



DECISION OF

Sheriff SG Collins KC

**ON APPEAL FROM A DECISION OF THE FIRST TIER TRIBUNAL, HOUSING
AND PROPERTY CHAMBER**

IN THE CASE OF

Mr Michael Nwaobi

Appellant

- and -

Mr Derek Featherstone
per Stonehouse Lettings

Respondent

FTS Case Reference: FTS/HPC/EV/23/1073

22 January 2024

Decision

1. The appeal is allowed. The decision of the First Tier Tribunal for Scotland (“FTS”) of 29 September 2023 is quashed. The case is remitted to the FTS for rehearing before a freshly constituted panel, and in accordance with the directions given below.



Introduction

2. Following a telephone case management hearing on 29 September 2023 the FTS made an order for the eviction of the appellant from Flat 9, 219 Victoria Road, Aberdeen. It was satisfied that Grounds 12 and 12A of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) were established, and that it was reasonable to issue an eviction order.
3. Following an oral hearing on 20 December 2023, and as set out in the decision of the Upper Tribunal of 23 December 2023, permission to appeal was granted. This was on the basis that the FTS had failed to properly address the issue of whether any rent arrears had been due to a failure or delay in payment of benefit, and in particular a failure of the respondent’s agents, Stonehouse Lettings, to apply for direct payment of Universal Credit as the appellant submitted that they had agreed to do.

Discussion

4. In granting permission to appeal I said that:

“... in terms of both sub-paragraphs 12(4) and 12A(3) of Schedule 3 to the 2016 Act, in deciding whether it is reasonable to issue an eviction order, the FTS is to consider whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, including Universal Credit.

...It is clear from paragraphs 5 to 9 of the FTS written statement of 29 September 2023 that the appellant had raised the question of whether any arrears were due to a delay or failure in payment of Universal Credit, and in particular whether there had been a failure as regards the making of direct payment to the respondent’s agents from this benefit. Further, the appellant had provided a screen shot which indicated that from September 2023 part of his Universal Credit would be paid directly to his landlord.

...Yet at paragraph 13(v) of the written statement the FTS found in fact as follows: “There is no evidence that rent has been paid or will be paid by state benefits. (sic.) receives an element of housing benefit;”. The second sentence of this paragraph is obviously incomplete, and incomprehensible. The finding in the first sentence is simply wrong. At least *some* evidence had been provided by the appellant at the hearing on 30 June 2023, and in the



screen shot later produced, to the effect that rent had been paid or would be paid by state benefits. If the FTS was rejecting that evidence, it did not say that it was doing so, nor did it explain why.

...At paragraph 15 of the written statement the FTS sets out parts of paragraphs 12 and 12A of schedule 3 to the 2016 Act. It does not set out either sub-paragraph 12(4) or 12A(3). It therefore did not expressly remind itself of the need to consider whether, at least in part, any rent arrears were due to failure or delay in payment of a relevant benefit. At paragraph 19 the FTS explains why it decided that it was reasonable to issue an eviction order. There is no reference in its reasons to indicate that in making this decision it had considered the issues required of it by sub-paragraphs 12(4) or 12A(3).

...In these circumstances there would appear to be a clear error of law on the part of the FTS. It either was unaware of the terms of sub-paragraphs 12(4) and 12A(3), and so failed to consider them when it should have, or it failed to give adequate and comprehensible findings and reasons for its decision that it was reasonable to evict in the light of the evidence before it which was relevant to these sub-paragraphs.”

5. Permission to appeal having been granted, matters would normally have proceeded to a full hearing of the appeal before the Upper Tribunal. However given the apparently clear error of law on the part of the FTS identified above, I suggested to parties that this might be a case in which they would prefer to consent to the appeal being allowed without further procedure in the Upper Tribunal, and for the case to be remitted to a freshly constituted panel of the FTS for rehearing. In response to this invitation both parties indicated in writing that they were content with this course.

Conclusion

6. The appeal is allowed. The decision of the FTS of 29 September 2023 is quashed. The FTS erred in law, for the reasons set out above. The case is remitted to a freshly constituted panel for rehearing and reconsideration. In doing so the FTS will require to give clear directions to both parties sufficient to establish the appellant’s housing benefit/universal credit position since the start of the tenancy, and presently. It will also need to consider and decide whether there was – as asserted by the appellant – an agreement that the respondent’s agents would apply for rent to be paid direct from benefits, and if so whether there was a failure to do this. Neither party appeared clear about these matters at the time of the permission hearing on 20 December 2023. It does appear that there are substantial rent arrears, but it was unclear to me the extent to which, whether in whole or in part, they were due to a delay or failure in relation to payment



of benefit. Careful fact finding is required on these matters, and only in the light of this can the FTS properly consider whether it is reasonable to issue an eviction order.

7. Any party aggrieved by this decision may seek permission to appeal to the Court of Session. Such an appeal may only be on a point of law. A party wishing to appeal must apply for permission to do so from the Upper Tribunal. Permission to appeal must be applied for within 30 days of the date on which this decision was sent to a party. Any request for permission to appeal to the Court of Session must be in writing and must: (a) identify the decision of the Upper Tribunal to which it relates; (b) identify the alleged error or errors of law in the decision; and (c) in terms of section 50(4) of the Tribunals (Scotland) Act 2014, state the important point of principle or practice that would be raised in the further appeal or any other compelling reason there is for allowing a further appeal to proceed.

Sheriff SG Collins KC
Member of the Upper Tribunal for Scotland