



DECISION OF

Sheriff McCartney

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

Mrs Andrea Bradshaw,
per Mr Graham Bradshaw

Appellant

- and -

Delmor Estate Agents Ltd

Respondent

FTS Case reference: FTS/HPC/LA/23/1251

17 June 2024

Decision

1. Permission to appeal is granted. Both parties consent to the Upper Tribunal dealing with the substantive appeal. The Respondents concede the appeal, and thereafter the Appellant withdraws the application, parties having reached a settlement between them.

Introduction

2. Mrs Bradshaw (who was represented by Mr Bradshaw) is referred to as the Appellant. Delmor Estate Agents Ltd (which were represented by Ms Tracey Allan) is referred to as the Respondent.



3. The Respondent provided (and still provide) letting agent services to the Appellant for a property she owns.
4. In February 2022 the Fire Brigade was called out to the property after the tenant was thought to have left the gas on. The Fire Brigade capped the gas hob, meaning the tenant would not be able to use the hob. The Fire Brigade recommended that the hob was checked by a gas safety engineer and queried whether the hob met current regulations, indicating it might not. The hob was subsequently inspected by a gas safety engineer, who considered the hob safe. The Appellant maintained throughout that the gas hob was safe and that the regulations referred to did not apply to her property. There was extensive correspondence with the Respondents about the issue. After some delay, the Appellant eventually paid for the gas hob to be reconnected. She complained about the Respondent's handling of the issue. She also complained about some ancillary matters relating to the Respondent's handling of other aspects of the tenancy, although it was agreed at the hearing that these other issues were incidental.
5. The First-tier Tribunal dismissed the Appellant's application, making a number of findings in fact. It refused permission to appeal to the Upper Tribunal.

Grounds of appeal

6. The Appellant sought permission to appeal on a number of grounds, all relating to the findings in fact made by the First Tier Tribunal. The Appellant submitted that many findings were simply wrong and others presented an incomplete picture, or were based on matters taken out of context. The Appellant had reproduced the Tribunal decision, annotating the findings challenged with a commentary and, where relevant, a link to a document to show why the finding was wrong when considered against the documentary evidence.

Discussion

7. It is clear that the First-tier Tribunal has misunderstood at least some of the critical facts. In findings 20 and 21, the First-tier Tribunal concluded:

20. The Applicant appears to have attempted to renew their gas safety certificate later that year. They incurred a charge of £70.00. The Applicant then claims to have been informed that the gas had been capped.

21. Inexplicably, the Applicant appears to think that the Respondent is responsible for paying the Applicant's bill for their gas safety checks out of their own pocket.



8. Both sides agree these findings are factually wrong. The £70 charge was not for the renewal of the gas safety certificate, but rather a charge for the reconnection of the gas hob. The correct factual position was confirmed in correspondence between the parties. On 20 March 2023, the Respondents emailed the Appellant stating *"I can only apologise you had to organise for the hob to be reconnected yourself and had that expenditure of £70"*. What the charge of £70 related to was not in dispute, and accordingly the First-tier Tribunal have erred in making finding 20. Finding 21 (if it is a true finding in fact), is also therefore factually wrong.
9. That error alone is sufficient for permission to appeal to be granted. It is also sufficient for the appeal itself to be granted. The central issue in dispute between the parties was the Respondent's action (or rather lack of action) after the hob was capped. As the First tier Tribunal have misunderstood the facts around this issue, these findings undermine its decision and the decision falls to be overturned.
10. Both parties were agreed that:
 1. The Upper Tribunal should grant permission to appeal;
 2. The Upper Tribunal would then immediately deal with the appeal itself, with both parties consenting to waiving the time limit for the appeal itself in terms of Rule 26 of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016;
 3. The Respondent did not oppose the Upper Tribunal then allowing the appeal, on the basis that a number of findings, particularly finding 20, was not supported by the evidence.
11. Thereafter the parties having reached agreement that the Respondent would pay the Appellant the £70 in relation to the gas reconnection, it was agreed that the application to the First tier Tribunal was now redundant, and the Appellant wished to withdraw her application. Accordingly it is not necessary to remit the matter to the First-tier Tribunal.
12. It would be remiss of the Upper Tribunal not to highlight other matters of concern. Some of what are said to be findings of the First tier Tribunal are written in pejorative language (for example finding 39 *"The Applicant's complaints here are hard to understand as rational"*). Many are not findings of fact, but rather conclusions that might be reached following findings in fact being made (for example finding 33 *"There is no merit in any aspect of the Applicant's complaints which appear entirely misguided and unreasonable"*). Some findings contain a procedural narrative (for example finding 28 *"The Application is premised on these complaints being ignored. Mr Bradshaw gave evidence to that effect"*). Many use emotive language (for example finding 41 *"The Applicant's complaints have no merit in them whatsoever and the Respondent has manifestly no statable case to answer"*).
13. It is also unhelpful that the First-tier Tribunal use Roman numerals to signpost over 40 findings in fact, given it is a forum generally dealing with unrepresented parties.



14. Findings in fact should be written in a neutral tone. They should not contain a procedural narrative. The findings should tell the reader the true sequence of events on the salient points in dispute. Findings of fact should be succinct, and should be made on all material points required to resolve the issue or issues between the parties. The views of the fact finder on the credibility or reliability of a witness are not contained in the findings of fact, but rather in a subsequent explanation in the decision or judgement explaining why such findings have been made.
15. It is also unfortunate that resolution of this case was not achieved at an earlier stage. Parties were given time during the hearing before the Upper Tribunal, quickly reaching agreement on the underlying dispute. In cases such as this, where there is an existing business relationship between parties, the First tier Tribunal will recognise that both parties have a stake in reaching an extra-judicial agreement. Parties are commended for their sensible approach and willingness to negotiate directly.

Conclusion

16. In simple terms given that the appeal has been allowed and the original application withdrawn, proceedings are now at an end.
17. The parties are thanked for the time and care in presenting matters to the Upper Tribunal, and also taking the decision to resolve matters directly between them.

Sheriff F McCartney
Member of the Upper Tribunal for Scotland