



[2019] UT 27
UTS/AP/18/0028

DECISION NOTICE OF SHERIFF PINO DI EMIDIO

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

in the case of

MS SANDRA CRAIG, 183 Yarrow Terrace, Dundee, DD2 4DY
per Dundee North Law Centre, 101 Whitfield Drive, Dundee, DD4 0DX

Appellant

and

MRS STACEY TAYLOR, 88 Tullideph Road, Dundee, DD2 2JF

FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER,
Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT

Respondents

FTT Case Reference: FTS/HPC/EV/18/2003

The Tribunal not being satisfied that there are arguable grounds of appeal REFUSES to grant permission to appeal to the Upper Tribunal for Scotland and REFUSES to grant an order for suspension of the First Tier Tribunal for Scotland's order of 2 October 2018.

Introduction

[1] This application relates to the lease of a property situated at 183 Yarrow Terrace, Dundee, DD2 4DY ("the property") let under a short assured tenancy by the landlord

Mrs Craig to the applicant. Under cover of a letter sent on 14 November 2018 by her solicitors the Applicant has requested permission to appeal by submission of a Form UTS-1. The decision which the applicant seeks to be permitted to appeal is the decision of the First Tier Tribunal for Scotland (“FTTS”) dated 2 October 2018 granting an order for possession of the property. This decision was intimated by letter dated 8 October 2018. The decision was made following a case management discussion by a single legal member of the FTTS.

[2] The terms of a letter of 22 October 2018 written by her solicitors seeking permission to appeal from the FTTS have been incorporated so that it is read as part of the form UTS-1. The letter of 22 October 2018 from the applicant’s solicitor seeking permission to appeal from the FTTS in turn made reference to a letter of even date which sought review of the FTTS’s decision to make the order for possession. I have had regard to both letters of 22 October 2018 in considering this application.

[3] On 1 November 2018 the FTTS refused a request for review of its decision explaining it was not in the interest of justice to review the decision because no new matters had been raised in the application for review. By a separate decision dated 1 November 2018 the FTTS refused permission to appeal stating that the proposed ground of appeal raised no point of law. This decision was intimated by letter dated 6 November 2018.

[4] On 15 November 2018 the landlord through her agents served a notice on the applicant requiring her removal from the property on or before 30 November 2018. The applicant seeks suspension of the order of the FTTS while she pursues her appeal.

Grounds of Appeal

[5] It is important to note that at the hearing before the FTTS the applicant did not dispute that the FTTS should grant the order sought by the landlord. She did seek a

postponement of the enforcement of the order pending the re-housing of the applicant by the local social housing authorities.

Discussion

[6] The first issue is whether section 33(4) of the Housing (Scotland) Act 1988 can be construed as allowing the FTTS to specify a later date for the order for possession to take effect. The decision of the FTTS makes reference to the previous version of section 33(4) which relates to an order being made by the sheriff. Following upon the transfer of jurisdiction in relation to private rented tenancies to the FTSS section 33(4) has been amended so that the current version makes reference to an order made by the FTTS. The failure of the FTTS to quote the up to date version is not material for the purposes of this application. Although I have not heard argument on the point, I proceed for present purposes on the basis that the FTTS is indeed empowered by section 33(4) to fix a later date for any decision to grant an order for possession to take effect.

[7] The FTTS Judge discussed the various factors put forward on behalf of the applicant at pages 4 and 5 of her decision. I agree with her analysis. Any difficulties anticipated by the applicant arise from the approach that it is anticipated will be taken by the Housing Authority in finding her suitable alternative accommodation. While I may sympathise with her plight, the matters of concern put before the FTTS are the statutory responsibility of the Housing Authority. They do not provide a proper basis for an order which postpones the date upon which the order for possession will take effect. There is no reason to think that section 33 was intended to provide a basis for delaying the date when the landlord who has no statutory responsibility for re-housing the applicant might recover possession of the property.

[8] The two letters of 22 October 2018 from her solicitors do not provide further information that is of assistance for the applicant. In particular, the letter seeking to permission to appeal simply requested a re-hearing and directions as to what evidence required to be placed before the FTTS. With respect, further evidence of this kind would be of no assistance in determining the question whether the order under section 33(4) should be granted. The decision whether to seek further evidence was a procedural one within the discretion of the FTTS. More significantly nowhere in the Form UTS-1 or the supporting letters does the applicant identify any arguable error of law made by the FTTS in terms of section 46(4) of the Tribunals (Scotland) 2014.

Conclusion

[9] I consider that the FTTS was correct to refuse permission to appeal and I have therefore also refused permission to appeal. I can find no proper basis on which I should order suspension of any enforcement action under the order for possession made by the FTTS.

Reconsideration

[10] Rule 3(7) of the relevant Rules of Procedure is set out in the Appendix. The applicant is entitled by application in writing made within 14 days of receipt of this decision to seek to have this refusal to grant permission to appeal reconsidered at a hearing before a different member of the Upper Tribunal for Scotland.

APPENDIX

Excerpts from the relevant provisions of the 1988 and 2014 Act and the Rules of Procedure referred to above are as follows:-

Housing (Scotland) Act 1988

Section 33

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal shall make an order for possession of the house if the Tribunal is satisfied—

- (a) that the short assured tenancy has reached its ish;
- (b) that tacit relocation is not operating; and
- (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

- (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
- (ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Tribunals (Scotland) Act 2014 Section 46

Appeal from the Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—

- (a) by a party in the case,
- (b) on a point of law only.

(3) An appeal under this section requires the permission of—

- (a) the First-tier Tribunal, or
- (b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (2016 no. 232)

Rule 3 Notice of appeal against a decision of the First-tier Tribunal

(1) A person may lodge with the Upper Tribunal a notice of appeal against a decision of the First-tier Tribunal.

(2) A notice of appeal must —

- (a) identify the decision of the First-tier Tribunal to which it relates; and
- (b) identify the alleged error or errors of law in the decision.

- (3) The appellant must provide with the notice of appeal a copy of—
 - (a) any written record of the decision being challenged;
 - (b) any separate written statement of reasons for that decision; and
 - (c) the notice of permission to appeal or alternatively notice of refusal of permission to appeal from the First-tier Tribunal.
- (4) When the Upper Tribunal receives a notice of appeal it must send a copy of the notice and any accompanying documents to each respondent and interested party (if any).
- (5) If the appellant lodges the notice of appeal with the Upper Tribunal later than the time required by paragraph (9)—
 - (a) the notice of appeal must:
 - (i) include a request for an extension of time;
 - (ii) explain why the notice of appeal was not provided in time; and
 - (iii) state why it is said to be in the interests of justice that the time be extended;
 and
 - (b) unless the Upper Tribunal extends the time for lodging a notice of appeal the Upper Tribunal may not admit the notice of appeal.
- (6) The Upper Tribunal may, where the First-tier Tribunal has refused permission to appeal—
 - (c) refuse permission to appeal;
 - (d) give permission to appeal; or
 - (e) give permission to appeal on limited grounds or subject to conditions; and
 must send a notice of its decision to each party and any interested party including reasons for any refusal of permission or limitations or conditions on any grant of permission.

- (7) Where the Upper Tribunal, without a hearing—
- (f) refuses permission to appeal; or
 - (g) gives permission to appeal on limited grounds or subject to conditions, the appellant may make a written application (within 14 days after the day of receipt of notice of the decision) to the Upper Tribunal for the decision to be reconsidered at a hearing.
- (8) An application under paragraph (7) must be heard and decided by a member or members of the Upper Tribunal different from the member or members who refused permission without a hearing.
- (9) Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 30 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal.