

Housing & Property Chamber – An Update

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Introduction

- Two and a half years since the First-tier Tribunal for Scotland (Housing and Property Chamber) acquired jurisdiction over all civil disputes in the Private Rented Sector
- Reasonable body of caselaw now developed
- Consider some important cases arising out of FTT and UT

Anderson v Stark [2019] UT 48

- UT decision regarding extent of FTT Jurisdiction
- “It is noteworthy that the starting point is to award to the FTT the whole of the powers of a sheriff, and then to limit these by reference to those “arising from” a PRT. The tenor is that the FTT is given such powers as is necessary for the purposes of dealing with a particular subject area and, just as significantly, the sheriff court is deprived of those powers. It appears that the traditional narrow approach taken by the courts, in considering exclusion of their own jurisdiction, would in this instance be somewhat at odds with the intention of the legislature.”
- “Whether a dispute “arises from” a PRT depends, in my view, on the individual circumstances of each case. It is a matter of fact and degree. It is unlikely to be enough simply to point to a tenuous causal connection, such as bankruptcy arising through the failure to pay rent and which is not covered... The question is a mixed question of fact and law in each case... the natural and ordinary effect of the words “arising from” is unrestricted and imprecise, and invites a wide, inclusive approach. It is quite the opposite of a defined award. It tends to show that the legislature intended the FTT to deal with all PRT-related events, to the exclusion of the sheriff court, and not just the core lease.”

Watt v Chestnutt Skeoch Ltd UTS/AP/19/0032

- Action for payment
- Defence that lease should be reduced on grounds of facility and circumvention
- UT decided that a separate application for reduction would be required
- “...if a valid application had been made to the FTT, then it is arguable that the FTT had jurisdiction to deal with it. The action for reduction can only arise following a lease being entered into.”

Majid v Gaffney [2019] UT 59

- Permission to appeal refused
- NTL specified 3 months rent arrears before 3 consecutive months of arrears had elapsed
- FTT rejected the application under Rule 8, saying it was frivolous
- Error in law asserted was that there is no requirement in private residential tenancy legislation for the ground of eviction to apply when the Notice to Leave is issued
- Question to be considered is whether it is necessary that the ground of eviction applies as at the date of service of the NTL
- UT stated “The appellant appears to be conflating two separate statutory provisions. In terms of section 62(1)(b) reference is made to a date on which the landlord “expects to become entitled to make an application for an eviction order to the [FTT]”. It is clear that the word “expects” relates to the date on which the application will be made. That is entirely distinct from the eviction ground. The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid.”

Panpher v McDonald [2019] UT 18

- The appellant had failed to complete the part of the NTL which was to specify the earliest date that an application could be made
- FTT rejected the application under Rule 8 as frivolous
- UT found “There is a blank for the insertion of the earliest date that Tribunal proceedings can start. There is an instruction to insert a date. If no date is inserted then there has not been compliance with regulation 6. If regulation 6 has not been complied with then the notice is not compliant with section 62(1)(d) and accordingly it is not a notice to leave within the meaning of the 2016 Act.”

Holleran v McAlister

- FTS/HPC/EV/18/3231
- Action for eviction under a PRT
- Case concerns validity of notice to leave
- Period of notice was 28 days from the date of receipt of notice, which is to be taken as two days after it is sent unless contrary is shown (s.26(5))
- BUT date in the notice is to be “the day falling after the day on which the notice period defined in section 54(2) will expire”
- Notice said 31 August; should have said 1 September
- S.73 allows power to disregard minor errors “unless the error materially affects the effect of the document”

Affleck v Brondson [2019] UT 49

- UT refused appeal
- UT stated that the appellant “does not occupy the property “as a separate dwelling”. She is one of four residents, and is entitled to exclusive occupation only of her own bedroom. She has to share all other facilities. Other tenants can come and go. She does not occupy a separate dwelling. She occupies part of a communal dwelling. For that reason, the arrangement does not qualify as a PRT under the 2016 Act.”
- BUT – UT’s attention not apparently drawn to section 2(4) which allows “Shared accommodation” to be a PRT
- Leave to appeal to Inner House granted (unsurprisingly)

Mansfield v Dickson [2020] UT 14

- Appellants argued that the FTT erred in law by failing to take account of video and audio evidence
- “The appellant, at this stage, in order to satisfy the UT that there are arguable grounds for appeal, requires, in my view, to point to a material error of law, which could result in the decision of the FTT being quashed in terms of section 47(1) of the 2014 Act. An error of law would include: (i) an error of general law, such as the content of the law applied; (ii) an error in the application of the law to the facts; (iii) making findings for which there is no evidence or which is inconsistent with the evidence and contradictory of it; and (iv) a fundamental error in approach to the case: for example, by asking the wrong question, or by taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal could properly reach (see Advocate General for Scotland v Murray Group Holdings 2016 SC 201 at paras 42 to 43)”

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