



DECISION NOTICE OF SHERIFF FRANCIS McCARTNEY

on an application for permission to appeal
(decision of First-tier Tribunal for Scotland)

in the case of

MR BARRY JAMES PARKER, MRS AGNES DONIS PARKER, West Doura Farm, Craigie,
Kilmarnock, Ayrshire, KA1 5NL

Appellants

and

MR IAIN STEPHEN TREHERNE, MRS ANN CHRISTINE TREHERNE, 7 Swanston Avenue,
Edinburgh, EH10 7BU

Respondents

FTT Case Reference FTS/HPC/CV/19/0649

30 January 2020

Decision

Leave to appeal to the Upper Tribunal is refused.

Introduction

[1] This decision concerns an application for leave to appeal to the Upper Tribunal from a decision of the First Tier Tribunal for Scotland Housing and Property Chamber ("the FTT"). The proposed Appellant to the Upper Tribunal is Mrs. Agnes Parker, who has sought leave

to appeal on behalf of herself and her husband. They are referred to throughout this decision as the Applicants.

[2] The application before the FTT concerned the Applicant's claim under section 16 of the Housing (Scotland) Act 2014. That application was for damages arising from a claimed breach of contract, and an alleged breach of the statutory repairing duty for a tenancy between the parties between 20 May 2016 and 1 May 2018.

[3] The hearing before the FTT was originally due to take place on 2 July 2019, but adjourned as a result of additional documents being lodged by the Applicants lodged on the morning. The hearing was reconvened on 13 September 2019. The FTT issued its decision on 14 October 2019.

[4] The FTT considered eight alleged defects of the property, listed at paragraph 20 of its decision. Parties had agreed a joint minute of admissions. The FTT heard evidence from the Applicant Mrs. Parker, and a witness Mr. Watt for the Respondent (who appears to be the property or letting agent on behalf of the Respondents). The FTT also had evidence before it in the form of an affidavit from a relative of the Applicants, and correspondence from the local authority Environmental Health department regarding their investigations and finding that the property failed the tolerable standard in March 2018.

[5] The FTT considered the alleged defects and found for the Applicants on each of the breaches it dealt with (it does not appear to have dealt with the issue of the ventilation in the bathroom, but it might be that there was no dispute on that issue given the terms of the findings of the local authority Environmental Health department). The FTT proceeded to consider the issue of quantum. The Applicants claimed damages for breach of contract and breach of the repairing standard. In essence the Applicants sought damages in the form of a partial reimbursement of rent already paid and damages for inconvenience and loss of

amenity. The Respondents opposed the claim on the merits, but also argued that in relation to quantum the Applicants' remedies were to withhold rent, claimed an abatement of rent or applied for a Repairing Standard Enforcement Order. The FTT rejected the Respondents' arguments that damages could not be sought. It rejected the Applicants' claim for a general reimbursement of 80 % of the rent already paid, on the basis that a claim for damages at this stage had to be supported by specific heads of loss. It did, however, award a claim for loss of amenity and inconvenience of £650.

[6] The Applicant sought to appeal the FTT by seeking leave from the FTT on 13 November 2019. That was refused by the FTT on 30 November 2019 and sent by the FTT to the Applicants on 3 December 2019. The FTT refused leave on the basis that no point of law arose in the application for leave.

Grounds of appeal

[7] Leave to appeal from the Upper Tribunal was sought by way of a form signed and dated by the second Applicant on 31 December 2019. The Applicants had 30 days to lodge the application.

[8] The proposed grounds for appeal are found in two handwritten letters annexed to the application. Those have been transcribed into typed text by tribunal staff. One of the letters is a general covering letter (in the sense that it does not relate to any particular part of the form) but details a number of specific concerns about the judgement.

[9] In relation to the specific grounds of appeal, it is said that (i) 'the landlords and letting agent conspired to prevent the course of justice' by failing to provide details of companies involved in the renovations of the property and details of the landlord's

insurance policy and (ii) that the tribunal “ask East Ayrshire Council for all correspondence” in relation to the investigations by their Environmental Health department.

[10] In addition, in the covering letter reference is made to “there are many other points of law” that it is said the FTT did not consider and further that no decision was made on the refund of the rent paid over a two year period.

Discussion

[11] The application for leave to appeal is late. The FTT’s refusal to grant leave to appeal was sent under cover of a letter of 3 December 2018.

[12] Rule 3 (9) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (‘the 2016 Upper Tribunal Rules’) reads:

“Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 30 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal.”

[13] Accordingly the application should have been lodged within 30 days of 4 December 2019. Bank holidays do not appear to be excluded for the purposes of calculating the 30 day period by the However, the Second Applicant has explained within the application the difficulties in sending the application over the Christmas and New Year period, and given that the application is only days late, the Upper Tribunal would not have refused leave solely on the basis that the application was lodged late.

[14] However, there is a more fundamental problem with the application. The application for leave does not explain the proposed grounds in law where it is said that the FTT erred. Reading the letters as a whole, it is clear that the Second Applicant disagrees with the FTT’s decision. What is absent is any indication of where the FTT erred in law.

[15] The Applicants were successful before the FTT on the factual matters in dispute regarding the condition of the property, in respect that the FTT largely made findings in their favour as to whether the alleged defects were a breach of the landlord's duties. The Applicants were not wholly successful on the alleged defects regarding the garage, in respect that the FTT ruled that the garage did have a number of defects but described it as a technical defect in that the tenants agreed only to use the garage for a limited purpose. Whilst it appears that the FTT appear not to have specifically dealt with the issue of the ventilation of the bathroom, that does not seem to be a material point in relation to the quantification of damages overall, given the other defects that the FTT ruled on. The Second Applicant complains that the FTT should have ordered the Respondents to provide the details of the companies involved in the remedial works, the landlord's insurance policies and ordered further documents from the local authority as to investigations by environmental health officers. It does not appear that any application was made to the FTT for such documents to be obtained. But in any event given the Applicants succeeded in showing the landlords breached their obligations in relation to the condition of the property, it is difficult to see how obtaining such documents would have assisted the FTT in reaching a decision more favourable to the Applicants.

[16] Dealing with the points raised in the covering letter, there is no specification of the points of law that the FTT erred on.

[17] The FTT did consider the Applicants claim for partial refund of rent. Pages 22 to 25 of the FTT's decision sets out why it considers as a matter of law the Applicants claim for damages based on a partial repayment of rent is ill-founded. It is not correct to say that the FTT did not make a decision on that application; the FTT held against the Applicants on that

issue. The Second Applicant does not address why the FTT erred in law in making that decision.

Conclusion

[18] There is no point of law specified in the application for leave to appeal. Leave to appeal is refused.