



DECISION OF UPPER TRIBUNAL JUDGE PINO DI EMIDIO

in an Application for Permission to Appeal against a Decision
of the First-Tier Tribunal for Scotland

in the case of

MISS ANNA RUTKOWSKA, 45 Park View, Mitlaw, Peterhead, AB42 5TA

Appellant

and

MRS JILL GARVIE, PERTSHIRE PROPERTY SERVICES, 1/2 48 Scott Street,
Perth, PH1 5EH

Respondent

FTT Case Reference FTS/HPC/CV/19/2905

3 December 2020

Decision

The Upper Tribunal for Scotland Refuses the appellant permission to appeal the decision of the First Tier Tribunal Housing and Property Chamber dated 25 September 2020 on the proposed grounds set out in her Form UTS-1 dated 20 October 2020.

Introduction

[1] In this Note Ms Rutkowska is referred to as “the appellant” and Ms Garvie as “the respondent” unless the context otherwise requires.

Background

[2] The appellant seeks permission to appeal against the decision of the First-tier Tribunal Housing and Property Chamber (“FtT”) dated 25 September 2020 to make a payment Order in the sum of £667.71 in favour of the respondent in respect of an unpaid amount of rent due by her for the property at G/R, 13 Inchaffray Street, Perth, PH1 5RU. The respondent had sought an order for payment of this sum as representing a balance of outstanding rent unpaid at the termination of the tenancy on 9 August 2019. Before the FtT the appellant disputed any sum was due owing to the alleged condition of the property during the course of the tenancy. The reasons for the FtT’s decision are set out in the following passage of its reasons for decision:

“[The appellant] was very clear that she was not counter claiming in respect of losses which she said she had incurred and her evidence on the point at which she had decided to stop payment of rent made it clear that she was not withholding rent as a means to force her landlord to effect repair, indeed it seemed as though she had simply decided that she was paying no more rent due to the problems she had encountered.

For the Respondent to succeed in her defence in relation to non-payment of rent the Tribunal would require to be satisfied on the evidence that the property was in a condition below the “required living standard” and as such that the landlord had failed in terms of her obligations under the tenancy agreement. The Tribunal did not come to that view for the reasons referred to in respect of the evidence that was accepted. In fairness to the Respondent the Tribunal considered the case of *Taghi v Reville*, 2003 Hous.L.R 110, and the approach taken in that case, in particular as to the test to be applied in respect of habitability and whether abatement of rent could apply if there was a breach of another obligation such as failing to attend to repairs within a reasonable time. The Tribunal found no such breach in this case on the evidence before it and was satisfied that the property was reasonably fit for people to live in throughout the tenancy.”

[3] On 19 October 2019 an application for permission to appeal to the Upper Tribunal (“UT”) was rejected by the FtT. On 20 October 2020 the appellant submitted a form UTS-1 to

the UT seeking permission to appeal. This was not formally processed by the UT clerks until 2 November 2020 when the FtT decision to refuse permission to appeal was received. On 27 November 2020 there was a telephone conference call hearing in which both the appellant and the respondent participated.

Grounds of appeal

[4] The appellant set out three grounds in her UTS-1.

- Ground 1 - Error of general law;
- Ground 2 - Error of findings with no evidence;
- Ground 3 - Equality Act – discrimination against my age.

I propose to examine each of these in turn.

Ground 1

[5] In the course of the hearing the appellant accepted that the FtT had asked itself the right question when it identified the following question:

“... whether the property had been maintained to an appropriate standard and whether in all other respects the property was reasonably fit for people to live in during the tenancy ... [page 7]”.

As I understood her, she now accepted that there was no substance to this ground of appeal.

Permission to appeal is refused on this ground.

Ground 2

[6] This ground is stated in very vague terms. At the hearing I went over the FtT's findings in fact with the appellant to seek to identify which findings she took issue with. For

present purposes she primarily took issue with findings 16, 17 and 18. These findings were in the following terms:

“16. During the period between January 2019 and July 2019 with the exception of a period in March when the Respondent was on placement she continued to live in the property, sleep there and make use of the washing and cooking facilities.

17. The property was reasonably fit for people to live in during the tenancy.

18. The condensation and mould problems during the tenancy were connected to high relative humidity, restricted airflow due to furniture and stored items in the property and the need for increased heating, ventilation and insulation.”

The criticism made in this proposed ground does not identify an arguable error of law even after elaboration in the course of the hearing. The FtT has narrated the evidence it heard in careful terms and has explained why it accepted certain parts of the evidence and rejected other parts. The appellant strongly disagrees with their findings in fact. She is quite entitled to have a different view from the FtT but that does not necessarily mean that the FtT has erred in law in its approach to the evidence. The decision of the FtT proceeds on a proper understanding of the applicable aspects of the law of leases and it was entitled to come to the conclusion it did on the evidence it heard. The FtT proceeded on the written and photographic evidence that was produced to it by the respondent. The only third party evidence was from a witness put forward by the respondent. That person had a degree of specialist knowledge. The FtT has accepted that evidence and I can find no flaw in its stated reasons for doing so. If other evidence had been available, it may be that the FtT would have reached a different conclusion. Permission to appeal is refused on this ground.

Ground 3

[7] The FtT made a remark about the appellant’s lack of experience as a tenant. It was careful to make clear that this was not part of the reasoning for its decision. I do not

interpret the remark as one that was intended to insult the appellant but it has caused offence. It may have been better if it had been omitted but it does not give rise an arguable point of law impacting on the reasoning for the decision of the FtT. Permission to appeal is refused on this ground.

Conclusion

[8] Permission to appeal is refused on all three grounds. No arguable point of law has been identified in any of the grounds set out in the application.

Sheriff Pino Di Emidio

Member of the Upper Tribunal for Scotland