



2026UT61

Ref: UTS/AP/26/0012

DECISION OF

Sheriff Jillian Martin-Brown

**ON AN APPLICATION TO APPEAL
IN THE CASE OF**

Steven Sibbald

Appellant

- and -

Martin Mellor & Ewan Halley

Respondents

(FTS Case Reference: FTS/HPC/EV/24/3379)

Appellant: unrepresented

Respondents: P. McIntosh, Mattac Ltd.

Forfar, 23 July 2026

Decision

The appeal is refused. The decision of the First-tier Tribunal for Scotland Housing & Property Chamber is upheld.

Reasons for Decision

Background

1. The respondents sought recovery of possession of the property at 44 Rosslyn Crescent, Edinburgh (FTS/HPC/EV/24/3379) and an order for payment in respect of rent arrears (FTS/HPC/CV/3377). Both cases were conjoined and an evidential hearing took place at George House, Edinburgh on 14 October 2025.



2. The First-tier Tribunal for Scotland (“FTS”) determined that the parties entered into a private residential tenancy agreement which commenced on 1 July 2023. The appellant had occupied the property under a series of short term lets followed by an unwritten residential tenancy. The monthly rent was £1,250 and was increased to £1,350 on or about June 2022. The appellant did not pay rent between 28 September 2023 and 28 September 2025.
3. The FTS determined that the notice to leave was served by sheriff officer on 16 May 2024. At the date of service of the notice to leave and the date of making the application, the appellant had been in rent arrears for three or more consecutive months. Notification was provided to the local authority in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 on 24 July 2024.
4. The FTS determined that the incorrect date stated at the bottom of page 1 of the notice to leave did not affect the effect of the notice to leave dated 15 May 2024. The notice to leave was valid. In the circumstances it was reasonable to grant an order for possession of the property. Orders were therefore granted for recovery of possession of the property and payment of £33,100 on 20 October 2025. Both cases were appealed by Mr Sibbald.
5. The FTS considered six grounds of appeal in both applications and granted permission to appeal in respect of the two following grounds in relation to the eviction decision only:
 - (i) the Tribunal failed to apply the correct legal test under section 73 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”); and
 - (iv) the Tribunal failed to apply the statutory test of materiality under section 73 of the 2016 Act.
6. Both grounds were essentially the same point, i.e. whether the FTS was correct to decide that the notice to leave was valid despite containing an error.
7. The FTS refused permission to appeal in respect of the remaining four grounds in respect of the eviction decision and all six grounds in respect of the arrears decision on 5 December 2025.
8. The appellant sought leave to appeal on four additional grounds in respect of both the eviction decision and the arrears decision. Permission to appeal on those four further grounds was refused on 31 March 2026.
9. An appeal hearing took place on 21 July 2026 by WebEx, attended by the appellant Mr Sibbald and by Mr McNosh on behalf of the respondent.



Authorities

10. Parties referred me to the following authorities:

- Private Housing (Tenancies) (Scotland) Act 2016;
- *Halcrow v Davies* 2025 S.L.T. (Tr) 197; and
- *Stalker, Evictions* (2nd edn, 2021), page 331.

Submissions

11. The appellant submitted that the FTS' reasoning reduced the section 73 question to the proposition that because more than three months' rent arrears existed on any calculation, the error in the arrears figure did not materially affect the notice to leave. That approach was legally flawed and treated the existence of the eviction ground as decisive of notice validity. Instead, the tribunal should have asked whether the notice to leave as served was materially accurate and effective in communicating the factual basis on which eviction was sought. The error in this case was not simply a harmless typographical error. It was an incorrect figure for arrears arising from an incorrect chronology. The error materially affected the possibility of a path to mediation between the parties.
12. The appellant submitted that the correct approach under section 73 was to consider: (i) the errors; (ii) whether those errors related to the statutory ground relied upon; (iii) whether the errors affected the tenant's understanding of the factual basis for eviction; (iv) whether the errors were linked to a later correction; (v) whether the tenant suffered prejudice; and (vi) whether in all the circumstances, the errors material affected the effect of the notice as served.
13. The respondents submitted that the starting point was whether the 84 day notice period was provided and it was in this case. Any error in the date for commencement had no effect on the period of notice. Precise evidence of the arrears was not necessary. *Stalker* referred to it as desirable rather than required. In *Halcrow* a minor error did not render the notice to leave invalid on the basis that, in practice, sufficient notice was actually provided.
14. The respondents submitted that the reasoning of the FTS was sound. It considered both prejudice and materiality in the round. The appellant had not identified any prejudice. His reference to the possibility of mediation was disingenuous.



Decision

15. I took into account that the error in question was not in relation to the date on which the landlord expected to become entitled to make an application to the FTS for an eviction order, but in relation to the date when the appellant commenced living in the property, which had been calculated by reference to when the private residential tenancy commenced. Parties had never agreed a date upon which the appellant's occupation of the property became a private residential tenancy and therefore this was a difficult calculation. The respondents incorrectly thought the last date they had stayed in the property was 26 April 2022 and overlooked that they stayed in the property on 13 August 2022. The appellant himself had not provided a precise date when he considered that the unwritten private residential tenancy commenced. In such circumstances, an oversight was understandable. The figure for rent arrears was a matter in dispute between the parties and was determined at the hearing. It was to be expected that the figure that the FTS determined might be different from that which the respondents were seeking and did not constitute an error as such.
16. I took into account that the FTS made reference to the decision of *Halcrow* in its decision of 20 October 2025. From that case, it extracted the general principle that materiality was a matter of degree, requiring consideration and determination of all relevant facts and circumstances, including any evidence indicating prejudice to the party receiving the notice (para. 29).
17. Applying that analysis to the facts and circumstances of this case, the FTS determined that the notice to leave was in the prescribed form (para. 26). The evidence before it did not indicate the respondent (appellant) had suffered any prejudice as a result of an error in the date at the bottom of page 1 (para. 29). On his own evidence, the appellant he had not paid rent for at least nine months (para. 30). The ground relied upon for eviction was rent arrears over three consecutive months. Though the appellant submitted that sums required to be deducted from the arrears figure, the balance remaining was still over £10,000, which was more than seven months of rent arrears (para. 31).
18. I determined that the FTS was correct to apply the general principle outlined in *Halcrow* that materiality was a matter of degree. It considered the relevant facts and circumstances, including the absence of any prejudice to the appellant. It provided reasons for its decision detailing these steps. In all the circumstances, I did not consider that the appellant had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal



*within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Sheriff Jillian Martin-Brown
Member of the Upper Tribunal for Scotland