



DECISION NOTICE OF SHERIFF NIGEL ROSS

ON AN APPLICATION FOR PERMISSION TO APPEAL (DECISION OF FIRST-TIER
TRIBUNAL FOR SCOTLAND) IN THE CASE OF

MR JAMES MALLOCH, 109 Pilton Avenue, Edinburgh, EH5 2HP

Appellant

and

BERNISDALE HOMES LIMITED, 1A Rosebery Crescent Lane, Edinburgh EH12 5JR and
First-tier Tribunal for Scotland Housing and Property Chamber, Glasgow Tribunals Centre,
20 York Street, Glasgow, G2 8GT

Respondent

FTT Case Reference FTS/HPC/CV/18/2810

30 May 2019

Decision

Leave to appeal is refused in relation to all the grounds of appeal, other than the ground number 5 in which permission has already been granted by the First-tier Tribunal (“FtT”)

Reasons

[1] The FtT considered the application by reference to the relevant legislation. The decision sets out the positions of the parties and proceeds to discuss what evidence the FtT did or did not accept. The FtT found on the facts that the respondent did not impose a requirement on the applicant, but rather that the relevant wording represented no more than

a recording of what had been agreed, namely that the applicant volunteered to pay rental in advance. The FtT explains the reasoning, in relation to the circumstances and terms of the tenancy agreement. There is no evident error in the FtT's reasoning.

[2] In the grounds of appeal, the appellant places reliance on the asking of questions. There is no significance in asking questions, which are only necessary when the FtT requires clarification of any point in parties' submissions. If the FtT has understood the submissions, no questions are necessary. The hearing was the first and last opportunity for the appellant to provide evidence. The onus is on the parties to identify the legal basis of their claim and then to present all the factual evidence which they consider necessary. The FtT has no means of knowing what evidence is considered significant by the parties, and it therefore remains the responsibility of the parties to ensure that all relevant evidence is presented. In relation to the specific grounds of appeal:-

[3] In relation to ground 1, the matters complained of could have no causal effect on the Tribunal's findings, and do not amount to a ground of appeal. This ground is not arguable.

[4] In relation to ground 2, the applicant rehearses evidence, but these representations were for the FtT to assess for relevancy and persuasiveness. None of these points is determinative, but form only part of the background of fact. The FtT was not obliged to accept any evidence as either accurate or persuasive, and assessment of this was part of their function. There is no error in their reasoning. Hearsay evidence is admissible and was available for the FtT to consider. The FtT was entitled, and indeed obliged, to assess what evidence they accepted and what evidence they did not accept. They rejected the appellant's account. Their reasoning shows no error. The decision to refuse leave discusses these matters, and shows no error. This ground is not arguable.

[5] Ground 3 makes the same point, with the same result. The FtT decision to refuse leave discusses these matters, and shows no error. This ground is not arguable.

[6] Ground 4 raises further issues of fact. The FtT records that the factual basis was not disputed by the parties. There is no requirement for evidence where matters are not in dispute. The ground also seeks to re-raise matters of fact on which the FtT have made a reasoned finding. There is no evident error. This ground is not arguable.

[7] Ground 5: permission to appeal already granted by the FtT.