



DECISION NOTICE OF SHERIFF PINO DI EMIDIO

IN AN APPLICATION FOR PERMISSION TO APPEAL AGAINST
A DECISION OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND
(HOUSING AND PROPERTY CHAMBER)

in the case of

MR DAVID GRIERSON 2 Chamfrom Gardens, Stirling, FK7 7XU
per Mrs Linda Leung, 1/1 Lancefield Quay Glasgow G8 8RD

Appellant

and

MR ARCHIE COWAN, Apartment 519, Marsa Gardens, The Wave, Al-Mouj Muscat, Oman

Respondent

FTT Case Reference FTS/HPC/CV/20/1481

10 MARCH 2021

The Upper Tribunal for Scotland Refuses the appellant permission to appeal the decision of the First Tier Tribunal for Scotland Housing and Property Chamber dated 16 December 2020 on the proposed grounds set out in the Form UTS-1 dated 8 February 2021.

Note of reasons for decision

[1] In this Note, unless the context otherwise requires, Mr Grierson is referred to as “the appellant”. Mr Cowan is referred to as “the respondent”.

Background

[2] The appellant seeks permission to appeal (“PTA”) the decision of the First Tier Tribunal for Scotland Housing and Property Chamber dated 16 December 2020 making an order for payment in the sum of £7,425.00 in respect of unpaid rent for the property 2 Chamfron Gardens, Stirling, FK7 7XU (“the Property”). The First-tier Tribunal for Scotland is referred to as “the FtT” in this document. On 18 January 2021 the FtT refused an application for review by the appellant. On the same date he was also refused permission to appeal to this Tribunal.

[3] This appeal relates to FtT case number FTS/HPC/CV/20/1481. There is a related case in which the respondent seeks an order for the eviction of the appellant from the Property. In that matter the FtT granted an order for recovery of possession on 22 December 2020 under case number FTS/HPC/CV/20/2007. There is a separate appeal in respect of that matter under case number UTS/AP/21/002. On 4 March 2021 hearings on permission to appeal were conducted by WebEx in respect of this case and case number UTS/AP/21/002. Both parties attended. The appellant was represented by Mrs Leung. This Decision deals with the payment matter only.

The Grounds of appeal

[4] Section 46(4) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provides that PTA is to be granted where:

“... the Upper Tribunal is satisfied that there are arguable grounds for the appeal.”

In approaching the terms of section 46(4), I have had regard to the discussion by the Lord Justice Clerk (Lord Carloway) in *Czerwinski v H.M. Advocate* 2015 S.L.T. 610 at paragraph [9]

together with the authorities cited there. The function of the Upper Tribunal is a limited one. An appeal under the 2014 Act is not an opportunity to rehear the factual matters argued before the FtT but rather to correct any errors of law that may have been made in the decision of the FtT.

[5] The proposed grounds of appeal are set out in the appellant's Form UTS-1. They are follows.

"Making findings in fact without a basis in the evidence. The landlord arranged via email I pay rent in cash through a window during lockdown 2020 because I am a US Citizen. I gathered £3000 and handed it to an individual on April 2020 and the landlord never acknowledge he received it. He tricked me and I since withheld rent because there was problems in the house with no smoke detector, a leaking sink and that he was discriminating against me because I am disabled both physically and mentally. I am a US citizen and I have a visa and I am allowed into the UK."

Reasons for decision

[6] There is no dispute that the parties entered into a Private Residential Tenancy Agreement (PRTA) commencing 31 January 2020, that monthly rent of £825 was due for the Property and that the appellant had not paid any rent since 3 May 2020. The FtT heard the evidence and rejected the factual basis of the appellant's defence to the claim for payment of rent. All the matters referred to in the ground of appeal were matters of fact for the FtT. The FtT concluded that his evidence and that of his witness was not credible or reliable. It found aspects of it evasive and inconsistent. He was unable to produce evidence for payment of the sum of £3,000 despite having asserted he could vouch withdrawals. The defects he had complained of had been in the main rectified. The FtT accepted and preferred the evidence of the respondent and his witnesses. The reasons put forward by the appellant for not paying rent were described as "spurious and without foundation".

[7] All the matters referred to in the stated grounds of appeal were stated before the FtT and considered by it. Questions of fact are the province of the FtT and there is no basis

which has been identified on which it can be concluded that it is arguable that the FtT has made an error of law. The appellant is simply seeking a re-hearing of the factual matters decided by the FtT. In the circumstances PTA is refused as no arguable point of law has been identified.