



DECISION NOTICE OF SHERIFF NIGEL ROSS

on an application for permission to appeal reconsideration
(decision of First-tier Tribunal for Scotland)

in the case of

MRS MARILYN HENDERSON WILSON, 9 James Inglis Crescent, Cupar, KY15 4GX

Appellant

and

FIFE PROPERTIES, 22 North Street, Glenrothes, KY7 5NA

Respondent

FTT Case Reference: FTS/HPC/LA/20/1509

18 August 2021

Decision

[1] On reconsideration of the appellant's application for leave to appeal the decision of the First-tier Tribunal dated 4 February 2021, leave is refused.

Reasons

[2] The appellant seeks to appeal the decision of the First-tier Tribunal dated 4 February 2021. By that decision, the First-tier Tribunal found that the respondent was in breach of

paragraphs 17, 19, 26 and 108 of the Letting Agent Code of Practice (Scotland)

Regulations 2016, and awarded the sum of £400 to the appellant.

[3] The appellant applied for leave to appeal. This was refused by the First-tier Tribunal on 18 March 2021, and by the Upper Tribunal on 8 July 2021. Each of those decisions gave detailed reasons for refusal. This is a re-consideration of the latter decision, in terms of Rule 3(7) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016. The re-consideration was on the basis of the documents submitted by the appellant, and the appellant confirmed by email of 11 August 2021 that she did not require an oral hearing.

[4] This appeal is based on grounds of appeal in the application UTS-1 dated 8 May 2021, which the Upper Tribunal decision allowed to be received late. The grounds proposed by the appellant are:-

1. Error in application of the law to the facts;
2. Making findings in fact without a basis in evidence;
3. Taking a wrong approach to the case by, for example, asking the wrong questions, taking account of manifestly irrelevant considerations and by arriving at a decision that no reasonable tribunal can properly reach.

In general terms, such errors are, if correctly identified, capable of providing grounds of appeal. It is not enough, however, to make only general assertions. They require to be related back to the evidence, and to the specific pieces of evidence or topics to which the criticism relates. The appellant has not done that. It is not possible to identify which error of law has been made, or which findings in fact are attacked as groundless, or which irrelevant considerations were taken into account.

[5] I have scrutinised the evidence in case any such faults are obvious. No such faults are evident on a plain reading of the original decision. I note as follows: In relation to the

first ground, the facts found by the First-tier Tribunal are set out at paragraphs 65 to 75 of the decision. These facts were then applied to the law, in this case the Code of Practice, in paragraphs 97 to 123. Each head of claim is identified and discussed separately in relation to the facts as found. No error is evident. The appellant does not identify what error has been made. The ground of appeal is too vague to assist this exercise. The decision, and the reasons for it, are logical and supported by the evidence.

[6] In relation to the second ground, the First-tier Tribunal made findings in fact at paragraphs 65 to 75. These were based on a lengthy and careful consideration of: the appellant's representations (paras 1 to 20); the respondents' written representations (paras 21 to 52); and the representations made at the hearing (53 to 64). The reasoning is set out at considerable length at paras 76 to 95. There is a substantial factual basis on which the First-tier Tribunal could make their findings in fact. The appellant has not identified which of the findings in fact are criticised by her, why they are wrong, what the evidence correctly showed in her view, and why the First-tier Tribunal was in error in understanding the evidence in the manner they did. It is the function of the First-tier Tribunal to make findings in fact. It is not a good ground of appeal that the appellant simply disagrees with the findings. The findings in fact made by the First-tier Tribunal are logical and supported by the facts established by the evidence led.

[7] In relation to the third ground, the appellant does not identify what manifestly irrelevant considerations were taken into account, or why the decision is unreasonable. It is not possible to identify any stateable ground of appeal from this. It is difficult to identify why a question can ever be said to be "wrong", and what would flow from that. A question is not evidence, and the First-tier Tribunal placed no reliance on questions. The decision is supported by the evidence.

[8] None of these grounds identifies any error on the part of the First-tier Tribunal. They are no more than assertions. Disagreement with the decision does not by itself demonstrate any error, and does not form a ground of appeal.

Further evidence

[9] The appellant encloses several further items that were not before the First-tier Tribunal. The first is a series of observations about the effect of the decision, disagreements with the process and apparent complaints about procedure. These do not amount to specific complaints about the decision itself. Complaints about procedure do not render a decision, which followed that procedure, appealable. The First-tier Tribunal are obliged to follow the prescribed procedure. The appellant further encloses invoices and other factual material. These are not said to have been before the First-tier Tribunal. No reason is advanced for their earlier omission. The function of appeal is not to re-hear the case. Further evidence can be admitted only if relevant and only if the material could not be made available earlier. Neither of these points applies here, and accordingly I am unable to consider the further evidence now tendered. Even if I were able to consider it, the further evidence now tendered does not demonstrate that the First-tier Tribunal decision was wrong, and so does not provide a basis for appeal. There is also a further statement of complaint about the decision of the Upper Tribunal. It adds nothing to the merits, or lack thereof, of this appeal, which is against the First-tier Tribunal decision. Even if I had taken this further material into account, it would not render this appeal arguable.

Disposal

[10] If this appeal proceeded, there is no prospect of success, for the reasons set out above. No specific errors are identified. No errors are evident from the decision of the First-tier Tribunal. That decision is a detailed and fully-explained decision, based on the facts as found by the First-tier Tribunal, in turn based on the evidence which was presented. It is rational and based on the correct principles within the Code of Practice. I agree with the conclusions of both the First-tier Tribunal and the Upper Tribunal in their decisions refusing leave to appeal.

[11] This appeal has no material prospect of success. Leave to appeal is accordingly refused.