

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/24/4628

Re: Property at Flat 2, 106 Argyll Street, Dunoon, PA23 7NE (“the Property”)

Parties:

Lynn O'Hare, Allan O'Hare, 1 Ollach, Erskine, PA8 7EU (“the Applicants”)

Michael Campbell, Cot House Caravan Park, Sandbank Road, Kilmun, Dunoon, PA23 8QS (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 1 May 2020.
2. The application was undated and lodged with the Tribunal on 4 October 2024. The application relied upon a Notice to Leave dated 24 May 2024 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by recorded delivery post (in terms of the Tenancy Agreement) on that date. The Notice relied upon Grounds 10, 11 and 12 of Schedule 3 Part 1 of the 2016 Act, all as detailed further below. The Notice intimated that an application to the Tribunal would not be made before 26 June 2024.

3. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Argyll & Bute Council on 25 September 2024 was provided with the application. There was evidence in the application papers of compliance with provision of the pre-action protocol information in standard form on behalf of the Applicants to the Respondent by letters on 31 January, 16 February, 21 March, and 16 April 2024.

The Hearing

4. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 12 May 2025 at 10:00. We were addressed by David Phinn, solicitor (associate), Miller Samuel Hill Brown LLP on behalf of the Applicants. There was no appearance from the Respondent.
5. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicants’ agent said that no communication had been received from the Respondent since prior to the start of the year. He said that there had been contact with the Respondent regarding access for inspections, and the Respondent had replied by email exerting that he remained a tenant and did not consent to access. Nonetheless, access was taken in January 2025 and this resulted in further information about the condition of the Property which was communicated to the Tribunal (reviewed below). The first named Applicant had been told by neighbours of the Property that the Respondent “comes and goes” at the Property. No payment towards rent had been received since July 2023 however (which was relied upon both in regard to this application and a conjoined case on rent arrears: CV/24/4630).
6. We noted that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal, served at a new address for him at a caravan park. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
7. We sought oral submissions on specific matters but noted that the Applicants’ agent principally relied on the terms of the application and supporting papers, which include a rent statement to October 2024 and numerous photographs. We noted the following points from the application papers:
Ground 12
 - a. As at the date of application the Respondent was in rent arrears for 16 consecutive months (totalling £6,800). (The Applicants’ agent confirmed at the CMD that he was now in arrears for 23 consecutive months totalling £9,775.)
 - b. The monthly rent for the property is £425 to be paid on the first of every month. (The Tenancy Agreement incorrectly narrated the rent is £600 per month but the rent was set between the parties at £425 per month per agreement.)
 - c. The Respondent made generally regular payment of the rent until July 2023. The last rent payment was on 29 June 2023, and covered the rent

due up to 31 July 2023. The Respondent has not made or attempted to make payment of rent since and has missed rental payments from 1 August 2023.

- d. The Applicants have issued demands for payment and pre-action protocol letters on various dates prior to issuing the Notice to Leave, being on 31 January 2024, 16 February 2024, 21 March 2024 and 16 April 2024.

Ground 10

- e. The Respondent was no longer occupying the Property. The Applicants had been informed that, since July 2023, the Respondent had been living at Cot House Caravan Park, Sandbank Road, Kilmun, Dunoon, PA23 8QS where he was understood to be a site handyman/joiner. (This was known by the Applicants to be the Respondent's occupation.)
- f. The Applicants had been informed that the Respondent was simply using the Property as a store for his belongings and all information from their investigations conformed with this.
- g. For example, the first named Applicant had been informed by contacts of hers, who have the Respondent as a friend on Facebook, that he had posted photographs from his "home" which was the Caravan Park.
- h. Further, the Applicants had been made aware that no gas had been on at the property since July 2023 as they had employed workers to undertake building work at the Property and they had informed the Applicants that no gas had been on at the Property (and that they believed the Respondent had not been living at the Property). Upon an electricity reading completed in the Property in November 2023, the account was in debt by £55.41 and this had increased to £81.60 upon inspection in January 2024. During one of the inspections of the property, the Applicants topped up the Gas and Electricity cards in order to put the heating on to avoid any damage to the Property caused by dampness or frozen pipes.
- i. In an email to the Tribunal of January 2025, the Applicants' agent stated that access had just been taken for the annual gas engineer inspection during w/c 13 January 2025 but the test could not be completed as there remained significant arrears on the gas and electricity meters, so there had been no heat in the Property for some time. The Applicants were informed that this lack of heat had caused considerable damp which was damaging the Property.

Ground 11

- j. The Respondent was in breach of multiple terms of the Tenancy due to the condition of the Property and unauthorised work carried out by the Respondent.
- k. With reference to Clause 16 of the Tenancy Agreement, the Respondent had not informed the Applicants (or their agents) before making alterations to the Property including: fixing of CCTV cameras to the Property; removal of a boundary fence; drilling holes through the kitchen/bedroom wall, PVC windows, and two bedroom ceilings (photographs illustrating this showed cabling led through these holes); cutting a louvre door in half to make space for the Respondent's own appliances; cutting a chunk of the bottom of the rear bedroom door; and cutting (but apparently, from the photographs, re-laying) a carpet in the front bedroom.
- l. With reference to Clause 16e, the Respondent has failed to use the appropriate level of heating at the Property, leading to dampness.

- m. With reference to Clause 17, the Respondent has not paid for utilities at the Property as reviewed above.
 - n. With reference to Clause 19, the Respondent has on multiple occasions been absent from the Property in excess of 14 days and has not informed the Applicants, nor taken appropriate measures to prevent frost or flood damage (as he has not heated the Property).
 - o. With reference to Clause 34, the Respondent has not kept the Property in good repair and condition both for the above reasons and as he has not maintained the garden in a reasonable manner, instead using the grounds for storing large amounts of rubbish, building materials and wood, which may be a fire safety risk.
 - p. With reference to Clause 37, when the Respondent has been absent from the Property he has not arranged for inspection by a competent person nor has he notified the Applicants of said competent person and provided their name, address and phone number.
8. The Applicants' agent provided further oral submissions on the background in regard to the reasonableness of the application:
- a. The Property was a two-bedroom flat and it was not believed to be specially adapted for the use of the Respondent, nor especially suitable for his needs.
 - b. The Applicants believed the Respondent to remain in employment, at the caravan park. (No information was provided to the Tribunal to suggest that the Respondent had ever sought or received benefits.)
 - c. The Applicants were concerned about continued deterioration in the condition of the Property the longer it took for them to regain possession.
 - d. The Property was mortgaged and the long period without rental income was causing a financial pressure on the Applicants.
9. No motion was made for expenses.

Findings in Fact

10. In an undated lease, the Applicants let the Property as a Private Residential Tenancy to the Respondent with commencement on 1 May 2020 ("the Tenancy").
11. In terms of clause 9 of the Tenancy Agreement, the Respondent required to pay rent of £600 a month in advance on the 1st day of each month, but by agreement between the parties, the passing rent was revised to £425 a month payable on the same day of the month.
12. In terms of clause 16 of the Tenancy Agreement, the Respondent was obliged to obtain written permission from the Applicants prior to doing any of the following:
- a. applying adhesive materials, or inserting nails or hooks in walls or ceilings other than two small picture hooks per wall;
 - b. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Property;
 - c. removing or adding walls, or performing any structural alterations;
 - d. installing a waterbed(s);

- e. changing the amount of heat or power normally used on the Property as well as installing additional electrical wiring or heating units;
 - f. placing or exposing or allowing to be placed or exposed anywhere inside or outside the Property any placard, notice or sign for advertising or any other purpose; or
 - g. affixing to or erecting upon or near the Property any radio or TV antenna or tower.
13. In terms of clause 17 of the Tenancy Agreement, the Respondent was responsible for the payment of all utilities in relation to the Property.
14. In terms of clause 19 of the Tenancy Agreement, the Respondent undertook to inform the Applicants if he was to be absent from the Property for any reason for a period of more than fourteen days and agreed to take such measures to secure the Property prior to such absence as the Applicants may reasonably require and take appropriate measures to prevent frost or flood damage.
15. In terms of clause 34 of the Tenancy Agreement, the Respondent undertook to keep the Property in good repair and condition and in good decorative order and to maintain and clean the stairs and other common parts of the building in conjunction with the neighbouring proprietors, tenants and residents.
16. In terms of clause 37 of the Tenancy Agreement, if the Respondent was to be absent from the Property and the Property was to be unoccupied for a period of fourteen consecutive days or longer, the Respondent was to arrange for regular inspection by a competent person and to notify the Applicants in advance as to the name, address and phone number of this said person.
17. As of 24 May 2024, the Respondent was in arrears of rent of £6,800 having failed to make payment of rent from 1 August 2023 until that date.
18. As of 24 May 2024, the Respondent was in breach of clause 16 of the Tenancy Agreement for the following reasons:
- a. Having made unauthorised alterations to the Property including:
 - i. fixing of CCTV cameras to the Property;
 - ii. removal of a boundary fence;
 - iii. drilling holes through the kitchen/bedroom wall, PVC windows, and two bedroom ceilings, and leading cabling through these holes;
 - iv. cutting an internal louvre door in half;
 - v. cutting a chunk off the bottom of the rear bedroom door; and
 - vi. cutting a carpet in the front bedroom.
 - b. Having failed to use the appropriate level of heating at the Property.
19. As of 24 May 2024, the Respondent was in breach of clause 17 due to having fallen into arrears with the utilities for the Property.
20. As of 24 May 2024, the Respondent was in breach of clause 19 having been absent from the Property in excess of 14 days without informing the Applicants

and failing to take appropriate measures to prevent frost or flood damage by turning off heating at the Property, believed to be from around June 2023.

21. As of 24 May 2024, the Respondent was in breach of clause 34, by failing to keep the Property in good repair and condition both for the reasons giving rise to a breach of clause 16 (as detailed above) but further by failing to maintain the garden in a reasonable manner and storing large amounts of rubbish, building materials and wood there.
22. As of 24 May 2024, the Respondent was in breach of clause 37, by being absent from the Property without arranging for inspection by a competent person nor notifying the Applicants of any such competent person and their contact details.
23. As of 24 May 2024, the Respondent was no longer occupying the Property as his home, having moved to a caravan at Cot House Caravan Park, Sandbank Road, Kilmun.
24. On 24 May 2024, the Applicants' legal agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period in excess of three consecutive months and detailing the arrears, as well as the breaches of the Tenancy and that the Respondent was no longer occupying the Property.
25. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 26 June 2024.
26. The Applicants' agent served a copy of the Notice to Leave on the Respondent by recorded delivery on 24 May 2024.
27. The Applicants raised proceedings on 4 October 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Grounds 10, 11 and 12 of Schedule 3 Part 1 of the 2016 Act.
28. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Argyll & Bute Council by the Applicants' agent on 25 September 2024.
29. Letters complying with the pre-action protocols were issued to the Respondent on behalf of the Applicants on 31 January 2024, 16 February 2024, 21 March 2024 and 16 April 2024.
30. As of 12 May 2025, the Respondent remains in arrears of rent in the amount of £9,775 which is equivalent of 23 months of rent.
31. The Respondent does not claim to have paid any amount of the arrears of £9,775 remaining as at 12 May 2025.

32. The sum of arrears remaining as of 12 May 2025 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
33. As of 12 May 2025, the Respondent has not re-occupied the Property as his home and nor has he removed his belongings from the Property. The Respondent returns to the Property on occasion to take access.
34. As of 12 May 2025, the Respondent remains in breach of clauses 16, 17, 19, 34 and 37 having failed to remedy any of the above narrated breaches.
35. The Property is currently suffering from damp due to a prolonged period without heating.
36. The Respondent has no known dependents living with him at the Property.
37. The Respondent lived alone at the Property.
38. The Property is not specially adapted for the use of the Respondent nor is its location specifically suitable for the Respondent's needs.
39. Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 14 March 2025.

Reasons for Decision

40. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent in respect of the interests of the Applicants.
41. Ground 10 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *It is an eviction ground that the tenant is not occupying the let property as the tenant's home.*
 - (2) *The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—*
 - (a) *the let property is not being occupied as the only or principal home of—*
 - (i) *the tenant, or*
 - (ii) *a person to whom a sub-tenancy of the let property has been lawfully granted,*
 - (b) *the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and*

- (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

...

42. Ground 11 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

- (1) *It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*
- (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has failed to comply with a term of the tenancy, and*
 - (b) *the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*
- (3) *The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

43. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:

- (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
- ...
- (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.*

...

44. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that the Respondent's failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.

45. Further, the information provided in the application papers and at the CMD regarding occupation and the condition of the Property showed both Grounds 10 and 11 to be satisfied subject to reasonableness.
46. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard of persistent arrears, non-occupation, or multiple breaches of the Property. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the amount and duration of the arrears and the significant issues related to the condition of the Property and its deterioration and continued deterioration. There was an absence of any engagement by the Respondent on payment of the arrears or condition of the Property with the Applicants and no engagement with the Tribunal. The Respondent did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us.
47. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time under each of Grounds 10, 11 and 12. For completeness, we would have been satisfied to grant eviction on any one of those grounds alone as each was satisfactorily made out and reasonable on its own terms.

Decision

48. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to grounds 10, 11 and 12 of Schedule 3 of that Act.

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.

Joel Conn

13 May 2025

Legal Member/Chair

Date