



2023UT01
Ref: UTS/AP/22/0020

DECISION OF

Sheriff Donald Corke

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

Mr Norman Blair, 43/6 Deanhaugh Street, Edinburgh, EH4 1LR

Appellant

- and -

Mr Nitin Jangda, 23 Sighthill Street, Edinburgh, EH11 4PQ

Respondent

FtT Case Reference: FTS/HPC/CV/21/1970

16 January 2023

Decision

Refuses permission to appeal the decision of the First-tier Tribunal Housing and Property Chamber dated 24 June 2022.

Introduction

[1] The appellant is a landlord. The respondent is his former tenant in terms of a private residential tenancy between five tenants and the appellant. When the respondent ceased to occupy the property on 10 June 2021, a dispute arose between him and the appellant,

primarily as to whether and when the respondent had agreed to leave but also as to the state in which he had left his room. An application for a payment order was first submitted to the First-tier Tribunal Housing and Property Chamber (“the FtT”) on 16 August 2021 and accepted by it on 28 September 2021. The claim as amended was for a total of £2202.62 and included claims for alternative accommodation for a new tenant who could not be accommodated as soon as the appellant hoped; cleaning and painting costs; a fee for finding and signing up a replacement tenant; and a late payment fee of £21 per month up to February 2022. There was a refund of 14 days’ rent to cover the period from 1 to 14 June 2021 (paragraph 4 of FtT decision).

[2] After some procedure and in the light of the factual disputes between the parties there was a hearing with evidence before the FtT concluding on 24 June 2022. The unanimous decision of the FtT was that the appellant was entitled only to a payment order in the sum of £710. That was because the respondent had failed to take reasonable care to keep the property clean. The sum awarded reflected the cleaning and painting required as a result of his breach of the tenancy agreement.

[3] The appellant requested permission from the FtT to appeal to the Upper Tribunal for Scotland (UTS) under s.46(3)(a) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”). By Statement of Decision dated 11 August 2022, the FtT unanimously refused permission to appeal on all grounds.

[4] The appellant has accordingly sought permission to appeal to the UTS. That lies on a point of law only in terms of s.46(3)(b) of the 2014 Act. Such permission may be given only if the UTS is satisfied that there are arguable grounds for the appeal (s.46(4)). A permission to appeal hearing took place before me on 12 December 2022.

[5] It may be noted that although the appellant ticked both boxes on the first page of Form UTS-1, this was a permission to appeal request under s.46(3)(b) and not an appeal against the decision of the FtT under s.46(1) with their permission.

Grounds of appeal

[6] The original ground of appeal on form UTS-1 dated 15 September 2022 is in the following terms:

Can the sender of a message subsequently benefit from an ambiguity which the message created to the detriment of the receiver, especially when the sender neglected to provide written clarification when asked to do so by the receiver? The receiver (the appellant) would argue that the First-tier Tribunal should have applied the legal concept of contra proferentem and erred in law in not doing so and as a result created an injustice which should be overturned by the Upper Tribunal for Scotland.

[7] It appears that the appellant did not receive a copy of the FtT decision until 20 September 2022. After he did receive a copy, he responded with what he considers to be two points of law for the Upper Tribunal to consider:

13. POINT ONE. Based upon ALL of the evidence and not just the text messages, was it correct for the FTT to rule that the tenant had not indicated a move out date upon which the landlord was entitled to rely. Paragraph 13 FTT grounds of refusal.

14. POINT TWO. Was it correct for the FTT to rule that the tenant wasn't required to pay the 'agreed fee to enable him to be relieved of his individual obligations under the tenancy'?

Discussion

[8] The FtT has carefully considered and set out not only their initial decision but also the reasons for the refusal to grant permission to appeal to the UTS. I agree with their approach and conclusions.

[9] As far as point one is concerned, the FtT made certain findings in fact and law, including those at paragraphs 44-49 and in particular:

45. Although there was an agreement that the Respondent could leave before August without penalty there was no agreement on an actual date when the Respondent would leave.

46. The discussions between the parties did not amount to notice by the tenant or a consensual agreement on a date when the tenancy ended in terms of section 48 or 49 of the Private Housing Tenancies (Scotland) Act 2016 [“the 2016 Act”].

47. The Respondent ceased to occupy the property on 10th June 2021.

48. The Applicant verbally agreed with a new prospective tenant that he could move into the Respondent’s room at the property before the Respondent had agreed an actual date to move out and before the Applicant could give the incoming tenant possession. The Applicant incurred costs for alternative accommodation as a result of this agreement.

[10] “Contra proferentem” has no application in law to the construction of the text messages between the parties. The initial decision at paragraph 60 shows explains how the FtT set about their task. There is no reason to consider that they missed any material out of consideration. The appellant strongly disagrees with their conclusions, but that does not mean that they were not entitled to make them on their interpretation of the evidence. I agree that there is no arguable point of law with reference to the categories set out in *Advocate General for Scotland v Murray Group Holdings Ltd* [2015] CSIH 77; 2016 SC 201 (affirmed by the Supreme Court in [2017] UKSC 45; 2018 SC (UKSC) 15) and as quoted by the FtT.

[11] As far as point 2 is concerned, recovery of the “agreed fee”, this is a reference to paragraph 42 of the decision, a finding of fact and law in these terms:

42. The Respondent understood when he moved into the property that he would be liable to pay rent until the end of August 2021 and would lose a month’s rent paid at the start if he moved out before the end of August 2021 and that this was the only reason for a month’s rent being forfeited.

[12] It is plain from the decision and the reasons for refusal of permission that the FtT refused to allow the “agreed fee” because they accepted the evidence of the respondent on this point. They considered that this sum of £340 was not lawfully due, as set out in their decision at paragraphs 57 and 58, and in particular:

The Tribunal took the view that this term was therefore entirely at odds with the legislation which allows tenants and joint tenants to give notice to leave in specific ways at any time during a tenancy without penalty. The Tribunal took the view that the extra terms allowing a tenant to leave before others with the agreement of all did not mean that the legislation could be ignored, and tenants could not be expected to forfeit monies for leaving a tenancy before a specific date if appropriate notice is given.

[13] The argument of the appellant (paragraph 48) is that the 2016 Act is only relevant where a complete tenancy comes to an end and in this case the tenancy for the house did not come to an end. Reference can be made to the reasons for decision at paragraph 57:

The tenancy presented in this application appeared to be a joint tenancy but with additional terms which appeared to allow one tenant to leave the tenancy with the agreement of all others and the landlord. A single tenant cannot terminate a joint tenancy in terms of the 2016 Act and this model appeared to allow a tenant to leave before other tenants who wished to continue the tenancy. It was said in the terms that the tenancy continued but the Applicant accepted in his evidence that a new

tenancy was created even though he did not have a new agreement signed by everyone each time a tenant left the property. Whilst the Tribunal accepts that a joint tenancy may be capable of being ended in this way, by agreement of all and a new tenancy can be created with continuing tenants and the “new” tenant, this does not in our view allow a landlord to impose terms which do not accord with the legislation.

[14] The appellant has his own and strongly held views on the legitimacy and utility of the £340 payment. However, and for the reasons given by the FtT there is no arguable point of law. Reference is again made to the categories set out in *Advocate General for Scotland v Murray Group Holdings Ltd*, above.

Conclusion

[15] The grounds of appeal are not arguable. Permission to appeal is refused.

**Sheriff D S
Corke**
Sheriff Donald Corke
Judicial Member

Digitally signed by Sheriff
D S Corke
Date: 2023.01.16 15:02:21
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