Upper Tribunal for Scotland

[2020] UT 20
UTS/AP/19/0051

DECISION NOTICE OF SHERIFF NIGEL ROSS

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

in the case of

MR IAIN MEEK, Dovers Gate, Edenhall, Penrith, Cumbria, CA11 8TD per Community Help and Advice Initiative, 5th Floor Riverside House, 502 Grorgie Road, Edinburgh, EH11 3AF

Appellant

and

MR ALLASTAIR MACDONALD, 7/8 Bighouse Park Crescent, Edinburgh, EH4 6QS

Respondent

FTT Case Reference FTS/HPC/RP/1652

24 December 2019

Decision

Leave to appeal is refused.

Note

Permission to appeal is refused for the following reasons:-

[1] No grounds of appeal on the merits: Appeal is only permissible on a point of law. No point of law (relating to the merits of an appeal) is identified in either form UTS-1, or was identified to the FtT when application for leave was made to it. There are no grounds

on which this tribunal could give permission to appeal. The only points of law identified in form UTS-1 relate to the FtT decision to refuse leave to appeal, not the underlying FtT decision that the landlord had not failed to meet the repairing obligations under section 14(1)(b) of the Housing (Scotland) Act 2006.

[2] No evident error: On the terms of the FtT decision (on the merits), there are no grounds to anticipate any error of law. The law was not in dispute. The dispute related to the facts. The FtT reached a discerning, reasoned and explained decision on the basis of the evidence it heard and its own inspection. No error of law is evident. A dispute on fact is not sufficient to ground an appeal.

[3] The tenant's position was that there was a leak in the boiler cupboard, that the living room flooring required material replacement, floor coverings should be replaced, and that certain anti-mould or cleaning operations should be carried out.

[4] The FtT carried out a personal inspection and found that there was no leak, no sign of damaged flooring and no sign of dampness or mould problems. After discussion in detail, the FtT noted that the remaining dispute related to the extent of any damage and the condition of the property since repairs were carried out. The FtT carried out a careful analysis of the tenant's evidence relating to mould and air quality, and came to a discerning decision. The evidence for the tenant was noted to be partly based on subjective factual evidence, to make comparisons which were capable of criticism, to contradict earlier evidence, to be several months out of date, and to make no allowance for other factors such as heating. These are relevant grounds upon which to decide against the tenant.

[5] No error in refusal of permission to appeal: In any event, even if there were an appealable error of law, the FtT was entitled, and obliged, to regard the ending of the tenancy on 13 September 2019 as amounting to a withdrawal of the appeal, in terms of

paragraph 7 of Schedule 2 of the 2006 (not 2001) Act. On the FtT's understanding, the tenancy was lawfully terminated. S ubject to any other provision, the FtT required to treat the application as withdrawn.

[6] No failure to exercise discretion: The UTS-1 is based on an alleged failure by the FtT, in refusing permission to appeal, to exercise a discretion. That discretion is said to arise under paragraph 7(3). That provision provides an alternative – either the application is treated as abandoned, or the application may be considered despite the withdrawal. The FtT has, on any view, treated the application as abandoned. It has cited the terms of section 46, but there was no requirement to do so, as it was sufficient to make an election under paragraph 7(3). On the hypothesis that was an error of law, it has had no material effect on the decision, which was to treat the appeal as at an end following termination of the tenancy.

[7] No material effect: Separately, on the hypothesis that the FtT was exercising a discretion, and made an error in so doing, any appeal could not succeed unless it could be demonstrated that the error had a material effect on the decision. In circumstances where no error of law is identified by the appellant (on the merits), no error of law is evident, the tenancy is at an end, and where there is no stated (non-collateral) benefit to the appellant in maintaining the appeal following termination, there are no grounds to consider that the decision would have been materially different had it not been for such hypothetical error.

[8] In these circumstances, an appeal is not arguable. Permission is therefore refused.