



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/3261

Re: Property at 20B Windsor Gardens, Largs, KA30 9DN (“the Property”)

Parties:

Mr Jonathan Maclean, 79 Irvine Road, Largs, Ayrshire, KA30 8HT (“the Applicant”) per his agents, Patten and Prentice, solicitors, 2, Ardgowan Square, Greenock, PA16 8PP (“the Applicant’s Agents”)

Ms Leanne McCrear, 20B Windsor Gardens, Largs, KA30 9DN (“the Respondent”) per her representative, CHAP, Michael Lynch Centre for Enterprise (MLCE), 71, Princes Street, Ardrossan, KA22 8DG

Tribunal Members:

Karen Moore (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 29 July 2025 and 25 August 2025 (“the Application”), the Applicant’s Agents applied to the Tribunal on his behalf for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
 - i) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 13 June 2025 with proof of issue;
 - ii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Ayrshire Council being the relevant local authority;
 - iii) copy rent ledger statement showing arrears of £3,870.85 due and owing as at July 2025;
 - iv) copy pre-action requirement letter sent to the Respondent.
3. The Application explained that the tenancy had been constituted informally with no written agreement between the Parties and stated that the rent agreed by the Parties was £127.00 per week.
4. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 3 March 2026 at 10.00 by telephone conference.

5. Prior to the CMD, the Applicant's Agents lodged updated rent statements showing that the rent due and owing had increased to £7,426.85.

CMD

6. The CMD took place on 3 March 2026 at 10.00 by telephone. The Applicant, Mr. Maclean, was not present and was represented by Mr. Caldwell of the Applicant's Agents. The Respondent, Ms. McCrear, was not present and was represented by Ms. Matheson of the Respondent's Representatives.
7. The Application was heard alongside application FTS/HPC/CV/25/3261 between the same Parties seeking an Order for payment of rent due and owing in respect of the Property.
8. Mr. Caldwell for Mr. Maclean confirmed that an Order for eviction is sought. Ms. Matheson advised that the Application was not opposed. The Tribunal explained that it required to be satisfied that the correct statutory process had been carried out, that the Ground for the Application was satisfied and that it was reasonable to grant the Order. In this regard, the Tribunal was satisfied that the correct procedure had been carried out and that there was supporting evidence for the Ground and asked the representatives to provide information on the tenancy and the Parties' circumstances.
9. Mr. Caldwell explained that, as set out in the Application, the tenancy had been an informal arrangement beginning in March 2023. He advised that a weekly rent of £127.00 had been agreed because Ms. McCrear had been in employment at the time and was receiving a weekly wage. He noted that payment of rent had been sporadic, and that there had been no payments since May 2025. Mr. Caldwell explained that the Property is Mr. Maclean's only rental property and that he is not a professional or commercial landlord. Mr. Caldwell pointed out that it was likely that Ms. McCrear had been in receipt of Universal Credit with a housing benefit element and had not paid this on to her landlord.

10. With regard to Ms. McCrear, Ms. Matheson stated that Ms. McCrear is not in employment, is in receipt of benefits and that she has two school aged children. She explained that Ms. McCrear had returned to Scotland from Canada following a relationship breakdown and had resultant mental health issues. Ms. Matheson accepted that Ms. McCrear was in receipt of Universal Credit and had not paid the housing benefit element to her landlord. Ms. Matheson stated that CHAP are assisting Ms. McCrear with her finances and have applied on her behalf for discretionary Early Doors funding to reduce or clear the rent arrears. Ms. Matheson explained that this funding is a homelessness prevention approach to assist persons in arrears who might otherwise be considered to be intentionally homeless due to non-payment of rent. She confirmed that CHAP are assisting with Ms. McCrear's housing application with the local authority. Ms. Matheson stated that although Ms. McCrear accepted that the rent is in arrears, she disputed the amount claimed as due. She explained that some rent had been paid in cash but could not give detail on specific payments not accounted for. Ms. Matheson stated that a detailed rent statement had been requested both from Mr Maclean and his agents, a point which Mr. Caldwell strongly disputed with reference to the rent statements lodged. Ms. Matheson confirmed that the Application is not opposed.

Findings in Fact

11. From the Application and the CMD, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties commencing on or around 16 March 2023;
- ii) The rent is £127.00 per week;
- iii) Rent has been in arrears for more than three consecutive months;
- iv) The correct statutory procedure has been carried out;
- v) The Applicant is not a professional or commercial landlord;
- vi) The Respondent is not in employment and is in receipt of state benefits;
- vii) The Respondent has two school aged children.

Issue for the Tribunal

12. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. Ground 12 states “(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a)the tenant has accrued rent arrears under the tenancy in respect of one or more periods, (b)the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and (c)the Tribunal is satisfied that it is reasonable to issue an eviction order. (3)In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider (a)whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, (b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). (4)For the purpose of this paragraph (a)references to a relevant benefit are to (i)a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (ii)a payment on account awarded under regulation 93 of those Regulations,(iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent, (iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980, (b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”

Decision and Reasons for Decision

13. The Tribunal had regard to all the information before it and to its Findings in Fact.

14. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
15. The Tribunal, having no evidence in respect of issues with state benefits, was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
16. The Tribunal noted that Government Guidance on pre-action protocols for notices issued after 1st October 2022 had been complied with.
17. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
18. The Tribunal then had regard to the circumstances of the Parties.
19. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
20. The Tribunal then looked to balance the rights and interests of both parties.
21. The Tribunal accepted that the Applicant, although not a professional landlord, is entitled to receive and rely on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondent has been in rent arrears throughout the tenancy and has failed to pay rent in almost a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
22. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent and her family would have

