



DECISION OF

Sheriff O'Carroll

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

Mr Karl Mooney

Appellant

- and -

Ms Donna Vincent, Mr Liam Vincent-Kilbride and Mrs Sheona Vincent-Kilbride

Respondent

FTS Case Reference: FTS/HPC/CV/23/3868

8 January 2025

Decision

Permission to appeal is refused

Background

1. This is an appeal against the decision of the FTS dated 22 August 2024 to refuse the claim by the appellant for £3,450 against the respondents, being former tenants, that sum representing the cost of replacing shutters to the house which were alleged by the appellant to have been stolen by the respondents during the course of the tenancy. The respondent denied theft of the shutters claiming that the shutters had in fact fallen into disrepair



resulting in their being removed from the windows and placed in the attic. However, the decision of the tribunal did not turn on the fate of the shutters.

2. Once the subjects of the tenancy were vacated by the respondents, the appellant sold the property. He did so without replacing the shutters or incurring any cost so far as the shutters were concerned. Furthermore, the appellant did not claim or offer to prove that the sale price of the property was in any way reduced by the absence of working shutters. The claim therefore of the appellant rested solely on the proposition that the shutters having been stolen or damaged by the respondents during the course of the tenancy, and that being a breach of the tenancy agreement, a breach of contract, the respondents were obliged to pay him what would have been the cost of paying a company to make bespoke shutters for the house even though he did not instruct or pay for that work, even though he does not own the house anymore and even though the sale price of the house was not diminished by the absence of working shutters.
3. The FTS refused the appellant's claim for the shutters on the very straightforward basis that the appellant had not suffered a loss. The appellant sought permission to appeal from the FTS on the same basis as advanced to the FTS and rejected by it.
4. The FTS refused permission to appeal adhering to its earlier decision. The appellant then renewed his application for permission to appeal to this Upper Tribunal.
5. The parties made written submissions, helpfully outlining their position as regards whether there was an arguable error of law on the part of the FTS. The position of the appellant was essentially the same as advanced before the tribunal: that is the shutters having been removed/stolen, he was thereby entitled to compensation for that without the need to prove that he had incurred a loss. The response by the respondents was that the FTS had made the correct decision and that no error of law was demonstrated.
6. On 8 January 2025, at a WebEx hearing fixed to determine the question of permission to appeal, (which also considered the related and conjoined appeal in UTS/AP/24/0100) the appellant and the respondent appeared. They referred to their prior written submissions and rested on those submissions. At the hearing, I announced the decision of the Upper



Tribunal which was to refuse permission to appeal. I stated that written reasons would follow. These are those written reasons.

Reasons

7. This is essentially a claim for damages by the appellant resulting from a breach of contract, the contract being the tenancy agreement. In Scotland, damages are restitutionary. That is, damages are awarded to restore the wronged party to the position they would have been had it not been for the breach of the contract by the wrongdoer. Therefore, the principle is that a breach of contract must cause loss to the pursuer to entitle the pursuer to damages. This is a fundamental rule vouched for in a large number of cases. See for example the discussion on this area in McBryde (3rd ed), the Law of Contract in Scotland at para 22-06 and the cases cited therein. The burden is on the wronged party to prove his loss. If he fails, no award of damages is payable.
8. In this case, the FTS did not make any clear finding that there had been any breach of contract on the part of the respondent, finding only that the shutters in the bedroom were broken and removed during the tenancy. The way that the FTS approached the question of damages was not to decide whether there was a liability for damages on the part of the respondents but rather to decide whether even if there was such a liability, the appellant had suffered loss. Given that the appellant did not attempt to prove any loss, he not having replaced the shutters attached to the house, and the price for which was not reduced by the absence of working shutters, it follows that the tribunal was correct to refuse his claim for damages in respect of the shutter. It follows therefore that no error of law, arguable or otherwise has been demonstrated on the part of the FTS. It follows also that permission to appeal against the FTS decision must be refused.
9. There is no appeal against this decision to refuse permission to appeal to the upper tribunal.

Upper Tribunal for Scotland



Member of the Upper Tribunal for Scotland