



Statement of Decision under Rule 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) (“the Procedure Rules”) in relation to a request for permission to appeal under section 46(3)(a) of the Tribunals (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/2587

Re: Property at 3/1 811 Dalmarnock Road, Glasgow, G40 4QB (“the Property”)

Parties:

Mr Craig Cherry, Farnells Cottage, Ongar Road, Brentwood, Essex, CM15 0LE (“the Applicant”)

Mr Phil Walker, 3/1 811 Dalmarnock Road, Glasgow, G40 4QB (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member)

Decision (in absence of the Applicant and the Respondent)

Decision

The Tribunal refuses permission to appeal on all grounds in terms of Rule 38 of the Procedure Rules.

Background

1. An application was received by the Housing and Property Chamber dated 28th July 2022. The application was lodged in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant is seeking an order for payment of the sum of £1063.75 terms of s16 of the Housing (Scotland) Act 2014.

2. On 22nd September 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 3rd November 2022 at 11.30am by teleconferencing. The letter also requested all written representations be submitted by 13th October 2022.
3. On 23rd September 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by a Certificate of Intimation dated 23rd September 2022.
4. A CMD was held on 3rd November 2022 at 11.30am. Neither the Applicant nor the Respondent were present or submitted representations that they would not attend the CMD. The Tribunal had insufficient information before it to grant the application. The Tribunal refused the application. No order was granted.
5. On 8th November 2022 an email was received by the Housing and Property Chamber from Lorraine, Accounts, 1-2-LET. This is presumed to be Miss Lorraine Brennan who lodged the application. The email said “Can I appeal this as I could not get onto the conference call?”. Section 2 of the Scottish Tribunals (Time Limits) Regulations 2016 provides that the application for permission to appeal must be received within 30 days of the date the decision was sent to the Applicant. The application is timeous.
6. On 9th November 2022 an email was sent asking for clarification to the email address that had emailed the Housing and Property Chamber on 8th November 2022. It stated that if the request was to bring back the case to a CMD then a review or recall of the decision should be considered. If the appeal was to continue then grounds were required to be submitted. It was noted that this point was further explained in the guidance documentation issued with the decision. A response was requested by 11th November 2022.
7. As of 9th December 2022 there was no response to the email sent by the Housing and Property Chamber on 9th November 2022 to the letting agent.
8. Rule 37(2) of the Procedure Rules provides that the written application to the Tribunal for permission to appeal must:
 - a. *identify the decision of the First-tier Tribunal to which it relates;*
 - b. *identify the alleged point or points of law on which the person making the application wishes to appeal; and*
 - c. *state the result the person making the application is seeking.*
9. The email from the letting agent does not identify that they were seeking to have the outcome overturned. It asked for an appeal but without stating the grounds. It did state that the caller could not connect to the teleconferencing. The Tribunal considered this point.

10. GROUNDS OF APPEAL AND REASONS FOR DECISION

11. The grounds of appeal founded upon by the Respondent are as follows:-

12. Ground 1 – The letting agent representative could not get onto the teleconference.

- i. This is neither an error in law or an error in fact. It does not meet the legal requirements as stated above for an appeal to be granted. The letting agent was emailed directly to ask for clarification as to whether a review or recall was actually being requested. There was no response from the letting agent.
- ii. The Tribunal cannot identify any error of law upon which Permission to Appeal could be properly granted as per the terms of Rule 37(2)(b) and Rule 38(1).
- iii. Permission to Appeal is refused.

13. The ground of appeal raises no point of law. Leave to appeal is refused.

APPEAL PROVISIONS

14. A party aggrieved by the decision of the Tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and you may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.

Gabrielle Miller

9th December 2022

Legal Member/Chair

Date