



DECISION NOTICE OF SHERIFF IAN HAY CRUICKSHANK

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

in the case of

MISS WENDY WILSON, MR MARK JON HALLWORTH, Ashbank, 4 Burnfoot Cottages,
Ashkirk, Scottish Borders, TD7 4PH

Appellants

and

MRS PAULINE MCDERMOTT NEE MCGREGOR, c/o T C YOUNG, 7 West George Street,
Glasgow G2 1BA

Respondent

FTT Case Reference FTS/HPC/EV/21/0039

8 July 2021

Decision

Having re-considered the appellants' application for permission to appeal Refuses permission to appeal the decision of the First-tier Tribunal Housing and Property Chamber dated 1 March 2021 on the proposed grounds set out in appellant's Form UTS-1 dated 5 May 2021.

Introduction

[1] Miss Wilson and Mr Hallworth (“the appellants”) have sought permission to appeal a decision of the First-tier Tribunal Housing and Property Chamber (“the FtT”) dated 1 March 2021. Leave to appeal has been refused by the FtT. Permission to appeal has also been refused by Upper Tribunal member Sheriff Ross dated 18 May 2021.

[2] The appellants have requested re-consideration of the decision of Sheriff Ross. The request is made under Rule 3(7) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (No 2016/232). Under Rule 3(8) such an application requires to be dealt with by a member of the Upper Tribunal different from the member who refused permission without a hearing.

[3] A hearing took place before me on 7 July 2021 and was conducted via the WebEx platform. On the day before the scheduled hearing the appellants emailed the Upper Tribunal advising that for health reasons they would not be attending. On this information being brought to my knowledge I asked further enquiry to be made as to whether the appellants were requesting a postponement of the Hearing or whether they were content for me to deal with matters per their written submissions and other lodged items. A brief email was received advising that the appellants were “content, under the circumstances, and to mitigate further stress” for the Hearing to proceed in their absence. I determined in all of the circumstances it was appropriate to do so. At the Hearing the respondent attended and was represented by her solicitor, Miss Donnelly.

Grounds of appeal

[4] The grounds of appeal are stated as follows:

1. Making findings in fact without a basis in the evidence;

2. Taking a wrong approach to the case by, for example, asking the wrong questions or taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal can properly reach.

[5] The appellant's application referred to their attached statement.

Discussion

[6] The decision made by the FtT relates to granting repossession under Schedule 3, Part 1 of the Private Housing (Tenancies) (Scotland) Act 2016 on the ground under paragraph 4(1), namely that the landlord intends to live in the property. The FtT found the landlords intention to occupy the property as her only or principal home for at least 3 months, as required by paragraph 4(2), had been proved. The order for eviction was granted.

[7] The FtT considered evidence in the form of an affidavit from the respondent. It considered the written representations lodged by the appellants. The appellants also personally attended the Hearing and made further representations challenging the position outlined by the landlord. Ultimately, the FtT accepted evidence and representations made on behalf of the landlord. They concluded on the facts accepted by them that the eviction was reasonable.

[8] Following refusal to grant leave to appeal by the FtT the applicants lodged a written response outlining what they considered to have been unfair treatment of them during the Hearing. They considered the Hearing to have been biased and they had been treated unfairly. The terms of their written response is with the papers I have seen and is further summarised in the decision to refuse permission to appeal by Sheriff Ross. I will not repeat their response herein.

Conclusion

[9] This is an appeal in terms of section 46 of the Tribunals (Scotland) Act 2014. As such, an appeal is to be made on a point of law only. In terms of section 46(4) permission to appeal may be given if I am satisfied that there are arguable grounds for appeal. The function of the Upper Tribunal is limited as it is not an opportunity to rehear the factual matters previously argued before the FtT. My task is to decide whether the grounds of appeal disclose an arguable error of law on the part of the FtT.

[10] Having reviewed and considered the materials and submissions before me I wholly endorse the reasoning of Sheriff Ross. The FtT accepted and preferred the evidence presented on behalf of the landlord. They were entitled to do so. There is no basis upon which the Upper Tribunal is entitled to interfere with their decision. The grounds of appeal are unarguable. Permission to appeal is refused.