



DECISION NOTICE OF SHERIFF FRANCES MCCARTNEY

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

in the case of

MR DALE HUGHES, 104 Bellgrove St, Glasgow G31 1AA

Appellant

and

GLASGOW CITY COUNCIL PRIVATE SECTOR, 231 George Street, Glasgow, G1 1RX

Respondent

**FTT Case Reference FTS/HPC/PR/19/0888**

20 June 2020

### **Decision**

Permission to appeal is refused in relation to the two additional grounds of appeal sought by the Appellant regarding findings in fact 20 and findings in fact 18.

### **Introduction**

[1] The First Tier Tribunal (“FTT”) granted permission to appeal its decision on 14 February 2020, but limited to two from four grounds of appeal sought by the Appellant. The Appellant now seeks permission to appeal on the two grounds of appeal which the FTT refused permission on.

[2] The application to the FTT concerned an appeal against a Rent Penalty Notice (“RPN”). From the FTT’s decision, it appears that the Appellant and a Mr Matthew Berlow co-own a property which is subject to a residential tenancy. A RPN was issued by the Respondents against Mr Berlow as his registration as a landlord lapsed on 21 December 2018 and was not renewed until 12 February 2019. On 12 February 2019 the RPN was revoked when Mr Berlow renewed his registration as a landlord. Mr Berlow was treated as an interested party in the proceedings before the FTT, but did not participate at any stage in the proceedings.

[3] The RPN had the effect that the tenant of the property was not required to pay rent for the period of the notice. The Appellant applied to the FTT to set aside the RPN. The FTT refused the application.

### **The application for leave to appeal**

[4] The Appellant sought leave to appeal before the FTT, and the FTT granted leave two grounds; firstly in relation to whether the Respondents were required to show that the RPN had been served on the Appellant in addition to Mr Berlow, and secondly in relation to an argument under Article 1 of Protocol 1 of the ECHR.

[5] Leave to appeal was refused by the FTT on two other grounds. The first of those proposed grounds concerned a challenge to finding in fact 20 of the FTT’s decision regarding service of the RPN on the Appellant, and the second concerned a challenge to a finding in fact 18 regarding the service of the notice on Mr Berlow.

## Discussion

[6] In relation to the proposed ground of appeal relating to finding in fact 20, this was a finding by the FTT that “[A] RPN was sent by the Respondent to the Applicant by second Class post on 30 November 2018 to the Applicant but not received by him.” In his application for leave to appeal before the FTT the Appellant stated there was no evidence before the FTT that allowed such a finding to be made. In his application for leave to the Upper Tribunal, the Appellant criticises the FTT’s decision in respect of its discussion of information provided by the Respondents regarding the RPN having been given to its mailroom.

[7] Leave in relation to this ground is refused. The FTT noted at paragraph 17 of its decision that “it was a matter of agreement that there was no need to hear evidence” regarding the mailing of the RPN. It appears that the Appellant did not challenge the factual position stated by the Respondent’s representative at the FTT hearing. The FTT had information before it regarding the Respondent’s practice in the service of notices. In noting that it was not required to hear evidence on the issue, the FTT was focusing on the matters in dispute. The FTT was entitled to accept the information provided by the Respondents that the RPN was sent out in the post by the Respondent’s mail room, but also accept the Appellant’s position before it that the Appellant did not receive such a notice. Beyond that neither party wished to lead evidence on the issue. The FTT was entitled to make such a finding given that position.

[8] In relation to the proposed ground of appeal relating to finding in fact 18, this was a finding by the FTT that “[T]he respondent served a RPN on Mr. Matthew Berlow that was not challenged or appealed by him.” The Appellant sought leave before the FTT the basis that there was no evidence before the FTT that the RPN was served on Mr Berlow. The Appellant maintains that position before the UT.

[9] Leave to appeal in relation to that ground is refused. The FTT made its finding on the balance of probabilities, having regard to the information before it regarding the passing of the RPN to the Respondent's mailroom and the subsequent remedying of Mr Berlow's registration after that notice might have been expected to be received by him. The FTT was entitled to infer that Mr Berlow remedied the position after receipt of the notice. Whilst the Appellant in his Form UTS-1 argues he remedied Mr Berlow's registration, that does not appear to be information placed before the FTT. The Appellant agreed that it was unnecessary for the FTT to hear evidence on the mailing of the RPN. He did not lead evidence to show the RPN had not been received by Mr Berlow. The FTT were entitled to make the finding in fact it did.

[10] In relation to the two grounds of appeal for which the FTT has already granted permission to appeal, a Case Management Direction will be issued shortly.