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/25/5218

Re: Property at Flat 6 Granary House, Granary Street, Burghead, IV30 5UA ("the Property")

Parties:

Mr Nathaniel Turner, 17 Quarry Road, Fintry, Glasgow, G63 0XD ("the Applicant")

Mr David King, Flat 6 Granary House, Granary Street, Burghead, IV30 5UA ("the Respondent")

Tribunal Members:

Elaine Paton (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

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.

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, section 11 notice and evidence regarding compliance with the rent arrears pre-action protocol were lodged with the application.

2. The case was conjoined with case FTS/HPC/CV/25/5219 (an application for payment order).

3. A copy of the application was served on the Respondent by Sheriff Officers on 12 May 2026. The parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 16 June 2026 at 10am and that they were required to participate. The Respondent was given

an opportunity to submit written representation in response to the application by 02 June 2026 but did not do so by that date. On 08 June 2026 an updated rent statement was received in advance of the CMD which did not comply with the requirements of Rule 14A of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 and a Direction was issued to parties in advance of the CMD in relation to the updated sum sought and potential postponement or adjournment of the scheduled CMD.

4. The CMD took place on 16 June 2026. The Applicant was not present but was represented by Mrs Rebecca Nicolson from the Applicant's letting agent Cluny Estate Agents, 5 Thunderton Place, Elgin, Moray, IV30 1BG ("Cluny"). The Respondent attended and represented himself. The tribunal produced a Note of the CMD which was issued to parties on 19 June 2026. The CMD in both Applications were adjourned to a further CMD.

5. By letter dated 27 August 2026, parties were notified that the further CMD would take place by teleconference call on 29 October 2026 at 10am and they were required to participate. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they did not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. There was no representation(s) received from the Respondent in advance of the new CMD.

6. On 29 October 2026, the Tribunal had the following documents before it:-

   (1) Form E application and supporting documents: (i) private residential tenancy agreement; (ii) letters in compliance with the pre-action protocol; (iii) rent statement; (iv) Notice to Leave with evidence of service; (v) Section 11 Notice with accompanying email to the local authority; (vi) authority by the Applicant company in favour of Cluny;

   (2) updated rent statement at 08 June 2026;

   (3) Direction to the Parties dated 12 June 2026;

   (4) CMD Note dated 16 June 2026;

   (5) updated rent statement at 13 October 2026 with copy email of even date sent by Cluny to the Respondent enclosing the rent statement.

7. The CMD took place by telephone conference call on 29 October 2026. The start time was delayed briefly to allow the Respondent an opportunity to attend in the event they may have been making efforts to dial into the teleconference call. The Applicant was represented by his letting agent Mrs Rebecca Nicolson of Cluny. The Respondent did not participate. For the

avoidance of doubt the following constitutes a summary of the key elements of the discussion and is not a verbatim account of the proceedings.

Summary of Discussion

8. The Legal Member made introductory comments, provided a reminder that the purpose of the CMD was to establish what information was agreed between the parties, what issues remained in dispute and whether or not a resolution could be reached, a determination made or if further procedure was required. The Tribunal explained it would explore whether the payments discussed at the earlier CMD had been made and hear from Mrs Nicolson in relation to that, and the current position.

9. In response to the Tribunal, Mrs Nicolson, for the Applicant, stated that she had not heard anything from the Respondent to suggest he would not attend the CMD. The Tribunal referred Mrs Nicolson to the CMD Note dated 16 June 2026 and further, to an updated rent statement lodged by her timeously on 13 October 2026 which had been sent by email to the Respondent on the same day. Responding to the Tribunal, Mrs Nicolson stated the rental sum entry at 27 September 2026 on the statement reflected a partial month's rent and was the sum applicable at the date of the statement on 13 October 2026. Mrs Nicolson stated the balance on the rent account is £4,131.71 to date and the Respondent had not made the payments he referred to at the CMD on 16 June 2026 therefore the Applicant was seeking an eviction order.

10. The Tribunal noted at paragraphs 11 and 15 of the CMD Note dated 16 June 2026 that the Respondent had stated a proposal to clear all arrears by the end of July 2026. He had indicated he had spoken to Mrs Nicolson a couple of weeks beforehand when he told her he would be able to pay £1,150 per month from his salary of £53,000 per annum as the skipper of a dredger however he had spoken to his boss the previous day and was told he would get a transfer of £3,800 on 20 July 2026 regarding a trial period prior to his contract starting, which he intended to put straight towards his arrears then meet the rest from his salary, and he was able to maintain ongoing rent payments of £575 per month.

11. Mrs Nicolson stated that despite her efforts to engage the Respondent in relation to his arrears payments as stated to the Tribunal, the Respondent indicated several times to her that payment(s) would be made then no payment was forthcoming. Mrs Nicolson explained that during his message exchanges with her, the Respondent indicated he had arranged a meeting with the Citizens Advice Bureau for 21 August 2026; he was employed now full time as a taxi driver as at 08 September 2026, and able to make weekly payments of £250, then made two payments of £250 on 11 September 2026 and 18 September 2026 respectively. No further payments were made to the rent account. Mrs Nicolson stated that on 26 October 2026 the Respondent messaged her to say he was now signed off work, he would be cleaning the flat and leaving by the end of the week, presumed to be Friday 30 October 2026. In response to the Tribunal, Mrs Nicolson stated she did not believe the

Respondent was in receipt of any benefits as he had alluded to any claim taking too long, therefore he was moving out of the Property.

Findings in Fact

12. The Applicant is the owner and the registered landlord of the Property.

13. The Respondent is the tenant of the Property in terms of a private residential tenancy agreement which commenced on 27 September 2024.

14. The calendar monthly rental in terms of the tenancy agreement is £575. There have been no rent increases therefore the Respondent is due to pay the ongoing rent of £575 per calendar month until termination of the tenancy.

15. The Respondent has been in arrears of rent generally since on or around 27 November 2024 with payments made late or sporadically after months of non-payment. The rent account was last clear for a period of approximately 10 days following a payment on or around 18 July 2025. The last payment into the Respondent's rent account was received on or around or around 18 September 2026 in the sum £250.

16. The balance on the rent account is said presently to be £4,131.71. The Respondent owed £2,025 when the Notice to Leave was served on 29 October 2025, £2,600 on 03 December 2025 when the present application was lodged, and £3,821.37 as at 13 October 2026 in terms of an updated statement emailed to the Respondent and to the Tribunal on that date.

17. The Applicant's letting agent Cluny is said to have made continuing efforts to engage the Respondent by WhatsApp messages in relation to their proposal for settlement of the rent arrears after the CMD on 16 June 2026.

18. The Respondent has failed to make the payments he stated to the Tribunal on 16 June 2026 that he proposed to make. The balance of unpaid rent arrears has increased since that date.

19. The Respondent resided in the Property when the tenancy commenced and is still believed to be residing in the Property to date.

Reasons for Decision

20. The application was submitted with a copy signed Private Residential Tenancy agreement. The Respondent has resided at the Property since 27 September 2024.

21. The application was also submitted with a Notice to Leave dated 29 October 2025, 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).

22. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has 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 therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

23. 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."

24. 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.

25. The Tribunal accepted the unchallenged evidence lodged on behalf of the Applicant in the form of the documents submitted, the submissions of the Respondent and the Applicant's letting agent Mrs Nicolson of Cluny at the CMD on 16 June 2026 as recorded in the Tribunal's relative Note issued to the parties, and the unchallenged information provided in oral submission by Mrs Nicolson, for the Applicant, at the further CMD today. The Tribunal is satisfied that the balance on the Respondent's rent account is £3,821.37 representing unpaid rent to 13 October 2026, the Respondent is aware of that sum, and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave, at the CMD on 16 June 2026 and today's further CMD. Ground 12 is therefore established.

26. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

    (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant's letting agent provided copies of email correspondences issued to the Respondent in compliance with

the protocol.

(b) The Tribunal is also satisfied that following upon the Respondent's position put to the Tribunal at the CMD on 16 June 2026, there is no evidence to contradict the Applicant's representative's belief that the Respondent is not presently in receipt of benefits, thus that the arrears may be attributable to a delay or failure in the payment of a relevant benefit.

(c) The Respondent did not participate in the CMD today or notify the Tribunal if the application was opposed.

(d) The arrears are increasing. The Respondent did not follow through on the payments he proposed to make when he attended the CMD on 16 June 2026.

(e) The Respondent has failed to engage meaningfully with the Applicant's letting agent in order to address his arrears. The Respondent provide no written explanation to the Tribunal regarding any change in his circumstances and did not attend the further CMD.

(f) The Tribunal noted that the Respondent is believed to be 41 years old; he is said to have two children aged 6 and 14 whose permanent residence is not at the Property. The Respondent is said to have health issues which is not disputed on behalf of the Applicant.

(g) The Tribunal noted the Applicant is aged in his 20s, the Property is the only property he owns and he is reliant upon the income as he resides in rented accommodation elsewhere where he is employed in hospitality.

The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 12 has been established. For the reasons outlined in paragraph 26, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

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.

Elaine Paton

Elaine Paton, Legal Member/Chair **29 October 2026**