

Housing and Property Chamber
First-tier Tribunal for Scotland



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/25/1004

Re: Property at 23 Gryfebank Avenue, Houston, PA6 7LZ (“the Property”)

Parties:

Mrs Balbir Kaur Benning, 23 Crosslee Crescent, Johnstone, PA6 7DT (“the Applicant”)

Naomi McKay, 23 Gryfebank Avenue, Houston, PA6 7LZ (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant such order not to be enforced before 12noon on 07 August 2026.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“**the Act**”).
2. The application was accompanied by a Private Residential Tenancy Agreement between the Applicant and the Respondent commencing 26 June 2019, a Notice to Leave dated 28 January 2025 together with proof of service, a copy of the Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 together with proof of service, several rent arrears schedules, the latest of which was updated to June 2026 and a copy of correspondence to the Respondent in relation to the rent arrears.

Case Management Discussion – teleconference –05 November 2025

3. A case management discussion took place via teleconference on 05 November 2025. The Applicant was represented at that hearing by Mr Saqib Deen, Apex Property Services (Scotland) Limited. The Respondent was present and was represented by Ms Stella Cojacularu, Renfrewshire CAB. The Tribunal fixed an evidential hearing to establish whether it is reasonable to grant the eviction order. There seemed to be no dispute that the Respondent was in rent arrears and had been for a period of at least three consecutive months. The Tribunal

explained to parties that one of the considerations in whether it was reasonable to grant the eviction order was the level of compliance with the pre-action requirements.

4. It was agreed that the representatives would exchange emails to enable the Respondent to obtain whatever information she required to assist in attempts to obtain housing benefit. The Respondent's representative indicated that it might be possible to obtain a back payment of benefit owed to the Respondent.

Evidential Hearing – 07 July 2026

4. The Evidential Hearing was scheduled to take place on 07 July 2026 at 10am, by videocall before both Members of the Tribunal. The Applicant was accompanied by Mr Saqib Deen, Apex Property Services (Scotland) Limited and Mr Singh, her supporter. In advance of the Evidential Hearing, Ms Stella Cojacaru, Renfrewshire CAB had given notice to the Tribunal that she was no longer acting for the Respondent. Accordingly, the Respondent attended at the Evidential Hearing on her own behalf.
5. At the outset of the Evidential Hearing it was confirmed that the Respondent was no longer opposing the application. The Respondent asked that enforcement of the eviction order be delayed for a period of six weeks from the date of the hearing so as to allow her sufficient time to remove from the Property.
6. As a preliminary matter, the Tribunal addressed the late production of documents on behalf of the Applicant. These included a skeleton argument and statement of evidence which simply narrated the history of the case so far and the Applicant's position as set out in the Application. These also included copies of emails, letters and text message correspondence on behalf of the Applicant to the Respondent to demonstrate the Applicant's compliance with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. When asked why the Applicant considered that the Tribunal should consider these late documents, the Applicant's representative explained that the arrears were £46,950, the Respondent admitted these arrears and the documents really just vouched this.
7. The Respondent explained that she opposed the Tribunal considering these late documents on the basis that not all of the relevant documents had been provided.
8. In light of fact that the correspondence documents referred to had all been seen by the Respondent previously and the skeleton argument and statement of evidence documents simply summarised the history of this case and what is in the eviction application, the Tribunal finds that there will be no prejudice caused to the Respondent by the Tribunal considering these documents. Taking into account the excuse provided by the Applicant's representative, the Tribunal was prepared to allow for these late documents to be considered.
9. The Respondent explained that the Property was no longer affordable. She was not working at the present time and was in receipt of Universal Credit of £600 per month.
10. The Property was a six bedroomed property. It was only the Respondent and her daughter who were now living in the Property. The Respondent's daughter was turning 18 this month and that would decrease the amount received by the Respondent by way of Universal Credit.
11. The Respondent did not dispute what was set out in the rent schedule updated to June 2026. That confirmed that the rent arrears were presently £46,950.

12. The Respondent explained that following a car accident in January 2023, she has been declared unfit to work. She explained that she has fibromyalgia and walks with the assistance of a cane. She also has trigeminal neuralgia which causes sharp shooting pains down her face. She is also on morphine tablets for an injury to her ankle and is waiting on an operation on this.
13. The Respondent has been in contact with her local authority regarding rehousing. They have explained that she will not be treated as a priority unless and until an eviction order is made against her. She has tried to look for a private let but they are hard to come by.
14. Additional time was sought to allow the Respondent sufficient time to remove from the Property.
15. The Applicant's representative explained that the Applicant was still insisting on the Application. The Application was self-explanatory. The arrears were £46,950. The Applicant had sought to try and resolve matters with the Respondent but that had not been possible. The Applicant is 76. The Property is her sole rental property. She relies on this rental income to support herself. In the absence of the rent from the Respondent, the Applicant was relying on her husband to support her. In relation to the request for more time, the Applicant's representative observed that if the order was made today, it would be at least six weeks before it could be enforced having regard to the time needed by Sheriff Officers to arrange an eviction.

Findings in Fact

16. The Applicant is the registered owner of the Property.
17. The Applicant and the Respondent, as respectively the landlord and tenant, entered into a tenancy of the Property which commenced on 26 June 2019.
18. The tenancy agreement was a Private Residential Tenancy agreement in terms of the Act.
19. The agreed monthly rental is £1,300 payable on the 25th of each month.
20. On 28 January 2025 the Applicant's representative served upon the Respondent a notice to leave as required by the Act ("**the Notice**"). Service of the Notice was effected by email as permitted under the lease. The Notice became effective on 30 January 2025 at the latest. The Notice informed the Respondent that the Applicant wished to seek recovery of possession of the Property using the provisions of the Act, namely that the Respondent was in arrears of rent over three consecutive months.
21. The Notice was not opposed by the Respondent.
22. The Notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the Respondent had been in arrears of rent for three or more consecutive months). Rental arrears at the date of service of the Notice were £23,150.
23. The amount of rental arrears at the date of the Evidential Hearing was £46,950.
24. Appropriate accounting had been provided with the application to the Tribunal in respect of the outstanding rent due under ground 12.
25. The basis for the order for possession on ground 12 was thus established.

Reasons for Decision

26. The order for possession sought by the Applicant was based on a ground specified in the Act and properly narrated in the Notice served upon the Respondent. The Tribunal was satisfied that the Notice had been served in accordance with the terms of the Act and that the Applicant was entitled to seek recovery of possession based upon this ground.

27. The Tribunal accepted the evidence presented on behalf of the Applicant with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since May 2023, the Respondent has failed to pay the full rent as it fell due and significant arrears have accrued. The last payment made by the Respondent was £300 on 07 December 2023. Since that date, no further payments have been made by the Respondent.
28. The Tribunal was satisfied that the Respondent has been in arrears for a period far in excess of three consecutive months. The Tribunal accepted the unchallenged evidence of the Applicant relating to the arrears. The Tribunal accepted that the Applicant had made appropriate attempts to encourage the Respondent to deal with the arrears. The Applicant has complied with the relevant provisions of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
29. The ground for eviction based on rent arrears was accordingly established.
30. Since 07 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
31. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in a frequently quoted passage:

"[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account".

32. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
33. In this case the Tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the Applicant in this application for the following reasons.
34. The level of arrears is extremely high. The Respondent acknowledged that the rent is unaffordable to her. The Respondent is not presently working. Her sole income is Universal Credit of £600 per month. The rent is £1,300 per month. The Respondent cannot afford the shortfall. The arrears as at the date of the Application and the Evidential Hearing are a significant sum and there appears to be no likelihood of them being repaid by the Respondent.
35. The Respondent has already engaged with the local authority about new accommodation. They will not consider her as a priority until an eviction order is made.

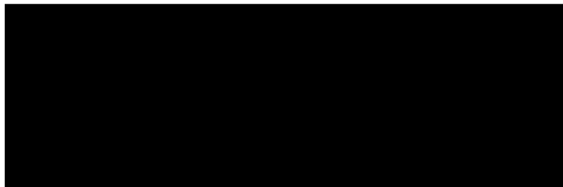
36. The fact that the Respondent had no objection to the order being made was another factor which the Tribunal considered made the granting of the order reasonable in all of the circumstances.

Decision

37. The Tribunal determines that an eviction order should be granted against the Respondent.

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.



07 July 2026

Legal Member/Chair

Date