Upper Tribunal for Scotland

2023UT04
Ref: UTS/AP/22/0007

DECISION OF

SHERIFF GEORGE JAMIESON

IN THE APPEAL OF

Mr Gerard Boyle, Miss Katrine Boyle, 3 Robertson Court, Armadale, West Lothian, EH48 3LS

Appellants

- and -

Mrs Lorraine Ford, 5 Breadalbane Place, Polmont, Falkirk, FK2 0RF
per Blackadder & McMonagle,
41 High Street, Falkirk, FK1 1EN

Respondent

FtT reference FTS/HPC/EV/21/1168

Paisley, 6 January 2023

Decision

The Upper Tribunal for Scotland:

1. Allows the appeal on part 1 of ground of appeal 1 and on ground of appeal 4.
2. Refuses the appeal on parts 2 and 3 of ground of appeal 1 and on grounds of appeal 2, 3 and 5.

3. Quashes the decision of the First-tier Tribunal for Scotland dated 16 December 2021 granting an order against the appellants for possession of the dwellinghouse at 3 Robertson Court, Armadale, West Lothian, EH48 3LS.
4. Remakes the foregoing decision in terms of section 47(2)(a) of the Tribunals (Scotland) Act 2014 and refuses the respondent's application before the First-tier Tribunal for Scotland for an eviction order in respect of the dwellinghouse at 3 Robertson Court, Armadale, West Lothian, EH48 3LS.
5. Finds in fact in terms of section 47(3)(b) of the Tribunals (Scotland) Act 2014 that the agreement entered into between the parties dated 1 October 2018 created a short assured tenancy between the parties within the meaning of section 32(3)(b) of the Housing (Scotland) Act 1988 as saved by regulation 6(c) of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017, SSI 2017 No. 346.

Representation in the Appeal

The Appellants were represented by Mr Boyle in this appeal.

The Respondent was represented by Catriona Macdonald, solicitor, Blackadder & McMonagle, 41 High Street, Falkirk at the preliminary stages of the appeal and, at the oral hearing of the appeal on 28 September 2022, by Mr D.D. Anderson, Advocate.

Introduction

[1] This appeal proceeds in respect of five grounds of appeal. The First-tier Tribunal for Scotland (hereafter "the FtT") granted the appellants permission to appeal to the Upper Tribunal for

Scotland (hereafter "the UT") on the first ground of appeal. The UT granted the appellants permission to appeal to the UT on the second, third, fourth and fifth grounds of appeal. The first four grounds of appeal are whether:

1. The tenancy at 3 Robertson Court, Armadale, West Lothian, EH48 3LS was a private residential tenancy or a short assured tenancy;
2. The doctrine of accretion applied to retrospectively validate the tenancy agreement;
3. Tacit relocation applied to the previous tenancy agreement; and
4. The First-tier Tribunal for Scotland erred in law in its assessment of the reasonableness of granting the eviction order.

[2] I have concluded in relation to these four questions as follows:

1. The tenancy at 3 Robertson Court, Armadale, West Lothian, EH48 3LS was a short assured tenancy;
2. The doctrine of accretion applied to retrospectively validate the tenancy agreement;
3. Tacit relocation did not apply to the previous tenancy agreement; and
4. The First-tier Tribunal for Scotland erred in law in its assessment of the reasonableness of granting the eviction order.

[3] The fifth ground of appeal was related to the fourth ground of appeal but not particularly insisted upon by the appellants. I discuss this ground of appeal later on in this Decision.

Findings in Fact Made by the FtT

[4] The FtT made a finding in fact that the lease between the parties was a private rented tenancy. For the reasons hereafter discussed, that was an erroneous conclusion.

[5] The FtT also made the following findings in fact which are essential to an understanding of the issues in this case (which I have rephrased, re-ordered and where necessary corrected or amplified based on the more comprehensive information submitted by the respondent to the UT):

1. In October 2010, the appellants entered into a lease with Hiram Dunn Ford, the respondent's late husband, in respect of the dwellinghouse at 3 Robertson Court, Armadale, West Lothian, EH48 3LS (hereafter "the property").
2. Mr Ford and the appellants thereafter signed a new lease each year.
3. On 1 October 2017, Mr Ford and the appellants entered into a short assured tenancy agreement in respect of the property. This agreement was headed as a short assured tenancy agreement and in clause 4 stated that the parties intended to create a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988. The ish in respect of this agreement was 30 September 2018.
4. Mr Ford died intestate on 22 November 2017. The property formed part of his estate.
5. The respondent, as his widow, was subsequently decerned as his executrix-dative.
6. On 20 April 2018, she obtained confirmation as executrix-dative of her late husband.
7. By written agreement dated 1 October 2018, the respondent entered into a short assured tenancy agreement with the appellants in respect of the property. This agreement was headed as a short assured tenancy agreement and in clause 4 stated that the parties intended to create a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988. A Form AT5 was served on each appellant in connection with that agreement.

8. On 22 July 2020, the respondent served a notice to leave the property on each appellant in terms of section 50(1) (a) of the Private Housing (Tenancies) (Scotland) Act 2016 on the ground the respondent intended to sell the property.
9. On 29 April 2021, the respondent applied to the First-tier Tribunal for Scotland for an eviction order against the appellants in respect of the property. On 15 June 2021, her solicitor gave notice of that application to the local authority in terms of section 11(3) of the Homelessness etc. (Scotland) Act 2003.
10. On 8 October 2021, the property was disponed to the respondent.
11. On 11 October 2021, the respondent was registered as proprietor of the property in the Land Register of Scotland under title number WLN11962.

Ground of Appeal 1- The Type of Tenancy

Part 1 - The Type of Tenancy by Reference to the Saving Provision

[6] The question whether the tenancy of the property was a private residential tenancy or a short assured tenancy turns on the proper interpretation of regulation 6 of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017, SSI 2017 No. 346 (hereafter "the saving provision").

[7] The saving provision has the effect of continuing a tenancy as a short assured tenancy in terms of section 32 of the Housing (Scotland) Act 1988 as it applied before 1 December 2017 ("the 1988 Act") but only in relation to:

(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;

(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and

(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1 December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).

[8] Section 32(3)(b) of the 1988 Act as it applied before 1 December 2017 provided that a "new contractual tenancy" which came into being:

(3) … at the ish of a short assured tenancy:

(a) …

(b) [and which was] of the same or substantially the same premises… [and] under which the landlord and the tenant [were] the same as at that ish,

[was to be] a short assured tenancy...

[9] Subject to the saving provision, no new assured, including no new short assured tenancy may be granted after 1 December 2017 (sections 12(1A) and 32(1), 1988 Act). The fact the parties' tenancy agreement dated 1 October 2018 was headed a short assured tenancy and was intended to create such a tenancy is therefore immaterial to the determination of that question. In the respondent's submission, the tenancy agreement between the appellants and the respondent dated 1 October 2018 was a new contractual tenancy of the same premises, but it was not a tenancy under

which the landlord and the tenant were the same as at the ish of the short assured tenancy between the appellants and her late husband dated 1 October 2017.

[10] She therefore submitted that section 32(3) (b) of the 1988 Act as saved by regulation 6(c) of the saving provision did not apply in the circumstances of this case.

[11] The appellants submitted that the respondent was *not* to be treated "as an individual who was entering as a new party to the lease".

[12] I therefore understood their position to be that the respondent was, in fact, to be treated as the same landlord as in the lease between the appellants and the respondent's late husband dated 1 October 2017.

[13] By Order dated 8 December 2002, I asked the respondent to comment on the terms of section 55 of the 1988 Act which had not previously been cited before the FtT or in the course of this appeal.

[14] Section 55 of the Housing (Scotland) Act 1988 provides a definition of the word "landlord" when used in Part II of the Housing (Scotland) Act 1988 "except where the context otherwise requires".

[15] "Landlord", where the definition applies, includes *inter alios* "any person from time to time deriving title from the original landlord". This definition therefore applies to the expression "landlord" as used in section 32(3) (b) of the 1988 Act unless "the context otherwise requires".

[16] The respondent submitted in connection with section 55 that the context of section 32(3) (b) was such that the expression "landlord" as used therein meant the original landlord and not any successor in title to that landlord.

[17] The respondent submitted that applying the section 55 definition to section 33(3) (b) meant that any successor in title would be the landlord.

[18] This was in contradistinction to the expression "the same" in section 32(3) (b) of the 1988 Act: "the same" implied the possibility of a different landlord and therefore the use of the word "same" would be pointless, redundant and have no meaning if the landlord could not change.

Part 2 - The Type of Tenancy by Reference to the Definition of a PRT

[19] The appellants submitted that the tenancy agreement between them and the respondent dated 1 October 2018 was an assured tenancy; accordingly, this prevented their tenancy from being a private rented tenancy (hereafter "PRT") by virtue of the definition of a PRT in section 1(1)(c) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") which, by reference to paragraph 21(d) of schedule 1 to that Act, excluded an assured tenancy from being a PRT.

Part 3 - The Type of Tenancy by Reference to Service or Non-Service on Forms AT5 on the Appellants

[20] The appellants submitted that the FtT had not been correct to find in fact that Forms AT5 had been served on them in connection with the tenancy agreement between them and the respondent dated 1 October 2018.

[21] The respondent submitted in reply that this issue could not be determined by the UT as this was a finding in fact made by the FtT and an appeal to the UT was restricted to a point of law.

[22] The respondent also submitted that only short assured tenancies could continue to exist under the saving provision: this argument therefore did not assist the appellants in persuading the UT that the tenancy agreement between them and the respondent dated 1 October 2018 was not a PRT.

Discussion of Ground of Appeal 1

[23] I discuss this ground of appeal on the assumption at this stage that the respondent validly entered into a contractual tenancy with the appellants on 1 October 2018. As this agreement: (1) constituted a new contractual tenancy in relation to the same premises as the previous agreement between the respondent's late husband and the appellants dated 1 October 2017; (2) came into being at the ish of that previous agreement; and (3) that previous agreement was a short assured tenancy, the question for determination by the UT is whether the parties to this later agreement dated 1 October 2018 were the same landlord and the same tenant as in the previous agreement between the respondent's late husband and the appellants dated 1 October 2017.

[24] As the landlords were on the face of each agreement different, the answer to the question would be no but for section 55 of the 1988 Act, unless section 55 does not apply. If section 55 applies, then the "landlord" would include the respondent as a person deriving title to the property from the original landlord, her late husband. As the tenants had not changed, the landlord and tenant would be the same as in the previous agreement.

[25] I am unaware of any authority to assist me in deciding this point. I am grateful to Mr Anderson for his careful submissions on this point. However, I have concluded that all that is required for section 32(3)(b) to operate is that both parties under the new agreement are to be the same as under the previous agreement, applying any extended definitions of landlord or tenant in section 55 of the 1988 Act.

[26] The section 55 definitions apply except where the context otherwise *requires*. Section 55 defines both landlord and tenant as including any person deriving title from the original tenant or original landlord.

[27] While this would always, in the case of a landlord, include any successor in title by gift, purchase, or succession, or in any other way that title passes, as the landlord requires to be the owner, deriving title from the original landlord, this is not so of a tenant. The old tenant could leave and a new agreement could be entered into between the landlord and that new tenant without the new tenant deriving title from the original tenant by succession or assignation.

[28] So long as there exists the possibility of a different configuration of landlord and tenant, whereby one of the parties to the tenancy agreement has not derived title from an original tenant or landlord, then the UT is not in my opinion *required* to disapply the definitions of landlord and tenant in section 55 of the 1988 Act.

[29] I accordingly conclude that the tenancy agreement entered into between the parties was a short assured tenancy. This conclusion may make it unnecessary for me to deal with the other parts of ground of appeal 1, but for the sake of completeness, the appellants' argument based on the definition of private rented tenancy in section 1 of the 2016 Act is circular as the definition of assured tenancy in schedule 1 to the 2016 Act is found in the 1988 Act, section 12(1A) of which states that a tenancy granted on or after 1 December 2017 cannot be an assured tenancy; this therefore brings things back to the interpretation of the saving provision.

[30] As to the third part of ground of appeal 1, the FtT concluded on the balance of probabilities, applying the presumption *omnia praesumuntur rite esse acta*, that the letting agency had served

forms AT5 on the appellants in connection with the new tenancy agreement between the parties. It was entitled to do so and this approach did not involve any error of law on its part. The UT is therefore not entitled to interfere with this factual finding of the FtT.

[31] Service of Forms AT5 on the appellants may have been unnecessary in any event to the status of the new tenancy agreement as submitted by the respondent as section 32(3) of the 1988 Act makes it clear the new contractual tenancy will continue to be a short assured tenancy irrespective of service of a Form AT5, so long as the premises and parties to the lease are the same (see section 32(3) referring to section 32(1) (b) of the 1988 Act). There only requires to be a new contractual tenancy at the ish of a previous short assured tenancy, but service of the AT5s in this case confirms the status of the new contractual tenancy as a short assured tenancy.

[32] I therefore allow the appeal on part 1 of ground of appeal 1 and refuse the appeal on parts 2 and 3 of ground of appeal 1.

Ground of Appeal 2 – Accretion

[33] The tenancy agreement entered into between the parties was in the name of the respondent as an individual. The appellants therefore argued before the FtT the respondent lacked capacity to enter this contract with them on 1 October 2018 as she had not become the registered owner of the property until 11 October 2021.

[34] The respondent's reply to this argument was that under the doctrine of accretion her title to enter the lease with the appellants was retrospectively validated after she had acquired title to the property.

[35] The FtT's decision dated 16 December 2021 does not discuss this concept with sufficient clarity to satisfy the UT that the FtT had actually considered, accepted and applied this doctrine to the facts of this case.

[36] However, the law on this point was fully cited to the UT and it clear the doctrine of accretion applied to this case (Reid, *The Law of Property in Scotland*, 1996, paragraph 677; McAllister, *Scottish Law of Leases*, 5th edition, 2021, paragraph 2.38). Since the order for possession was granted by the FtT *after* the respondent was registered as owner of the property, accretion applied, the lease was retrospectively validated to the date of its grant, and accordingly the FtT did not err in law in granting the order for possession because of the earlier date of the lease.

[37] Moreover, it appears that the respondent was entitled to serve notices to leave on the appellants on 22 July 2020 after having been confirmed as executrix-dative to her late husband's estate on 20 April 2018, but before becoming owner of the property (*c.f. Garvie's Trustees v Garvie's Tutors* 1975 S.L.T. 94 at 96; *Pattison v Matheson* 2022 S.L.T. 1289 at paragraph [22]).

[38] The appeal is therefore refused on ground of appeal 2.

Ground of Appeal 3 – Tacit Relocation

[39] Ground of appeal 3 is logically related to ground of appeal 2. If the tenancy agreement entered into between the parties on 1 October 2018 had been void for reason of lack of the respondent's capacity to enter into the agreement, then arguably the previous agreement between the appellants and the late Mr Ford dated 1 October 2017 may have continued in existence under the doctrine of tacit relocation.

[40] However, there is no scope for tacit relocation in this case. Firstly, because the new contractual tenancy between the parties, retrospectively validated by the doctrine of accretion, impliedly renounced the earlier agreement (McAllister, *Scottish Law of Leases*, 5th edition, 2021, paragraph 10.3), to which tacit agreement can no longer apply.

[41] Secondly, because the earlier agreement specifically states that "tacit relocation shall not apply to this tenancy" (clause 2).

[42] The appeal is therefore refused on ground of appeal 3.

Ground of Appeal 4 – Reasonableness of Granting the Order for Possession

[43] Both appellants have very serious health problems which they submit makes the granting of an order for possession not to be reasonable.

[44] The respondent submits that the UT should not interfere with the FtT's decision to find, on the contrary, that it was reasonable for it to grant an order for possession.

[45] The grounds for the UT interfering with this decision appear to be well established.

[46] Thus, reasonableness is not in itself a fact but instead a concept or conclusion determined by an exercise of judgment (*City of Edinburgh Council v Forbes* 2002 Hous. L. R. 61 at paragraph 7-16, per Sheriff Principal Nicholson Q.C.).

[47] Accordingly, the UT may only interfere with the FtT's assessment of reasonableness if satisfied there are cogent and compelling reasons for suggesting that the FtT erred in the exercise of that judgment (*Glasgow West Housing Association v Harasimowicz* 2015 Hous. L. R. 77 at paragraph [11], per Sheriff Principal Scott Q.C).

[48] Matters of weight are normally for the FtT to decide; the UT will not interfere unless the FtT has misdirected itself or gone plainly wrong (*Bedfordshire Housing Association v Khan* 2007 EWCA Civ 1445 at paragraph [16], per Tuckey LJ). Infelicities in expression by the FtT are not sufficient in themselves to infer an error of law on the part of the FtT (*Barking and Dagenham LBC v Bakare* [2012] H.L.R 34 at paragraphs [32] to [36], per MacFarlane LJ).

[49] The FtT's task is to consider whether, in all the circumstances, granting an order for possession is reasonable, not the most reasonable course of action, nor one within a range of possible actions; if it so decides, it must grant the order (*East Lothian Council v Duffy* 2012 S.L.T. (Sh. Ct.) 113 at paragraphs [71] and [72], per Sheriff Braid).

[50] The FtT found it was reasonable to grant an order for eviction.

[51] However, in doing so, it firstly "noted" the position regarding the appellants' health issues, but it was of the view that Mr Boyle had indicated in his "evidence" to the tribunal "a volition to move in spite of the ongoing health conditions that he and his sister have". The FtT "did not consider this to be a reasonable ground to refuse the granting of an order".

[52] The FtT did not consider the difficulties that the appellants might have in getting rehoused "to be a reasonable ground to refuse the granting of the order". They took this view because the appellants' advisers had advised the appellants during an adjournment of the proceedings before the FtT that the appellants would be given a much higher priority for rehousing once an eviction order had been granted.

[53] The FtT noted that any special requirements which needed to be met by the appellants to move into a new property could be paid for by the appellants and this factor was therefore not prohibiting Mr Boyle from moving.

[54] In his oral submissions before the UT on the question of reasonableness, Mr Anderson pointed out that the respondent had made out a ground of possession based on her intention to sell the property.

[55] He referred to a letter from the respondent's employer dated 22 April 2022 which he submitted demonstrated the deleterious effect that the respondent's husband's bereavement was having on the respondent: it was having a significant impact on her mental health and ability to cope at work.

[56] In reply, Mr Boyle said he had thought he "had very little chance" of opposing the proceedings for possession of the property during the hearing of his case by the FtT. He had been willing to discuss settlement, but when asked by me for his views on reasonableness, he said, no, it was not reasonable to grant an order for possession, particularly having regard to his sister's critical health circumstances.

[57] I am satisfied there are cogent and compelling reasons for suggesting that the FtT erred in the exercise of its assessment of reasonableness in this case. Its decision in itself cannot be said at this stage to be "plainly wrong" in terms of whether it would or would not be reasonable to grant an order for possession of the property. However, the FtT misdirected itself in law and has failed to demonstrate that it took into account, and properly weighed and balanced, all relevant considerations, in reaching that conclusion.

[58] It is apparent from Mr Boyle's submissions to the UT that he had an insufficient understanding of significance of the concept of reasonableness when he appeared before the FtT.

[59] Rather than Mr Boyle expressing a "volition" to move from the property, he was expressing his belief that there was no other option available to the FtT. The FtT should not have interpreted Mr Boyle's evidence in the way that it did. When asked about the matter by the UT, it was evident Mr Boyle was not expressing a "volition to move".

[60] The FtT placed undue weight on this alleged factor. It made no attempt in its decision to identify all of the relevant circumstances, both favouring granting and not granting an order for possession, and to weigh those in the balance in assessing the reasonableness of granting such an order.

[61] Instead, it concluded with reference to the appellants' health problems, and to their difficulties in getting rehoused, that these were "*not* reasonable [grounds] *to refuse* the granting of an order" (emphasis added).

[62] This reversed the statutory test and effectively placed an onus on the appellants to show "reasonable grounds" for the FtT *to refuse* the granting of an order for possession, whereas, taking into account all the relevant circumstances, the FtT's responsibility in terms of section 33(1) (e) of the 1988 Act was to satisfy itself that "it [*was*] reasonable *to make* an order for possession" (emphasis added).

[63] Totally absent from its reasoning is any reference to the circumstances of the respondent: why did she intend to sell; what impact was being a landlord having on her health and ability to

cope at work; and how did those effects on her compare with the health conditions of the appellants?

[64] Nor is there any reference in the reasoning of the FtT to factors such as the length of time the appellants had been tenants at the property and whether they had been good tenants during this period in terms of paying rent and fulfilling their contractual obligations as tenants; and how such factors should be weighed in the balance in considering the reasonableness of making an order for possession.

[65] Finally, there is no reference in the reasoning of the FtT to *Miss Boyle's* very serious health problems; there is no suggestion in its reasoning that she gave evidence to the FtT of any "volition to move" from the property; and there is no reference to the effect any such move might have on her health in assessing whether it was reasonable to grant an order for possession.

[66] For these reasons, I allow the appeal on ground of appeal 4.

Ground of Appeal 5 – Local Authority's Duty to Rehouse the Appellants if an Order for Possession was made by the FtT

[67] Ground of appeal 5 relates to the appellants' position that the local authority has not taken any or sufficient steps to rehouse them upon receipt of the section 11 notice. The FtT appeared to have regard to this factor as one of its grounds for holding this was not a reasonable ground for refusing the order for possession by stating in its decision Mr Boyle would be given a priority for being rehoused by the local authority after an order for possession was granted.

[68] The appellants did not provide additional written submissions supporting this ground of appeal in their appeal to the UT, though Mr Boyle said in his oral submissions to the UT he was still insisting on this ground of appeal.

[69] Mr Anderson submitted that the extent of the local authority's statutory duties to rehouse the appellants upon being evicted was properly a factor taken into account by the FtT when determining the reasonableness to grant the order for eviction.

[70] I am of the opinion that the FtT's reference to this factor was one which it was entitled to take into account in reaching a decision on reasonableness, subject to applying due weight to this factor.

[71] However, the issue is perhaps academic given I have allowed the appeal on ground of appeal 4. While I formally refuse the appeal on ground of appeal 5, any future assessment of reasonableness by the FtT must be carried out by applying its mind to the correct statutory approach to the reasonableness of granting an order for possession, without placing sole or undue weight on this factor. The question for the FtT is whether it is reasonable to grant an *order for possession*; it is not *ipso facto* reasonable to do so just because of the existence of local authority duties to rehouse the appellants; nor may the FtT give undue weight to any difficulties likely to be experienced by the appellants after an order for possession has been granted, standing the existence of such duties.

Conclusion

[72] The FtT ought to have concluded the tenancy agreement between the parties dated 1 October 2018 was a short assured tenancy. It ought to have made clear and distinct findings in fact

in relation to the various factors, including all parties' health conditions, which were relevant to its decision on the reasonableness of granting an order possession of the property. It ought to have more clearly distinguished its findings in fact from the parties' evidence and to have explained whether or not it accepted certain evidence as its basis for its findings in fact. Once those facts were established, it ought to have carried out an assessment of all of the relevant factors for and against the making of an order for possession of the property, and if satisfied that making such an order was reasonable, it ought to have explained why it had reached that conclusion based on its assessment of the competing needs and interests of all parties as at that date.

[73] I have accordingly quashed the decision of the FtT granting an order for possession of the property. For the avoidance of doubt, the respondent will require to make a new application to the FtT for an order for possession of the property in terms of section 33 of the 1988 Act. I cannot remit the current proceedings to the FtT as they were mistakenly brought under the 2016. The only jurisdiction the UT can exercise in this appeal is therefore to remake the decision and to refuse the respondent's application for an eviction order under the 2016 Act.

Terminology

[74] The FtT's decision dated 16 December 2021 referred to the making of an order for possession of the property instead of an order for eviction consistent with the FtT's finding the property was a PRT. I have therefore referred to the FtT making an order for possession of the property in this decision to reflect its own terminology, and to an eviction order where the context required the use of that expression.

Expenses

[75] I have not decided any issues of expenses in relation to the proceedings before the FtT or the UT. I have accordingly made a separate Order requiring any such submissions to be made to the UT. In the absence of any such submissions, the UT will not make any order for expenses.

Further Appeal

[76] Any party aggrieved by this decision may seek permission to appeal to the Court of Session. Such an appeal may only be on a point of law. A party wishing to appeal must apply for permission to do so from the Upper Tribunal. Permission to appeal must be applied for within **30 days** of the date on which this decision was sent to a party.

[77] Any request for permission to appeal to the Court of Session must be in writing and must: (a) identify the decision of the Upper Tribunal to which it relates; (b) identify the alleged error or errors of law in the decision; and (c) in terms of section 50(4) of the Tribunals (Scotland) Act 2014, state the important point of principle or practice that would be raised in the further appeal or any other compelling reason there is for allowing a further appeal to proceed.

George Jamieson

Sheriff of North Strathclyde

Judge of the Upper Tribunal for Scotland