Upper Tribunal for Scotland

2025UT59
Ref: UTS/AP/25/0104

DECISION OF

Sheriff O'Carroll

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

Miss Peace Echeonwu

Appellant

- and -

Mrs Susan Mitchell
per Thorntons

Respondent

FTS Case Reference: FTS/HPC/EV/24/3951

20 August 2025

Decision

The application for leave to appeal by the appellant against the decision of the First Tier-tribunal for Scotland dated 28 April 2025 is refused.

Reasons

Background.

1. This application for permission to appeal against the decision of the First-tier Tribunal for Scotland dated 28 April 2025 ("the tribunal") concerns the decision of the tribunal to grant

an order against the appellant for her eviction from the subjects of a tenancy of a flat at an Edinburgh address ("the property").

2. The tribunal held that the appellant was in breach of the lease between the parties in a number of respects. The tribunal made findings in fact that the appellant had sublet the property, she had allowed the property to become infested with cockroaches, she had caused damage to the water pipes in the property resulting in leaking to neighbouring properties, she failed to properly ventilate the property resulting in mould and condensation and failed to maintain the property in a clean and tidy condition. In addition, she was in rent arrears of around £2,000. The tribunal further found that the necessary statutory notices had been served on the appellant prior to the commencement of the action and that she had been properly cited to attend the hearing. In all the circumstances, the tribunal decided that it was reasonable to grant the order for eviction.
3. That decision was made in the absence of the appellant at the hearing who although properly invited to attend, did not do so.
4. Subsequently, the appellant made an application seeking review of the tribunal's decision, and also leave to appeal against the tribunal's decision. The grounds for review and the appeal are to similar effect. That is, the appellant claimed that she had not been given proper notice of the hearing, that the tribunal was not permitted to proceed in her absence, that the tribunal failed properly consider the interests of justice and in doing so, the tribunal acted in a procedurally unfair way. That application did not challenge any of the tribunal's findings in fact or offer a defence.
5. By way of decision dated 7 July 2025, the tribunal refused the appellant's request for a review on the grounds that the application was made out of time, was not copied to the respondent, did not set out why a review was necessary and was in all other respects without merit. By way of another decision on the same date, the tribunal refused leave to appeal against its own decision of 28 April 2025. It held that the application for leave to appeal did not identify any error of law in its decision.

Application for leave to appeal to Upper Tribunal

6. The appellant renewed her application for leave to appeal against the decision of the tribunal to this Upper Tribunal on 24 July 2025.
7. This Tribunal fixed a hearing on the appellant's application for permission to appeal which took place on 19 August 2025 by Webex. At that hearing, the appellant, spoke to her application. She relied on her written grounds of appeal and did not wish to add anything. The respondent did likewise.

The law as regards appeals to the Upper Tribunal.

8. An appeal to this Upper Tribunal against a decision of the First-tier Tribunal for Scotland can only be made on a point of law: section 46(2)(b) of the Tribunals (Scotland) Act 2014. Permission to appeal is required under section 46(3)(b) which must be sought first from the tribunal below. If there refused, permission must be sought directly from this Tribunal. Permission will only be granted if there are arguable grounds. Therefore permission to appeal will only be granted if the Tribunal is satisfied there are one or more arguable errors of law.
9. The meaning of an appeal on a point of law in the context of appeals against a tribunal decision was explained in *Advocate General for Scotland v Murray Group Holdings Ltd* 2016 SC 201, [2015] CSIH 77 at paragraphs [41] to [43]. In brief, there are five categories of error: content or interpretation of the law; application of the law to the facts; a finding in fact for which there was no evidence or inconsistent with/contradictory of the evidence; fundamental error in tribunal's approach or a decision which no reasonable tribunal could have reached.
10. By contrast, permission to appeal will not be granted where, for example, the appeal is essentially an attempt to reargue factual matters which have been evaluated and decided by the tribunal. Neither for example, will permission to appeal be granted on the basis of additional factual material not put before the tribunal.
11. The test for arguability is not a particularly high one. The appellant is not required to prove that the tribunal did actually err in law. That is for determination at a later hearing, if the appeal gets that far. But the appellant does require to show at permission stage that there

is a real argument requiring a full hearing for proper resolution of the contention that the tribunal has erred in law. Mere assertions or error of law will not suffice. Neither will asserted errors of law, which can readily be shown to be unfounded, suffice. Nor will assertions of error of law, which are in substance merely an attempt to reargue the facts, suffice.

12. The grant of permission to appeal is an exercise of discretion on the part of this Tribunal. That discretion is unlikely to be exercised even where the appellant establishes an arguable error of law if the error would not have had a material effect on the outcome: see *R v Secretary of State for Social Services ex parte Connolly* [1986] 1 WLR 421; *R(Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982.

13. In deciding whether an arguable error of law has been established, this Tribunal gives due deference to the expertise of the members of the tribunal below whilst acknowledging at the same time that this Upper Tribunal is itself a specialist part of the adjudication mechanism. So, this Tribunal should be slow to interfere with the decision of the tribunal below where the decision is one that involves elements of evaluation and judgement after hearing evidence. There is a need for appellate caution in reversing an evaluation of the facts by a tribunal judge. The higher the factual component in the evaluative exercise, the slower the appellate court should be to interfere: see *Advocate General for Scotland v Murray Group,* above, at paragraphs [45] to [47].

Grounds of appeal for which permission is sought.

14. I now deal with the grounds on which application for permission to appeal is made. The appellant claims that the tribunal erred in law by proceeding with the case management discussion on 28 April 2025 in her absence, by making a decision in her absence and by refusing to recall its decision or review its decision. She claims that the tribunal did not give effect to the overriding objective under rule 2, misapplied rule 6 relating to service of tribunal documents, failed to ensure proper notification of notice of hearings under rule 24, heard the case in her absence contrary to rule 29, failed to apply the interests of justice test

under rule 30, wrongly concluded that she had not established an arguable error of law, all of which constituted procedural unfairness and a good arguable error of law.

Decision.

15. The appellant has not established that the tribunal arguably erred in law in any respect for the following reasons. First, it is clear beyond doubt examining the ample documentation available to the tribunal that the appellant received proper notice of the date time and place of the case management discussion on 28 April 2022 in more than one way. On 10 March 2025, the tribunal administration sent a formal very detailed letter and enclosures to the appellant at the property providing the date and time of case management discussion, how she was to take part in the case management discussion, stating that the tribunal might do anything at a case management discussion including making a decision on the application. That letter told the appellant that if she did not take part in the case management discussion, the tribunal would be entitled to make a decision in her absence. She was given the opportunity to request a postponement of the hearing. In addition, Sheriff Officers were instructed by the tribunal administration to serve the same notice on her by personal means together with all of the relevant documentation. That was done by Sheriff Officers on 11 March 2025. The tribunal had before it a signed copy of this certificate of intimation. Furthermore, additional documentation was served on the appellant by agents for the respondent on 17 April 2025 relating to that hearing which was done by way of email referring to the correct tribunal reference number. Thus, the tribunal was well entitled to conclude that the appellant had had proper and adequate notice of the case management discussion and that the rules of procedure regarding that matter, rules 6 and 17(2) were followed. By contrast, the appellant does not make any attempt to explain how in these circumstances she did not receive proper notification.

16. Second, rule 17(4) provides that a tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision. That is what the tribunal did. Rule 29 provides that the tribunal may proceed with any application, if a party does not appear at a hearing, if satisfied notice was given of the hearing in terms of rule

24(1). The tribunal was entitled for the reasons noted above to conclude that such notice had been given. Thus the tribunal did not breach the rules by making a decision in the appellant's absence.

17. The appellant claims that the tribunal erred in not allowing her application for recall of the decision. However, the appellant did not make an application for recall of the decision in terms of rule 30. The application made was for review which is governed by rule 39. But, there is no appeal against a decision to refuse to review a decision: section 43(4) Tribunals (Scotland) Act 2014. Nothing more need to be said about that aspect of the appellant's application.

18. In addition, the appellant alleges that the tribunal erred in law by not considering the terms of rule 2 which sets out the overriding objective of the FTS. That is "to deal with the proceedings justly". It is not arguable that that has not been done. The fact that the tribunal dealt with the respondent's application for recovery of possession in the absence of the appellant does mean that it acted unjustly. It is clear from the tribunal's decisions on the original application, the application for review and the application for leave to appeal, that the tribunal has fully taken that account all that has been stated by the appellant. It has also obviously fully taken into account all that was been said by the respondent landlord in the original application. The tribunal will have noted that the appellant has not attempted to state any positive defence to the application for recovery of possession. The respondent commenced the proceedings for recovery of possession in June 2024 and is entitled to a decision from the tribunal within a reasonable time as regards her application to recover possession of her property. The appellant of course has her own interests particularly in maintaining possession of the subjects and the decision of the tribunal will no doubt have significant consequences for her. It is in the very nature of the task of any tribunal that it must weigh the competing considerations put before it which necessarily in a recovery of possession case will involve adjudication between a landlord and tenant each often with starkly contrasting interests. The tribunal in this area must be expected to have understood and weighed up competing considerations and to have applied to the terms of rule 2 in a

fair and just way. It is in the interest of justice that tribunal rules of procedure are followed. There is nothing on the face of the decision of the tribunal to indicate that it has done anything other than perform its duty justly within the bounds of the rules of procedure. There is no arguable error of law associated with the decision of the tribunal appealed against.

19. Finally, the appellant was also concerned that she was not able to secure legal representation at this hearing. However, in my view, such representation was not necessary in order to do justice to the case. The appellant, a doctoral student at the University, has been able to set out her position clearly in writing and orally with detailed reference to the tribunal's rules of procedure. She has not been significantly disadvantaged by being unable to obtain legal representation. This Tribunal is well used to dealing with party litigants. This is a specialist tribunal. Although the respondent is legally represented, that fact in the circumstances of this case does not represent an inequality of arms potentially productive of injustice. The issues to be considered in this application for leave to appeal are limited and legal representation was not needed to enable the application to be fairly dealt with.
20. Accordingly, it follows that considering the stated grounds of appeal together with the terms of the tribunal's decision and the other relevant material considered by the tribunal, no arguable errors of law in the tribunal's decision are demonstrated. Leave to appeal is therefore refused on all grounds. The tribunal's order for eviction of the appellant from the property dated 28 April 2025 may now be enforced in the usual way.

Sheriff O'Carroll
Member of Upper Tribunal for Scotland

There is no appeal against this decision or right of review: section 48 and 55(2) of the Tribunal (Scotland) Act 2014.