



**DECISION OF**

Sheriff O'Carroll

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

Mr Karl Mooney

Appellant

- and -

Ms Donna Vincent

Respondent

FTS Case Reference: FTS/HPC/CV/24/0020

**8 January 2025**

**Decision**

Permission to appeal is refused

*Background*

1. This is an appeal against the decision of the FTS dated 22 August 2024 to refuse the claim by the appellant for £1757 against the respondents, being former tenants, that sum representing the cost of replacing carpets in the property at the end of the tenancy. The tenancy agreement provided that at the end of the tenancy, the tenants would replace to the original standard all carpets within the property. The effect of that obligation was that



the respondent was obliged to fit new carpets in the property of the same quality and standard as the carpets at the commencement of the tenancy. The respondents accepted that at the end of the tenancy they had not replace the carpets. The appellant said he had obtained a quotation of £1,757 to replace the carpets in the property.

2. However, once the subjects were vacated the appellant sold the property without replacing the carpets or incurring any costs as far as the carpets were concerned. Furthermore, the appellant did not claim or offer to prove that the sale price of the property was in any way reduced by the carpets not having been replaced. The claim therefore of the appellant rested solely on the proposition that the carpets not having been replaced by the respondents at the end of the tenancy and that being a breach of the tenancy agreement, a breach of contract, the respondents were obliged to pay him what would have been the cost of instructing a company to fit new carpets to the property even though he did not instruct or pay for that work to be done and even though he does not own the house anymore and even though the sale price of the house was not diminished by the absence of new carpets.
3. The FTS refused the appellant's claim for the carpets on the very straightforward basis that although it found that the respondent was obliged by the tenancy agreement to have replaced the carpets with carpets of the same quality, but did not do so and therefore was in breach of contract, the appellant had not suffered a loss. The appellant sought permission to appeal from the FTS on the same basis as advanced to the FTS and rejected by it.
4. The FTS refused permission to appeal adhering to its earlier decision. The appellant then renewed his application for permission to appeal to this Upper Tribunal.
5. The parties made written submissions, helpfully outlining their position as regards whether there was an arguable error of law on the part of the FTS. The position of the appellant was essentially the same as advanced before the tribunal: that is the carpets not having been replaced by the respondents in breach of contract, he was thereby entitled to compensation for that without the need to prove that he had incurred a loss. The FTS had



erred in law in finding otherwise. The response by the respondents was that the FTS had made the correct decision and that no error of law was demonstrated.

6. On 8 January 2025, at a WebEx hearing fixed to determine the question of permission to appeal, (which also considered the related and conjoined appeal in UTS/AP/24/0099) the appellant and the respondent appeared. They referred to their prior written submissions and rested on those submissions. At the hearing, I announced the decision of the Upper Tribunal which was to refuse permission to appeal. I stated that written reasons would follow. These are those written reasons.

### *Reasons*

7. This is essentially a claim for damages by the appellant resulting from a breach of contract, the contract being the tenancy agreement. In Scotland, damages are compensatory. That is, damages are awarded to restore the wronged party to the position they would have been had it not been for the breach of the contract by the wrongdoer. Therefore, the principle is that a breach of contract must cause loss to the pursuer to entitle the pursuer to damages. This is a fundamental rule vouched for in a large number of cases. See for example the authoritative discussion on this area in McBryde (3<sup>rd</sup> ed), the Law of Contract in Scotland at para 22-06 and the cases cited therein. The burden is on the wronged party to prove his loss. If he fails, no award of damages is payable. Thus, there is no disgorgement of the defender's gains: it is the pursuer's position that must be considered in the case of damages for breach of contract. So any gain made by the wrongdoer is not the correct basis for assessment of damages. Other legal systems may have different rules: see McBryde, paragraph 22-94 fn 305 and references therein.
8. In this case, while the FTS did find that the respondents were in breach of contract, the claim for damages was refused because the pursuer, upon whom the burden rested was unable to prove any loss. Indeed, he did not attempt to prove any loss relying simply on what would have been the cost of replacing the carpets in the house had he chosen to do so before he then sold the house. Given that the appellant did not attempt to prove any loss, he not having replaced the carpets and the price received for the house was not

## Upper Tribunal for Scotland

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reduced by carpets not having been replaced, it follows that the tribunal was correct to refuse his claim for damages in respect of the carpets. It follows therefore that no error of law, arguable or otherwise has been demonstrated on the part of the FTS. It follows also that permission to appeal against the FTS decision must be refused.

9. There is no appeal against this decision to refuse permission to appeal to the upper tribunal.

Member of the Upper Tribunal for Scotland