



**DECISION OF**

Sheriff McCartney

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

Mr John McCawley

Appellant

- and -

Ms Anne Marie McKnight

Respondent

FTS Case Reference: FTS/HPC/EV/23/4478

28 August 2025

**Decision**

Permission to appeal is refused.

**Background**

[1] This is an application for permission to appeal to the Upper Tribunal for Scotland (UTS). On 15 February 2025 the First-tier Tribunal for Scotland (FTS) refused the appellant's application to evict the respondent and subsequently refused permission to appeal its decision.



[2] An appeal to the UTS can only be on a point of law (s46 (2)(b) of Tribunals (Scotland) Act 2014. It is not sufficient to say that a different tribunal may have taken a different, or better decision. It is not a rehearing of the case. Further, to obtain permission to appeal, the appellant must show there are arguable grounds for such an appeal (s46 (4) of Tribunals (Scotland) Act 2014). The phrase “arguable grounds” is generally understood as a relatively low test, but it does require the appellant to point to an issue in the FTS’ decision, where it can be said the FTS erred in law.

[3] The parties are landlord and tenant. The appellant, who is the owner of the property, having purchased it in 2022. The respondent has been renting the property since 2015. She had therefore already been the tenant for some years by the time of the appellant’s purchase of the property. The appellant sought to terminate the tenancy in September 2023, alleging eight breaches of the tenancy agreement. Those breaches can be summarised as allegations of damage by the tenant, allowing drugs to be used in the property, causing a nuisance to the landlord (by making false allegations to Glasgow City Council about the appellant’s conduct as a landlord), disposing of items that did not belong to the tenant and, against the terms of the lease, allowing both smoking and the keeping of dogs in the property.

## **The FTS hearing and decision**

[4] The FTS dealt with the application in terms of s 18 of the Housing (Scotland) Act 1988 as an assured tenancy. Originally the appellant sought eviction on both Ground 13 of Schedule 5 of the Housing (Scotland) Act 1988 and s 33 of the Housing (Scotland) Act 1988 (regarding the end



date of a tenancy) but indicated at an earlier Case Management Hearing that he was only seeking eviction in terms of Ground 13 of Schedule 5.

[5] The FTS heard evidence over 2 days in August and December 2024. It heard from the appellant, his wife and the respondent. It issued its decision on 15 February 2025, refusing the eviction. It made various findings in fact, largely accepting the respondent's evidence. It determined clause 8n in the tenancy agreement (a clause regarding the landlord's rights to terminate the tenancy on the basis of nuisance) was unenforceable but, in any event, found the alleged nuisance had not been proved. It did not accept much of the respondent's evidence as to other alleged breaches of the tenancy agreement, and considered that, even if those breaches had been proved, it would not be reasonable to evict the appellant.

## **The hearing before the Upper Tribunal**

[6] At a Webex hearing, the appellant represented himself. The respondent was represented by Ms Berry, who had also appeared for the respondent before the FTS. The appellant provided a detailed written application for permission to appeal and various documents.

## **The legislative framework**

[7] The statutory ground relied upon by the appellant was Ground 13 of Schedule 5 of the Housing (Scotland) Act 1988. That reads:

*"Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed."*



[8] In addition, in terms of s 18 (4) of the Housing (Scotland) Act 1988, the appellant must show it is reasonable for the order for possession to be made. Accordingly, the appellant had to show both that an obligation of the tenancy had been broken, and that it was reasonable to evict the respondent.

## **Consideration of the proposed grounds for appeal**

[9] It is not easy to follow the appellant's written application for leave to appeal. It is lengthy. It contains many criticisms of the FTS without necessarily explaining the error of law which is said to arise from such criticisms. The proposed grounds of appeal often overlap and are repetitive. It was therefore helpful to hear from the appellant direct.

[10] The first alleged error of law is it is said the FTS misapplied the Consumer Rights Act 2015 to the tenancy agreement. The tenancy agreement contains clause 8n, which prohibits the tenant in the following terms:

*"Not to do anything that may be deemed a nuisance to the landlord or adjoining proprietors under declaration of what amounts to a nuisance for the purpose of this clause shall be determined at the landlord's sole discretion."*

The appellant argues this clause gave him, and him alone, the ability to determine what actions were a nuisance. In deciding whether such a clause was enforceable, or at least the appellant's interpretation that he alone could determine whether there was a nuisance, the FTS considered the decision of Sheriff O'Carroll sitting as a UTS judge, in *Horne v Slash Property Ltd* 2024 UT 36. In that case Sheriff O'Carroll had been referred to a clause in a lease that may have been an unfair contract term, and had considered the applicability of the Consumer Rights Act 2015 to the lease



in that case. The FTS, as part of its consideration as to whether clause 8n was enforceable, considered whether the Consumer Rights Act 2015 applied. Whilst it did not explicitly say that the Consumer Rights Act 2015 did apply, it made a finding that the respondent was a consumer and the appellant was acting in the course of business and decided clause 8n was an unfair term.

[11] The appellant takes issue with the FTS' determination that he was acting in the course of business. His argument is solely that the Consumer Rights Act 2015 does not apply. That is his only argument under this heading; I was not otherwise addressed on the applicability of the Consumer Rights Act 2015 to housing law, nor to how a FTS should determine if a term is an unfair contract term.

[12] No stateable point of law arises on this point. Whether or not the Consumer Rights Act 2015 applies (and whether clause 8n is enforceable) was ultimately irrelevant to the FTS' decision. The FTS did not find there was any behaviour by the tenant that could constitute a nuisance. The appellant's case of nuisance failed on the facts. Accordingly the case did not turn on whether the Consumer Rights Act 2015 applied or not and the proposed ground of appeal is not stateable.

[13] In any event, it is difficult to see how making a finding that the appellant was acting in the course of a business could be an error of law on the part of the FTS. On the facts such a conclusion appears irresistible. The appellant purchased the property whilst the respondent was a sitting tenant. There was no intention that he would reside in the property. Whilst the appellant appeared to make something of the fact his profession was as a solicitor at the time of the purchase (he has since retired), he describes, in his written case the purchase of the property as an



investment. It was purchased and rented as a commercial enterprise. Whether he was a practicing solicitor at the time of the purchase is not determinative. An individual can have more than one trade or profession at one time. In any event, the appellant does not point to any error of law in the FTS making such a finding. Leave to appeal is refused on this ground.

[14] Under a heading of unfairness, the appellant raises a list of issues (pages 3 to 7 of his written submission) relating to the findings in fact made by the FTS. He argues the FTS did not accurately reflect “the factual matrix”, failed to consider the documentary evidence, failed to address the legal wrongs (including of a criminal nature and of defamation) of the respondent’s behaviour and failed to apply the correct standard of proof.

[15] It is not clear what the error of law by the FTS is said to be on any of these matters. I have carefully considered each of them. Due to the number of points raised, the overlapping nature of submissions and conflation of the appellant’s views with errors of law, I do not deal with each one in detail but deal with some, so the appellant understands why such submissions are misplaced.

[16] On page 4 (relating to damage to various floor coverings) the appellant rehearses evidence led before the FTS. He asserts the FTS did not “reach a determination of fact” on a material matter (whether the respondent deliberately damaged a carpet). This is erroneous. The FTS did reach a finding in fact – it dismissed the appellant’s claim that there was significant damage to the carpet. A finding in fact the appellant does not like is not the same as an absence of a finding. Whilst the FTS did not make findings on the sequence of events leading up to the damage to the carpet coming to the appellant’s attention, it was not necessary to do so. The starting point is that the FTS found, after hearing disputed evidence, that the damage to the carpet was minor and trivial. Accordingly



it decided, as it was entitled to do, that such an allegation did not assist the appellant in seeking to bring the tenancy to an end.

[17] Similarly, the appellant's complaint regarding the FTS' finding in fact [7] is also misplaced. The appellant's complaint relates to his reading of the tense of that finding, and whether the FTS therefore misunderstood at what point in time he concluded the respondent to have deliberately damaged things. However as the appellant accepted in the permission hearing, the way the finding is written accurately represented the appellant's position before the FTS. Nothing arises under this heading.

[18] As to whether the FTS's findings in fact regarded the vinyl being cut rather than the vinyl being damaged by a wrinkle or a bubble, no point of law arises. The FTS narrate the appellant's evidence on this point at para [10] of its decision, referring at one point to vinyl being cut, but later in the para to "deliberate damage". The real issue is whether the respondent damaged the vinyl rather than the mechanism of doing so. If there is an error by the FTS in its narration of this evidence, it is minor and does not give rise to an error of law. The appellant's position is that the vinyl was damaged by a "bubble" being created; the FTS refer to a bubble when narrating the evidence of the respondent. It therefore correctly understood his evidence, but rejected it. There is no error of law by the FTS in its conclusion there was no reliable or credible evidence on the issue of damage to the vinyl.

[19] On the issue of the drains (page 7 of the appellant's submissions) there is no error in the FTS's approach. There was a dispute between the parties as to whether certain drains were blocked because the respondent had flushed items into the drainage system, blocking them. The appellant



said he would pay for the unblocking of the drains but only on under certain conditions. His position was that the refusal of the respondent to agree to his conditions formed a breach of tenancy. The FTS rejected that argument, noting that the terms of any agreement was, in their opinion, vague. For each of these matters (and others) it is not clear as to what the error of law is said to be. The appellant does not explain how the FTS have erred. Asserting the FTS is wrong does not equate to an error of law.

[20] Under the heading of “errors of fact, contrary to the evidence and omissions of evidence/fact” the appellant complaints that the FTS made “multiple errors of fact.” Again, I deal with some of the issues raised so the appellant better understands why no points of law arise in any of the matters raised under this heading.

[21] One such error is said to be the FTS’s narration of the appellant’s evidence on the redecoration of the kitchen in the tenancy. It is not an error of law if the FTS did not accurately narrate the correct sequence of events (assuming the appellant’s version is correct). The appellant does not explain the relevance of any such error. The other points under this heading similarly do not raise a point of law (some under the heading of ‘defamatory statements’). Those points range from whether the FTS had the wrong name for an official from Glasgow City Council, to whether the FTS were wrong to say the tenancy commenced in 2014 rather than 2015, to whether the appellant made a particular remark at the full hearing or an earlier Case Management Hearing. Pointing to such minor errors (if they are errors) in the FTS’ decision is not enough. None of any such errors go to the heart of the matters in dispute.



[22] The appellant complains that the FTS did not refer to key evidence in that it failed to consider all his evidence on the allegations of both smoking and use of cannabis in the property. The appellant's evidence on these issues is narrated at paragraphs [14] and [18]. Whilst the FTS did not refer to the older inspection report which suggested a smell of cigarettes, it is clear the issue of whether the respondent was smoking and/or cannabis was being used in the property was firmly before the FTS. The respondent's evidence is narrated at paragraph [25]. The FTS made findings on both smoking and cannabis. It is clear from those findings that the FTS preferred the respondent's evidence to the appellant's, noting the appellant's evidence was not direct on either matter. The omission of reference to the inspection report, assuming it was before the FTS, is not material. There is no arguable ground of appeal under this heading.

[23] The appellant argues the tribunal acted in a procedurally unfair way. Again, the appellant's submissions are not clearly set out. By way of an example, the appellant complains the *"the Respondent was shown to have lied..."* on the sequence of events regarding the redecoration of the kitchen. Whilst the appellant might disagree with the FTS' decision, it was for the FTS to decide whether the respondent was credible. It is incorrect to say the respondent was shown to have lied; that might be the appellant's view, but it is the FTS' view on the credibility and reliability of the respondent's evidence that matters. The FTS considered the respondent was a credible and reliable witness. It gave reasons why it came to that conclusion. There is no error of law. Nothing arises under this heading.

[24] Separately the appellant complains as to the tone taken by the FTS towards him, perceiving it to be different to the tone taken towards the respondent. He gives no further detail, although



accepts apologising to the FTS members for his conduct. However, from reading the appellant's submissions, it appears the true complaint is not tone, but rather that he was curtailed in his questioning. He complains if he had tried to ask a certain question, he would not have been allowed to do so. There is no merit in this point. There can be no complaint if a question was not asked. He also complains his cross-examination was curtailed by the FTS, indicating a particular issue had already been dealt with. He does not explain what evidence would have been presented that was not already before the FTS. The FTS have a duty to control proceedings. It has a duty to ensure cross-examination is not prolonged by irrelevant issues or duplication of evidence. There is no error of law.

[25] The other points raised under this heading similarly have no merit. For example, the appellant argues it was unfair for the FTS to consider the enforceability of clause 8 (n) at the end of the hearing, during submissions. He argues that it should have been raised earlier, during the evidence. To the contrary, it was correct for Ms Berry to raise that point at the stage of submissions. The enforceability of the clause is clearly a legal point, to be considered at the point of submissions and not as a matter of evidence.

[26] The appellant also details what is said to be numerous examples of where the FTS erred in its exercise of considering reasonableness.

[27] As a starting point, the issue of reasonableness does not arise if the appellant failed to prove that the tenant had breached an obligation of the tenancy. Accordingly, on each of the grounds on which the appellant relied upon, the FTS was obliged to consider whether there was a breach of the tenancy, and if so, whether it was reasonable to evict (section 18 (4) of the Housing (Scotland)



Act 1998). On the facts the appellant failed to prove any breach arose. The appellant's written submissions appear to treat reasonableness as a stand-alone ground to terminate the tenancy. It is not a statable ground of appeal. Arguments as to the "retrospective effect of legislation" are irrelevant as are arguments as to what the status was of the previous landlord. In any event, when the FTS considered the issue of reasonableness on an *esto* basis, it is clear from its decision that it considered the arguments for both sides. It set out various factors at para 37 of its decision that would make it unreasonable to grant the eviction, if a breach of tenancy had been proved. It referred to "*the competing justification*" put forward by the appellant. There is no error of law.

[28] The appellant complains the FTS erred in dismissing his complaint regarding the prohibition of keeping dogs in the property. The respondent accepted she had a dog but explained the previous landlord was content with that arrangement. The appellant asserts the FTS heard no specific evidence that the respondent had been given such permission. That argument is contradicted by the FTS decision, which narrates the evidence from the respondent on this point at paragraph 31 of its decision. Accordingly, the FTS had such evidence before it.

[29] The appellant argues the FTS did not consider the breakdown of his relationship with the respondent. That largely stemmed from his reaction to a letter that the respondent had instructed to be sent to Glasgow City Council as to whether the tenancy met the repairing standard. The appellant's argument was that this letter was false and defamatory, amounted to a fraud, and gave him the right to terminate the tenancy on the basis that the sending of such a letter constituted a nuisance. He also complained of other actions by the tenant, including of damage to the property and use of drugs, which he referred to as both criminal acts and of other examples of nuisance.



[30] There is no merit in appellant's arguments. The FTS came to an *esto* conclusion on whether clause 8 n was enforceable. But the starting point is the rejection by the FTS of the allegations of nuisance, including whether the respondent made false allegations. Whilst the FTS found although the letter sent to Glasgow City Council (by an advice agency on behalf of the appellant) was not wholly accurate, it also considered she was entitled to take such advice given the appellant had failed to deal with certain repairs. Accordingly, the FTS concluded the respondent was justified in involving Glasgow City Council. Any arguments by the appellant that the wording of the clause in the tenancy gives him the right alone to decide if a nuisance exists is not stateable. The question of whether, as a matter of fact, a ground of repossession exists is a question of fact. It is a fact to be determined by the FTS, not the appellant. If it were solely for a landlord to decide, the statutory protections for tenants under the Housing (Scotland) Act 1988 would be undermined. A tenant is entitled to dispute the underlying factual basis for an alleged breach of tenancy.

## **Conclusion**

[31] Taken as a whole, the appellant's proposed grounds of appeal do no more than say that he disagrees with the FTS. It is helpful to remember it was the FTS who saw and heard the witnesses. It is for the FTS to make findings in fact on contested evidence, setting out the evidence assessed as credible and reliable and giving reasons why. Whilst the FTS made some criticisms of the respondent regarding the letter sent to Glasgow City Council it found her to be reliable and credible (para 33). By contrast it found the appellant's evidence unreliable, noting the appellant



had *“lost his perspective”* and that much of his evidence was based on *“supposition and innuendo”* (para 18). The FTS was entitled to reach that conclusion and has given reasons for doing so.

## **Conclusion**

[32] The proposed grounds of appeal are not arguable. Leave to appeal is refused.

Sheriff F McCartney

Member of the Upper Tribunal for Scotland