



DECISION OF

Sheriff Ian Hay Cruickshank

**ON AN APPEAL
IN THE CASE OF**

Mr Hector MacLeod and Mrs Rongrong MacLeod

Appellants

- and -

Mr Andrew Taylor and Mrs Elizabeth Hanna Butney

Respondents

FTS Case Reference: FTS/HPC/PR/25/2130

24 March 2026

Decision

Dispenses with the necessity to serve this appeal on the respondents on the basis that their current whereabouts are unknown; Dispenses with the requirement of the respondents to provide a written response to the notice of appeal; Proceeds to consider the ground of appeal without assigning a hearing and based on written submissions as lodged by the appellants; Grants the appeal: Quashes the decision dated 14 November 2025 and remits the matter to the First-tier Tribunal for Scotland to consider the application of new.

Note



[1] The appellants lodged an application with the First-tier Tribunal for Scotland, Housing and Property Chamber (“the FTS”), under Rule 103 of the relevant Rules of Procedure. The application therefore sought a remedy based on an alleged failure on the part of the respondents to lodge a tenancy deposit with an approved scheme under and in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations 2011”).

[2] The whereabouts of the respondents were, and as far as I am aware, remain unknown. The FTS ordered service on its “Service by Advertisement” web page.

[3] At a Case Management Discussion, the appellant appeared but there was no appearance for or on behalf of the respondents. The FTS refused the application because it considered the same was incompetent. This was on the basis that the deposit had been paid at the outset of the tenancy in June 2007. The FTS determined that because the 2011 Regulations did not become operative until 7 March 2011 the said Regulations did not apply to the deposit in this case and refused the application on that basis. The FTS considered that the 2011 Regulations could not be applied retrospectively.

[4] On 16 March 2026, the FTS granted permission to appeal. It did so on the basis that the appellant brought to the attention of the FTS Regulation 47 of the 2011 Regulations. That Regulation relates to tenancy deposits paid prior to the date upon which the Regulations came into force and provides time limits thereafter for landlords to comply with the requirement to lodge deposits in an approved scheme.

[5] Regulation 47 of the 2011 Regulations is as follows:

“Where the tenancy deposit was paid to the landlord before the day on which these Regulations come into force, regulation 3 applies with the modification that the tenancy



deposit must be paid, and the information provided, within 30 working days of the date determined under paragraph (a) or (b)—

(a) where the tenancy is renewed, by express agreement or by the operation of tacit relocation, on a day that falls three months or more, but less than nine months, after the first day on which an approved scheme becomes operational, the date of that renewal;

(b) in any other case, the date which falls nine months after the first day on which an approved scheme becomes operational.”

[6] In its decision granting permission to appeal the FTS accepted that Regulation 47(a) would appear to operate in the circumstances of this case. Whereas the tenancy commenced in June 2007, the same continued by tacit relocation until the appellants vacated the subjects in March 2025. As such, based on that information, the deposit, and the requirement for it to be placed in an approved scheme would fall under the 2011 Regulations. The statutory duty imposed on a landlord to ensure a deposit is paid into an approved scheme would fall to be observed in respect of a deposit paid in connection with a lease commenced prior to 11 March 2011 if that lease continued for any length of time after that date. As the lease in question here subsisted until March 2025, the 2011 Regulations could be invoked if indeed it is proved to the satisfaction of the FTS that the deposit was not transferred to an approved scheme by the date calculated in terms of Regulation 47 of the 2011 Regulations.

[7] There is little I require to add. The 2011 Regulations provides a saving provision. The Regulations clearly anticipated, and provided for, the fact that there would be leases which subsisted and were continuing at the point in time when the requirements of the deposit scheme became operative. This was not appreciated at first instance by the FTS in this case, but the FTS does acknowledge that it failed to give effect to the above Regulation in its decision granting



permission to appeal. Based on the information available to me, and the fact that this lease continued to subsist at that point, the FTS erred in law in refusing this application.

[8] This is an expedited appeal process for the following reasons. The whereabouts of the respondents are unknown. I can see no need for the Upper Tribunal for Scotland (“the UTS”) to make further enquiry as to their whereabouts at this time based on the concession on the part of the FTS that it has fallen into error. I agree with that concession.

[9] The UTS has the power to regulate its own procedure (Rule 7 of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016). On that basis, I dispense with the requirement to intimate this appeal on the respondents. I further dispense with the usual requirement for time to be given to the respondents to provide a written response to the notice of appeal. Furthermore, the UTS has the power to make a decision without assigning a matter to a hearing (Rule 24 of the 2016 Regulations). I proceed to do so in this case as it is sufficient to dispose of this appeal based on the written submissions which accompany the appellant’s notice of appeal.

[10] In terms of section 47(1) of the Tribunals (Scotland) Act 2014, I quash the decision of the FTS. In terms of section 47(2)(a) of the 2014 Act I remit the case to the FTS to be considered of new. There is no necessity for the matter to be considered by a freshly constituted tribunal unless for administrative reasons, it is more expeditious to do so. Attempts to intimate or re-serve the application on the respondents will then be a matter to be addressed and resolved per the relevant FTS Rules of Procedure.

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

Upper Tribunal for Scotland



*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 Ian H Cruickshank
Member of the Upper Tribunal for Scotland