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 Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act")**

**Chamber Ref: FTS/HPC/EV/25/0425**

**Re: Property at 188 Cambusnethan Street, Wishaw, ML2 8PW ("the Property")**

**Parties:**

**Mr Calum Gaw, Barnharrow, Kirkcowan, Newton Stewart, DG8 0ET ("the Applicant")**

**Mr Stephen Pierpoint, 188 Cambusnethan Street, Wishaw, ML2 8PW ("the Respondent")**

**Tribunal Members:**

**Elaine Paton (Legal Member) and Gerard Darroch (Ordinary Member)**

## Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to refuse the application.

## Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of Schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, rent statement, rent increase notice, section 11 notice and evidence regarding compliance with the rent arrears pre-action protocol were lodged with the application.

   *Case Management Discussion 1*

2. A copy of the application was served on the Respondent by Sheriff Officer on 20 August 2025. The parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 24 September 2025 at 10am and that they were required to participate. No response to the application was lodged in advance of the CMD by the Respondent, The CMD

took place on 24 September 2025 and both parties attended. The Respondent explained his personal circumstances and how the arrears or rent had arisen, including that he had suffered a serious illness that affected his immune system leaving him unable to work. The Respondent had indicated he was in arrears amounting to £2,000. The Respondent had had difficulties in relation to an application for benefits, he had retired and living on the basic state pension however had plans to improve his circumstances including repayment of his rent arrears. The Applicant did not know the level of arrears and stated he would have to check this with his letting agent. The proceedings were adjourned to another CMD to give the Respondent an opportunity to clear the arrears (via a loan from a family member) and the Applicant was reminded that if the Respondent cleared the arrears in advance of the next CMD then he should be in touch with the Tribunal administration to advise the application was to be withdrawn.

*Case Management Discussion 2*

3. The parties were notified by letter dated 26 November 2025 that the further CMD would take place by telephone conference call on 16 December 2025 at 10am and that they were required to participate. The CMD took place on 16 December 2025. The Applicant attended however the Respondent was not present or represented and the tribunal clerk was unable to reach the Respondent by telephone as the call was not answered. The Tribunal proceeded in absence of the Respondent as proper notice had been given. The Applicant stated he wanted an eviction order to be granted, the arrears were approximately £2,000 and £302 per month rent was being paid by benefits, leaving a shortfall regarding the £400 rent. The Applicant stated he was open to an arrangement if the monthly rent was paid and an additional sum to the arrears. The Applicant stated a lump sum payment of £2,000 to £3,000 had been paid since the previous CMD, then indicated if he obtained an eviction order it was his intention to re-let the Property. As the Respondent had previously indicated he had been seriously ill the Tribunal determined the proceedings be adjourned to another CMD indicating to the Applicant that it required an up-to-date rent statement showing payments made and a running total of arrears on the account in advance of the next CMD; also, that the adjournment would allow for the Respondent to attend on the next occasion to confirm his position and to confirm his eligibility for housing benefit/universal credit housing costs; lastly that parties should discuss whether a suitable payment arrangement could be entered into. The information/documentation required from the parties in advance of the next CMD was set down in the relative Note of the CMD and highlighted in the Outcome.

*Case Management Discussion 3*

4. The parties were notified by letter dated 29 January 2026 that a third CMD would take place by telephone conference call on 02 March 2026 at 2pm and that they were required to participate. The CMD took place on 02 March 2025. The Respondent attended however there was no attendance by or on behalf of the Applicant. The Respondent stated he had settled the arrears and his entitlement to state benefits had been adjusted to avoid further arrears arising,

and suggested this may be why the Applicant was not present. The Tribunal refused the application on the basis that the ground relied upon in the Notice to Leave was no longer established and the Applicant did not appear to be insisting upon the application.

*Applicant request for recall*

5. By email on 10 March 2026, the Applicant requested recall of the Tribunal's decision dated 02 March 2026 to refuse the application. In his email the Applicant made representations in relation to circumstances arising which suggested he missed the CMD on 02 March 2026 accidentally and his non-attendance was due to matters out of his control. On 27 April 2026, the Tribunal issued its determination and stated it would be in the interests of justice to grant the application for recall of its said decision.

*Case Management Discussion 4*

6. The parties were notified by letter dated 25 August 2026 that a fourth CMD would take place by telephone conference call on 15 October 2026 at 2pm and that they were required to participate. The CMD took place on 15 October 2026 and both parties attended.

**Summary of Discussion**

7. The Tribunal reminded the parties of the purpose of the CMD, noted that they were now at a fourth CMD in relation to the application and stated what matters the Tribunal had to be satisfied on in the event of any eviction order being granted. The Tribunal explained how it proposed to proceed, then confirmed with the parties that they understood, noting they had no questions before continuing.

8. The Tribunal referred the parties to the various CMD Notes amongst the case papers and summarised the parties' varying attendances at each and the relative outcomes before moving to consider what parties had or had not acted upon in terms of the matters highlighted to them by the Tribunal after each CMD, then the current position.

9. In response to the Tribunal, the Respondent stated he was still residing in the Property, and the Applicant acknowledged the proceedings were concerned with his application therefore it was for him to satisfy the Tribunal on the points mentioned in the introductory remarks.

10. The Respondent confirmed his position as stated to the Tribunal on the last occasion, on 02 March 2026: the arrears had been settled at that time and his benefits had been adjusted to meet the ongoing rent due by him. The Respondent stated he had been asked recently to complete a new benefits claim and had encountered the same issues as he had last year in dealings with the Department of Work and Pensions ("DWP"). Responding to the Tribunal, the Respondent stated he was asked to complete a new benefits claim form in August 2026 which he had done, but this was rejected due to an apparent error in the form he submitted, he had resubmitted the application and

the determination was not entitled to housing benefit. The Respondent stated he is 68 years old and in receipt of basic state pension, but was uncertain as to why DWP had reached the decision that he was no longer entitled to housing benefit. The Respondent stated he had had enough of trying to deal with DWP therefore he had gone out to find a job, at aged 68 years; he had just started that job at the beginning of the month which was with a company he previously worked for; he is their Sales and Marketing Manager for the Highlands of Scotland and expects to receive his first pay on the fourth or fifth of November 2026 when he will be in a position to pay his rent and get his current arrears cleared off. The Respondent went on to state a family member was selling their place and he would like to discuss with the Applicant about a potential purchase of the Property from him as he likes residing there. Responding to the Tribunal, the Respondent stated the current arrears had only arisen very recently when his benefits had stopped in August 2026, estimating these to be around £800 [equivalent of two months' rent] but reiterated he would be able to pay his rent and get the arrears cleared off once he receives payment in a few weeks from his new job.

11. The Applicant confirmed that he was in attendance at the CMD held on 24 September 2025 and heard the Respondent's explanation on how the arrears had arisen, he expected to obtain confirmation imminently about a loan of monies to pay his arrears and take matters forward regarding his entitlement to housing benefit. The Applicant confirmed he was in attendance at the CMD held on 16 December 2025 and he had received the resulting Note issued by the Tribunal which stated an updated rent statement was required in advance of the next CMD. The Applicant was unable to explain why he had not then lodged any updated rent statement stating his letting agent would have this. The Applicant was reminded he had heard already what matters the Tribunal had to be satisfied upon in relation to any grant of an eviction order. The Applicant stated he had not realised he was to provide an updated rent statement therefore he had not asked his letting agent for this. The Applicant confirmed he had missed the subsequent CMD on 02 March 2026. The Applicant confirmed he had received the relative Decision with Statement of Reasons which was to refuse the application as the arrears were said to have been settled thus the ground in the Notice to Leave was no longer valid. The Applicant confirmed he then lodged a comprehensive email explaining his personal circumstances in the run up to the CMD on 02 March 2026 (involving family members experiencing health matters) which contributed to him overlooking the date, and he sought recall of the Tribunal's decision. The Applicant confirmed his email dated 10 March 2026 stated: *"I wish to make it absolutely clear that my absence [at the CMD on 02 March 2026] was certainly not intended as any form of disregard for the Tribunal or its procedures. I have the utmost respect for the Tribunal process… I believe I have valid and important points to raise in relation to this matter and respectfully request the opportunity to present them accurately and properly before the Tribunal."*

12. The Tribunal invited the Applicant to present those points he wished to raise. The Applicant stated the Respondent is in arrears of around £2,200 and his letting agent Lanarkshire Lettings have had problems getting a hold of the Respondent to get access to the Property for checks, including a Gas Safety

check. The Tribunal invited the Applicant to explain his position further to the reasons stated in the Tribunal's decision on 02 March 2026 and to confirm whether or not the arrears on the rent account had been cleared at that date as the Respondent had stated at the time, and again today. The Applicant demonstrated reluctance to respond to the Tribunal and he was asked directly if the rent arrears had been cleared off in March 2026, or not. The Applicant replied by stating the arrears were currently around £2,200 and the benefits payments to the rent had stopped, making reference to a monthly benefits sum. The Applicant was pressed on a couple of occasions by both tribunal members regarding the position as at 02 March 2026 but he did not provide a response. When pressed by the Tribunal for an exact figure on the current arrears, he stated this was £2,230 and he knew this because his letting agent told him. The Applicant stated he had not seen an updated rent statement. In response to the Tribunal, the Applicant stated he did not have much contact with his letting agent but had been on the phone to them last week. Responding further to the Tribunal, the Applicant stated he had one other rental property located in Paisley; confirming that he had two rental properties in total and the house where he resides.

13. In response to the Tribunal, the Respondent stated he had received emails from someone named Fiona at the Applicant's letting agency but not about how much rent was due, rather a mention of a message from the Council. The Respondent stated he had received an email from the letting agent about his stopped housing benefit very recently, within the last four days or so. Responding to the Tribunal, the Respondent he stated it was very difficult to get anyone to provide advice and assistance regarding the forms. The Respondent further stated he had tried several times to call 'Fiona' and was told she would return his calls but she never did; also, that the payment figure mentioned by the Applicant was incorrect, he had been in receipt of £457 per month from DWP which was paid by them to the letting agent. In clarification to the Tribunal, the Respondent stated it was absolutely 100 per cent his position that: he had turned up at the CMD on 02 March 2026, and at that time the rent account was clear and the rent paid in full. Seeking clarification from the Applicant, the Tribunal indicated he did not appear to know if any rent was owing in March 2026 and he was invited again to answer its question: 'as a matter of fact, was there any rent owed in March 2026?'. The Applicant replied by stating housing benefit paid £362.40 rent. The Tribunal noted that the Applicant did not recall '.. important' information that the Tribunal required him to present to it regarding his application.

14. The Tribunal summarised the parties' positions insofar they had stated. It was the Applicant's position that an eviction order be granted however if the arrears - for a sum(s) stated to have arisen during an unspecified rental period - are cleared off and the ongoing rent maintained he is content for the Respondent to continue to reside in the Property. It was the Respondent's position that he had cleared the original arrears on or around 02 March 2026, that regular monthly payments were being made by DWP to the Applicant's letting agent however fresh arrears had arisen as a consequence of his housing benefit being stopped in August 2026, approximately two months ago, and that he now had a job and expects to pay the ongoing rent and clear off the recent sum of

arrears, and wants to continue to reside in the Property (going so far as to suggest he might want to discuss a purchase of the Property in conjunction with a family member). The parties agreed with the summarised positions and the CMD was adjourned to allow the Tribunal to consider the papers and oral submissions. Parties were requested to re-join the call after a stated period.

15. The Tribunal re-convened. The tribunal clerk confirmed the Applicant had re-joined the call however the Respondent had dropped off the call shortly before the adjournment and had not re-joined. The CMD was paused to allow additional time for the Respondent to re-join, after which time, the clerk made efforts to call the Respondent however the number was not answered. The Applicant was advised that in the circumstances the Tribunal would issue its written decision and this would be sent to both parties. The Tribunal thanked the Applicant for his attendance and made closing remarks.

**Findings in Fact**

1. The Applicant is the owner and registered landlord of the Property. The Property is a one bedroomed flat.

2. The Respondent is the tenant of the Property in terms of a private residential tenancy agreement which commenced on 01 July 2020.

3. The initial calendar monthly rental was £325. The rent was increased to £400 in terms of a Rent Increase Notice issued to the Respondent, effective 01 December 2022. The Respondent is due to pay ongoing rent of £400 per calendar month.

4. The Respondent had been in arrears of rent since 01 June 2024.

5. The Applicant's letting agent served a Notice to Leave dated 03 October 2024 on the Respondent, by email on even date. At 03 October 2024 the arrears of rent were £2,000; and at 02 February 2025 the arrears were £3,200, both sums evidenced by the rent statement produced with the application.

6. Sometime between 24 September 2025 and 16 December 2025, the Respondent made a lump sum payment to the rent account, said by the Applicant on 16 December 2025 (in absence of the Respondent) to have been in the sum £2000 to £3,000. During this same period, the Respondent had become entitled to housing benefit which was in payment by the DWP to the Applicant's letting agent.

7. On 16 December 2025, the Applicant was informed by the Tribunal that it required an up-to-date rent statement showing payments made and a running total of arrears on the account and that he was to produce this in advance of the next CMD. No updated rent statement was produced by the Applicant.

8. On 02 March 2026, the Tribunal determined to refuse the application for an eviction order on the basis that the ground relied on in the Notice to Leave was no longer established and the Applicant apparently was no longer insisting on

the application. On 27 April 2026, the Tribunal granted a request for recall made by the Applicant on 10 March 2026 to allow him, in the interests of justice, to put forward his position before the Tribunal at a fourth CMD.

9. The rent account is said by the Respondent to have been clear on or around 02 March 2026 and housing benefit payments being made by DWP regarding the ongoing rent due by the Respondent. The Applicant has produced no documentation to contradict that position. The Applicant did not state a contradictory position in oral submission to the Tribunal today.

10. No updated rent statement has been produced by the Applicant since the application was lodged on 02 February 2025 to date.

11. Since at least 16 December 2025 until a date in August 2026, the Respondent was in receipt of benefits, including housing benefit that was paid by DWP to the Applicant's letting agent.

12. There are fresh arrears of rent currently due by the Respondent to the Applicant in the sum of at least £800. Those fresh arrears are stated to have arisen as a consequence of the Respondent's housing benefits being stopped during August 2026.

13. The Respondent is 68 years old, he is in receipt of his state pension, and resides at the Property alone.

14. The Respondent has resided at the Property from the commencement of the tenancy arrangement and is still in occupation of the Property.

15. The Applicant owns one other rental property located in Paisley.

**Reasons for Decision**

16. The application was submitted with a copy signed Private Residential Tenancy agreement. The Respondent has resided at the Property since 01 July 2020.

17. The application was also submitted with a Notice to Leave dated 03 October 2024, together with a copy email to the Respondent which establishes that the Notice was served on the Respondent on that date. The Notice states that an application to the Tribunal is to be made on ground 12 (rent arrears over three consecutive months). The application to the Tribunal was made after expiry of the notice period.

18. The Tribunal is satisfied that as at 24 September 2025, the Applicant had complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is satisfied that as at 24 September 2025, the Applicant had complied with Section 56 of the 2016 Act.

19. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application

by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

20. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order." Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.

21. After several adjournments in the proceedings, the Tribunal considered whether or not the ground referred to in the Notice to Leave was still established today.

    (1) The Respondent maintained his position that the arrears had been cleared on or around 02 March 2026 and that housing benefit monies were being paid to the ongoing rent. The Applicant did not challenge this position by the production of an updated rent statement demonstrating a contrary position nor in his oral submissions before the Tribunal at this fourth CMD. Despite being asked by the Tribunal several times, by each member, to state the position at 02 March 2026 the Applicant offered no contradictory position to that stated by the Respondent. Having considered the papers before it and having weighed the oral submissions of the parties, the Tribunal accepted the Respondent's submission. The Tribunal considered that the Applicant did not demonstrate a desire "to present … accurately and properly before the Tribunal" the 'valid and important points' he had stated on 10 March 2026 that he wished to raise when seeking recall of the Tribunal's decision on 02 March 2026. On balance, the Tribunal concluded the initial arrears of rent that brought about the application had been cleared on or around March 2026, therefore the ground being relied upon in the Notice to Leave was no longer established.

    (2) The Tribunal is satisfied that in the absence of any updated rent statement or statement by the Applicant to contradict the Respondent's position on when his housing benefit stopped, there are arrears due by the Respondent to the Applicant however these have arisen during the past two months, thus the Respondent may be regarded as being in arrears of rent for approximately two consecutive months.

For the reasons referred to in paragraphs (1) and (2) above, the Tribunal is not satisfied that Ground 12 is still established.

22. The Tribunal also considered the following points:

(a) By reference to the CMD Note dated 24 September 2025, the Applicant did not know the level of arrears and stated he would have to check this with his letting agent. The Respondent stated the level of arrears told to him by the Applicant's letting agent, indicated he intended to obtain a loan to make a payment to the arrears and would organise his claim for benefits. The Respondent followed up on what he stated. Sometime between 24 September 2025 and 16 December 2025, the Respondent made a lump sum payment to the rent account and had become entitled to housing benefits.

(b) By reference to the CMD Note dated 16 December 2025: the Applicant confirmed the Respondent had made a lump sum payment of £2,000 to £3,000 and housing benefit was in payment regarding the rent, albeit leaving a shortfall. Despite being told he was required to produce an updated rent statement the Applicant failed to do so. No updated rent statement has been produced by the Applicant since his application on 02 February 2025.

(c) Although the Respondent was not present at the CMD on 16 December 2025, in terms of the Tribunal's resulting Note, the Respondent attended the next CMD as the Tribunal had stated he should so do, and at the CMD on 02 March 2026 the housing benefit in payment was said to have been adjusted to ensure no further arrears would occur with payments being made by DWP to the Applicant's letting agent; that said by the Respondent to have endured until August 2026 when his benefits stopped. The Applicant did not attend on 02 March 2026; he made an application for recall of the decision; recall was granted on 27 April 2026 to allow him an opportunity to put his points to the Tribunal. The Applicant did not produce any information to the Tribunal about the position at 02 March 2026.

(d) The Respondent is 68 years old, he is in receipt of his state pension, and resides at the Property alone. The Respondent has resided at the Property from the commencement of the tenancy arrangement and is still in occupation of the Property.

(e) The Applicant stated he owns two rental properties, one in Paisley and the Property. The Applicant employs a letting agent to manage the Property. The Applicant stated in oral submission to the Tribunal on each occasion he attended a CMD that his letting agent held pertinent information that he did not know, yet there is an apparent reluctance on his part to obtain necessary information/documentation from his letting agent in order to present the information or evidence properly and accurately before the Tribunal, or to allow the letting agent to represent him in the proceedings in order to do so.

The Tribunal concludes that in terms of the requirements of the 2016 Act, Ground 12 is no longer established. Consequently, the application for eviction is refused.

**Decision**

The Tribunal determines that the necessary ground is no longer established, therefore, the application for eviction order is refused.

**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.**

Elaine Paton

**Elaine Paton, Legal Member** **15 October 2026**