Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 92 of the Antisocial Behaviour etc (Scotland) Act 2004.

Chamber Ref: FTS/HPC/GL/18/2549

Parties:

Mr Abtin Ossatian, 38 Montrose Drive, Glasgow, G61 3LG ("the Applicant")

Glasgow City Council, 231 George Street, Glasgow, G1 1RX ("the Respondents")

Tribunal Members:

Lesley Ward (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the application made by Mr Abtin Ossatian dated 18 September 2018 in terms of s92 of the Antisocial Behaviour etc (Scotland) Act 2004 and rule 99 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

This is an application in terms of s99 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 'the rules' and s92 of the Antisocial Behaviour etc Scotland Act 2004, 'the Act', made by Mr Abtain Ossatian. The basis of the application was that the applicant had been removed from the register of landlords held and approved by Glasgow City Council.

A case management discussion on 7 January 2019 was adjourned with directions. It was agreed at the CMD that the same panel would hear today's hearing. The parties' solicitors also agreed at the CMD that an evidential hearing would not take place and instead the approach the tribunal should take was in relation to the reasonableness of the respondent's decision as narrated in the Wordie property case and reiterated by Sheriff Deutch (in the case of TH –v- Glasgow City Council in September 2017).

Since the CMD the parties have lodged further documents. The applicant's solicitors have lodged a note for the applicant and a list of documents and the respondents

have lodged their written answers and their "statement of relevant law" document including copies of some case law.

The tribunal had before it today the following copy documents:

1. Application dated 18 September 2018.
2. Redacted application dated 22 October 2018.
3. Statement of reasons of respondent dated 21 December 2018.
4. Letter from Brian Carroll Principal Officer of Housing intervention and Support Team to applicant dated 31 August 2018.
5. Respondent's letter to the tribunal dated 21 December 2018.
6. Memorandum from Housing Intervention and Support Team to Corporate Services dated 6 August 2018.
7. 19 appendices to item 5 above.
8. Answers and outline of submissions for the respondent.
9. Minutes of Licencing and Regulatory Committee's Minutes dated 29 August 2018.
10. Licence for House in Multiple Occupation for applicant regarding 1/1 370 Great Western Road dated 3 November 2015.
11. Licence for House in Multiple Occupation for applicant regarding 1/1 335 Great Western Road dated 21 July 2016.
12. Further note for applicant.
13. List of documents for applicant.
14. Statement of relevant law and answers to applicant's grounds of appeal.

The applicant attended the hearing and was represented by Mr Lang solicitor. Mr McDonald solicitor attended on behalf of the respondents. Since the CMD items 11 and 12 had been lodged on behalf of the applicant and items 8, 9 and 13 on behalf of the respondents. Each party had received the other's timeous submissions and were ready to proceed.

The tribunal reiterated that the hearing would proceed on the basis of submissions alone and no evidence would be heard. The parties were in agreement.

The only preliminary matter was in relation to item 11 above. The applicant's solicitor agreed that he had misquoted s85(2)(c)(i) of the Act on page 2 of his written submissions.

Submissions on behalf of applicant

The submissions made on behalf of the applicant related to five main areas of the committee decision.

Firstly, in relation to the tenancy deposit case which he characterised as the "Champaign" case after one of the former tenants, Mr Lang stated that the committee erred in taking in to account the decision of the Sheriff and the Sheriff Appeal Court without also taking into account that the case was "still in litigation".

His submission was that the committee should have made further inquiries and gone beyond the sheriff's judgment. In particular, he submitted that they should have been alive to the applicant's legal argument that the money paid was not a deposit in terms of regulation 3 of the Tenancy Deposit Regulations. In his submission, in failing to do so the committee did not attempt to understand the factual position and they therefore took account of irrelevant considerations.

Secondly, his submission was that in relation to the tenancy deposit cases, the committee seem to have used a form of "toting up" in making their decision and they refer in their decision letter to three different findings against the applicant in relation to tenancy deposits. His submission was that this is plainly wrong as there are only two findings in the appendices: the sheriff and sheriff appeal court findings and the adjudication by Safe Deposit Scotland at appendix 19.

The third submission was that the narrative of the committee in their decision letter in relation to the Tenancy Management Agreement 'TMA' was incomplete and makes no reference to communications going on behind the scenes between the applicant and the council. He made reference to item 3 of his inventory which was a copy of an email from the applicant dated 23 March 2017 which states "Hi, here is a copy of the tenancy agreement and AT5 form". Mr Lang's submission was that there is no mention of ongoing communications between the council and the applicant regarding the terms of the TMA in the statement of reasons. To present appendix 4 to the committee with no other information does not therefore give the committee accurate information. There is no recognition in the statement of reasons that there was a background to the changes to the TMA.

The fourth submission was in relation to the information in the statement of reasons in connection with the CCTV cameras. The cameras pre dated the grant of the multi occupancy licence and were there when the properties were inspected. Although the committee does not explicitly refer to them in the summary of their decision on page 6 they must have taken them into account in reaching their decision. The committee in his submission had no proper factual basis for placing any reliance on the CCTV cameras in reaching their decision. Mr Lang also submitted that had the CCTV cameras been positioned in the manner suggested, it is unlikely that Police Scotland would not have taken any criminal action.

In relation to the issue of landlord visits to the properties, the applicant has lodged documents in item 5 and 6 of item 12 above which show that at that time there were no particular issues with that tenant. At the point in time that these emails were sent (around October 2016) the council did not have specific allegations of a breach of the licence issued to the applicant and they were simply seeking reassurances. In his view the committee have not addressed all of the email chains in reaching their decision under this head. In Mr Lang's view the committee have construed any information they have been given on this point negatively against the applicant and they failed to take account of the balancing arguments

In summary Mr Lang's submission was that if the committee had been aware and taken the forgoing into account they would have reached a different conclusion.

Submissions on behalf of respondents

Mr McDonald firstly addressed the tribunal in relation to the legal test and the scope of the appeal. He referred to two licencing cases, Hughes-v- Hamilton District Council 1991 S.C. 251 and Ranachan-v-Renfrew Distract Council 1991 S.L.T. 625. In his view both cases were authority for the proposition that the weight that the committee give to the facts before them are a matter for them and not for the sheriff. In Hughes the Court of Session decided that the sheriff was not entitled to decide that the committee had made a wrong assessment of the weight to be attached to the repeated offences of the applicant in that case. The Court of Session held that "once there is relevant material before a licencing authority the question as to the weight to be attached to that material and to the significance of any other balancing factors must be for the authority to assess"

In his submission the committee are not legally obliged to provide written reasons as they are a quasi-judicial body. They have to reach a decision in connection with the fit and proper person test and consider material falling within s85(2) and (4) of the Act. They considered material that they were required to have regard to and no criticisms has been made by the applicant that they should not have had regard to the material before it.

Turning to the 5 specific points made by Mr Lang, Mr McDonald stated firstly that he knew of no legal principle or authority which would preclude the committee from taking the findings of the sheriff appeal court into account. In his submission they also took the applicant's views into account and his views are recorded in the statement of reasons. He also drew the tribunal's attention to appendix 12 in which the applicant sent an email to his former tenant (who had never lived in the property) after the sheriff appeal court decision was received in which he made a request for the sum of £15950 in respect of unpaid rent. In his view the committee were entitled to take the matter in to account in the way in which they had.

He conceded that the council refer to three tenancy deposit cases in their statement of reasons but this may well be an error as there is only information lodged concerning two. His view is that the deposit case in which a finding was made in the applicant's favour was not before the committee as they make no reference to it in their statement of reasons. In his submission the committee were entitled to draw an inference from the two findings against the applicant and this was one aspect of their decision.

Regarding the changes to the TMA Mr McDonald's submission was that appendix 1 and 2 clearly show that the approved TMA had 16 pages and the TMA used by the applicant had 32 pages. This is a breach of condition 10 of the licence. Any changes to the TMA have to be intimated and approved. He did not accept that the emails lodged by the applicant amount to intimation or approval.

Regarding the CCTV, in his submission this was not as material part of the decision of the committee. They make no reference to it in their conclusion and it was raised

more in the context of the complaints by tenants about the frequency of the landlord's visits to the property.

In his submission the committee had relied on the information before them regarding the applicant's and the applicant's mother's conduct towards three unrelated and unconnected tenants. They also took into account their conduct towards and the council employees on two separate occasions.

In conclusion he made reference to the statement of reasons and the "cumulative view "that the committee took in drawing all of the strands of the case together. In his submission the committee were entitled to reach the conclusion they had based on the matters set out in their detailed letter.

Reasons

This application concerns a decision taken by the Licensing and Regulatory Committee of Glasgow City Council following upon a hearing of that committee which took place on 29 August 2018 and which was communicated to the applicant on 31 August 2018. The applicant attended the hearing on 29 August 2018 and he was provided a written statement of reasons for the decision on 21 December 2018 (item 3 above).

It was a matter of agreement between the parties that the approach to be taken by the tribunal was that the respondent's decision can only be interfered with by the tribunal on very narrow grounds, namely, the judicial review grounds that there has been an error of law, the decision was based on an incorrect material fact or that the respondent exercised their discretion in an unreasonable manner. As noted by Sheriff Deutch, the respondents have a wide margin of appreciation in determining the factors they are required to take into account. The task before us is therefore to decide that the decision taken was one which the committee of the Glasgow City Council's Licencing and Regulatory Committee were entitled to take on the information before it? We have concluded that it was and we have decided to allow their decision to stand. We consider that the decision is a reasonable one and took into account factors that were relevant to the task in hand. They may have concluded that the applicant had three adverse findings against him in relation to tenancy deposits instead of 2 but in our view this was only one part of the decision and as noted within in it, there were several other factors which were looked at cumulatively by the committee.

We were not persuaded that the committee erred in taking the decision of the sheriff appeal court into account. We were not persuaded that the committee failed to note that the applicant had taken any steps on the way to agreeing significant changes to the TMA. We were not persuaded that the committee failed to balance the positive aspects of the applicant's relationship with tenants. They refer to positive aspects in their statement of reasons. We were not persuaded that undue weight had been places in the CCTV information. It was not referred to in the conclusions and did not appear to be a material point. We were not persuaded that emails sent to the applicant's former solicitors regarding visits to the property and seeking assurances

prior to the decision that a breach of the licence had occurred were relevant factors that the committee failed to take into account. The tribunal decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

L. A. Ward

13 March 2019

Lesley A Ward Legal Member **Date**