



DECISION OF

Sheriff Iain Fleming

**ON AN APPLICATION TO APPEAL
IN THE CASE OF**

Mrs Jennifer Davidson, 17 Milton Road, Pittenweem, Anstruther, KY10 2LN

Appellant

- and -

Mr Gerhard Opperman, Mrs Cindy Opperman, 2 The Stables, Kinnaird House, Falkirk, FK2 8QX

Respondents

FtT case reference FTS/HPC/PR/21/1866

16 June 2022

Decision

[1] The Upper Tribunal grants the appeal and quashes the decision of the First Tier Tribunal, dated 1 December 2021 and remits the application to the First Tier Tribunal Housing and Property Chamber to proceed as accords.

Introduction

[2] Gerhard Opperman and Cindy Opperman, spouses, (hereafter “Mr and Mrs O”) were the tenants and the respondent (the now appellant) was the landlord of a property at 23 Broomage Avenue, Larbert, FK5 3LF.

[3] On 1 December 2021, the First Tier Tribunal for Scotland (Housing and Property Chamber) (hereafter “the FtT”) held a Case Management Discussion (hereafter “the CMD”) in relation to an application dated 26 August 2021 by Mr and Mrs O following an application by them for a wrongful-termination order. In terms of section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereafter “ the 2016 Act”) the FtT may make a wrongful-termination order if it finds that a former tenant was misled into ceasing to occupy let property by the person who was the landlord under the tenancy immediately before it was brought to an end.

[4] The CMD took place by telephone. Mr and Mrs O were present but unrepresented. Of significance is the fact that the appellant was neither present nor represented. It would appear that notice of time, date and method of the hearing was served on the appellant by advertisement on the FtT website between 20 October 2021 and 1 December 2021. Although the hearing was delayed until 2.12 pm there was no appearance by or on behalf of the respondent. The now appellant had not made any written representations and in the absence of appearance by the appellant the FtT proceeded on the basis that there was no opposition to the application. Having heard evidence from and Mr and Mrs O, Findings in Fact were made and the FtT determined to make a wrongful-termination order and it proceeded in terms of section 59(1) of the 2016 Act to impose a wrongful-termination order in the sum of £4,200.

[5] Thereafter sheriff officers instructed by Mr and Mrs O served a charge upon the appellant on 16 March 2022. The appellant maintains that this was the first time she became aware of the FtT proceedings. In written submissions she submitted that there had been procedural unfairness because she did not receive notification of the time, date and place of the CMD at which the FtT granted a wrongful-termination order. She explains that due to family circumstances she required to move home repeatedly. Her contact details could have been made available through the auspices of an estate agent she had instructed. The appellant submitted that she had been deprived of a fair hearing and that she is in a position to respond to the application by Mr and Mrs O.

[6] In short, the appellant's position is that she is not being dishonest and that it was her intention to occupy the property as her family home, but her family circumstances changed as a result of which she no longer proceeded with the aforesaid intention to occupy.

[7] The position was submitted to the FtT and on 21 March 2022 permission to appeal was granted in terms of Regulation 38 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2011 (hereafter "the 2017 Regulations").

[8] Mr and Mrs O advised in terms of an email of 28 April 2022 that "*We do not oppose the appeal as both parties should feel due process took place*".

[9] Paragraph 2 of the 2017 Regulations states that the overriding objective of the FtT is to deal with proceedings justly. Paragraph 3 enjoins the Chamber President and the FtT to seek to give effect to the overriding objective when exercising any power under the Regulations. In terms of Paragraph 3(2) of the Regulations, the Chamber President and the FtT must manage the proceedings in accordance with the overriding objective.

[10] In this particular case, the appellant was apparently unaware of the existence of proceedings. Her family circumstances were such that she was moving home on a repeated basis. Service had been made by means of advertisement. The appellant has a stateable position. It would not be consistent with the overriding objective to deal with proceedings justly for the appeal to be refused. It is unopposed by Mr and Mrs O.

[11] The circumstances are peculiar to this case. This is a case which I have decided without the benefit of legal representation on behalf of the either party and I did not have the benefit of legal submissions in relation to the decision which I have taken from either. Notwithstanding that the legislative process had been followed insofar as intimation of the action is concerned I am of the view that the objective must prevail. To do otherwise in the particular circumstances of this case as they have been presented would be unjust.

[12] In the circumstances and without the necessity for a hearing the appeal is granted and the case is remitted to the First Tier Tribunal in terms of Section 47(2)(b) of the Tribunals (Scotland) Act 2014.

Sheriff Iain M Fleming
Member of the Upper Tribunal for Scotland

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*