Upper Tribunal for Scotland

[2021] UT 25
Ref: UTS/AP/21/0010

DECISION NOTICE OF SHERIFF NIGEL ROSS

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

in the case of

MISS WENDY WILSON, MR MARK JON HALLWORTH, Ashbank, 4 Burnfoot Cottages, Ashkirk, Scottish Borders, TD7 4PH

Appellants

and

MRS PAULINE MCDERMOTT NEE MCGREGOR, c/o T C YOUNG, 7 West George Street, Glasgow G2 1BA

Respondent

FTT Case Reference FTS/HPC/EV/21/0039

18 May 2021

Decision

Permission to appeal is refused, for the reasons noted below.

Note

[1] This application for permission to appeal is made against a decision dated 1 March 2021 by the First-tier Tribunal (Housing and Property Chamber). The decision related to an application by the respondent, Ms McDermott, who is the owner of a property which is

currently leased to the applicants. Ms McDermott as landlord sought repossession of the property from the tenants and applicants, Mr Hallworth and Ms Wilson.

[2] Repossession was sought under Schedule 3, Part 1 of the Private Housing (Tenancies) (Scotland) Act 2016. The ground was under paragraph 4(1) of Part 1, namely "that the landlord intends to live in the property". In terms of paragraph 4(2),

> "The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months."

If the First-tier Tribunal was satisfied that this intent was proved, it had no option but to grant an order for eviction (section 51(1)).

[3] The matter accordingly turned on the evidence led before and accepted by the First-tier Tribunal, as set out in the decision dated 1 March 2021. The evidence available to the tribunal can be summarised for present purposes as follows:

[4] The landlord, Ms McDermott, gave evidence by way of affidavit that she had family ties with the property. Her daughter, partner and granddaughter reside in a neighbouring town. Her daughter is pregnant again. She has elderly parents who she will care for. She will retire to the property, and live there with her husband. Her former husband is buried nearby. She has friends nearby. The garden to the property suits her needs.

[5] Furthermore, she had sold her current home in Callander and was now homeless. She was residing with family and friends, unexpectedly as the respondents had refused to leave after service of a Notice to Leave.

[6] For the respondents, it was said that the landlord had acted duplicitously (based on the fact that on a visit in May 2020 she had not mentioned plans to evict them), that they did not believe she had sold her house in Callander, that it was not reasonable to move them in the midst of a pandemic, that the property next door, which the landlord also owned, would

be more suitable, that the landlord had failed to compromise with them, that the landlord had acted intimidatingly by parking in the driveway, and that they had been significantly ill.

[7] The First-tier Tribunal found in the landlord's favour. They were satisfied that the landlord's evidence should be accepted. They noted that the applicants regarded this evidence as untruthful, but that no evidence was presented which would justify this accusation. The tribunal regarded the eviction as reasonable, noting that the applicants had provided no evidence of effort to find alternative accommodation. They noted that the applicants felt angry and upset, but also that there was no evidence of unfair treatment.

Further information by Ms Hallworth and Ms Wilson

[8] The applicants applied to the First-tier Tribunal for permission to appeal. The tribunal refused permission on 2 April 2021 on the basis that the grounds of appeal were "entirely vague and lacking in specification". They have therefore presented this application.

[9] In a written response, the applicants set out the following: they speculate at unfair treatment on the basis that the legal member of the First-tier Tribunal, and the applicant's agent, were briefly at the same firm between 2013 and 2015; that the hearing was affected by being remote, due to the pandemic; that there was no explanation for two Notices to Evict having been served; that affidavit evidence "often stretches the truth or is outright dishonest"; that the affidavit had been sworn in front of a member of the same firm; that the tribunal did not answer questions; that finding alternative accommodation was a challenge; that they continue to doubt that the landlord was homeless; that she should instead evict their neighbour instead of them; that the landlord's behaviour towards them was a matter of complaint; that they have continued health difficulties; that the whole

procedure was "farcical, a mockery of justice", but however they "weren't and are not angry and upset at being asked to remove from the property".

Decision

[10] Permission to appeal can only be granted if there are arguable grounds of appeal. An appeal is not a re-hearing, and can only succeed if the tribunal can be shown to have erred in some manner. That means that there must be material which the appeal can consider. It is not enough that parties disagree with the decision. The Upper Tribunal cannot overturn the First-tier Tribunal's decision without material to justify doing so. It cannot simply substitute its own view. There is no such material, and accordingly permission to appeal must be refused.

[11] The First-tier Tribunal decision recorded that very little evidence was placed before them. The applicants were unable to justify their assertions that the landlord was "duplicitous", or had lied about selling her house, or was not truthful in her evidence. Doubt and assumptions cannot support a case, and cannot support an appeal. The tribunal can only act on the basis of evidence placed before them, whether documentary or oral. No error is evident in their reasoning.

[12] The landlord produced an affidavit countersigned before a solicitor. The affidavit remains evidence of what was said to the tribunal, and the fact that the solicitor witnessed that the statement was made. The affidavit does not provide a ground of appeal.

[13] The fact of two solicitors having worked in the same firm some 6 years prior does not by itself demonstrate, or even indicate, bias. It does not by itself provide a ground of appeal.

[14] If the tribunal did not answer questions, that was because they were unable to do so. The function of the tribunal is to adjudicate between two parties, and they cannot become involved by advising one or other of the parties. It is not a ground of appeal.

[15] The tribunal is criticised about lack of information about the rental market. They can only consider the evidence placed before them. The tribunal record that they were not shown any information which would allow them to accept that the applicants had tried, and failed, to find alternative accommodation. The tribunal cannot be shown to have erred in that regard. It is not a ground of appeal.

[16] The applicants complain that no reason has been given for two Notices being served. There was, however, evidence that there was an error in the first Notice. In any event, there is no disadvantage to them, as the landlord founds on the second Notice, which has given the applicants further time in occupation of the property. It is not a ground of appeal.

[17] The applicants did not place medical evidence before the tribunal. They have now provided some medical evidence, in a brief letter and a photograph of medication. That is insufficient to displace the tribunal's findings that eviction was reasonable, and that the landlord's grounds had been made out. As the 2016 Act sets out, eviction must be granted unless unreasonable. The new information is not sufficient to demonstrate unreasonableness or to provide a ground of appeal.

[18] The landlord not evicting their neighbour instead of the applicants is not a ground of appeal. That is a decision for the landlord.

[19] The form of the hearing, a remote hearing in the now customary form, appears to have been unremarkable. This is now the norm, and has been accepted as a fair method of conducting a hearing. This cannot be a ground of appeal.

[20] For all these reasons, an appeal on these grounds has no prospects of success, and therefore permission must be refused.