Upper Tribunal for Scotland

2025UT39
Ref: UTS/AP/25/0082

DECISION

of

SHERIFF S. REID

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

in the case of

LUKE BRICKNELL

APPELLANT

- against -

SHAZAD BAKHSH
(PER PREMIER PROPERTIES)

RESPONDENT

First-tier Tribunal Reference: FTS/HPC/EV/24/0673

GLASGOW, 5th June 2025

Decision

The Upper Tribunal for Scotland:

1. Refuses the Appellant's application for permission to appeal to the Upper Tribunal for Scotland ("UTS") against the decision of the First-tier Tribunal for Scotland ("FTS") dated 22 November 2024; and

2. Refuses the Appellant's application to suspend the Order for Possession (eviction order) of the FTS dated 22 November 2024.

Reasons for Decision

Summary

1. By a decision dated 22 November 2024, the FTS decided to grant an eviction order against the Appellant.

2. The Appellant had accrued arrears of £10,955. The appellant did not dispute the arrears. Instead, he claimed he was entitled to an abatement of the rent (or, alternatively to withhold payment meantime) due to the alleged poor deficient condition of the property. He also claimed that it was not reasonable to evict him due to his poor mental health and previous alleged ability to reduce arrears by payment indulgence.

3. On the evidence, the FTS concluded that such deficiencies as did exist in the condition of the property were cosmetic; that there was no realistic prospect of the Appellant clearing the arrears (or, indeed, meeting the ongoing rent); and that it was reasonable to grant the eviction order, pursuant to grounds 12 & 12A of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

4. By a decision dated 28 January 2025, the FTS refused the Appellant's application for permission to appeal against the decision to evict him. (The Appellant also applied to suspend the eviction order.) The sole ground on which permission was sought was that the

Appellant wished to appeal "on a point of discrimination law". Permission to appeal was refused because the ground was too vague to disclose an arguable error of law.

5. The Appellant applied to the UTS for permission to appeal.

6. In order to obtain permission to appeal, the UTS must be satisfied that an arguable error of law is made out. The test of arguability is a relatively low one (*Anderson v Stevenson*, UTS/AP/24/0064, per Sheriff Di Emidio). There is no requirement to demonstrate that the case put forward is "good", only that it is habile for meaningful debate. In the present case, that low threshold is not satisfied.

7. Having considered the proposed grounds of appeal, the UTS has refused the Appellant's application for permission to appeal and refused the application to suspend the eviction order. The reasoning of the UTS is set out below.

The Proposed Grounds of Appeal

8. Permission to appeal was sought from the UTS on (broadly) four proposed grounds.

The alleged failure to adjourn proceedings

9. The first proposed ground of appeal was this: the Appellant submitted that the FTS erred in law by failing to make "reasonable adjustments" to facilitate his "meaningful participation" in the FTS proceedings, in breach of the Equality Act 2010, the public sector equality duty, and Article 6, ECHR; and that it failed to conduct proceedings justly with consideration for his vulnerabilities, in breach of rule 2 of the First-tier Tribunal (Housing & Property Chamber) Procedure Rules 2017.

Specifically, the Appellant submits that, despite advising the FTS during the hearing of his "disability", his "inability to respond swiftly to complex legal matters", and his lack of representation, the FTS failed to adjourn the proceedings to allow him to obtain legal representation.

10. The UTS has refused permission to appeal on these proposed grounds because they fail to disclose an arguable error of law.

11. By way of explanation, the FTS is not obliged to adjourn a substantive hearing merely because one party claims to have (or indeed has) a disability of some nature. Likewise, the FTS is not obliged to adjourn proceedings merely because one party attends a Hearing unrepresented and seeks further time to instruct legal representation. The issue for determination is a more subtle one.

12. The FTS has a wide power to adjourn proceedings in order to do justice between the parties. But the exercise of that power is essentially discretionary in nature. It involves a delicate balancing of the competing interests of *both* parties to the dispute, *both* whom are entitled to a fair hearing within a reasonable time. There may be many good reasons to adjourn (including, in suitable cases, as a potential way of making a reasonable adjustment for a disability), but it involves a consideration of the whole circumstances of the case, including, among other relevant factors, the procedural history, the disclosed reasons for the adjournment, and the likely prejudice to each party of allowing or disallowing adjournment. The fact that a refusal to adjourn may have drastic consequences for the party making it is obviously a matter to be taken into account, but it is not necessarily conclusive. The interests of the other party (or parties) must also be considered and weighed in the balance, as well as the public interest in the due administration of justice, specifically, the need to reach a final adjudication in a fair, efficient and business-like manner, within a reasonable period of time.

13. A decision by the FTS to adjourn (or refuse to adjourn) proceedings can only be impugned if it can be shown to have proceeded upon a misconception of the material facts or law, or that it reached a decision which no reasonable tribunal could have done.

14. In the present case, the Appellant's criticism of the FTS decision fails to disclose an arguable error of law by the FTS.

15. Firstly, by way of preliminary observation, the Appellant does not appear to have asked the FTS for an adjournment. (The FTS Decision dated 22 November 2024 discloses no such request having been made.) Instead, before the UTS, the Appellant's submission appeared to be that it was for the FTS, off its own back, to adjourn proceedings on the basis of the Appellant's disclosed "disability" and lack of representation, to ensure the Appellant's "meaningful participation" in proceedings. While it is possible to conceive of cases in which it may be evident to a tribunal or court of law that adjournment is necessary in order to ensure that a party's Article 6, ECHR Convention Right is protected, such cases are likely to be exceptional, and to involve (i) a manifest inability by a party to participate meaningfully and (ii) no prior opportunity having been afforded to that party to do so. This is not such a case. There is no arguable basis on which to assert that the Appellant was manifestly unable to participate meaningfully; there is no arguable basis on which to assert that he had not previously been afforded the opportunity to do so.

16. Secondly, even if the Appellant had sought an adjournment by reason of his alleged "disability", the Appellant's assertion lacked both specification and adequate vouching. Even before the UTS, there was still no clarity (or vouching) of the nature of his asserted "disability"; or how it affects him; or, specifically, how it was liable to affect or impair his participation in the FTS proceedings.

17. The Appellant refers to his "disability" in his written Response. It forms an essential component element of his defence that it is not reasonable to evict him.

18. By Order dated 6 August 2024, the FTS ordained the Appellant to lodge evidence in support of his claims. He failed to do so. Not even a simple letter from his general practitioner was lodged to confirm and clarify the nature of the Appellant's alleged disability, or its effect upon him.

19. The failure of the Appellant to provide any such specification and vouching, having been afforded a reasonable opportunity to do so, would have been a highly relevant factor to be taken into account by the FTS in deciding whether to adjourn the substantive hearing (if any such request had been made). *Prima facie* that failure would have pointed strongly in favour of refusing such a request (if it had been made). No arguable error in law by the FTS is discernible.

20. Thirdly, the mere fact that a party does not have legal representation does not *per se* justify the adjournment of proceedings.

21. In the present case, the Notice to Leave was served in January 2024; the proceedings were served in February 2024; an FTS case management discussion was held in August 2024, at which point the substantive Hearing was assigned in the presence of the Appellant; and the application called at the substantive hearing on 18 November 2024.

22. Viewing that timeline objectively, the Appellant was afforded more than adequate opportunity to identify and instruct legal or lay representation. He failed to do so.

23. The failure of the Appellant to identify and instruct legal or lay representation, having been afforded a reasonable opportunity to do so, would have been a highly relevant factor to be

taken into account by the FTS in deciding whether to adjourn the substantive hearing on 18 November 2024 (if it had been asked to do so). *Prima facie* that failure would have pointed strongly in favour of refusing such request (if it had been made). No arguable error in law by the FTS is discernible.

24. Fourthly, even if the Appellant had belatedly sought an adjournment before the FTS (by reason of his unvouched asserted "disability" and lack of representation), multiple other factors would have pointed strongly against the grant of such a request.

25. For example, the FTS would have been entitled to consider the relative *prima facie* strengths and weaknesses of the parties' respective positions. On a *prima facie* analysis, the landlord's grounds for eviction were strong: the rent account had been in arrears since May 2022; by January 2024, when Notice to Leave was served, the arrears were £6,270; the arrears had increased to £10,955 by the date of the substantive hearing in November 2024. None of this was in dispute. In contrast, on a *prima facie* analysis, the Appellant's defence was weak: no specification or vouching had been produced by him of his asserted "disability"; no vouching had been produced by him of any material damage to the property, still less of a nature to justify retention or abatement of the rent, still less to render the property "uninhabitable", as he now alleged. Accordingly, an adjournment would have risked of inflicting additional irrecoverable loss on the landlord by way of further rental arrears, in circumstances where his entitlement to an eviction order was *prima facie* compelling. In the second place, the Appellant's former co-tenant (and the named second respondent in the FTS proceedings), who had not occupied the property since 5 September 2022, nevertheless retained a joint and several liability for the accrued and accruing arrears of rent. In a written submission to the FTS on 8 October 2024, she had advised the FTS that she was fully supportive of the grant of an eviction order against the Appellant in order finally to conclude the matter and bring to an end her own relentlessly-accruing financial liability.

26. *Prima facie* these other factors would also have pointed strongly in favour of the FTS refusing a request for an adjournment (if it had been made), particularly when viewed in the context of the Appellant's failure to identify and instruct legal or lay representation, or to specify and vouch his asserted "disability", at an earlier stage in proceedings, having been afforded a reasonable opportunity to do so. In that wider context, no arguable error in law by the FTS is discernible.

The alleged failure to accept the Appellant's evidence of dampness/mould, etc.

27. The second proposed ground of appeal was this: the Appellant submitted that the FTS erred in law by accepting the letting agent's "false claims" (such as that there was no dampness/mould, and that no such complaints had been made to the landlord), despite "clear evidence to the contrary". The Appellant submitted that the FTS did not engage with "contradictory evidence", and that this constituted "irrational and inadequately reasoned decision-making".

28. This proposed ground fails to disclose an arguable ground of appeal based on a point of law.

29. In essence, the Appellant complains that the FTS preferred the evidence of the landlord to that of the Appellant. The assessment of the quality of the evidence before it, and the weight to be attached to it, are pre-eminently questions of fact for the FTS, not questions of law. No arguable error in law is discernible in that conclusion by the FTS on these questions of fact

30. The UTS also observes that, in the context of these proceedings, where the Appellant admitted the rental arrears, the evidential onus lay on him to adduce credible and reliable evidence to support his asserted right to retain, or claim an abatement of, the rent. The onus

lay on him to prove that he had intimated such complaints to the landlord, and to prove the nature and extent of the alleged dampness and mould, in order to support his plea of retention and/or abatement. He failed to do so.

31. Other than merely repeating before the UTS his own (unvouched and unspecific) allegations, the Appellant fails to point to any particular adminicles of credible and reliable evidence (i) that support his allegations, (ii) that were available to, but not taken into account by, the FTS, and (iii) that manifestly ought to have been preferred by the FTS (and why). Accordingly, no arguable error in law is discernible in that conclusion by the FTS. Absent such an error, it is not for the UTS to substitute its assessment of the evidence for that of the FTS.

32. Lastly, in this application, the Appellant sought belatedly to introduce new evidence (in the form of communications, each post-dating the FTS decision, from a former tenant and a former occupant of the property). These were not produced to the FTS at the substantive hearing. No adequate explanation was given for that failure. In any event, on a preliminary analysis, this new information is *prima facie* of no material evidential value.

The alleged failure to consider the landlord's repairing obligation

33. The third proposed ground of appeal was this: the Appellant submitted that the FTS erred in law because it "overlooked clear evidence presented on [the] property conditions" and failed to consider "relevant mandatory statutory duties under the Housing (Scotland) Act 2006, specifically the Repairing Standard, requiring landlords to maintain properties free from damp and mould at all times.."

34. This proposed ground fails to disclose an arguable ground of appeal based on a point of law.

35. Again, in essence, the Appellant's complaint is that the FTS preferred the evidence of the landlord to that of the Appellant. However, the assessment of the quality of the evidence before it, and the weight to be attached to it, are pre-eminently questions of fact for the FTS, not questions of law.

36. Again, other than merely repeating his own (unvouched and unspecific) allegation about the presence of damp and mould, the Appellant fails to point to any particular adminicles of credible and reliable evidence (i) that support his allegation, (ii) that were available to, but not taken into account by, the FTS, and (iii) that manifestly ought to have been preferred by the FTS (and why). Accordingly, no arguable error in law is discernible in the FTS conclusion. Absent such an error, it is not for the UTS to substitute its own assessment of the evidence for that of the FTS.

Harassment and the alleged "retaliatory nature" of the landlord's eviction notice.

37. The fourth proposed ground of appeal was this: the Appellant submitted that the FTS erred in law because it failed to consider the "retaliatory nature" of the landlord's Notice to Leave. The Appellant submitted that the conduct of the letting agent in "encouraging" the Appellant to find a flatmate, and thereafter immediately issuing an eviction notice, "demonstrates possible harassment" under section 22 of the Rent (Scotland) Act 1984 and constituted a breach of the Private Housing (Tenancies)(Scotland) 2016.

38. This final proposed ground fails to disclose an arguable ground of appeal based on a point of law.

39. Firstly, it is irrelevant to the proceedings. The proceedings are founded upon prolonged non-payment of rent, not upon the alleged breach of any other tenancy condition, such as

unauthorised sub-letting. Whether or not the letting agent encouraged the Appellant to take in a flatmate is nothing to the point.

40. Secondly, even if the letting agent did encourage the Appellant to take in a flatmate to ease financial pressure on the Appellant, and nevertheless proceeded with the eviction, it is difficult to characterise such conduct as "harassment" (or, as the Appellant more tentatively asserts, "possible harassment"). The proposed ground fails to pass the low threshold of arguability. The Appellant does not, for example, go as far as to suggest that the landlord, by its conduct, is personally barred from pursuing eviction based upon prolonged non-payment of rent, or has waived, or renounced, the right to do so.

41. Thirdly, in a similar vein, even if the letting agent encouraged the Appellant to take in a flatmate to ease financial pressure on the Appellant, and nevertheless proceeded with the eviction, it is unclear how such conduct could amount to a breach of the Private Housing (Tenancies) (Scotland) 2016 or could conceivably constitute a defence to this eviction application so far as founded upon prolonged non-payment of rent. The proposed ground fails to pass the low threshold of arguability.

42. For the foregoing reasons, the UTS refused the Appellant's application for permission to appeal and refused his related application to suspend the eviction order.

Sheriff S. Reid
Member of the Upper Tribunal for Scotland