



DECISION OF

Sheriff Ian Hay Cruickshank

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

Mr Adeyinka Alase, 24 Alexander Drive, Aberdeen, AB24 2XE

Appellant

- and -

Mrs Alison Iveson, C/O Martin and Co Aberdeen, 123 - 125 Rosemount Place, Aberdeen, AB25
2YH

Respondent

FtT Case reference – FTS/HPC/EV/22/0873

8 December 2022

Decision

Refuses permission to appeal the decision of the First-tier Tribunal Housing and Property Chamber dated 15 August 2022.

Introduction

[1] Mr. Adeyinka Alase (“the appellant”) seeks permission to appeal the decision of the First-tier Tribunal Housing and Property Chamber (“the FtT”) dated 15 August 2022. The FtT refused permission to appeal on 17 October 2022.



- [2] Having received the appellant's application for permission to appeal, matters proceeded before me by way of a Hearing on 7 December 2022. The Hearing was conducted via WebEx. The appellant attended as did the respondent's representatives Mr. Barr, Mr. Prato and Ms. Card.
- [3] When the application for permission to appeal was received by the Upper Tribunal the appellant sought suspension of an imminent eviction from the tenanted subjects. Having considered this aspect of the appeal, on 22 November 2022, I issued an order in terms of rule 7(3) (n) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 suspending the effect of the decision of the FtT pending determination of the appellant's application for permission to appeal.

Grounds of appeal

- [4] The appellant sought to advance two grounds of appeal. These can be summarized as follows;
1. The FtT erred in not allowing the appellant a fair hearing on the basis that the appellant could not hear most of what was being said and therefore he was deprived of the ability to participate effectively in the said hearing.
 2. The FtT erred in law in concluding that the lease had expired when, in fact, it had been renewed between the parties.
- [5] I have summarized the above grounds of appeal from the appellant's UTS-1 form. I confirmed with the appellant at the hearing before me that I had correctly understood the extent of the grounds of appeal which the appellant sought to advance.



Discussion

- [6] In addition to the Appellant's UTS-1 form I was forwarded submissions contained in an email shortly before the hearing commenced. At the hearing the appellant stated he would send a further email for my consideration when the hearing had concluded. The email would provide evidence of the renewal of lease agreements between 2017 and 2021. These items, together with the appellant's oral submissions at the hearing have all been considered by me.
- [7] In relation to the first ground of appeal the appellant submitted that he could not hear most of what was said at the hearing before the FtT. As such he submitted that he had been deprived of a fair hearing under Article 6 of ECHR. He accepted he had not made the difficulties he was experiencing known at the time but the appellant submitted it was the FtT's responsibility, and not his, to ensure that he could hear what was being said. The appellant made reference to the case of *DG v Secretary of State for Work and Pensions* (Upper Tribunal Ref-CPC/19957/2009).
- [8] The appellant's written submissions in relation to the second ground of appeal were relatively brief. He asserted that his lease had not expired in July 2017. He had evidence that the parties had renewed the lease on more than one occasion. The lease continued and the appellant submitted that he could provide evidence of this. When questioned by me, the appellant confirmed that he had not brought any such evidence to the attention of the FtT. He stated the email he would send to me would confirm the renewal of agreements albeit the items sent by "docusign" could not be opened as they had now expired.

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[9] At the hearing the respondent's representative made very brief submissions. In essence these were to the effect that the FtT had not erred in law and the decision correctly recorded the information presented by the parties at the CMD. Renewal of the lease was denied. On that basis, permission to appeal should be refused.

Conclusion

[10] This is an appeal in terms of section 46 of the Tribunals (Scotland) Act 2014. As such, an appeal is to be made on a point of law only. In terms of section 46(4) permission to appeal may be given only if I am satisfied that there are arguable grounds for the appeal. My function, as a member of the Upper Tribunal, is limited. Consideration of an application for permission to appeal is not an opportunity to rehear the factual matters previously argued before the FtT.

[11] The FtT's decision of 15 August 2022 confirms the respondent sought an order under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. A case management discussion ("CMD") was assigned and intimated to the parties. The appellant was invited to make written submissions by 28 July 2022 but none were received in advance of the CMD. At the hearing before me the appellant accepted he had not made any written submissions in advance of the CMD and cited stress as his reason for not doing so.

[12] The CMD proceeded by conference call. The appellant represented himself and the respondent's representative attended. The FtT's decision records the information provided by both parties at paragraph 4 of its decision dated 15 August 2022. Based on the



information before the FtT it reached findings-in-fact and concluded that based on the fact that a Notice to Quit had been served and the tenancy had reached its end, on balance, it was reasonable to grant the order sought.

[13] In its decision refusing leave to appeal dated 17 October 2022, and in relation to the grounds of appeal which the appellant seeks to advance before the Upper Tribunal, the FtT commented as follows. With regard to the first ground, the FtT stated that the appellant gave no indication that there were communication difficulties and he had responded appropriately throughout the CMD. The information provided was recorded in the decision and the appellant did not identify any additional information which had been omitted or was relevant. On the second ground of Appeal, the FtT stated that the appellant did not give an indication of the evidence which he had or what bearing this might have on the decision reached. As such, permission to appeal was refused.

[14] Having considered the submissions advanced by the appellant and respondent I determine the grounds of appeal as follows. As I have already outlined, an appeal before the Upper Tribunal is to be made on a point of law only. It is not an opportunity to rehear the factual matters previously argued before the FtT.

[15] In relation to the appellant's first ground of appeal reliance on the case of *DG v Secretary of State for Work and Pensions* is ill-founded. In that case the appellant had waived his right to an oral hearing. This had been based on the fact that bad advice had been given to the appellant by the Job Centre. The decision in that appeal centered on this bad advice and failure of the Tribunal at first instance to communicate with the appellant's GP. These were



the constituent elements which led the Upper Tribunal, viewing the case as a whole, to conclude the appellant had been deprived of a fair hearing within the meaning of Article 6. The decision in *DG* therefore is of no assistance to the appellant in this case.

[16] The appellant in his written application for permission to appeal, and in his oral submissions, has provided no information in relation to what material consequence there was to the hearing as a result of the appellant's professed inability to hear. The appellant has provided general submissions to the effect that he was deprived of a fair hearing. That said, the FtT did not consider there was any communication difficulty. The FtT recorded the information that each party provided in paragraph 4 of its decision. The appellant has not suggested that there was any further material submission which he intended to make but was prevented from doing so given any communication difficulty which he experienced. As such there was no error of law on the part of the FtT. Based on the information provided by the parties the FtT reached the findings-in-fact which led to its decision. Any communication difficulty did not lead to the findings-in-fact being inaccurate or incomplete. As such the appellant was not deprived of a fair hearing. The appellant's first ground of appeal is not arguable. Permission to appeal on this ground is refused.

[17] In relation to the appellant's second ground of appeal the appellant conceded he had not provided any evidence to the FtT to support his contention that the lease had not expired but had been renewed. The appellant conceded that the email he forwarded to the Upper Tribunal anent possible documentation to substantiate his claim had not been provided to

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the FtT. As the FtT commented in its refusal of permission to appeal the appellant did not give an indication of the evidence which he had or what bearing this might have on the decision reached. Even if the content of the email sent to the Upper Tribunal was of relevance it was not before the FtT when it determined this matter. Accordingly, based on the information available to the FtT it did not err in law in the findings-in-fact which it reached. On that basis, the appellant's second ground of appeal is not arguable. Permission to appeal must be refused.

[18] Accordingly, having considered this matter fully I refuse permission to appeal. In those circumstances, the appellant's application for permission to appeal now having been determined, the previous order issued in terms of rule 7(3) (n) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 suspending the effect of the decision of the FtT is revoked. The decision of the FtT stands and enforcement may follow.

Sheriff Ian Hay Cruickshank

Member