



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/2212

Re: Property at 79 Mactaggart Road, Cumbernauld, G67 1JJ (“the Property”)

Parties:

Mr Mark Cheyne, Mrs Nicola Cheyne, 4 Woodmill Gardens, Condorrat, Cumbernauld, G67 4AX; 4 Woodmill Gardens, Condorrat, Cumbernauld, G67 4AX (“the Applicants”)

Mr Gordon McKay, 79 Mactaggart Road, Cumbernauld, G67 1JJ (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction. The Tribunal determined to suspend enforcement of the order until 16 August 2026.

Background

1. By application dated 22 May 2025 the applicants seek an order for eviction relying on ground 11 (breach of tenancy agreement) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicants submitted the following documents with the application:
 - Copy tenancy agreement

- Notice to leave with proof of delivery
 - Section 11 notice
 - Photographs of the property
 - Correspondence with the respondent
 - Property inventory
3. A case management discussion (“cmd”) took place via teleconference on 8 January 2026. The applicant was represented by Ms McAllister, Letting agent, Key Central Property Management. The respondent, Mr McKay was in attendance. Mr McKay opposed an order being granted and sought to defend the action. Mr McKay did not dispute that he had breached the tenancy agreement by failing to maintain the property and failing to allow access. He sought to defend the application on the grounds of reasonableness. The Tribunal fixed an evidential hearing to determine the application. A Direction was issued to parties following the cmd specifying information that the parties required to submit in advance of the hearing. The Direction required the respondent to submit a medical report/letter from his GP setting out any medical conditions affecting him, a report/letter from his support worker setting out the support being provided to the respondent particularly relating to his ability to maintain the property and details of his income from all sources including any income from personal/occupational pensions.
4. The respondent did not submit any further information in advance of the hearing.

Evidential hearing – 16 June 2026 – teleconference

5. The applicant, Mark Cheyne was in attendance with his letting agent and representative, Ms McAllister. The respondent attended on his own behalf. The Tribunal heard from Ms McAllister, Mr Cheyne and Mr McKay. A summary of the evidence is set out below. For the avoidance of doubt this is not a verbatim record of the evidence heard but a summary of the evidence relating to the relevant issues.

Summary of Ms McAllister's evidence

6. Ms McAllister confirmed that the applicants sought an order for eviction. She stated that the tenancy commenced in February 2020. She referred to photographs that had been submitted which showed the condition of the property when access had been gained in April 2025. She stated that there had been difficulties in gaining access to the property at that time and when access had been gained the property was in a terrible condition. She stated that the property had been cleared at that time however that had not resolved issues with the odours in the property. Ms McAllister stated that the cost of the professional clearance in April 2025 had been £2000, however £500 had been paid by the respondent leaving a cost of £1500 to be covered by the applicants.
7. Ms McAllister stated that there continued to be issues with the respondent's behaviour in the property. She stated that since April 2025 there had been an incident where water had overflowed from the bathroom into the downstairs property. She believed that this had been caused by the respondent's failure to maintain the bathroom in a reasonable state.
8. Ms McAllister stated that since the cmd she had emailed the respondent on 4 occasions requesting access to the property in order to carry out an inspection. She had not received any response from the applicant. She had received a response from the respondents daughter on 15 May 2026 stating that the respondent would telephone to arrange access however no further contact was made.
9. Ms McAllister stated that the rent was being paid for the property, however the current months' rent was outstanding. She stated that given the history of damage to the property she was very concerned that access had not been permitted and that the respondent had failed to engage.

Evidence of Mark Cheyne

10. Mr Cheyne confirmed that he owns the property jointly with his wife. He stated that he is self-employed. He stated that after they purchased the property they

carried out significant upgrading works. There had been one previous tenant before the respondent moved in however the property had been in good condition. Mr Cheyne stated that he is very worried about the condition of the property and that he will have to cover the cost of sorting out any issues after the respondent moves out. He stated that he is stressed and worried about the respondent's conduct and the fact that it has not been possible to get access to the property to carry out routine inspections and gas safety checks. Mr Cheyne stated that access was last gained in April 2025 when the property was in a shocking condition. He had spent £1,500 at that time on a professional clearance and clean. He stated that not long after that there had been a leak into the property below.

11. Mr Cheyne stated that his intention was to refurbish and sell the property. He stated that based on what he saw in the property in April 2025 a full refurbishment would be required before the property is sold. He stated that the floor boards had been saturated and would need to be lifted and replaced. He stated that the bathroom and kitchen would need a full renovation.
12. Mr Cheyne stated his wife has been worried sick about what could happen in the flat.

Evidence of Gordon McKay

13. Mr McKay did not dispute that a clearance of the property was required in April 2025. He stated that since then he had been cleaning the property as much as he could. He stated that he has a heart condition and also suffers from anxiety. He has been taking medication to address his alcohol addiction and stated that he is drinking much less than before. He stated that he had been signed off sick for 6 months before he retired due to dizzy spells.
14. Mr McKay stated that he did not have regular visitors to the property. He stated that he does have support from family and friends, in particular his daughter who lives close by.

15. Mr McKay stated that he been employed for many years as a team leader by HMRC before he retired last August. He stated that he was waiting for his employment pension to be processed. At present his sole income is his state pension of £940 per month. He advised that he receives no benefits. He had hoped to apply for personal independence payment however no progress has been made with that. Mr McKay stated that he previously had a support worker however she had gone on maternity leave and he had not been provided with a replacement.
16. Mr McKay stated that when the property had been professionally cleaned his internet access had been removed. He stated that he had not received the email correspondence from Ms McAllister regarding access for inspections. He stated that these had been sent to his daughter, however they had gone into her spam account which explained why there had been no response to Mc McAllister.
17. Mr McKay stated that the leak into the property below was not due to his conduct. Mr McKay stated that he has applied for local authority housing and is on the waiting list however he has been told that help will not be provided until he has nowhere else to live. He stated that he has an appointment with Citizens Advice to discuss his housing and benefit issues. Mr McKay stated that he did not have any problem with the landlords taking action however he did not want to end up homeless. He stated that if his employment pension was paid he hoped to obtain a lump sum which could be used to find alternative private rented accommodation.

Findings in fact

18. Parties entered into a private residential tenancy agreement with a commencement date of 28 February 2020.
19. The respondent resides alone in the property.
20. The respondent has a history of alcohol addiction. He has a heart condition for

which he receives medication. He is affected by anxiety.

21. The respondent previously received support from a support worker.
22. The respondent retired from his long term employment at HMRC after moving into the tenancy.
23. The respondent failed to maintain the property in a reasonable state of cleanliness. Rubbish was not removed from the property causing a risk to health and safety.
24. The respondent failed to respond to reasonable requests to inspect the property prior to April 2025. The applicant considered applying for right of entry to gain access to the property.
25. Access was gained to the property in April 2025.
26. A professional clearance of the property was carried out in April 2025 at a cost of £2,000. The respondent contributed £500 towards the expense.
27. Due to the condition of the property refurbishment will be required to return the property to a reasonable condition including a replacement bathroom and kitchen.
28. Since January 2026 the applicants' letting agent has contacted the respondent on 4 occasions by email to request access to the property. Access has not been provided.
29. The applicants are concerned that the property is not being maintained in a reasonable condition.
30. The applicants are concerned that the condition of the property may be a health and safety risk and may result in expensive repairs and upgrading being

required.

31. The respondent has applied for housing from the local authority and is currently on the waiting list for social housing.
32. The respondent's sole income is from the state pension. The respondent retired in August 2025 and is awaiting payment of his civil service pension.
33. The respondent worked for 25 years at HMRC and anticipates receiving a lump sum and ongoing payments from his civil service pension.
34. The respondent has breached his clause 17 of his tenancy agreement by failing to take reasonable care of the property.
35. The respondent has breached clause 20 of his tenancy agreement by failing to allow reasonable access.

Reasons for decision

36. Ground 11 states;

11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

37. The Tribunal took into account the application and documents that had been submitted on behalf of the applicant and the oral evidence at the hearing and cmd. The respondent did not dispute that the property had been in condition that required a professional clearance and clean due to his conduct in April

2025. The Tribunal determined that the condition of the property at that date and the failure to allow reasonable access constituted a breach of the tenancy agreement.

38. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.

39. The Tribunal gave significant weight to the seriousness of the breach of the tenancy condition. The photographs that had been submitted showed that the tenancy was in a chaotic state in April 2025 with rubbish piled high and presented a health and safety risk to the respondent as well as a potential fire risk. It was clear from the photographs that the respondent was not coping at that time. The Tribunal had discussed at the cmd in January that the respondent's ability to maintain the property and cooperate with the letting agents to ensure access would be a focus of the hearing. It was also discussed at the cmd that the respondent should access support and advice.

40. The Tribunal gave great weight to the respondent's failure to respond to requests for access since the cmd. He did not dispute that emails had been sent requesting access. He stated that these had gone into the spam email folder. The Tribunal determined that the respondent had a duty to ensure that the letting agents had a means of communicating with him. His failure to do so had resulted in access not being provided.

41. The Tribunal gave significant weight to the applicants' circumstances. The Tribunal found Mr Cheyne to be credible and truthful in his evidence. The Tribunal accepted his evidence that both applicants were very worried about the consequences of the respondent's conduct from a risk point of view. They

were also concerned about the damage to their property and the financial costs of returning the property to a reasonable condition after the respondent left.

42. The Tribunal gave considerable weight to the respondent's personal circumstances. He is in poor health and taking steps to tackle his addiction to alcoholism. As he resides alone he is concerned that he may be accommodated in a hostel if he applies as homeless. The respondent is clearly vulnerable and in need of support. The Tribunal also gave weight to the fact that he had been waiting for considerable time for his civil service pension to be paid which had left him in limited financial circumstances.
43. The Tribunal gave weight to the respondent's evidence that if an order was granted he had no alternative accommodation and was concerned that he would be accommodated in a hostel setting if he applied as homeless.
44. Against this the Tribunal took into account that the respondent had failed to comply with the Direction issued after the cmd. No supporting evidence relating to his health issues and support needs had been supplied. The respondent gave little explanation as to why he had not sought advice and support including why had not accessed support to assist with applying for personal independence payment. He stated that his support worker had gone on maternity leave however he provided no explanation as to why he had not enquired about a replacement.
45. The respondent provided no evidence that there had been a change in his conduct since the previous clearance had been required. He had continued with his pattern of failing to engage with the letting agents for the purpose of allowing inspections to be carried out. In these circumstances the Tribunal determined that the breach of tenancy was ongoing.

46. The Tribunal took into account that once the respondent's civil service pension was in payment he may be in a position to secure alternative accommodation. The Tribunal took into account that the respondent was articulate and able to advocate on his own behalf at the hearing. This was in contrast to his failure to take action to provide evidence supporting his position in advance of the hearing.

47. Taking all the foregoing circumstances into account the Tribunal was satisfied that on balance in light of the ongoing breach of the tenancy agreement and lack of evidence of a change in the respondent's conduct, it was reasonable to grant an order for eviction.

48. The Tribunal heard from parties on whether a suspension of the period before enforcement of the order was sought. The respondent sought a 60 day suspension to allow him to make arrangements to leave the property if an order was granted. The applicant stated that if an order was granted there was no objection to a short suspension.

49. The Tribunal determined to suspend enforcement for 2 months to allow the respondent additional time to make arrangements before leaving the property and for his employment pension to be processed.

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.

M-C.Kelly

Legal Member/Chair

16 June 2026

Date