



2023UT05
Ref: UTS/AP/22/0031

DECISION OF

**SHERIFF SG COLLINS KC
JUDGE OF THE UPPER TRIBUNAL**

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

Miss Glara Emily Ahdie, Flat 2, 83 Greencroft Gardens, London, NW6 3LJ

Appellant

- and -

Mr Makinde Oladipupo, 5 Pendreich Way Room 4, Hermitage Road, Bridge of Allan, Stirling,
FK9 4LA

Respondent

FtT Case reference: FTS/HPC/PR/22/2310

9 February 2023

Decision

Permission to appeal the decision of the First Tier Tribunal (FTT) of 23 September 2022 is refused.

Introduction

The decision of the FTT was that Ms Ahdie had breached regulation 3 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”) because she failed to pay Mr Makinde’s deposit into an approved tenancy deposit scheme within 30 days of



the start of the tenancy on 6 November 2021. Because the FTT found Ms Ahdie to be in breach of regulation 3, it ordered her in terms of regulation 10 to make payment to Mr Makinde of £800.

Grounds of appeal

Ms Ahdie accepted that she had failed to pay the deposit in accordance with regulation 3 of the 2011 Regulations. She said that she had not done so because she had had a miscarriage and as a result was suffering from severe mental health issues. She also alleged that Mr Makinde had engaged in anti-social behavior towards other residents in her property, and had kept it in such an insanitary condition that it had become infested with rats. Ms Ahdie enlarged on these matters at an oral hearing today. Mr Makinde disputed Ms Ahdie's allegations, and made counter allegations against her regarding her management of the tenancy.

Discussion

Appeal against the decision of the FTT is not unrestricted. It is only available on a point of law. It is therefore not available just because the losing party might disagree with the FTT's assessment of the facts. Furthermore, before there can be an appeal, permission to appeal must be granted, and it will not be granted unless the point of law on which it is sought to appeal is at least properly arguable.

No error of law was identified by Ms Ahdie in relation to the FTT's finding of a breach of regulation 3 of the 2011 Regulations. Nor was any error of law identified in relation to the FTT's decision to order Ms Ahdie to make a payment under regulation 10. It is clear that there were no such errors. There was an admitted breach of regulation 3, and therefore regulation 10 required the FTT to order payment of an amount not exceeding three times the amount of the deposit. The amount of the deposit was £365. Accordingly in terms of regulation 10 the FTT could have ordered Ms Ahdie to pay as much as £1,095, and in principle was entitled to order payment of £800.

Ms Ahdie did submit that the FTT's decision to order a payment of £800 was unreasonable. In principle this might constitute a point of law. But the amount selected by the FTT is not unreasonable as a matter of law simply because Ms Ahdie thinks it so, nor even if it is more than I might myself have selected. Nor does it become unreasonable because of evidence which Ms Ahdie could have put before the FTT at the time it made its decision, but failed to. Rather the question is whether, on the evidence before the FTT, its decision



to order payment of £800 for Ms Ahdie's breach of regulation 3 was so unreasonable that no reasonable tribunal could have made it.

The FTT had heard oral evidence from Mr Makinde at the case management hearing on 22 September 2022. Ms Ahdie failed to attend this hearing. The FTT was entitled to accept Mr Makinde's version of events in relation to the management of the tenancy. It was therefore entitled to take the view that the breach of regulation 3 was a serious one, and had involved a blatant disregard for the rights of Mr Makinde as tenant, for the reasons set out. And as the FTT says, the more serious the breach the greater the penalty that is appropriate.

The FTT explained its reasons for selecting the figure of £800 at paragraphs 22 to 28 of its decision of 23 September 2023 and at paragraph 9 of its decision of 18 November 2022 refusing permission to appeal. These reasons are on their face rational and coherent and based on the evidence which was before the FTT at the time it made its decision. The sum awarded was perhaps on the high side, given in particular that all of the deposit was ultimately returned to Mr Makinde, but it was within the range of awards which was open to the FTT.

In these circumstances it is not properly arguable that the decision to order payment of the sum of £800 was unreasonable in the way described above.

Conclusion

It follows that permission to appeal must be refused.

Sheriff SG
Collins
KC

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