Upper Tribunal for Scotland

2026UT83
Ref: UTS/AP/26/0079 & UTS/AP/26/0080

DECISION OF

SHERIFF GEORGE JAMIESON

ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER)
IN THE CASE OF

Mr Tomasz Gorecki

Appellant

- and -

Mr Norman Brown, Mrs Anna Bisset
per Harper MacLeod LLP

Respondent

FTS Case Reference: FTS/HPC/EV/25/3636 & FTS/HPC/CV/25/3640

Paisley 5 November 2026

Decision

The Upper Tribunal for Scotland refuses permission to appeal.

Introduction

[1] These two applications for permission to appeal were conjoined by Order of the UTS dated 30 October 2026.

[2] Case UTS/AP/26/0079 concerns the Decision of the FTS dated 3 March 2026 to grant an order for possession against the Appellant.

[3] Case UTS/AP/26/0080 concerns the Decision of the FTS dated 3 March 2026 to grant an order for payment of rent arrears of £9,350.00 against the Appellant.

[4] The FTS considered and determined both applications after a case management discussion on 23 February 2026.

[5] The FTS refused permission to appeal its Decisions.

[6] The Appellant now applies to the UTS for permission to appeal.

Grounds of appeal

[7] The FTS found the Appellant was the tenant in a short assured tenancy which commenced on 30 July 2010. The initial monthly rental was £425 but was increased to £500 by the time the Appellant fell into arrears of rent in March 2024.

[8] The FTS observed the notice to quit, and the section 33 notice, had been validly served and the Respondents had complied with the pre-action requirements.

[9] The FTS considered it was reasonable to grant an eviction order as the Appellant had not made any payments of rent from September 2024, the Respondents intended to sell the property when they had possession of it, and relations with the Appellant had broken down.

[10] The Appellant complains to the UTS about the way in which the FTS considered the applications. He is of the opinion the FTS entirely failed to consider harassment, intimidation, shouting through his window, kicking his front door, attempted illegal eviction, gas disconnection, SAR (subject access request) evidence, safety risks, and landlord misconduct.

[11] He regards any such failures as demonstrating clear procedural unfairness, a fundamental failure to consider relevant evidence, an unacceptable failure to provide adequate reasons and a distinct error of law.

[12] His grounds of appeal include that the FTS repeatedly interrupted him, prevented him from presenting his case, failed to consider essential evidence including harassment, gas disconnection and the SAR evidence (procedural unfairness and failure to consider relevant evidence), and misapplied landlord registration law and the law of *res judicata* and abuse of process. He submits that the FTS mischaracterised his submissions, attributed statements to him he did not make, treated legally distinct concepts as identical, accepted unsupported statements from the Respondents while ignoring objective evidence, and dismissed key issues without analysis.

[13] He seeks to appeal the FTS's Decisions along with its subsequent refusals of permission to appeal. There is, however, no right of appeal against a decision to refuse permission to appeal by the FTS. The UTS considers the application for permission to appeal afresh if permission to appeal is refused by the FTS.

[14] The Appellant formulated seven numbered grounds of appeal in relation to the eviction case and made some further comments, alleging bias on the part of the FTS. However, ground seven and the further comments are a criticism of the FTS's Decision to refuse permission to appeal. These criticisms are not relevant to the applications for permission to appeal to the UTS as there is no right of appeal against those decisions.

[15] The six grounds of appeal in relation to the eviction case the UTS can consider are as follows.

[16] Ground 1: Breach of natural justice, rule 2 and rule 16. The FTS made no findings in relation to harassment, intimidation, and gas disconnection; it refused to adjourn to consider the SAR evidence; and made repeated interruptions which impaired his ability to present his defence effectively.

[17] Ground 2: Error of Law in Relation to *Res Judicata* and Abuse of Process.

[18] Ground 3: Misdirection in Law: Landlord Registration.

[19] Ground 4: Failure to Consider his position in relation to matters such as harassment, intimidation, and gas disconnection.

[20] Ground 5: Irrationality in concluding the Appellant did not have a stateable defence.

[21] Ground 6: Reliance on material not presented at the hearing such as what James McDonald (the Respondent's letting agent) "thought", "considered" or "believed".

[22] The Appellant formulated a response to the FTS's refusal of permission to appeal in relation to the rent arrears case, which, as explained above, is not relevant to the question whether the UTS should grant permission to appeal.

[23] He formulated nine grounds of appeal in relation to the rent arrears case and an additional ground of apparent bias. Grounds 8 and 9 relate to the FTS's decision to refuse permission to appeal and cannot therefore be considered by the UTS.

[24] Ground 1 in the rent arrears case (Material Error of Fact) is identical to Ground 3 in the eviction case as it relates to landlord registration. Ground 2 is identical to Ground 2 in the eviction case. Grounds 3 to 6 engage allegations of procedural unfairness similar to Ground 1 in relation to the eviction case.



[25] Ground 7 relates to the failure of the FTS not to sist enforcement of the orders pending determination of permission to appeal.

[26] Given Grounds 1 - 6 in the rent arrears case mirror the grounds in relation to the eviction case, the UTS shall therefore consider the grounds as formulated in the eviction case plus Ground 7 in the rent arrears case which raises an additional point.

[27] The Appellant's references in his applications to the UTS for permission to appeal to a rule are to the rules in the First-tier for Scotland Housing and Property Chamber Rules of Procedure 2017 (hereafter, "Rules"). Rule 2, referred to in connection with ground of appeal 1, is the overriding objective that the FTS deals with proceedings justly. Rule 16, also referred to in connection with ground of appeal 1, refers to the power of the FTS to give directions to the parties relating to the conduct or progress of the application.

Discussion

[28] The UTS can only grant permission to appeal if there is an arguable point of law in relation to the Decisions of the FTS. The UTS has concluded there is no merit in any of the grounds of appeal for the following reasons. It has also concluded that no fair minded and informed observer, having considered the facts, would conclude there was a real possibility the FTS was biased against the Appellant (*Porter v Magill* [2001] UKHL 67). None of the grounds of appeal are therefore arguable.

[29] Ground 1: The Decisions issued by the FTS reveal no failure to deal with the proceedings justly.

[30] The FTS heard and considered both sides' arguments at the CMD. With reference to the claim of harassment, it noted the Appellant had "made vague and unsubstantiated remarks about harassment, intimidation and gas supply disconnection". The FTS took the view it could not consider such issues absent any specification or evidence and therefore the Appellant's remarks about harassment could not form the basis for a defence to non-payment of rent.

[31] These decisions, and any refusal of an adjournment, were issues falling within the case management powers of the FTS. The essential facts were not in dispute in this case. The Appellant was a tenant under a short assured tenancy in which the contractual tenancy had been lawfully terminated. The rent arrears were not in dispute. The Respondents were therefore *prima facie* entitled to an order for possession if the FTS concluded it was reasonable to make such an order (which it did). An evidential hearing on the harassment issue was not required to dispose of the application justly at the CMD. The FTS was entitled to be satisfied these allegations were vague and unsubstantiated and not to proceed to a hearing in respect of these allegations (cf *Swiffen v Paszkiewicz* [2026] UT 77).

[32] Ground 2: The FTS was aware that proceedings had been raised against the Respondent in Livingston Sheriff Court and had been dismissed by the sheriff because the sheriff lacked subject matter jurisdiction over those proceedings. The sheriff correctly exercised jurisdiction to decide on the competency of the proceedings in the sheriff court even if the proceedings were not competent there as a court or tribunal has an inherent jurisdiction to determine the extent of its own jurisdiction (*Reid v Redfern (No.2)* 2019 GWD 15-240).

[33] It was not an abuse of process for the Respondents subsequently to make their applications to the FTS as the correct forum. The doctrine in *Henderson v Henderson* (1843) 67 ER 313 that parties must bring forward their whole case in one action, referred to by the Appellant, has no application here as *res judicata* is not established where a court dismisses an action for lack of jurisdiction. The only legal effect of such dismissal is that the applicants must then make their application in the correct forum.

[34] Ground 3: The FTS was correct to conclude that even if the second Respondent had not been registered as a landlord, this was no defence to payment of rent arrears as there was no suggestion a notice had been served under section 94(3) of the Antisocial Behaviour etc. (Scotland) Act 2004. The effect of a section 94(3) notice is that no rent is payable during the "relevant period". The FTS correctly noted the case of *AB v CD* [2017] SAC Civ 32; 2018 SLT (Sh CT) 70 in which it was held that breaches of the landlord registration requirements did not affect the tenancy contract itself, and the absence of any suggestion of service of a section 94(3) notice in this case. The FTS was therefore correct to conclude rent was still due by the Appellant.

[35] Ground 4: The Appellant presumably means by this ground the FTS did not fix an evidential hearing to consider his defence based on harassment. This is an extension of ground of appeal 1. I am satisfied the FTS was entitled, in the exercise of its discretion, not to fix any such hearing if satisfied these allegations were vague and unsubstantiated.

[36] Ground 5: There was no irrationality in the FTS concluding the Appellant had no stateable defence where there was no substantial issue in dispute relating to the termination of the



contractual tenancy, the amount of the rent arrears, or the facts necessary to decide on the reasonableness of granting a possession order.

[37] The FTS was entitled to conclude the Appellant had no stateable defence in relation to harassment, given it considered his position in that regard was vague and unsubstantiated.

[38] Ground 6: The FTS had sufficient material before it at the CMD to make a final decision in respect of the applications as the essential facts for making orders for possession and payment were not in dispute. The Appellant's complaint in this ground of appeal that the FTS had recourse to material not before it at the CMD is not relevant as such matters did not affect its decisions on the key facts in the case. Moreover, the only reference to Mr McDonald in the FTS's reasons for its decisions is in connection with a defence to the applications before the FTS (family tax credits) which is no longer pursued by the Appellant. His specific comments about Mr McDonald in his applications for permission to appeal do not therefore establish any error of law on the part of the FTS.

[39] Ground 7 (Rent Arrears Only): The Appellant submitted the application he made to the FTS for a sist of enforcement action during the dependency of the application for leave to appeal had been competent and the FTS's depiction of his submission in this regard was inaccurate.

[40] The FTS made this decision, not in connection with the applications originally before it, but in connection with the Appellant's applications to the FTS for permission to appeal. The FTS specifically stated such a course was not competent as its orders could not be enforced pending the appeal being determined (if permission were granted).

[41] That proposition is not necessarily accurate, and the FTS did not cite any authority in support of the proposition. Indeed, the FTS perhaps misunderstood the point made by the Appellant.

[42] The Appellant wished enforcement of the orders to be suspended during the course of the application for permission to appeal (rather than pending the determination of the appeal). Such an application is competent to the UTS in terms of rule 7(3)(n) of the Upper Tribunal for Scotland Rules of Procedure 2016 and may be necessary to prevent an otherwise *lawful* eviction during the appeal process (see *Ene v Tocher (No. 2)* [2021] UT 37).

[43] While an order of the FTS may not be enforced within 30 days beginning with the day on which the decision of the FTS is sent to the Appellant, coinciding with the period for applying to the FTS for permission to appeal its own decision, in terms of rule 41(2) of the Rules, this protection does not extend beyond that period (such as where the FTS or UTS is considering an application for permission to appeal, or, if permission to appeal is granted, during the appeal process itself).

[44] The UTS does not wish to comment further on the competency of the Appellant's application to sist enforcement proceedings, given the complex interplay of rule 41(2) with other provisions regarding enforcement of FTS orders and the absence of competing submissions on this point. While there may well be an arguable point of law in respect of this matter, it is now academic standing the refusal of permission to appeal against the original decisions of the FTS.

[45] The question of the competency of an appeal against the decision of the FTS not to sist enforcement proceedings must also be considered where the matter is now before the UTS and the Appellant could have chosen to apply for a sist of enforcement of the orders before the UTS. The Appellant has not made any such application.

[46] Now that permission to appeal the original decisions has been refused, the Appellant is no longer entitled to apply to the UTS for a sist of the enforcement of the orders of the FTS.

Conclusion

[47] Permission to appeal is refused.

[48] This decision is not subject to a right of appeal in terms of section 55(2) of the Tribunals (Scotland) Act 2024.

[49] The Appellant may make an application for reconsideration of this decision **at a hearing** in terms of rule 3(7) of the Upper Tribunal for Scotland Rules of Procedure 2016. Any such application must be made to the UTS within 14 days after the day of receipt of notice of this decision.

George Jamieson
Sheriff of North Strathclyde
Judicial Member of the Upper Tribunal for Scotland