



DECISION NOTICE OF SHERIFF DAVID M BICKET

ON AN APPLICATION FOR PERMISSIONS TO APPEAL (DECISION OF FIRST TIER
TRIBUNAL FOR SCOTLAND)

in the case of

MS NILMINI CHAMPA WIJewardena, 29/5 Springfield Street, Edinburgh, EH6 5DU

Appellant

and

O'NEILL PROPERTY, No 16, Young Street, Edinburgh, EH2 4JB
per Paris Steele Solicitors, 1 High Street, Haddington, East Lothian, EH41 3ES

and

FIRST TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER,
Glasgow Tribunals Centre, 20 York Street, Glasgow, G2 8GT;

Respondents

FTT Case Reference FTS/HPC/EV/0483

Decision

[1] On an application by the appellant in terms of Regulation 3 (7) of the Upper Tribunal for Scotland (Rules and Procedure) Regulations 2016, seeking that the decision of the Upper Tribunal of 22nd October 2018 be reconsidered, following a hearing, having reconsidered that decision, adheres to the decision of the Upper Tribunal for Scotland of 22nd October 2018, and refuses permission to appeal in terms of Regulation 3(6)(a) thereof.

Introduction

[2] The appellant in the present case had made an application in terms of regulation 3(7) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, for reconsideration of the decision of the Upper Tribunal for Scotland dated the 22nd October 2018, which decision refused permission to the appellant to appeal the decision of the First Tier Tribunal in terms of Regulation 3(6)(e) thereof. The hearing attended by the appellant took place on 30th January 2019. In reviewing the decision of the Upper Tribunal referred to, consideration was given to all the written submissions made by the appellant prior to the hearing on evidence, the pre-proof papers and report of the pre-proof hearing which took place before the First Tier Tribunal on 9th May 2018, the decision of the First Tier Tribunal following that hearing, the appellant's application for review and for leave to appeal that decision, the refusal thereof by the First Tier Tribunal, and finally, the decision of the Upper Tier Tribunal refusing permission to appeal. Additionally, some verbal submissions were added by the appellant to the reasons for requesting an appeal submitted in her application for this review.

Grounds of appeal

[3] The grounds of the appeal which the appellant sought to introduce relied on the introduction of new evidence. She disputed the findings in fact made by the First Tier Tribunal. The reasons for requesting an appeal were stated in her application to be:

“AT6 relies upon grounds under Section 5 of the 1998 Housing Act, Grounds 8, 11, 12, under Section 19 of the Housing Act 1988. Grounds were not established but grant an order for possession against the respondent. By granting an order for possession against the aggrieved party under Section 18 of the 1988 Housing Act.

Section 16 of the 2014 Act by jurisdiction power over a false rent arrears claim of £4,655, rules 70 of procedure rules erred in law. (Rules of Procedure) Amendment Regulation 2017, Rule 39: 43(2)(b). Review of decision: 37(3)(b) to (j) 7 and 42(2)(a)(b)(c) – the review application was satisfactorily submitted with new evidence but refused. In terms of Rule 65 of First Tier Tribunal for Scotland Housing and Property Chamber Procedure Regulation 2017, was violated by refusing to consider new evidence submitted requesting for review decision.”

Reasons for the decision

[4] Between the date of the fixing of this review hearing and the hearing taking place, the appellant sought to lodge more new evidence which she had obtained from Edinburgh Sheriff Court. It was pointed out to the appellant again that an appeal is available on a point of law only, not a dispute on the facts. The First Tier Tribunal (“Ft T”) found that grounds 8, 11, and 12 were established. As has been stated in this decision of the Upper Tribunal for Scotland under review, no error in law is demonstrated, as from the findings of the First Tier Tribunal there was sufficient material available to them to support these grounds.

[5] As stated in the decision of the Upper Tribunal dated 22nd October 2018, they accepted evidence that arrears were £3,930 at the date of service of the notice to quit, and were at the date of their decision £4,655. The new evidence which the appellant sought to introduce before me was not available to the First Tier Tribunal, and even if relevant, (which I doubt given that it dated to a period prior to the service of the notice to quit,) it is not a matter that the First Tier Tribunal could have taken account of. They accepted that the sum outstanding as at both the date of the service of notice to quit and at the date of the hearing before them was substantially in excess of the amount necessary to prove ground 8. This Tribunal is unable to go behind these facts. Ground 8 is a mandatory ground as stated in the Upper Tribunal’s decision of 22nd October 2018. I can find no fault with that decision on review, and adopt the reasons for decision given in that decision.

[6] Shortly put, no error of law has been demonstrated and the appellant simply wishes to challenge the facts of the case that were found established by the First Tier Tribunal. She is not entitled to raise these factual matters again on appeal, or to introduce any new factual evidence. It is not open to this Tribunal to reopen the dispute on the facts, and the appellant, as stated by the Upper Tribunal in the decision of 22nd October 2018, as not identified or demonstrated any error in law for the purposes of Section 46(2)(b) of the Tribunals (Scotland) Act 2014.

[7] I therefore adhere to the decision of the Upper Tribunal of 22nd October 2018, and find that no appeal is available having reconsidered all matters.