



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/EV/20/2007

16 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”. The parties entered into a Private

Residential Tenancy Agreement for the property 2 Chamfron Gardens, Stirling, FK7 7XU (“the Property”) commencing 31 January 2020.

### **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 eviction and recovery of possession in respect of the respondent’s intention to sell 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 the FtT also refused permission to appeal to this Tribunal.

[3] This appeal relates to FtT case number FTS/HPC/EV/20/2007. There is a related case in which the respondent seeks an order for the payment of sums of unpaid rent due by the appellant from the Property. In that matter the FtT granted an order for payment on 16 December 2020 under case number FTS/HPC/CV/20/1481. There is a separate appeal in respect of that matter under case number UTS/AP/21/0001. On 4 March 2021 hearings on permission to appeal were conducted by WebEx in respect of this case and case number UTS/AP/21/0001. Both parties attended. The appellant was represented by Mrs Leung. This Decision deals with the eviction 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:

“Number 3 Making findings in fact without a basis in the evidence. Number 4 Taking a wrong approach to the case and arriving at a decision that no reasonable tribunal can properly reach. The decision was that I was not occupying the property since prior to 17 August 2020 and not looking at clear video evidence to prove that I was occupying the property in August 26 2020. Landlord falsely claiming to not recognise his own property. I was in hospitalised twice.”

#### **Reasons for decision**

[6] There is no dispute that the parties entered into a Private Residential Tenancy Agreement (PRTA) commencing 31 January 2020 and that the monthly rent of £825 was due for the Property. The FtT heard the evidence and rejected the factual basis of the appellant's defence to the claim for eviction and recovery of possession. It also went on to consider the question of the reasonableness of the order it was being asked to grant.

[7] I have taken account of all of the emails that were sent after the PTA hearing by the appellant's representative dealing with the offer to video evidence to show the presence of the appellant in the Property on 26 August 2020. A major focus of complaint by the appellant is that the FtT did not look at his video evidence which he maintained established that he had been present in the property on that date. It is claimed that if the FtT had done so it would have concluded that he had not abandoned the Property.

[8] The FtT has explained carefully that in advance of the hearings it made several directions. These were issued on 27 October 2020, 9 November 2020 and 1 December 2020. In particular Direction 4 of 1 December 2020 set out in detail the requirements for a medical certificate from either the hospital he was attending or a suitably qualified Italian doctor setting out details of the reasons for his unfitness to participate in a hearing. Direction 5 set out 5 distinct points which should be addressed in a written statement dealing with the merits of the dispute which the FtT was dealing with. If these directions had been complied with they might materially have assisted the appellant in the presentation of his case. The FtT report that none of its directions were complied with. A flavour of the FtT's assessment can be gleaned from the following passage in its decision.

“The Tribunal had given the Respondent clear direction on the information required. The Respondent (and Ms Leung) repeatedly failed to provide the information and sought to use the excuse of ill health. This position was entirely unsustainable and contrary to their own actions and evidence. The Respondent was well enough to correspond with the Tribunal administration, compile lengthy emails and attachments on a daily (and sometimes more) basis. Yet he was not well enough to prepare a detailed written statement as required by the Direction of 1 December 2020. He was unable to produce evidence confirming the date he left for Venice or of any booking to return – in fact he conceded that no booking to return had been made. He was unable to produce any evidence of his visa status despite making reference to the existence of such documentation during the course of his evidence and Ms Leung's.”

[9] The FtT is to be commended for the efforts it made to engage with the appellant and manage the case. A party that wished to engage with the fact finding process before the FtT would have been assisted by the directions as to how to bring evidence to the attention of the FtT. Ample opportunity, with detailed guidance, was provided to the appellant to provide vouching of his claimed unfitness to participate in the process but that opportunity was not taken. The complaint about a failure to view a particular piece of video evidence is of little assistance to the appellant. On the face of it more effort might have been made to

view it but at most it represented a single piece of evidence of little materiality in the overall assessment of the FtT of the evidence in the case. It cannot be said to be any realistic prospect that this piece of evidence would have affected the overall outcome. No reason for the failure to comply with numerous directions of the FtT has been provided. The FtT was well entitled to reach the conclusions it did in the circumstances in which it found itself at the hearing.

[10] 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.