Upper Tribunal for Scotland

2025UT20
Ref: UTS/AP/24/0096 &
UTS/AP/24/0097

DECISION OF

Sheriff Jillian Martin-Brown

ON AN APPLICATION TO APPEAL
IN THE CASE OF

Miss Kate Edmonds

Appellant

- and -

Mr Lindsay Bowman

Respondent

FTS Case References: FTS/HPC/PR/23/0348 & FTS/HPC/CV/23/2843

Appellant: unrepresented
Respondent: D. Anderson (Adv), Jackson Boyd

Forfar, 28 March 2025

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 appellant (Ms Edmonds) made an application for damages for unlawful eviction by the respondent (FTS/HPC/PR/23/0348), which was refused on 24 July 2024. The respondent (Mr Bowman) also made an application for payment of rent arrears against the appellant

under a private residential tenancy agreement (FTS/HPC/CV/23/2843), which was granted in the sum of £5,040 on 24 July 2024. Both cases were appealed by Ms Edmonds.

2. The First-tier Tribunal for Scotland ("FTS") determined that the parties entered into a private residential tenancy agreement over Flat 4, 31 Huntly Gardens, Glasgow ("the bedsit"), which commenced 10 November 2020 and ended 16 June 2023. The agreed monthly rent for the bedsit was £560 per month. The applicant failed to pay rent due on the bedsit and had accrued arrears of rent amounting to £5,040.

3. The FTS also determined that the parties entered into a separate agreement to lease the property known as "the bothy" at a rate of £220 per month. The purpose of the use of the bothy by the appellant was for residential purposes. The respondent changed the locks on the bothy and in doing so deprived the appellant of access to the bothy. However, the FTS was unable to determine whether there was an unlawful eviction in relation to the bothy because it did not fall within any of the types of tenancy agreements over which the FTS had jurisdiction.

4. The FTS considered 18 grounds of appeal in both applications and granted permission to appeal in respect of five grounds as follows:

   (ii) the Tribunal failed to consider key medical evidence;

   (v) the Tribunal mis-stated the move out date as 18 December 2022 when it was 18 November 2022;

   (viii) the Tribunal misinterpreted the statutory protections under the Housing (Scotland) Act 1988 insofar as they relate to unlawful eviction;

   (ix) the Tribunal failed to exclude evidence from the respondent's former solicitor, who is a legal member of the Housing and Property Chamber and that creates a potential conflict of interest and raises concerns regarding impartiality; and

   (xiii) the Tribunal erred in not considering an alternative application under rule 111, when it found against the applicant in her rule 69 application.

5. The FTS refused permission to appeal in respect of the remaining 13 grounds on 29 September 2024.

6. The appellant sought leave to appeal in respect of two further grounds. Permission to appeal on those two further grounds was refused on 15 January 2025.

Format of Appeal

7. The appellant requested that the appeal be determined on the basis of written submissions only. Reference was made to section 20 of the Equality Act 2010 and Article 6 of the European Convention on Human Rights. The respondent did not consent to the appeal being determined without a hearing. I therefore required to decide what format the appeal should take.

8. I took into account the appellant's submissions in relation to her disability and procedural disadvantage as well as her previous experiences before the FTS for the original hearing and before the Upper Tribunal for the Permission to Appeal hearing. I determined that it was not appropriate to proceed by way of written submissions in light of the lack of clarity in relation to the appellant's submissions, many of which appeared to address grounds of appeal for which permission had not been granted. I determined that a video conference hearing would enable reasonable adjustments to be made to enable the appellant to participate fully, which had previously been made for the Permission to Appeal Hearing.

9. An appeal hearing was therefore scheduled for 24 March 2025. The appellant indicated in advance that she would not attend the hearing and instead would rely on her written submissions.

Authorities

10. The respondent lodged a list of authorities referred to in his written submissions on 21 March 2025. The appellant objected to the timing and the manner in which those authorities had been lodged and submitted that she had no meaningful opportunity to engage with the material before the hearing.

11. I took into account that no deadline had been assigned for the lodging of authorities. The authorities were referred to in the written response lodged by the respondent and so the appellant did have an opportunity to consider the passages or sections of the authorities relied upon by the respondent within that written response. The appellant had lodged her own written "response for the appellant" to the respondent's written response, as well as a "supplementary submission" containing her own authorities. I determined that it was appropriate to consider the authorities lodged by *both* parties as part of their submissions.

12. Parties referred me to the following authorities:

- Civil Evidence (Scotland) Act 1988;
- Cost of Living (Tenant Protection) Scotland Act 2022;
- Housing (Scotland) Act 1988;

- Housing (Scotland) Act 2014;
- Private Housing (Tenancies) (Scotland) Act 2016;
- Solicitors (Scotland) Act 1980;
- Tribunals (Scotland) Act 2014;
- The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017;
- *AJ (Cameroon) v Secretary of State for the Home Department* [2007] EWCA Civ 373;
- *Baral v Arif* 2020 Housing L.R. 11
- *Manson v Turner & Others* 2023 UT 38;
- *Moray Council c Scottish Ministers* 2006 S.C. 691;
- *Porter v Magill* [2002] A.C. 356;
- *Wordie Property Co. V Secretary of State for Scotland* 1984 S.L.T. 345;
- Davidson, *Evidence,* (2007), pp. 620 – 623.

Ground (ii) – the tribunal failed to consider key medical evidence

Submissions

13. In relation to ground (ii), the appellant submitted that the FTS failed to consider the extensive medical evidence submitted by the appellant, which confirmed her diagnosed conditions and ongoing specialist care. The medical evidence demonstrated a direct link between the eviction, the landlord's harassment and the appellant's deteriorating physical and mental health. That was crucial to assessing whether the landlord's actions forced the appellant out of the property and made continued occupation untenable. Reference was made to the 2017 Regulations, Article 6 of the European Convention on Human Rights and the Civil Evidence (Scotland) Act 1988.

14. The respondent submitted that the duty of the FTS in lawfully providing a written decision was that its reasons provided required to adequate and comprehensible, deal with the substantial issues in an intelligible way and leave the informed reader in no real and substantial doubt as to the reasons for the decision and the material considerations taken into account when reaching it. The decision of the FTS achieved the necessary standard. It was not necessary to go over the minutiae of each and every point taken. A fact finder did not have to deal with every piece of material or even every point. An inference that evidence had been ignored did not arise simply because it had not been dealt with expressly. Reference was made to *Manson v Turner*, *AJ (Cameroon) v Secretary of State* and *Moray Council v Scottish Ministers*.

Decision

15. I took into account that the FTS stated in its decision of 29 September 2024 that it *did* consider the medical evidence lodged in the context of considering all documents lodged by the parties, and which comprised a written document lodged by the appellant regarding her medical history. The FTS acknowledged that it was not *referred to* in its written decision. In considering the question of unlawful eviction from the bedsit, the FTS focused on the actions of the respondent as landlord and was not satisfied that there had been unreasonable behaviour by the respondent which could be said to have forced the applicant to remove from the bedsit. Those actions were not dependent upon medical evidence.

16. 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.

Ground (v) - the Tribunal mis-stated the move out date as 18 December 2022 when it was 18 November 2022

Submissions

17. In relation to ground (v), the appellant submitted that the mis-statement of the move out date was not a minor typographical error but a material factual mistake that distorted the timeline of events. Reference was made to *Wordie v Secretary of State*. The FTS' ruling implied that the appellant was liable for two simultaneous private residential tenancies for a period of seven months following her eviction, which created an unjust financial burden on the appellant.

18. The respondent submitted that the FTS recorded the appellant's evidence as having been that she signed the new tenancy of an alternative property in Edinburgh on 18 November 2018. In paragraphs 53 and 56 of the FTS' decision, this was recorded as having taken place in December, which was a typographical error and was immaterial to the merits of the case.

Decision

19. I took into account that the FTS stated in its decision of 29 September 2024 that the mis-statement was a typographical error. I did not consider that the mis-statement of the move out date had any bearing on whether the appellant had been unlawfully evicted from the bedsit. The appellant's reference to having two simultaneous private residential tenancies appeared to me to indicate a misunderstanding of the law, notwithstanding that this point was addressed at the Permission to Appeal hearing. The condition of occupying the

property as the tenant's only or principal home must exist at the commencement of the agreement for it to be a private residential tenancy, but where this changes and the property *is no longer* the tenant's only or principal home, the tenancy *remains* a private residential tenancy despite that change in occupation status.

20. 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.

Ground (viii) - the Tribunal misinterpreted the statutory protections under the Housing (Scotland) Act 1988 insofar as they relate to unlawful eviction

Submissions

21. In relation to ground (viii), the appellant made a number of wide ranging submissions, many of which were outwith the grounds of appeal for which permission had been granted. Dealing only with those which related to the permitted appeal grounds, the appellant submitted that the FTS' jurisdiction extended to unlawful eviction of the bothy, even if the bothy was not a private residential tenancy. Section 36 of the Housing (Scotland) Act 1988 protected residential occupiers, not just tenants under private residential tenancies. Reference was made to *Baral v Arif*, the Rent (Scotland) Act 1984 and the Cost of Living (Tenant Protection) (Scotland) Act 2022.

22. The respondent submitted that the FTS did not err in law. Section 36 of the Housing (Scotland) Act 1988 made provision for an award of damages for unlawful eviction. Both section 36 (1) and (2) were concerned with deprivation by a landlord of occupation of premises by a residential occupier. In relation to the bothy, the FTS found as a matter of fact that the appellant did not occupy the bothy as her only or principal home and never had done, therefore there was no private residential tenancy and the FTS had no jurisdiction to consider whether the appellant had been unlawfully evicted from the bothy. In relation to the bedsit, the FTS found that the respondent did not deprive the appellant of occupation of the bedsit and section 36 was not engaged. Reference was made to section 16 of the Housing (Scotland) Act 2014 and section 23 of the Tribunals (Scotland) Act 2014.

Decision

23. I took into account that the FTS stated in its decision of 24 July 2024 that by her own admission, the appellant was not deprived of physical access to the bedsit, which was secured following her own change of locks and appeared to have been done without the respondent's knowledge or consent. The FTS was not satisfied that there had been a sustained campaign of harassment and intimidation by the respondent against the appellant. Whilst it was clear to the FTS that the relationship between the parties had

broken down, the FTS was not satisfied there had been unreasonable behaviour by the respondent which could be said to have forced the appellant to remove from the bedsit. In light of such findings, I determined that the FTS was correct to conclude that section 36 was not engaged in relation to the bedsit.

24. As far at the bothy was concerned, the FTS accepted that the rent due was up to date at the point at which the respondent changed the locks on the door and deprived the respondent of access to the bothy. However, the FTS also determined in its decision of 24 July 2024 that it had no jurisdiction to determine whether there was an unlawful eviction in relation to the bothy, since it was not a private residential tenancy. The FTS was satisfied that the appellant's only or principal home was the bedsit, which comprised the property under the original agreement entered into by the parties. The bothy was leased to provide additional living space. Whilst the appellant was correct that section 36 protected residential occupiers, not just tenants under private residential tenancies, the jurisdiction of the FTS was restricted to private residential tenancies; regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984; part VII contracts within the meaning of section 63 of the 1984 Act; and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988. The lease over the bothy did not fall into any of those types of tenancy agreements. In light of the absence of jurisdiction, I determined that the FTS was correct not to consider whether an award of damages for unlawful eviction should be made in relation to the bothy.

25. 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.

Ground (ix) - the Tribunal failed to exclude evidence from the respondent's former solicitor, who is a legal member of the Housing and Property Chamber and that creates a potential conflict of interest and raises concerns regarding impartiality

Submissions

26. In relation to ground (ix), the appellant submitted that the solicitor's dual role raised a significant risk of both actual and apparent bias. Even the appearance of partiality was sufficient to undermine confidence in the impartiality of decision-makers. The proximity between the solicitor and the legal member of the FTS created a reasonable apprehension that undue weight may have been given to the contents of the letter. Authorship by a solicitor embedded in the FTS' own system was problematic and should have prompted the exclusion of the evidence, or at the very least, a robust inquiry into potential bias.

27. The appellant also submitted that a letter, marked "without prejudice", was inadmissible unless both parties consented to its use. The appellant did not consent and requested its

removal prior to the hearing. Reference was made to section 9 of the Civil Evidence (Scotland) Act 1988, the Housing and Property Chamber (Procedure) Regulations 2017 and *Porter v Magill*.

28. The respondent submitted that the solicitor who wrote the letter being a legal member of the FTS was not a basis upon which it could be said that actual or apparent bias arose, or that the procedure had been unfair to any degree.

29. The respondent also submitted that the appellant's points in relation to admissibility were misconceived and without substance. The legislative provisions relied upon by the appellant were erroneous and did not vouch her propositions. The FTS Rules had no provision on the admissibility of evidence and the privilege which may be attached to true without prejudice communications emanated from the common law, rather than statute. The privilege arose because of the nature of the communication, rather than the phrase "without prejudice". The letter referred to by the appellant did not contain notional concessions for the purposes of negotiating a settlement but rather contained unequivocal assertions of fact, specifically, that as at that date the appellant remained the lawful occupier of the relevant property, and statements which could only have been intended to have legal effect, namely the provision of notice to terminate. Notwithstanding the addition of the "without prejudice" wording, when the substance of the letter was considered, no privilege attached to it. Reference was made to *Davidson* on Evidence.

Decision

30. I took into account that the FTS stated in its decision of 24 September 2024 that the former solicitor did not appear before the FTS in this case. There was no suggestion that he had been involved in the case other than by acting as the appellant's representative. Many solicitors with experience in housing matters were legal members of the Housing and Property Chamber and the mere fact that the appellant's former solicitor also happened to be a member of the Housing and Property Chamber did not of itself demonstrate a possible conflict of interest or impartiality on the part of the FTS. I did not consider that the appellant had demonstrated any actual or apparent bias on the part of the FTS.

31. I also took into account that the appellant's motion to remove the letter from process was refused because the FTS was satisfied it would be entirely unreasonable to expect the respondent or its agents to question the content of a letter received from a practising solicitor purporting to act on behalf of a tenant and it was entirely reasonable for a landlord and his agent to rely on the terms of any such correspondence. If the respondent was entitled to rely on the content of such letters at the time they were received, then it would be unfair to exclude them from evidence at the point of the hearing. I determined that the letter was admissible notwithstanding that it contained the phrase "without prejudice" since it contained a clear and unequivocal statement of fact that notice was being given in

relation to ending the appellant's tenancy from 19 May 2023. I did not consider that the appellant had demonstrated that the letter was inadmissible.

32. 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.

Ground (xiii) - the Tribunal erred in not considering an alternative application under rule 111, when it found against the applicant in her rule 69 application.

Submissions

33. In relation to ground (xiii), the appellant submitted that at no stage in proceedings did the FTS engage with or acknowledge rule 111 in any way. That was a material legal error that directly impacted the appellant's ability to seek financial redress for her loss of occupation.

34. The respondent submitted that this ground of appeal was misconceived. Rule 111 provided for civil proceedings in respect of private residential tenancies. Although it was confusing that there were separate rules for civil proceedings generally and unlawful eviction, which was in its nature a civil claim, the rules did not govern the FTS' jurisdiction. Treatment of the appellant's application as having been made under rule 111 or any other rule would have been of no assistance to the appellant. The FTS held that the appellant was not party to a private residential tenancy in respect of the bothy. The outcome of that analysis was that the agreement was a contract, and perhaps a lease, of the bothy, but one to which no statutory regime applied. The FTS did not have jurisdiction over such agreements and that would be the position whatever rule the appellant's claim was made under.

Decision

35. I took into account that the FTS determined in its decision of 24 July 2024 that it had no jurisdiction to determine whether there was an unlawful eviction in relation to the bothy, since it was not a private residential tenancy. The FTS was satisfied that the appellant's only or principal home was the bedsit, which comprised the property under the original agreement entered into by the parties. The bothy was leased to provide additional living space. I determined that whether the appellant's claim was considered under rule 69 or rule 111 made no difference to the issue of jurisdiction. In light of the absence of jurisdiction, I determined that the FTS was correct not to consider an alternative application under rule 111 when it found against the appellant in her rule 69 application.

36. 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