



DECISION NOTICE OF SHERIFF PINO DI EMIDIO  
ON THE APPELLANT'S APPLICATION FOR RECONSIDERATION OF  
REFUSAL OF PERMISSION TO APPEAL ON GROUNDS  
IN THE APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL FOR  
SCOTLAND

in the case of

MR DALE HUGHES, 104 Bellgrove St, Glasgow G31 1AA

Appellant

and

GLASGOW CITY COUNCIL PRIVATE SECTOR, 231 George Street, Glasgow, G1 1RX

Respondent

**FTT Case Reference FTS/HPC/PR/19/0888**

10 August 2020

**Decision**

Upon reconsideration permission to appeal is Refused in relation to grounds of appeal numbers 1 and 2 sought by the appellant regarding challenges to findings in fact 20 and findings in fact 18 respectively in the First-tier Tribunal's decision dated 27 January 2020.

## **Note of Reasons for Decision**

### ***Introduction***

[1] The First Tier Tribunal (“FtT”) granted permission to appeal its decision on 14 February 2020, but limited to two of four grounds of appeal sought by the appellant. The appellant now seeks permission to appeal on the two grounds of appeal on which the FtT refused permission.

[2] The application to the FtT concerned an appeal against a Rent Penalty Notice (“RPN”). From the FtT’s decision, it appears that the appellant and a Mr Matthew Berlow co-own a property which is subject to a residential tenancy. A RPN was issued by the respondent against Mr Berlow as his registration as a landlord lapsed on 21 December 2018 and was not renewed until 12 February 2019. On 12 February 2019 the RPN was revoked when Mr Berlow renewed his registration as a landlord. Mr Berlow was treated as an interested party in the proceedings before the FtT, but did not participate at any stage in the proceedings.

[3] The RPN had the effect that the tenant of the property was not required to pay rent for the period of the notice. The appellant applied to the FtT to set aside the RPN. The FtT refused the application.

### ***The application for permission to appeal***

[4] The appellant sought permission to appeal before the FtT, and the FtT granted permission on two grounds in relation to (a) whether the respondent was required to show that the RPN had been served on the appellant in addition to Mr Berlow (Ground 3), and (b) an argument under Article 1 of Protocol 1 of the ECHR (Ground 4).

[5] Permission to appeal was refused by the FtT on Grounds 1 and 2. Ground 1 concerned a challenge to finding in fact 20 of the FtT's decision regarding service of the RPN on the appellant, and Ground 2 concerned a challenge to finding in fact 18 regarding the service of the RPN on Mr Berlow.

[6] In a decision dated 20 June 2020 the Upper Tribunal Judge, Sheriff F McCartney ("the UT Judge"), also refused permission to appeal on grounds 1 and 2. The appellant has asked for reconsideration of that decision under rule 3(7) of the Upper Tribunal for Scotland Rules of Procedure 2016 ("the UTS Rules").

### *Reasons for Decision*

[7] Proposed Ground 1 relates to finding in fact 20, this was a finding by the FtT that "[A] RPN was sent by the Respondent to the Applicant by second Class post on 30 November 2018 to the Applicant but not received by him." In his application for permission to appeal before the FtT the appellant stated there was no evidence before the FtT that allowed such a finding to be made. In his application for permission to the Upper Tribunal, the appellant has criticised the FtT's decision in respect of its discussion of information provided by the respondent regarding the RPN having been given to its mailroom.

[8] In refusing permission on this ground the UT Judge observed that the FtT noted at paragraph 17 of its decision that "it was a matter of agreement that there was no need to hear evidence" regarding the mailing of the RPN. She noted that the appellant did not challenge the factual position stated by the respondent's representative at the FtT hearing. The FtT had information before it regarding the respondent's practice in the service of notices. In noting that it was not required to hear evidence on the issue, the FtT was

focusing on the matters in dispute. The UT Judge concluded that the FtT was entitled to accept the information provided by the respondent that the RPN was sent out in the post by the respondent's mail room, but also accept the appellant's position that he did not receive such a notice. Beyond that neither party wished to lead evidence on the issue. The FtT was entitled to make such a finding given that position.

[9] The appellant submits in his written application for reconsideration that the FtT fell into error of law because there was not sufficient evidence before it to support finding in fact 20 even by way of inference.

[10] The appellant's submission seems to relate to whether his co-proprietor received a copy of the RPN but the finding he wishes to challenge (number 20) relates only to the receipt by the appellant of a copy the RPN. The FtT has expressly accepted in finding 20 that the appellant did not receive a copy of the RPN. I agree with the reasoning of the UT Judge. There is no inconsistency in the finding and it does not indulge in speculation as to why the appellant did not receive the RPN. Therefore on reconsideration permission to appeal is refused on ground 1. No arguable point of law has been identified in Ground 1.

[11] Proposed Ground 2 related to finding in fact 18. The FtT found that "*[T]he respondent served a RPN on Mr. Matthew Berlow that was not challenged or appealed by him.*" The appellant sought permission to appeal before the FtT the basis that there was no evidence before the FtT that the RPN was served on Mr Berlow. The appellant maintained that position before this Tribunal.

[12] In refusing permission on this ground the UT Judge observed that the FtT made its finding on the balance of probabilities, having regard to the information before it regarding the passing of the RPN to the respondent's mailroom and the subsequent remedying of the co-proprietor's registration after that notice might have been expected to be received by him.

She decided that the FtT was entitled to infer that the co-proprietor remedied the position after receipt of the notice. She stated that whilst the appellant argued in his Form UTS-1 that he had remedied the co-proprietor's registration, that did not appear to be information placed before the FtT. The UT Judge noted that the appellant agreed that it was unnecessary for the FtT to hear evidence on the mailing of the RPN. The appellant did not lead evidence to show the RPN had not been received by his co-proprietor. She concluded that the FtT was entitled to make the finding in fact it did.

[13] In his supplementary submission in this reconsideration application, the appellant has asserted that he refutes the suggestion that he did not tell the FtT that he had remedied his co-proprietor's registration. He submits that he did not concede that the RPN had been served on his co-proprietor and it was for the respondent to prove that the RPN was served on the co-proprietor. He wishes the recording of the hearing before the FtT to be transcribed.

[14] I agree with the conclusion of the UT Judge on Ground 2. The appellant agreed that evidence was not required before the FtT. The FtT was entitled to make finding in fact number 18 on the information before it. The statutory function of this Tribunal is a limited one to correct errors of law. It is not part of its function to provide a party with an opportunity to re-open the proceedings in the FtT in order to have a second opportunity to put his case in the best light. The FtT's finding 18 is limited in nature and was one it was entitled to make on the information available to it. Therefore, on reconsideration, permission to appeal is refused on ground 2. No arguable point of law has been identified in Ground 2.