



DECISION OF

Sheriff Kelly

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

Mr Mukhtar Mohammed,

Appellant

- and -

Miss Irene Alvarado Reinoso, Miss Holly Samantha Bruton,

Respondent

FTS Case reference: FTS/HPC/PR/23/3160

Glasgow, 18 March 2024.

Decision

The Upper Tribunal refuses the appellant permission to appeal the decision of the First Tier Tribunal for Scotland, Housing and Property Chamber dated 11 December 2023.

Introduction

[1] The respondents sought an order from the First Tier Tribunal for Scotland, Housing and Property Chamber (“FTS”), arising from the failure of the appellant to lodge the deposit paid by them to him with an approved scheme, in terms of regulations 9 and 10 of the Tenancy Deposit



Schemes (Scotland) Regulations 2011 (“the 2011 regulations”). A case management discussion was held on 11 December 2023 after which the FTS issued its decision.

[2] The FTS found that the deposit paid over by the respondents was lodged in the appellant’s bank account. It was thereafter returned to them. There had been a clear breach of regulation 3 of the 2011 regulations. It provided reasons for arriving at that view. The FTS went on to make an award in terms of regulation 10 of the 2011 regulations and again provided reasons for the sum of £1800 it awarded to the respondents.

[3] The appellant sought permission to appeal from the FTS. It refused permission by decision dated 21 January 2024.

[4] The appellant sought permission to appeal from the Upper Tribunal by application dated 15 February 2024. The appellant sought an extension of time on the basis that the request for permission to appeal had been submitted outwith the 30 day period provided for in regulation 3 of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016. However, the application is submitted within that timescale. No extension of time is therefore required.

[5] The reasons provided by the appellant in seeking permission to appeal are as follows (with some minor amendments):

“My argument is when tenants moved into my flat they did not ask my consent or permission to keep a dog. If the tenants told me in writing I would ask for more rent and more dog deposit. The tenants have not bothered to send me a vet certificate or dog insurance. By law this is a breach of the tenancy agreement. After tenants evacuated there was damage bathroom floor. The tenant failed to notify of a water leak causing damage to the floorboard and dry rot. The tenants got full deposit of £1195 back so there was not any loss to the tenant.”



Arguable

[6] In terms of rule 3(6) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, where the FTS has refused leave to appeal, the Upper Tribunal may give permission to appeal if “the Upper Tribunal is satisfied that there are arguable grounds for the appeal”, section 46(4) of the Tribunals (Scotland) Act 2014.

[7] The threshold of arguability is relatively low. An appellant requires to set out the basis of a challenge from which can be divined a ground or grounds of appeal capable of being argued at a full hearing. The task of the Upper Tribunal in any application for permission to appeal is to ascertain whether the appellant has identified in the proposed ground or grounds of appeal an error of law that is capable of being argued before it at a hearing.

WebEx Hearing: 8 March 2024

[8] Mr Mohammed was unable to attend personally. Facilities were afforded to him to join the hearing via WebEx, telephone or other audio medium. He chose to submit written representations. Ms Bruton and Ms Reinoso were personally present via the WebEx platform.

[9] Ms Bruton submitted that permission to appeal ought not to be granted. She noted that the appellant accepted that the deposit was not lodged with an approved scheme. This is also what he had submitted to the FTS. He had told the respondents this. It was repeated in what he had stated in his application for permission to appeal. The other factors mentioned by the appellant were strictly irrelevant. In any event they were mentioned before the FTS. They had no bearing upon the decision arrived at by the FTS.

[10] Ms Reinoso associated herself with the submissions made by her co-respondent.



Submissions were made by her as to the averments of fact made in the appellant's submissions.

Decision

[11] The FTS was aware of the factual background in relation to the factors germane to their decision on the breach of regulation 3 and in relation to quantum. It was aware that the deposit had been returned to the respondents. The sum awarded was in respect of the failure by the appellant to lodge the deposit with an approved scheme.

[12] The FTS decided that the appellant had breached the obligations incumbent upon him in terms of regulation 3 of the 2011 regulations. The matters mentioned in his application for permission to appeal relative to: the dog kept by the respondents in the property, the absence of a vet certificate or dog insurance, the purported breach of the tenancy agreement, damage to the bathroom within the property and the return of the deposit to the tenants, do not form arguable grounds of appeal that are capable of being argued at a full hearing. The appellant has failed to identify an error of law. Permission to appeal is refused.

Sheriff T Kelly
Member of the Upper Tribunal for Scotland