



DECISION OF

Sheriff Ian Hay Cruickshank

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

Mr Thomas Roy

Appellant

- and -

Ms Kerry Anne McDermott

Respondent

FTS Case Reference: FTS/HPC/PR/24/1759

19 November 2024

Decision

Refuses permission to appeal the decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) dated 15 August 2024.

Introduction

[1] Thomas Roy (“the appellant”) seeks permission to appeal the decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the FTS”) dated 15 August 2024.

Permission to appeal was refused by the FTS on 2 September 2024. Permission to appeal is now sought from the Upper Tribunal for Scotland (“the UTS”).



[2] The FTS awarded the respondent in this appeal the sum of £1,100 having found that there had been a breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”). The appellant did not attend the hearing before the FTS but submitted written representations.

[3] The FTS found in fact that the parties had entered a Private Residential Tenancy Agreement on 11 December 2020, that a deposit of £550 had been paid at commencement, the tenancy ended on 31 May 2024 and at no time during the tenancy had the appellant lodged the deposit in an approved scheme. It was also noted by the FTS that the appellant continued to retain the deposit.

[4] In its reasoning the FTS noted that the appellant had lodged written submissions in which he stated he had not known about the tenancy deposit scheme. The FTS also noted that the appellant had more than one rental property. Given that the deposit had remained unprotected for almost three and a half years, the importance of landlords complying with the regulations and the fact that the appellant should have been aware of them, the FTS concluded that this was a serious breach.

Ground of appeal

[5] The ground of appeal, as stated in the appellant’s Form UTS-1, is in the following terms:
“we feel our case has not been given any consideration and we are now sitting facing a large bill for repairs to a tenant whom basically trashed our property and knew how to work a flawed system that gives us no cover for any damages occurred by a tenant to our property”



Discussion

[6] The appellant sought to argue that the FTS had erred in law because it ignored the fact that, per the tenancy, the parties' agreed that the deposit was to be held by the appellant's parent company. When the tenancy had ended there had been damage, and it was wrong that the respondent was entitled to compensation in the form of the award made by the FTS.

[7] Although the respondent attended the permission to appeal hearing, I did not require to hear submissions from her. In the brief discussion which ensued with the appellant it was accepted that he had entered into a Private Residential Tenancy with the respondent. When I sought clarification as to the error in law on the part of the FTS which the appellant sought to rely upon, he submitted that he could not further enunciate any such error.

Conclusion

[8] This application for permission to appeal has no merit. No error of law has been identified by the appellant and the decision of the FTS cannot be criticised.

[9] The provisions of the 2011 Regulations, and their application, have been explored in various decisions issued by the UTS (see for example *Rollett v Mackie* UTS/AP/19/0020). The main purpose of 2011 Regulations (made under the Housing Scotland Act 2006) was to move the holding of deposits from landlords to independent approved third parties. The policy objectives behind the Regulations are three-fold. First, to reduce the number of unfairly withheld tenancy deposits. Secondly, to ensure that deposits are safeguarded throughout the duration of the tenancy. Thirdly, to ensure that deposits are returned quickly and fairly, particularly where



there is a dispute over the return of the deposit, or portion of it, to the tenant. That is precisely what has been defeated in this case.

[10] A landlord does not, in law, require to seek a deposit. Should a landlord elect to do so then it is essential that he is aware of, and abides by, the duties imposed upon him by the 2011 Regulations. The fact that a tenancy agreement states that the landlord will himself hold the deposit is irrelevant. Parties to a tenancy cannot “opt out” of the requirement to comply with the 2011 Regulations. The appellant’s contention that he has no right of redress against the tenant is incorrect as legal remedies clearly exist. This reasoning provides no defence or mitigation to the making of an award under the 2011 Regulations. The FTS was right to conclude that there had been a serious breach of the 2011 Regulations. Permission to appeal is refused.

Sheriff Ian H Cruickshank
Member of the Upper Tribunal for Scotland