



DECISION OF

Sheriff Ian H Cruickshank

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF**

Miss Lynne Findlay
per Dundee Law Centre

Appellant

- and -

Mr Christopher Kane and Mrs Carrie-Anne Kane

Respondent

FTS Case Reference - FTS/HPC/RP/23/0360

22 February 2024

Decision

Refuses permission to appeal the decision of the First-tier Tribunal for Scotland, Housing and Property Chamber dated 27 October 2023.

Introduction

[1] An application was lodged with the First-tier Tribunal for Scotland Housing and Property Chamber (“the FTS”) seeking a Repairing Standard Enforcement Order (“RSEO”) on the basis



that the landlords had failed to comply with the duty imposed on them by section 14 (1)(b) of the Housing (Scotland) Act 2006. After sundry procedure, as outline below, the FTS, by its written decision of 27 October 2023, found that the landlords had complied with their statutory duty and dismissed the application.

[2] Miss Findlay (“the appellant”) sought permission to appeal. The FTS refused permission to appeal and issued its written decision to that effect dated 29 November 2023. The appellant now seeks permission to appeal from the Upper Tribunal (“the UT”) in terms of section 46 of the Tribunals (Scotland) Act 2014.

Grounds of appeal

[3] Three grounds of appeal were advanced in terms of the application. At the hearing assigned to consider whether permission to appeal should be granted only two grounds of appeal were insisted upon. These can be summarised as follows:

1. In relation to treatment and repair to the wet wall in the bathroom, as carried out by the landlords following the FTS’s direction notice, concerns about damp and mould, before and after repair, were advanced by the appellant’s representative. At the hearing of 27 October 2023 The FTS disregarded the submissions advanced due to a misunderstanding that these submissions were a prediction or concern for the future instead of a statement of fact relating to the present condition following said repairs.
2. The FTS failed to consider the appellant’s submissions in respect of the sealing of kitchen electric sockets. At paragraph 18 (j) of the written decision the FTS refers to 3 sockets and does make it clear these relate to sockets in the kitchen. Submissions



made it clear there were still ongoing concerns with the electrics. The FTS erred in law by not considering the oral evidence and submissions advanced by the appellant and her representative in relation to this matter.

Procedure before the FTS

[4] The written decision of the FTS outlines the procedure adopted in this case. On the morning of 21 April 2023 the surveyor member of the FTS carried out an inspection of the property and took photographs. The parties attended a hearing on the afternoon of 21 April 2023 when, with both parties' consent, the evidential hearing was converted into a Case Management Discussion. Thereafter the FTS issued a direction notice outlining, in parts (i) – (vi) thereof, the repairs or works to be carried out by the landlords. The landlords were given a period of six weeks for the various matters to be addressed.

[5] The FTS advised parties that the property would be re-inspected on 18 July 2023. Prior to that date both the landlords and the appellant's legal representative provided written representations to the FTS. Following re-inspection the surveyor member prepared a report which was circulated to the parties. The surveyor member's report stated that all works required to be carried out by the direction notice had been satisfactorily completed and no works were outstanding.

[6] A further hearing was conducted on 27 October 2023. In its written decision the FTS made various findings-in-fact and concluded that the property met the repairing standard and a RSEO was not required. The written decision of the FTS included reasons as to why it reached that decision.



[7] The comprehensive reasoning of the FTS is to be found at paragraph 18 (a) – (u) inclusive. These reasons supported and explained the findings-in-fact reached. At 18 (h) the FTS recorded the submissions made by the appellant’s solicitor dated 11 July 2023. Amongst subsequent subheadings the FTS recorded the following:

“18(j) The tenant remains concerned about electrical sockets in the kitchen and insists that they should be “sealed”, but her own solicitor confirms that “The electrician repaired 3 sockets”. We have had sight of satisfactory EICR and PAT certification dated 28 April 2023....

18(k) The only realistic conclusion that can be drawn from the evidence presented is that there is no defect in the electrical system nor in the electrical appliances provided by the landlord....

18(o) The tenant is still concerned about the quality of the remedial work carried out in the bathroom, but her concerns are about what “will arise again”. The tenant and her solicitor are looking to the future. We have to make a decision on the facts as they are today....

18(p) The facts that we find today are that the landlord has replaced the wet wall and resealed the bath. The landlord has replaced the bath panel....

18(u) A combination of agreed facts, persuasive evidence, and Tribunal member’s observations tell the tribunal that the property meets the repairing standard....”

[8] In an equally detailed and carefully considered decision refusing to grant permission to appeal the FTS did not accept it had ignored oral evidence or the appellant’s solicitor’s submissions. The FTS pointed to parts of its decision which recorded the appellant’s solicitor’s submissions and opined that its written decision clearly recorded that such submissions had



been considered. The FTS also pointed to the findings-in-fact it had made based on the evidence it accepted.

Discussion

[9] In order to determine whether permission to appeal should be granted a hearing took place by WebEx on 19 February 2024. The appellant was represented by her solicitor, Miss Falconer. Mr Kane, one of the landlords, attended and represented both respondents.

[10] The crux of the submissions for the appellant was that the FTS had either misunderstood or misinterpreted the material it had before it, including the written and oral representations made on behalf of the appellant, anent the concerns about works in relation to the bath and wet wall and in relation to the kitchen sockets. The FTS had erroneously concluded that the concerns regarding the bathroom were concerns for future possible deterioration rather than accepting these as actual concerns for the present state following the works which had been carried out. The written decision had not made it clear which sockets there were concerns about.

[11] Having considered the whole terms of the written decision I have concluded that the grounds of appeal are not arguable. No arguable point of law has been identified. It is very clear from the written decision that the FTS was conscious of, and gave consideration to, the submissions it heard on behalf of the appellant. What it made of those submissions was entirely a matter for the FTS. It cannot be said that the FTS either disregarded or ignored these. It cannot be said that what it made of these, or how it interpreted those submissions, was either unreasonable or unjustified. The FTS recorded the ongoing concerns which the appellant had expressed. The FTS ultimately made findings-in-fact which found that the landlords had



produced satisfactory EICR and PAT certificates regarding the electrics. It found in fact that the landlords had carried out works to the bathroom, including the wet wall as required. It found on re-inspection by the surveyor member that all works called for in terms of the direction notice had been carried out satisfactorily. These were findings-in-fact which the FTS was perfectly entitled to make based on its consideration of all material before it. None of these findings-in-fact can be faulted. No point of law arises.

Conclusion

[12] Having given consideration to the submissions of both the appellant and the respondents I am not satisfied that there are arguable grounds for this appeal. I refuse permission to appeal for the reasons above stated.

Sheriff Ian Hay Cruickshank
Member of the Upper Tribunal for Scotland