

**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/24/4391**

**Re: Property at 53 High Street, Gatehouse of Fleet, Castle Douglas, DG7 2HR  
("the Property")**

**Parties:**

**Mr James Watson and Mrs Jodie Watson, 10 Susan Court, Keilor, East Melbourne 3033, Victoria, Australia, 3033, Australia; 10 Susan Court,, Keilor, East Melbourne 3033, Victoria, Australia, 3033, Australia ("the Applicants")**

**Mr James Corson, 53 High Street, Gatehouse of Fleet, Castle Douglas, DG7 2HP ("the Respondent")**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent for possession of the Property at 53 High Street, Gatehouse of Fleet under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 18 September 2024, the Applicants' solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) ("the

Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a Notice to Leave dated 12 August 2024 with a Recorded Delivery proof of postage, a rent statement and an email dated 18 September 2024 addressed to Dumfries and Galloway Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Applicants’ solicitor explained the Applicants did not have a copy of the tenancy agreement with the Respondent but submitted the tenancy had commenced in January 2019 and a copy given to the Respondent.
3. On 22 November 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 6 March 2025 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 29 March 2025. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 20 May 2025. This paperwork was served on the Respondent by Ellie McConnachie, Sheriff Officer, Edinburgh on 13 March 2025 and the Execution of Service was received by the Tribunal administration.
5. On 24 April 2025 the Respondent emailed the Tribunal to be advised he had been allocated housing by Dumfries and Galloway Council and would vacate the Property on 18 May 2025.
6. On 6 May 2025 the Applicants’ solicitor forwarded an up to date rent statement to 28 February 2025 showing arrears of £25 200 together with emails between the parties from 18 January 2019 – 29 September 2023, letters from the Applicants to the Respondent dated January 2020, 18 December 2022 and 29 September 2023 and a Whats App message from the Respondent to the James Watson dated 24 April 2025.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 20 May 2025 by way of teleconference. Mrs Di Carlo from Messrs Harper McLeod, Solicitors appeared for the Applicants. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it the Notice to Leave dated 12 August 2024 with Recorded Delivery proof of postage, the email dated 18 September 2024

addressed to Dumfries and Galloway Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003, the rent statement to 6 May 2025 showing arrears of £25 200, emails between the parties from 18 January 2019 – 29 September 2023, the letters from the Applicants to the Respondent dated January 2020, 18 December 2022 and 29 September 2023 and the Whats App message from the Respondent to the James Watson dated 24 April 2025. The Tribunal considered these documents.

9. Mrs Di Carlo moved the Tribunal to grant an eviction order. Parties had entered into a PRT in about January 2019. The Respondent had accrued arrears of £25 200 as shown in the rent statement. She submitted that the Respondent was due to leave the Property the day before but that had not happened. She believed that the delay was probably more of a formality regarding the Respondent getting the keys to his new property. Mrs Di Carlo understood the Respondent was due to move out imminently.

10. With regard to reasonableness, she submitted that her clients, who lived in Australia had tried to do the best they could to manage the arrears as shown by the email correspondence lodged. However, no payment had been made. The arrears were excessive. Mrs Di Carlo did not believe there were any issues with benefits. She understood the Respondent was a single man and lived in the Property on his own. The Property had not been adapted and she was not aware of any disability.

### **Reasons for Decision**

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -

- Private Housing (Tenancies) (Scotland) Act 2016
- The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12(rent arrears).

13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

14. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

15. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expects to become entitled to make an application for an eviction order namely 12 September 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was sent to the Respondent on 12 August 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
16. The Tribunal considered the Respondent's arrears were increasing, and no payment had been made since March 2020. The Tribunal found that the Applicants had established a case under Ground 12. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
17. The Tribunal noted the emails and letters from the Applicants. The Respondent had not made any attempt to pay ongoing rent or clear the arrears. The Tribunal gave weight to the submissions that the Respondent's arrears were increasing. The arrears were substantial with no payment being made for over 5 years. The Tribunal gave great weight to the fact the Respondent had advised the Applicants and the Tribunal that he was getting rehoused by the local Council. The Tribunal accepted Mrs Di Carlo's submission they the Respondent would be rehoused imminently. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dumfries and Galloway Council had been served. The Tribunal was satisfied on the basis of the documents lodged, including the email from the Respondent dated 24 April 2025, together with submissions made by Mrs Di Carlo, that the balance of reasonableness in this case weighted towards the Applicants.
18. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

19. The Tribunal granted an Order of eviction. 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.



Legal Member

21 May 2025

Date