



2024UT55

UTS/AP/24/0054 & UTS/AP/24/0055

DECISION OF

SHERIFF F McCARTNEY

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

Miss Trinity Patel  
Represented by Mr Pankaj Patel

Appellant

and

Mr Mark Stubbs  
Represented by Clarity Simplicity

Respondent

FTS Case Reference: FTS/HPC/EV/23/0989 & FTS/HPC/CV/23/0990

7 October 2024

### **Decision**

[1] Permission to appeal is refused.

### **Introduction**

[2] This is an application for permission to appeal two decisions of the First Tier Tribunal for Scotland (FTS) both dated 8 April 2024. Those orders granted the eviction of the Appellant from the Respondent's property, and also an order for payment of arrears of

rent. Both decisions were made at a Case Management Discussion, at which the Appellant was not present or represented.

[3] The factual background, taken short, is that the Appellant rented a room from the Respondent in a flat owned by him. Other rooms were rented to others not connected to the Appellant. The Appellant had use of certain other rooms on a shared basis with other tenants. The Respondent wished to recover possession of the whole property to sell it. The other tenants moved out. The Appellant did not wish to leave. Mr Patel, the Appellant's father, became involved in representing the Appellant as to her opposition to moving out. Relations between Mr Patel and the Respondent quickly broke down. Mr Patel pointed out that the Respondent was not registered as a landlord with the local authority. Whilst the Respondent then sought registration, Mr Patel also claimed the property was being let as a House in Multiple Occupation, a claim disputed by the Respondent. In June 2022, the Appellant stopped paying rent. Proceedings were raised by the Respondent in the FTS. Two separate applications were lodged, one relating to an eviction order and the other relating to the question of arrears of rent. Both applications were, in effect, considered together.

[4] The proceedings in the FTS have a convoluted history. There was a Case Management Discussion on 18 September 2023 at which the Appellant did not attend nor was she represented. Orders for both eviction and payment of rent were made in favour of the Respondent. The Appellant sought for those orders to be recalled. The FTS recalled both orders, and assigned a new Case Management Discussion for 13 March 2024. Mr Patel lodged written submissions on 6 February and 4 March in advance of that hearing. He objected to the Case Management Discussion proceeding by telephone conference call. A clerk from the FTS administration (under instructions from an FTS judge) advised the

hearing would proceed by telephone. Neither the Appellant nor Mr Patel participated in that hearing. The FTS determined the case in their absence. The FTS concluded the tenancy was a Private Residential Tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. It made findings in fact relating to the Respondent's proposed sale of the property, and the payment of rent. It allowed the Respondents to amend the sum sued for to £7000, taking account of the further period for which rent had not been paid. It decided both applications in favour of the Respondent.

[5] Following those decisions, Mr Patel asked the FTS to reconsider both decisions. The FTS refused to do so. Mr Patel then sought leave to appeal to appeal from the FTS, which also refused. Mr Patel now seeks leave to appeal direct from the Upper Tribunal.

### **The hearing before the Upper Tribunal**

[6] A hearing on permission to appeal was assigned for 19 September by video call. Mr Patel objected to a hearing taking place, asking the application for permission to appeal be determined on the papers alone. He separately objected to the hearing proceeding by video. Whilst he did not need an interpreter, a hearing by video presented an additional barrier in his circumstances. Accordingly, the hearing was converted to one in person. However, Mr Patel maintained his objection to the principle of a hearing taking place. He advised that was because he wished to seek a reconsideration if leave to appeal was refused (which, in terms of a combination of Rules 3(6) and (7) of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, was not possible should a hearing take place).

[7] Notwithstanding those objections, Mr Patel attended the hearing. He made limited oral submissions, referring the Upper Tribunal to his written submissions.

### **The submissions at the hearing for permission to appeal**

[8] Mr Patel's brief oral submissions can be summarized as follows. He submitted leave to appeal should be granted. The Respondent had been operating a House in Multiple Occupancy without proper authorization. He had not been registered as a landlord with the local authority. It was unfair to allow him to obtain orders for eviction and payment of rent in those circumstances. The FTS should not have made such orders. Otherwise, he had relied on his lengthy written submission (54 pages) for leave on each of the grounds sought.

[9] Ms Herd for the Respondent opposed the granting of leave to appeal. She briefly commented on each ground as far as she was able.

### **Grounds of appeal**

[10] Mr Patel's application sought leave on the following grounds:

1. No jurisdiction over a "*lodger agreement*".
2. No legitimate right, and no jurisdiction, to accept an Application from the Applicant in circumstances where the Notice to Leave was unlawfully served and is therefore invalid.
3. No legitimate right, and no jurisdiction, to accept any Application where the date of landlord registration is outwith the date of the "*agreement*".
4. No jurisdiction over a matter which was clearly criminal in nature on the part of the Applicant.
5. No power, or jurisdiction, to convert a lodger agreement into a private residential tenancy agreement.

6. It was unjust and discriminatory to consistently and systematically ignore all of the facts and evidence put forward by the Respondent, and all of the Applicant's and Applicant's Solicitors perjury.
7. It was unjust and discriminatory to accept, from the Applicant and his Solicitors, what were clearly false grounds of eviction.
8. It was unjust and discriminatory to issue an eviction notice without any evidence and the First-Tier Tribunal had no lawful right to do so.
9. No lawful right to conduct Hearings/Trials under the guise of Case Management Discussions by telephone, in violation of The Convention and the Human Rights Act 1998.
10. No lawful right to do the same in-absentia of the Respondent/Respondent's Representative.
11. No lawful right to utilise incompatible Subordinate Legislation in order to convert Case Management Discussions by telephone, into Hearings/Trials, in violation of The Convention and the Human Rights Act 1998.

There was a slight discrepancy between what was contained within the application form seeking leave and Mr Patel's written submissions. I deal with that below.

### **The test for permission to appeal**

[11] Section 46 (3)(b) of the Tribunals (Scotland) Act 2014 sets out that an appeal to the Upper Tribunal can only be made on a point of law. By section 46(4) permission to appeal requires the Upper Tribunal to be satisfied there are arguable grounds for appeal. That is a low test; for example lower than obtaining permission in judicial review cases where the

test is whether a petition has a real prospect of success. In *Wightman v Advocate General*, Lord Carlway considered the test in judicial review cases required a prospective litigant to:

“demonstrate a real prospect, which is undoubtedly less than probable success, but the prospect must be real; it must have substance. Arguability or statability, which might be seen as interchangeable terms, is not enough”.

[12] Accordingly the test I am concerned with, arguability, is a lower test than showing that there is a real prospect of success in the arguments succeeding. In the context of this matter, I am not concerned with whether the Appellant is more likely than not to succeed. That is too high a test. The threshold set out by the statutory test is relatively low. The Appellant must show an issue or argument of law for the Upper Tribunal to grapple with; something that can be properly argued in due course. Grounds should focus on where it is said FTS have erred. That is not the same as asserting that the FTS should have made a different discretionary decision from what they did; rather it is concerned with considering whether the FTS have, for example, misapplied the law to the facts. A permission to appeal hearing is not concerned with considering the whole of the argument that might be considered in detail at the appeal hearing itself. Rather the permission hearing needs to consider whether there is something of substance to be considered at a full hearing. If not, permission to appeal should not be granted. If the appeal is hopeless, it is not in the interests of justice for matters to be considered at a full hearing, and permission should be refused.

[13] Many individuals come before the Upper Tribunal seeking leave to appeal without a focused point of law. There are a number of reported decisions repeating that the Upper Tribunal’s role is not to rehear the evidence. It is not for the Upper Tribunal to rehear the facts heard by the FTS in the hope that the Upper Tribunal might take a different view on

the evidence. Rather, the Upper Tribunal must consider whether there is an arguable ground of appeal.

### **Decision**

[14] Mr Patel's written submissions were often repetitive and failed to focus on what the errors of law were said to be.

[15] Taking each ground in turn:

**1. *No jurisdiction over a "lodger agreement".***

[16] Mr Patel's written submissions argue the tenancy was a lodger agreement (and thus the FTS would not have jurisdiction). He pointed to the fact that the Respondent used the property address on the lodger agreement. The Notice to Leave served by Sheriff Officers referred to the Respondent living at the property address. The FTS should have rejected the application in terms of Rule 8.

[17] Despite the name on the contract documentation referring to a lodger agreement, the FTS concluded the tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. If that was its conclusion, the FTS had jurisdiction. The FTS considered legal test, including the exceptions set out in Schedule 1 of the 2016. It made relevant findings as to the factual position to allow it to reach a conclusion as to the legal status of the tenancy. It gave reasons why reached that conclusion. It did so against the background that the Appellant did not attend, and did not provide contrary submissions as to the correct classification of the tenancy.

[18] Leave to appeal on this ground is refused. Mr Patel does not specify which of the parts of Rule 8 he relies upon. Rule 8 requires the Chamber President to reject an

application if it is frivolous or vexatious, or if there is good reason to believe it would not be appropriate to accept the application. I am not persuaded on either part of that rule that the application should have been rejected. The fact that the Respondent used the address on documentation does not mean, that as a matter of fact, he lived at the property. The FTS made a finding that the Respondent leased the property. Whilst there is no finding on the Respondent's address, on reading the decision as a whole, it is clear the Tribunal accepted the Respondent lived elsewhere. Mr Patel's written submissions suggest the Respondent was lying in using the leased address, suggesting he accepts the Respondent did not live at the property address. Particularly in the absence of submissions to the contrary, the FTS were entitled to determine the facts as they did.

[19] There is no arguable ground under this heading and leave is refused.

*5. No legitimate right, and no jurisdiction, to accept an Application from the Applicant in circumstances where the Notice to Leave was unlawfully served and is therefore invalid.*

[20] Mr Patel argues that the Notice to Leave was invalid, as it had the Respondent's address as at the property rather than at his home address. He asserts this was fraudulent, and the Respondent's solicitors "duped" Sheriff Officers to serve a fraudulent document. Further, he argues the application should not have been accepted by the FTS, although that argument is not further explained.

[21] The Notice to Leave described the tenancy as a Private Residential Tenancy (not as a lodger agreement). Mr Patel does not rely on any authority give to explain why the Notice



to Leave is invalid. Whilst the address should have had the Respondent's correct address, Mr Patel does not explain why the Notice to Leave is invalid in those circumstances.

[22] Leave to appeal is refused on this ground.

3. *No legitimate right, and no jurisdiction, to accept any Application where the date of landlord registration is outwith the date of the "agreement".*

[23] It is not disputed that the Respondent was not registered with the local authority as a landlord, as he should have been. The FTS did not make a finding of fact on registration (perhaps not surprising given Mr Patel's non-attendance and thus the lack of focus on this point as an issue). Reading the decision as a whole, it is clear the FTS accepted the Respondent subsequently registered as a landlord, and remained registered as at the date of the FTS hearing. In any event, it is arguable irrelevant for the FTS to have made such a finding. The failure of the Respondent to register as a landlord could have other consequences, but it does not follow that the Respondent cannot seek the orders as granted. If the Appellant's argument was true, the Appellant would be entitled to stay in the leased address for whatever period she pleased, and without any obligation to pay rent simply because a landlord had not registered with the local authority. Mr Patel does not offer any authority for the proposition that the FTS have "*no power to apply a landlord registration to any 'Agreement' retrospectively*". It is not clear what he means. The FTS has not applied landlord registration retrospectively. Landlord registration rests with the local authority, not the FTS.

[24] Leave to appeal is refused on this ground.

**6. *No jurisdiction over a matter which was clearly criminal in nature on the part of the Applicant.***

[25] Mr Patel argues the Respondent has committed “multiple criminal acts” and his solicitors have “aided and abetted him”. He argues the FTS have ignored such acts. The criminal acts he alleges are that the Respondent was not registered as a landlord, that the Respondent did not register the house as a House in Multiple Occupancy and the Respondent did not pay a deposit into a deposit scheme.

[26] The issue of landlord registration has already been considered. On whether the property was a House in Multiple Occupancy, the FTS made a finding it was not. Mr Patel did not attend the hearing, emailing in advance to protest at the hearing taking place. It is clear from the terms of his emails that he was refusing to attend. He has not explained by the FTS erred in law in making the findings it did, given his decision not to attend. The FTS made the decision it did on the evidence before it. On the last of the three points, regarding the deposit scheme, it does not appear that issue was put before the FTS. It is difficult to see how the FTS could have erred in law over something the FTS were not asked to consider.

[27] Leave to appeal is refused on this ground.

**7. *No power, or jurisdiction, to convert a lodger agreement into a private residential tenancy agreement.***

[28] Mr Patel’s submissions is the FTS has ‘converted’ the lodger agreement into a Private Residential Tenancy agreement. He asserts the Private Housing (Tenancies) (Scotland) Act 2016 does not apply, and that the FTS only had the power to “convert” such documents prior to 1 December 2017. No authority is offered for such propositions.

[29] The FTS heard evidence, made factual findings on that evidence, and in applying the law to the facts it found, made reached the legal conclusion that the tenancy was a Private Residential Tenancy. It is not clear from Mr Patel's submissions what error of law the FTS has said to have made in reaching that conclusion. Leave on this ground is refused.

8. *It was unjust and discriminatory to consistently and systematically ignore all of the facts and evidence put forward by the Respondent, and all of the Applicant's and Applicant's Solicitors perjury.*

[30] In his written submissions Mr Patel has a different ground number 6 than that stated above. I deal with both.

[31] Starting with ground 6 as per his written submissions, Mr Patel argues the FTS erred in considering the agreement was a private residential tenancy. He argues a Private Residential Tenancy Agreement does not have an end date. As he says the agreement between the parties did, it could not be a Private Residential Tenancy, and thus the FTS erred. He also refers to the fact that the Respondent lived in the property.

[32] On the first point, as a matter of law, Mr Patel's submission is incorrect. By section 4(a) of the Private Housing (Tenancies) (Scotland) Act 2016 the absence of an end date to the agreement would not, of itself, prevent a tenancy from being a private residential tenancy. On the second point, the FTS determined the application was not a lodger agreement. It is clear from their decision that the Respondent lived elsewhere. Reading the decision as a whole, it is clear they carefully considered how to categorise the agreement in law. Mr Patel does not disagree that as a matter of fact the Respondent did not live at the property. Accordingly, Mr Patel's argument has no merit.

[33] A further difficulty with the Appellant's proposed argument is that whether or not the agreement had an end date, the FTS were not asked to evict the Appellant on the ground that any such end date had passed. The application was made on the basis of the Respondent's financial hardship and his wish to sell the property.

[34] Accordingly there is no arguable point of law on this point. Leave is refused on this ground.

[35] In relation to the application for leave on ground 6 narrated above (regarding the ignoring of facts and alleged perjury), Mr Patel narrates a detailed submission as to the sequence of events relative to the timing of the landlord registration. Those submissions are irrelevant. If the Respondent did not have the proper authorisation in place, then other consequences may flow from such a failure but it does not necessarily follow that the Respondent cannot seek the orders he does.

[36] Mr Patel's written submissions on this ground, and in the following parts of his submissions, stray into making allegations of a serious nature. I deal with all such submissions in more detail below but leave is refused on the matters he narrates.

***9. It was unjust and discriminatory to accept, from the Applicant and his Solicitors, what were clearly false grounds of eviction.***

[37] Mr Patel's written submissions on this point are lengthy. He gives a number of examples where he submits the FTS made erroneous findings in fact, and asserts what he says the correct finding should be.

[38] Mr Patel choose not to participate in the hearing on the Appellant's behalf. The FTS were entitled to make findings based on the evidence it had. It has justified its decision. If a party does not attend, the FTS cannot hear their evidence. It is difficult to see how the FTS

can have erred in not taking the Appellant's evidence into account; the Appellant's evidence was not before the FTS for the FTS to consider it.

[39] Leave on this ground is refused.

**10. *It was unjust and discriminatory to issue an eviction notice without any evidence and the First-Tier Tribunal had no lawful right to do so.***

[40] The FTS had the evidence of the Respondent. It did not have the evidence of the Appellant, and in that respect, proposed ground 8 is similar to ground 7. It assumes a party can refuse to participate in a hearing, then make assertions that findings made after that hearing are wrong. Unless the FTS had the Appellant's evidence before it in written or oral form, it could only hear the Respondent's evidence, and it was entitled to accept or reject that evidence. The FTS cannot accept or reject the evidence of the Appellant if the Appellant refused to participate.

[41] Leave is refused on this ground.

**11. *No lawful right to conduct Hearings/Trials under the guise of Case Management Discussions by telephone, in violation of The Convention and the Human Rights Act 1998.***

[42] Mr Patel's lengthy submissions do not explain why the FTS was not entitled to convene by telephone, why it is unlawful, or why a hearing by telephone is not a public hearing. The FTS website for the Housing and Property Chamber provides details of upcoming hearings, with details as to how to observe or listen to a hearing.

[43] Leave is refused on this ground.

**12. *No lawful right to do the same in-absentia of the Respondent/Respondent's Representative.***

[44] Mr Patel's written submissions refer to Articles 1 and 6 of the European Convention of Human Rights (ECHR). He complains that the FTS accepted "only the word of one of the interested parties in the case."

[45] This submission is flawed. Mr Patel fails to acknowledge it was his decision not to attend on behalf the Respondent. That led to the FTS only hearing from one party. If a party chooses not to attend a hearing, that party cannot expect matters to be delayed or the hearing adjourned unless there is good reason to do so. It was not in the interest of justice to delay the hearings for Mr Patel to attend, particularly given the terms of his emails to the FTS. It was a reasonable inference from those emails that he would not change his position and attend a future hearing.

[46] Leave is refused on this ground.

**13. *No lawful right to utilise incompatible Subordinate Legislation in order to convert Case Management Discussions by telephone, into Hearings/Trials, in violation of The Convention and the Human Rights Act 1998.***

[47] The FTS held a case management discussion in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. In terms of those rules, the FTS has the same powers to make decisions as it would at a hearing (Rule 17 (4)). Leave is refused on this ground.

**General observation**

[48] On a more general note, Mr Patel's submission is peppered with accusations against the Respondent, his solicitors and the FTS.

[49] Mr Patel is entitled to raise the Respondent's failure to apply for registration as a landlord, whether the property was indeed a HMO (although where either matter takes him is a different issue) and other matters relating to the substance of the case. He is entitled to challenge the Respondent's reliance on his financial circumstances. He is entitled to argue on behalf of his daughter that the tenancy was not a Private Residential Tenancy. All of those arguments could and should have been made to the FTS. However, to make accusations against solicitors and FTS tribunal members is a different matter. Amongst other accusations, Mr Patel refers to the solicitors as committing perjury, accuses the FTS members of corruption, of the FTS covering up crimes. He also complains of being treated less favourably because of his race.

[50] It does not assist Mr Patel to raise such allegations in the absence of evidence. An assertion is not evidence. There is nothing in his papers that suggests any of his allegations are true. He does not explain why he has been treated less favourably because of his race. I put all such allegations to one side.

Sheriff F McCartney

Member of the Upper Tribunal for Scotland