

**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/24/3148

**Re: Property at 13E Glenhove Road, Cumbernauld, Glasgow, G67 2LG (“the
Property”)**

Parties:

Mrs Moira Rankin, 2 Glenview, Kirkintilloch, G66 1PG (“the Applicant”)

**Mr Krystion Krzysztof, Miss Karolina Siewlerska, 13E Glenhove Road,
Cumbernauld, Glasgow, G67 2LG (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met in this case and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1 This is an application for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 51 of the 2016 Act. The Applicant relied upon ground 12 as the ground for possession, citing unpaid rent.
- 2 The application was referred to a case management discussion (“CMD”) to take place on 7 May 2025 by teleconference. The Tribunal gave notification of the CMD to the parties in terms of Rule 17(2) of the Rules. Said notification was served upon the Respondents by sheriff officers on 13 March 2025.

- 3 Both parties were invited to make written submissions in advance of the CMD. No written submissions were received from any party.

The CMD

- 4 The CMD took place on 7 May 2025 at 10am by teleconference. Mrs Donna Cramb of K Property represented the Applicant. The Respondents did not join the call. The Tribunal delayed commencing the CMD before determining to proceed in their absence.
- 5 The Tribunal had the following documents before it:-
- (i) Title sheet DMB42353 confirming the Applicant as the registered owner of the property;
 - (ii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iii) Form E application form;
 - (iv) Written mandate from the Applicant authorising K Property to represent her in the Tribunal proceedings;
 - (v) Private residential tenancy agreement signed by the parties dated 18 November 2018;
 - (vi) Notice to leave dated 31 May 2024 and proof of sending to the Respondents by email of that same date;
 - (vii) Section 11 notice to North Lanarkshire Council and proof of sending by recorded delivery mail;
 - (viii) Rent statement;
 - (ix) Copy letters from K Property to the Respondents in compliance with the rent arrears pre-action protocol; and
 - (x) Statement from the Applicant regarding her circumstances.
- 6 The Tribunal explained the purpose of the CMD and the legal test to be applied under ground 12. The Tribunal invited Mrs Cramb to make submissions on the application. For the avoidance of doubt the following is a summary of the key elements relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the proceedings.
- 7 Mrs Cramb confirmed that no payments had been made to the rent account since March 2023. She understood that the second Respondent was no longer residing in the property, having left due to domestic violence around the time the rent payments stopped. The situation had deteriorated following the second Respondent's departure. The arrears were now £12,600. Miss Cramb confirmed that there had been previous discussions with the first Respondent but he had since ceased all communication, despite ongoing attempts by K Property to contact him on a weekly basis. The last communication from the first Respondent had been in August 2023, stating that he was trying to organise universal credit. However, Miss Cramb had investigated this and had found no claim was pending. Miss Cramb believed the first Respondent had been working at some point. It appeared there were other adult male occupants in the property, with people coming and going, according to reports from neighbours. There were no children residing there.

- 8 Miss Cramb confirmed that the property had been the Applicant's former home. She had been unable to sell it when she moved into her current home due to the market downturn and had to rent it out. She had no other rental properties. She was struggling to pay her own mortgage as well as the mortgage over the let property. She was in severe financial difficulty and the situation was affecting her health. The Applicant had delayed raising eviction proceedings to give the Respondents many opportunities to make payment. However, she had finally had enough. She now intended on selling the property to mitigate her losses. She therefore sought an eviction order.
- 9 The Tribunal adjourned the CMD to deliberate, at which point Mrs Cramb left the call, before resuming the CMD and confirming the outcome.

Relevant legislation

- 10 The Tribunal considered the following provisions of the 2016 Act:-

Private Housing (Tenancies) (Scotland) Act 2016

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

12 Rent arrears

“12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(3) The First-tier Tribunal may find that the ground named by 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.

(4) 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 Ministers in regulations.*
- (5) For the purposes of this paragraph—*
 - (a) references to a relevant benefit are to—*
 - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
 - (ii) a payment on account awarded under regulation 91 of those Regulations,*
 - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*
 - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*
 - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*
- (6) Regulations under sub-paragraph (4)(b) may make provision about—*
 - (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*
 - (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*
 - (c) such other matters as the Scottish Ministers consider appropriate.”*

Findings in Fact

- 13.** The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 14.** The Applicant and Respondents entered into a tenancy agreement in respect of the property, which commenced on 19 November 2018.
- 15.** The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 16.** In terms of Clause 8 of the said tenancy agreement the Respondents undertook to make payment of rent at the rate of £350 per calendar month.

17. The Respondents last paid rent to the Applicant on 15 March 2023. The Respondents have made no further payments to the rent account since that date.
18. On 31 May 2024 the Applicant's representative, K Property, gave the Respondents a notice to leave citing ground 12 of schedule 3 of the 2016 Act. The notice to leave stated that proceedings for possession would not commence any earlier than 1 July 2024. The notice to leave was delivered to the Respondents by email.
19. The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
20. In terms of Clause 4 of the said tenancy agreement, the Respondents consented to the delivery of notices by email.
21. At the time the notice to leave was sent to the Respondents rent arrears in the sum of £8750 were outstanding.
22. On 10 July 2024 the Applicant's representative sent a notice to North Lanarkshire Council under section 11 of the Homelessness etc (Scotland) Act 2003 intimating that proceedings would be raised against the Respondents for recovery of the property. The notice was sent by recorded delivery mail.
23. As at the date of this decision arrears in the sum of £12,600 are outstanding.
24. The Applicant's representative has corresponded with the Respondents to remind them of their rental obligations and offering to enter into a payment plan. The Applicant's representative has given the Respondents information regarding the arrears and has directed them to agencies for advice and support.
25. The Applicant has a mortgage over the property as well as insurance and factoring costs. The Applicant also has a mortgage over her own home.
26. The rent arrears have caused the Applicant significant financial difficulties. The Applicant now requires to sell the property to mitigate her financial loss.
27. The stress of the ongoing rent arrears has had a negative impact on the Applicant's health.
28. The second Respondent is no longer residing at the property. The first Respondent is the sole known occupant of the property. It appears that the first Respondent has allowed other adults to occupy the property without the consent of the Applicant.
29. There are no children residing at the property.

30. The Applicant's representative has had no contact from the first Respondent since August 2023.
31. The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit. The first Respondent previously advised the Applicant's representative that he was applying for universal credit. The Applicant's representative has been unable to obtain any evidence of a claim.

Reasons for Decision

32. The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondents had been given the opportunity to make written representations and attend the CMD but had chosen not to do so. There was therefore nothing before the Tribunal to contradict the evidence submitted by the Applicant, which the Tribunal accepted as fact.
33. Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondents had been given a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003 of her intention to recover possession of the property. The Tribunal therefore considered whether ground 12 of schedule 3 of the 2016 Act had been met in this case.
34. The Tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from Miss Cramb at the CMD, that the rent account had been in arrears for three or more consecutive months. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case.
35. The Tribunal gave significant weight to the level of rent arrears, which were excessive against a rent of £350 per month. The Respondents had failed to pay any rent for over two years. They had provided the Tribunal with no reasonable explanation as to why this was the case, and there was no evidence that the arrears were due to a failure or delay in the payment of a relevant benefit. The Tribunal therefore concluded that it could apply significant weight to the history of the arrears in this case. The Tribunal also took into account the Applicant's compliance with the rent arrears pre-action protocol, as evidenced by the correspondence produced from the Applicant's representative and the submissions from Mrs Cramb at the CMD regarding her attempts at contact.

36. The Tribunal also gave great weight to the impact of the rent arrears on the Applicant, who had clearly suffered financially when faced with mortgage payments and associated property costs. The Tribunal accepted that the stress of the situation had affected her health and she was struggling to meet her own financial obligations, which had led to her decision to sell the property.
37. The Tribunal carefully considered the Respondents' circumstances. The information the Tribunal had in this regard was limited to the submissions from Mrs Cramb at the CMD as the Respondents had chosen not to participate in the proceedings. However, the Tribunal found Mrs Cramb's submissions to be clear and straightforward. She clearly had extensive knowledge of the circumstances of this case and the Tribunal therefore accepted her submissions as fact.
38. The Tribunal therefore accepted that the second Respondent was no longer residing at the property. The Tribunal also accepted that there were no children residing at the property who would be at risk of homelessness. The first Respondent's conduct of the tenancy, as outlined by Mrs Cramb, was a cause for concern, with reports of unknown persons staying at the property on an intermittent basis. It was clear that he was no longer willing to engage with the Applicant's representative, and he showed no intention to address the situation which continued to cause significant stress to the Applicant. Accordingly, the Tribunal considered it could give most weight to the level of rent arrears in this case and the impact they were having on the Applicant.
39. Taking the above into account as factors relevant to the issue of reasonableness, the Tribunal concluded that ground 12 had been met. The Tribunal therefore made an eviction order.
40. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

7 May 2025

Legal Member

Date