Upper Tribunal for Scotland

2026UT82
Ref: UTS/AP/26/0068

DECISION OF

Sheriff Kelly

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

Appellant

Miss Alexandria Biggam-Gallagher

- and -

Respondent

Miss Tamara Stuart

Glasgow, 29 October 2026

FTS Case Reference: FTS/HPC/CV/25/1391

Decision

The Upper Tribunal for Scotland refuses the appellant permission to appeal the decision of the First-Tier Tribunal for Scotland (Housing and Property Chamber) dated 10 March 2026.

Introduction

[1] The appellant made application to the First-Tier Tribunal for Scotland (Housing and Property Chamber) ("the FTS") for an order for payment in the sum of £1225, together with interest said to be due in relation to arrears of rent for the lease of the subjects at 2 Lothian Street, Burntisland, Fife, KY3 0BA ("the property"). A case management discussion was held on 16 October 2025. A direction was issued thereafter. Both parties submitted representations and documentation. A hearing was held on 10 March 2026 where the applicant and the respondent were personally present together with representatives.

FTS decision

[2] The FTS helpfully records the matters not in dispute at paragraphs 8 – 18 and then narrates its sixteen separate findings in fact at paragraph 19. It records in some detail the position in respect of the rent statement. Rent was withheld by the respondent. The property was in a state of disrepair. There were various explanations for this.

[3] The FTS concluded that rent had been withheld by the respondent between March and May 2024 having regard to the various difficulties with the state of the property. In particular, the appellant had not maintained the property in a tenantable or habitable condition. The FTS arrived at the view that between December 2023 and May 2024 rent was properly abated in the sum of £200 per month.

[4] Having recorded its findings in respect of the rent statement, it noted a number of inaccuracies and unexplained matters. It had regard to the rent due for the 6-month period from December 2023 to May 2024. The sum due was found by the FTS to be £400 per month - a total of £2,400. An abatement of £200 per month represented £1,200. The respondent had paid £1,050. There was a balance of £150 to be paid by the respondent.

[5] The FTS made an order for payment by the respondent to the appellant in that sum. By decision dated 20 April 2026, the FTS refused the appellant permission to appeal the decision. The appellant sought permission to appeal from the Upper Tribunal for Scotland (UTS), proposing six grounds of appeal.

Hearing

[6] The appellant was personally present. The respondent was unable to attend the hearing. The appellant was content to proceed in the absence of the respondent. She referred to and founded upon a document lodged by her one day before the hearing. She spoke to that document and adopted it. It repeats much of what is in the proposed grounds of appeal.

[7] At the hearing the appellant was told that she would be listened to without interruption. There was no pressure of time. In response, the appellant indicated that she had a hearing to attend at Kirkcaldy Sheriff Court. In any event there was ample time to hear from her in relation to all matters that she wished to address.

Decision

Error or Point of Law

[8] *Advocate General for Scotland v Murray Group Holdings Ltd* [2015] CSIH 77; 2016 SC 201 (affirmed by UKSC in [2017] UKSC 45; 2018 S.C. (UKSC) 15) concerned an appeal from the Tax & Chancery Chamber of the First-Tier Tribunal under section 13 of the Tribunals, Courts & Enforcement Act 2007. An appeal to the Upper Tribunal was available "on any point of law arising from the decision made by the First Tier Tribunal". The appeal thereafter to the Court of Session is "on any point of law arising from a decision made by the Upper Tribunal". It was in this context that the Inner House examined what was meant by "a point of law". It identified four different categories that an appeal on a point of law covers:

(i) General law, being the content of rules and the interpretation of statutory and other provisions;

(ii) The application of law to the facts as found by the First Tier Tribunal;

(iii) A finding, where there was no evidence, or was inconsistent with the evidence; and

(iv) An error of approach by the First-Tier Tribunal, illustrated by the Inner House with examples: "such as asking the wrong question, or by taking account of manifestly irrelevant considerations or by arriving at a decision that no reasonable tax tribunal could properly reach." ([41]-[43]).

Arguable

[9] In terms of rule 3(6) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, where the FTS has refused leave to appeal, the Upper Tribunal may give permission to appeal if "the Upper Tribunal is satisfied that there are arguable grounds for the appeal", section 46(4) of the Tribunals (Scotland) Act 2014.

[10] The threshold of arguability is relatively low. An appellant requires to set out the basis of a challenge from which can be divined a ground or grounds of appeal capable of being argued at a full hearing. This is an important qualification or condition on appealing which serves a useful purpose. If no proper ground of appeal is capable of being formulated then there is clearly no point in wasting further time and resources in the matter proceeding. The respondent in a hopeless appeal ought not to have to meet any further or additional procedure in a challenge with no merit. It is in the interests of justice that a ground of appeal which is not arguable, is stopped in its tracks.

[11] The task of the Upper Tribunal in any application for permission to appeal, is to ascertain, with reference to the material submitted, whether the appellant has identified in the proposed grounds of appeal an error of law that is capable of being stated or argued before it at a hearing.

Proposed Grounds of appeal

Ground 1

[12] The appellant contends that the FTS applied the incorrect statutory regime. At its heart, this ground of appeal is about the classification of the respondent's occupation of the property. The appellant submits that the FTS was wrong to say that rent arrears arose in the context of a Private Residential Tenancy ("PRT"). Rather, the respondent's occupation of the property was by virtue of a Short Assured Tenancy created in 2012. This continued in existence notwithstanding the appellant's purchase of the property while the respondent was a sitting tenant and the "Assured Shorthold Tenancy Agreement" in November 2022. The 2012 Short Assured Tenancy had not been terminated. The application by the FTS of the Private Housing (Tenancies) (Scotland) Act 2016 was a jurisdictional error said to vitiate the entire decision.

[13] This matter is covered at paragraphs 5 – 7 of the FTS decision. The FTS at paragraph 7 states that:

> "It was noted that parties had entered into a tenancy agreement dated 2 November 2022 for a tenancy commencing 2 November 2022 expiring 2 May 2023 but renewable on said date. The tenancy agreement was titled "Assured Shorthold Tenancy Agreement." The Applicant insisted that she had got this agreement from the Scottish Government website despite the tribunal pointing out that no such agreement exists in Scotland. Ms Thorpe conceded that it was an inappropriate style of lease and the tribunal dealt with the tenancy as if it was a private residential tenancy agreement in terms of the Private Housing (Tenancies) (Scotland) Act 2016."

[14] The appellant has placed before the UTS a great deal of material in relation to that agreement, how it was accessed and details of her ownership of the property. These were

all matters for the FTS to decide. No submissions were made to the FTS about the Short Assured Tenancy that had been in existence in 2012.

[15] The FTS finds that a Private Residential Tenancy ("PRT") was created by virtue of the agreement dated 2 November 2022. Findings in fact were made– see 19.1 – 19.3. This was governed by the Private Housing (Tenancies) (Scotland) Act 2016. Further, the application lodged with the FTS states that parties entered into a private residential tenancy agreement on 2 November 2022

[16] The appellant seeks to depart from that position. She seeks to place before the UTS a number of points which she submits would entitle her to argue that the FTS was in error in ascribing to the tenancy the description of a PRT. She seeks to do so without seeking to disturb any findings in fact that the FTS makes, but rather on the basis of the underlying factual scenario as now explained by her in some way justifying the UTS taking a different view.

[17] This ground is not arguable. The matter was settled in her application, in submission, and on the basis of concessions made by the appellant and her representative before the FTS. It was said that the case of *Boyle v Ford* 2023 UT 04 vouched the proposition that the FTS was wrong to treat the tenancy as a PRT. In *Boyle* the UTS raised the issue of section 55 of the Housing (Scotland) Act 1988 at its own hand. It has no application to this appeal. This ground of appeal is said by the appellant to be a jurisdictional error. If that

be the case it is one that has its genesis in the application lodged with the FTS and in the conduct of the hearing before the FTS by the appellant. Further, in seeking to recast her application and her evidence before the FTS the appellant does not illustrate how that would have made any difference to the outcome.

Ground 2

[18] In relation to the question of the rent due, the appellant submits that £475 was the amended sum. This flies in the face of the application submitted which records that:

> "In terms of the tenancy agreement, the rent lawfully due was £400 per month. Although this was increased to £475 in May 2023 by way of a rent increase notice, the increase was not implemented in accordance with (s22(5)(b)) of the Private Housing (Tenancies) (Scotland) Act 2016. As such, the Applicant is only seeking recovery of the original rent amount of £400 per month."

[19] The question of the modification of rent is dealt with by the FTS at finding in fact 19.3. Paragraph 38 notes that the appellant's representative had accepted the correct monthly rent was £400. The FTS provided reasons as to the basis of its view of the applicable rent. This appears not to have been a disputed issue before the FTS. No proper basis has been placed before the Upper Tribunal to enable it to interfere with the view taken by the FTS. This ground of appeal is not arguable.

Ground 3

[20] The appellant describes the FTS conclusion as a "retroactive abatement capable of overriding a concluded agreement". It was said that the parties had reached their

agreement upon the question of abatement – a reduction of £350 for December 2023 to February 2024. It is said that as the parties have agreed an abatement there was no discretion on the part of the FTS to interfere (citing *Knight* v *Lowther Homes Ltd* 2025 UT 64).

[21] The FTS was entitled to look at the dispute before it as to the amount of rent due having regard to all the evidence before it. This submission seeks to characterise the FTS decision on this issue as in some way usurping the agreement reached between parties on the matter. However, the condition of the property during the tenant's occupation of it, what was lawfully due by way of rent and what sums fell to be abated having regard to the whole facts and circumstances were all issues before the FTS. What is submitted does not form a basis to argue that the FTS fell into error in its computation of the abatement of rent that it decided fell to be applied having regard to, among other things, the condition of the property.

Ground 4

[22] The appellant criticises the treatment of interest by the FTS, referring to the November 2022 agreement (which the appellant submits above has no effect). The parties had contractually agreed an interest rate of 6% above the base lending rate on overdue rent. The FTS had erroneously not added interest upon the unpaid sum.

[23] *Knight v Lowther Homes Ltd* 2025 UT 64 concerned an order of payment of interest where parties had concluded an agreement about what the effective rate would be between them. The UTS looked at the award of interest, holding that it was a discretionary decision on the part of the FTS that will depend on the facts and circumstances. No general rule could be formulated. Here, the FTS dealt with the question of interest at para.46 concluding that in light of the sums involved any award in this regard would be *de minimis* and made no award.

[24] This ground of appeal is not arguable. The FTS addressed itself to the question of interest and decided that it had been taken into account in the question of the abatement and did not require separate treatment. There is nothing in the submission made by the appellant on this ground of appeal that gives rise to an arguable basis for interfering with that finding.

Ground 5

[25] Somewhat overlapping with ground of appeal 1, it is said that the finding of lawful rent due in the sum £400 was based upon "an unargued concession". Reference is made to an unspecified rent review clause; a letter of intent dated 4 March 2023 and an email acknowledging a review clause of 6 months at £475 with payments being made without objection.



[26] This ground of appeal is not arguable at a full hearing. It repeats the position in relation to a concession. The finding of the lawful rent being due is based upon the evidence, and if there be any doubt, the application submitted to the FTS states:

> "In terms of the tenancy agreement, the rent lawfully due was £400 per month. Although this was increased to £475 in May 2023 by way of a rent increase notice, the increase was not implemented in accordance with (s22(5)(b)) of the Private Housing (Tenancies) (Scotland) Act 2016. As such, the Applicant is only seeking recovery of the original rent amount of £400 per month."

[27] Reference is made to *Muirhead & Turnbull v Dickson* (1905) 7 F 686, a case concerning a piano merchant seeking delivery of a piano, averred by the pursuer to be hired to the defender. After proof, the Sheriff at Glasgow held there was no consensus regarding the agreement entered into between parties. The Inner House held that there was a contract of sale, expressing reservations about the state of the evidence on the matter. I can find nothing in the case to support the appellant's position on this ground of appeal.

Ground 6

[28] It is said by the appellant that she was denied a fair hearing on the basis that despite having disputed the concession throughout the hearing it was accepted. It is said that she had raised the question of a sitting tenant directly with the FTS. After an adjournment, the FTS the concession was accepted. Reference was made to Article 6 of the European Convention on Human Rights ("ECHR") and the requirement to be afforded a meaningful

opportunity to be heard on every substantive issue. It is said that the appellant was not given "an opportunity to argue the legal consequences".

[29] The appellant had every opportunity to address the FTS on this and all issues. She appears to have done so at length in relation to the question of her purchase of the property, how she came to access the tenancy documentation, and the question of the rent review. These were all matters that were considered the FTS. The impairment claimed in participating in the hearing is not further specified in this ground of appeal. There has been no breach of Article 6 of ECHR. This ground of appeal is not arguable.

Conclusion

[30] The Upper Tribunal for Scotland refuses the appellant permission to appeal the decision of First-Tier Tribunal for Scotland (Housing and Property Chamber) dated 10 March 2026.

Sheriff Kelly

Member of the Upper Tribunal for Scotland