



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

Chamber Ref: FTS/HPC/EV/25/1396

Re: Property at 1 Galalaw Cottage, Skirling, Biggar, ML12 6HD (“the Property”)

Parties:

Mr George Noble, Aileen Margaret Berry Noble, Galalaw Farm, Skirling, Biggar, ML12 6HD; Don Marie Cottage, Skirling, ML12 6HD (“the Applicant”)

Mr Robert Davidson, 1 Galalaw Cottage, Skirling, Biggar, ML12 6HD (“the Respondent”)

Tribunal Members:

Graham Dunlop (Legal Member) and Peter McEachran (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order seeking an eviction order should be granted

Background

1. The respondent is the tenant of the property in accordance with the tenancy agreement with the landlord which commenced on 5th April 2022 at a rent of £425 per month.
2. The application called for a Case Management Discussion on 26th November 2025 at which the respondent was in attendance. At the CMD the respondent stated that he had not been paying rent due to the property not having a suitable supply of water. In correspondence the respondent has stated that the water supply is poisoned with bacteria and e-coli.

3. At the CMD it was explained that a hearing would be fixed and that parties required to lodge expert reports in relation to the water supply along with affidavits from all scientific and technical witnesses.
4. A hearing was fixed for 30th March 2026 to be held in person. The respondent stated that he was visiting his children who were moving house in Dubai. The hearing was changed to Webex to accommodate the respondent, although the respondent stated that being in Dubai was only one reason he was seeking a postponement.
5. The Tribunal had regard to the fact that the respondent had not lodged any technical evidence supporting his assertions as required by the Note of the CMD. The Tribunal also considered the prejudice to the applicant as the respondent had been in arrears of rent for a number of years and had paid no rent since October 2023. The arrears are currently in excess of £13,000.
6. The respondent also has a (legal) representative John Barclay of OEM legal who did not attend the hearing for reasons unknown to the Tribunal. Whilst not determinative the respondent produced no evidence to show he is in Dubai and the evidence at the hearing from Mr Noble was that he was not in Dubai when seen on Friday 27th March 2026 at the property.

The Hearing

7. The respondent lodged various technical reports and affidavits in respect of the water supply and allegations of contamination. The Tribunal heard evidence from Ms Mia Thomson employed as a Technical Assistant by the Protective Services Team and Scottish Borders Council. Ms Thomson adopted her affidavit evidence and explained that she had attended the property to carry out water testing in 2023 and 2024.
8. Ms Thomson explained that water testing was undertaken in May 2023 which was sent to Scottish Water for analysis. The results showed that the water was not fit for human consumption. Ms Thomson referred to the test reports lodged by the applicant.
9. As a consequence the applicant carried out works to the water supply to the property including fitting a new filtration system.
10. Ms Thomson explained that further testing of the water supply to the property was carried out in February 2024 and in November 2024, with testing on those occasions showing that the water was wholesome and fit for human consumption. Ms Thomson explained that discoloration of water does not automatically mean that the water is not wholesome and testing is required.
11. Ms Thomson stated that she met the respondent in November 2024 at which time the respondent indicated that he had obtained testing which showed the water was not wholesome. Those tests were not supplied to Ms Thomson or the Tribunal for reasons which are not known to the Tribunal.

12. In 2025 further testing was carried out to the water supply on 25th October 2025 which again confirmed the water supply was wholesome.
13. Mr Noble, the applicant gave evidence which was relatively brief as he adopted his affidavit evidence. Mr Noble explained that the non payment of rent issues started about 6 months into the tenancy. That evidence is consistent with the rent schedule produced by the applicant..
14. Mr Noble explained that the same supply of water serves a number of properties. Mr Noble confirmed that since October 2023 the respondent has not been paying rent.
15. The respondent's solicitor made brief closing submissions including drawing the Tribunal's attention to the lodged correspondence from the respondent seeking damages/payment in exchange for termination of the tenancy. The Tribunal explained that the issue before the Tribunal is whether or not it was reasonable to grant the eviction order as sought and any issues of damages were not before the Tribunal.
16. The Tribunal noted that the paperwork and affidavits lodged by the applicant greatly assisted the Tribunal in reaching a decision.

Findings in Fact

17. That the respondent has tenanted the property since April 2022.
18. That the respondent has been in arrears of rent since December 2022 and has paid no rent since October 2023.
19. That the rent arrears as at February 2026 amounted to £13,600
20. That there was an issue with the water supply to the property in 2023 which included bacteria and e-coli rendering the supply not being wholesome for consumption by the respondent as the tenant of the property.
21. That since no later than February 2024 the water has been wholesome for consumption and other uses by the respondent, which follows the installation of the filtration equipment.

Decision and Reasons

22. The Tribunal requires to be satisfied that the respondent has been in arrears of rent for three or more consecutive months and that it is reasonable to grant the eviction order.
23. The respondent does not appear to dispute that he has not been paying rent since 2023 and there was no evidence before the Tribunal to suggest otherwise.

24. In terms of reasonableness the Tribunal recognise that there was a period where the water at the property was not wholesome, and that a tenant such as the respondent is entitled to expect a wholesome supply of water under the tenancy to the property.
25. However the issue of the water quality was resolved over 2 years ago and there was no technical or scientific evidence before the Tribunal to indicate otherwise.
26. The Tribunal finds that it would not be reasonable to allow a tenant to remain in a property without paying any rent for years thereafter due to a previous maintenance or repair issue. In the circumstances it is reasonable to grant the order for eviction as sought.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Graham Dunlop

Legal Member/Chair

30/3/26
Date _____