



DECISION OF

Sheriff SG Collins KC

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

Miss Lisa Crilly, 2 Culloden Avenue, Bellshill, ML4 2AX

Appellant

- and -

Mr Thomas McDonagh, 64 Fitzwater Road, Dunmow, Essex, CM6 3FH

Respondent

FTS Case Reference: FTS/HPC/EV/22/2021

06 November 2023

Decision

Permission to appeal is refused.

Introduction

The parties entered into a private residential tenancy of the property at 2 Culloden Avenue on 13 January 2022 at a monthly rent of £700. The respondent lodged an application for an eviction order on 22 June 2022 on the ground that rent had not been paid. Following case management hearings on 10 February 2023, 5 May 2023 and 14 July 2023 the First-tier Tribunal for Scotland (“FTS”) granted the application and issued an eviction order with effect from 14 August 2023.

Grounds of appeal

The appellant sought permission to appeal to the Upper Tribunal on the ground that that the FTS had made findings for which there was no evidence, or which were contrary to the evidence. In

particular she submitted that there was no evidence that she had not paid the rent. The respondent had only produced documentation in relation to his personal bank account, and not from the letting agents' account to which she said the rent had been paid. An oral hearing on the appellant's application for permission to appeal was held by WebEx on 6 November 2023. Both parties were present and made submissions.

Discussion

The FTS heard and considered oral and documentary evidence from both the appellant and the respondent over three case management hearings.

The respondent gave evidence that no payment of rent had been received since January 2022, either by him or by his letting agents. The FTS accepted this evidence as credible and reliable: see paragraph 34 of its written statement of 14 July 2023. The appellant gave evidence that she had paid the rent to the letting agents. The FTS rejected this evidence as not credible or reliable: see paragraphs 35 to 38.

Prior to making its decision the FTS gave the appellant the opportunity to produce bank statements showing that the rent had been paid. Indeed it gave directions to her to this effect and continued the case management hearing for this purpose. But the appellant failed to comply with the directions and, insofar as she produced any documentation and for reasons which it explained, the FTS was satisfied that it had been deliberately fabricated or falsified in an attempt to deceive the tribunal.

Accordingly the FTS found in fact that the appellant had not paid rent to either the respondent or to his letting agents since January 2022, and therefore that as of 14 July 2023 rent of £12,600 was due and unpaid: see paragraphs 27 and 28. In the light of this the FTS issued an eviction order.

Conclusion

The question of whether the rent had been paid was a question of fact for the FTS. Assessment of the credibility and reliability of the evidence was a matter for the FTS. It was entitled to accept the evidence of the respondent and to reject that of the appellant. It has explained its reasons for doing so. In the light of the evidence which it accepted, the FTS was entitled to find that the rent had not been paid since January 2022. It was under no obligation, in the circumstances, to direct the respondent to obtain further documentation, as the appellant contends. The FTS did not make findings for which there was no evidence, and nor were its findings contrary to the evidence. The appellant's ground of appeal raises no arguable error of law, and permission to appeal is therefore refused.

Sheriff SG Collins KC

Member of the Upper Tribunal