

Housing and Property Chamber
First-tier Tribunal for Scotland



Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) following a Hearing in terms of Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/24/4430

Re: Property at 68 Waddell Avenue, Glenmavis, Airdrie, North Lanarkshire, ML6 0NZ (“the Property”)

Parties: Mrs. Christine Brodie, 540 Stirling Road, Riggend, Airdrie, North Lanarkshire, ML6 7SS (“the Applicant”) per her agents, Thorntons Law, Whitefriars House, 7 Whitefriars Crescent, Perth, PH2 0PA, (the Applicant’s Agents)

Miss Kirsty Robertson, 68 Waddell Avenue, Glenmavis, Airdrie, North Lanarkshire, ML6 0NZ (“the Respondent”)

Tribunal Members

Karen Moore, Legal Member and Melanie Booth, Ordinary Member

Background

1. By application received on 19 September 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 5 of Schedule 3 to the 2016 Act, that the landlord’s family member intends to live in the let Property.
2. The Application comprised the following: i) copy Notice to Leave in terms of Ground 5 of Schedule 3 to the Act dated 22 July 2024 with proof of service; ii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Lanarkshire Council being the relevant local authority; iii) copy signed and witnessed statement by the Applicant setting out the background to the tenancy and her reasons for making the Application.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 11 April 2025 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent, by Sheriff Officer service on 25 February 2025.

CMD

4. The CMD took place on 11 April 2025 at 10.00 by telephone. The Applicant was represented by Ms. McNicol of the Applicant's Agents. The Respondent, Miss Robertson, was present and was not represented.
5. The Tribunal explained that the purpose of the CMD was to determine if the statutory procedure had been carried out properly, if the Grounds for the Order had been met and if it was reasonable on account of those facts to make an Order. The Tribunal explained further that if the Application was opposed, the Tribunal could not make a decision at the CMD but would require to hold a hearing of evidence.
6. Ms. McNicol confirmed that the Applicant sought an Order. Miss Robertson stated that she opposed the grant of an Order based on reasonableness as she suffered from mental health issues which made it impossible for her to vacate the Property. Miss Robertson explained that she is under the care of mental health professionals and had had to give up work. Her position is that, contrary to the Applicant's written statement that she had moved into the Property and become the tenant without the knowledge and consent of the Applicant, she had arranged by text message with the Applicant that she would take over her sister's tenancy which had ended. She advised that she had given up a lease of another property to move into the Property. Miss Robertson stated that she had approached the local authority for housing but had been told that they could not assist as the Applicant is not a registered landlord and that she, Miss Robertson, did not have the correct paperwork. Miss Robertson accepted that she has not paid rent to the Applicant since July 2024 and stated that she had attempted to make payments but these had been returned by the Applicant's bank. She confirmed that, in spite of the returned payments, she has not retained the rent due and would have to make an arrangement to pay by instalments. Miss Robertson stated that she lives in the Property alone and has a pet dog.
7. Ms. McNicol confirmed that the Applicant's position is as set out in her written statement: that Miss Robertson's sister had been the tenant of the Property, that she had given up the tenancy and Miss Robertson moved in without authority and began paying rent. Ms. McNicol confirmed that the Applicant required the Property for her daughter and grandson. She confirmed further that no rent had been paid since July 2024 and advised that there had been no change to the Applicant's bank account since that date and so there was no reason for payments to be rejected.
8. Miss Robertson, having confirmed that she had no objection in respect of the procedural process and Grounds for the Order, the Tribunal advised that a Hearing of evidence in respect of the reasonableness test would be fixed and that a Direction would be issued in respect of the evidence required.

9. The Tribunal adjourned the CMD to a Hearing of evidence and issued the following Direction:

1. The Respondent, Mrs. Robertson, is required to submit:

- i) Evidence, for example, screenshots of text or other messages showing that the Applicant agreed to accept her as a tenant;*
- ii) Evidence of her personal circumstances with regard to the effect that an eviction order will have on her. If medical evidence is to be submitted, it is permissible to redact sensitive information;*
- iii) Information on any alternative accommodation available to her and any attempts made by her to secure alternative accommodation;*
- iv) Evidence that she attempted to make payment of rent but was unable to do so because of banking issues;*
- v) In light of the fact that no rent has been paid since July 2024 and that the Respondent admitted that she has not retained the unpaid rent for the benefit of the Applicant, evidence of her current financial position and ability to meet the financial obligations of the tenancy, including proposals to repay the rent arrears.*
- vi) Any other matters which the Respondent considers the Tribunal should have regard to in reaching a decision on reasonableness in respect of the eviction application.*

2. The Respondent, Mrs. Robertson, is required to submit a list of any witnesses.

3. The Applicant, Mrs. Brodie, is required to submit:

- i) Evidence of her personal circumstances and those of her daughter and grandson who intend to reside in the Property if an Order is granted. If medical evidence is to be submitted, it is permissible to redact sensitive information;*
- ii) Details of the Applicant's rental property portfolio, if any and*
- iii) Any other matters which the Applicant considers the Tribunal should have regard to in reaching a decision on reasonableness in respect of the eviction application.*

4. The Applicant, Mrs. Brodie, is required to submit a list of any witnesses she wishes to call."

10. A Note of the CMD and the Direction were issued to the Parties by first class mail on 1 May 2025.

Hearing

10. A Hearing was fixed for 18 July 2025 at 10.00 by telephone conference call and intimated to the Parties by recorded delivery mail on 26 June 2025.

11. Prior to the Hearing and by email dated 4 July 2025. the Applicant's Agents submitted a witness list and the following Productions in compliance with the Direction:-

1. Schedule of Rent Arrears as at 4th July 2025 showing no payments received since 1 July 2024 and an outstanding balance of £6,000.00;

2. Letter from Hugh Patten of NHS Greater Glasgow and Clyde dated 30th May 2025 in respect of the Applicant's daughter's employment and the detrimental of her current living situation on that;

3. Letter from Moira Anderson Foundation dated 6th May 2025 in respect of support being given to the Applicant's daughter.

12. The said witness list and productions were issued to the Respondent by first class mail on 10 July 2025.

13. The Respondent did not comply with the Direction to any extent.

14. The Hearing took place on 18 July 2025 at 10.00 by telephone. The Applicant, Mrs. Brodie, was represented by Ms. McNicol of the Applicant's Agents. The Respondent, Miss Robertson, was present and was not represented.

15. At the start of the Hearing, the Tribunal asked Miss Robertson why she had not complied with the Direction. Miss Robertson stated that she had not received any correspondence in respect of the CMD Note or the Direction. She stated that she received a letter notifying her of the Hearing and that, although marked as a recorded delivery letter, it had been delivered but had not been signed for, particularly by her. Miss Robertson stated that she then contacted the Tribunal office by phone on 14th July 2025 and received the case papers by e-mail on 16th July 2025.

16. The Tribunal impressed upon Miss Robertson that she had attended the CMD on 11th April 2025 during which the Tribunal had explained in detail the evidence which Miss Robertson would require to produce. The Tribunal then discussed the content of the Direction with Miss Robertson. She stated that she had copies of the screenshots which she could submit. She did not have any written evidence in respect medical records, nor did she have anything in writing from the local authority in respect of alternative accommodation. With regard to the unsuccessful attempts to pay rent by bank transfer, Miss Robertson stated that she had no records in support of this. She agreed that she had not paid rent since July 2024 and that she had not contacted Mrs. Brodie to discuss payment of rent. With regard to non-payment, Miss Robertson stated that someone had advised her that, as Mrs. Brodie was not a registered landlord, she did not have to pay rent. Miss Robertson could not recall who or when this advice had been given to her.

17. In answer to questions from the Tribunal, Miss Robertson advised the Tribunal that she had not made contact with the Citizens Advice Bureau until she had received the case papers on 16 July 2025 and that they did not have capacity to represent her. She stated that she had spoken with both the Citizens Advice Bureau and Shelter Scotland “on and off” since the proceedings were raised. She stated that she has had mental health issues and that her life since the proceedings began has been a “blur.” Miss Robertson stated that she opposed the Application as she had no alternative accommodation to move into.
18. On behalf of Mrs. Brodie, Miss McNicol objected to a postponement. She pointed out that Miss Robertson was aware that a Hearing would be held and was aware of the information which she was required to produce.
19. The Tribunal adjourned to discuss the motion to postpone and the objection to it. During the adjournment, the Tribunal made enquiries with the tribunal administration case worker and Royal Mail. Those enquiries showed that the letter notifying of the Hearing had been issued by Recorded Delivery on 26th June 2025 and had been signed for by “Kirsty” on 27 June 2025. The enquiries also showed that the letters issuing the CMD Note and Direction which had been sent on 1st May 2025 had not been returned by the Post Office. Further, the letter of 10th July 2025 issuing the Applicant’s Productions had not been returned by the Post Office.
20. The Tribunal had regard to all that was said in respect of a postponing the Hearing and took the view of that, as the Hearing had been scheduled for a full day, and as the information required from Miss Robertson ought to be to hand, the Tribunal would adjourn the Hearing to 14.00. The Tribunal Directed Miss Robertson to comply with the Direction no later than noon and directed her to copy her response to Miss McNicol by e-mail.
21. Miss Robertson complied with this Direction and submitted copy screenshots between Mrs. Brodie and herself evidencing the tenancy and a written statement in respect of her personal circumstances detailing her ill-health, her enquiries with the local housing office and lack of affordability and availability of alternative accommodation.
22. The Hearing reconvened at 14.00. Before the evidence of the witnesses began, the Tribunal asked Miss Robertson if she agreed the content of the letters submitted on behalf of Mrs. Brodie. It became clear that, although the cases papers had been issued to Miss Robertson by email on 16 July 2025, the letters in question had not be sent to her. The Tribunal adjourned for these to be emailed to Miss Robertson and for her to consider them.
23. The Hearing reconvened again and Miss Robertson confirmed, fairly, that she did not object to or question the letters.

Applicant's Evidence

24. Mrs. Brodie gave evidence on her own behalf. She confirmed her age as 61 years and her occupation as an assistant in a brain injury unit. With regard to the Property, Mrs. Brodie stated that she and her ex-husband had bought the property as sitting tenants in 1999. She and her daughter, Cheryl, had continued to live in the property for a considerable number of years after her marriage broke down. She explained that after she and her daughter moved out, her nephew had resided in the Property and that she then rented the Property to Heather Robertson, the sister of Kirsty Robertson, the Respondent. Mrs. Brodie explained that she did not deal with any of the paperwork regarding the tenancy as her ex-husband, who had a business, had dealt with that. She stated that she had a good relationship with Heather Robertson, who had been in the Property for roughly 7 years and who had been an excellent tenant.
25. Mrs. Brodie stated that she was pleased for Heather when Heather phoned to say that she was moving on to a larger house as she had met a new partner and was pregnant. Mrs. Brodie recalled that Heather had told her of this by phone in February or March 2024. She recalled that Heather had asked if her sister, Kirsty Robertson, could move in. Mrs. Brodie stated that, at that time, she was undecided as to whether to rent the Property again or to sell it. She recalled that, along with Mr. Edwin Geddes, her current partner, she met Kirsty at the Property. She stated that Heather was also present and had been packing to leave. Mrs. Brodie was clear that there had been no discussion in respect of accepting Kirsty as a tenant, that they had not had any formal interview and that it was just general chit chat. Mrs. Brodie stated that she later received a text from Heather to say that Heather had removed from the property and that Kirsty had moved in. She reaffirmed that, at that time, she was still undecided on renting or selling the Property.
26. Mrs. Brodie explained that around that time, her daughter, Cheryl, was going through a difficult breakup in her marriage. Mrs. Brodie said she phoned Kirsty and asked her to move out of the house so that her daughter and her daughter's son, her grandson, could move in. She recalled that this was around June 2024. Mrs. Brodie stated that when Kirsty had advised her that she needed a letter for the rent office, she and Mr. Geddes had drafted this and had taken it down to Kirsty. Mrs. Brodie stated she then received correspondence from Shelter to suggest that Kirsty had a full tenancy of the Property, and so, she and Mr. Geddes then contacted Ms. McNicol's office to take legal advice. Mrs. Brodie agreed that Notice to Leave was given on the basis of that her daughter and grandson needed the Property.
27. With regard to payment of rent, Mrs. Brodie stated that Kirsty had made three payments of £500.00 in respect of the rent and an amount to cover the

balance of arrears due by Heather. She stated that the last payment she received was in July 2024. Mrs. Brodie confirmed that she had not made any changes to her bank account and that it was the same bank account which Heather had paid rent into throughout her tenancy. Mrs. Brodie said that she did not discuss rent any further with Miss Robertson as she did not think she was allowed to after the tribunal proceedings began. She stated that she and Mr. Geddes had called at the Property to check the condition of it around the 18 May 2025. She stated that Kirsty did not mention anything about paying rent and did not mention or ask for bank details.

28. With regard to the effect which Miss Robertson not moving out of the Property and not paying rent has had, Mrs. Brodie said this has been a very difficult time for her. Both she and her daughter have been off work and have taken anti-depressants. Mrs. Brodie explained that she lives with and cares for her mother who has been critically ill and suffers from Alzheimer's disease. Mrs. Brodie stated that her daughter had sought alternative accommodation for herself and her son but had been told by the housing office that she was at the bottom of the list because she had a home of her own. Mrs. Brodie stressed that the Property was the house that Cheryl had grown up in from birth.
29. As far as Miss Robertson's family circumstances are concerned, Mrs Brodie stated that, as far as she is aware, Miss Robertson's mother resides close to the Property and has a two bedroom house.
30. Although invited by the Tribunal and advised that this was her opportunity to raise any discrepancies or questions on Mrs. Brodie's evidence, Miss Robertson had no questions for Mrs. Brodie and did not wish to challenge her evidence.
31. Cheryl Brodie gave evidence in support of the Applicant, her mother. She confirmed that she is 37 years of age and resides at 55 Cambridge Crescent, Airdrie. Miss Brodie confirmed that that she owns her home jointly with her son, Oliver's father, and explained that, although separated and no longer together as a couple, they reside there together. Ms. Brodie stated that she and Oliver's father's relationship broke down on 16th April 2024 when he threw her out of the property. She moved in with a cousin at that time and her ex-partner would not let her see her son. Ms. Brodie explained that Oliver's speech development suffered during Covid and has worsened with the situation in the family home as his parents do not speak. She advised that Oliver is six years old, is going into Primary 2 and is attending speech and language therapy.
32. Ms. Brodie said that all of this time has been extremely stressful for both her and her mum who is dealing with care for Ms. Brodie's gran. She stated that her mum has been unable to assist with her housing as Kirsty Robertson has

not moved out of the Property. Ms. Brodie stated that she had therapy before the breakup with Oliver's father and has since been referred to the Moira Anderson Foundation by her psychiatric nurse. She explained that her current living situation is that she and her ex-partner remain in separate rooms and co-parent Oliver with each taking an alternate day. Ms. Brodie stated that, although he is too young to understand the situation, Oliver does question why his parents and he do not do things as a family but are still in the same house. She stated that it is hard for him to understand.

33. Ms. Brodie said that she approached the housing association for a tenancy and was advised that she would need to get lawyers involved to buy out her ex-partner. She confirmed that she does not have enough finances to be able to do that as she works part time and cannot afford to pay for both childcare and a private rent or a mortgage on a house. She explained that she receives a reduced amount of Universal Credit as she has part time work and she's living with Oliver's other parent.
34. Ms. Brodie confirmed that she has had serious difficulties at work. With reference to that letter provided by her employer and line manager, Ms. Brodie confirmed that she has had to have time off work both long term and on numerous short term occasions. She stated that she understands that her line manager has tried to help but that he has to take her through the protocol on disciplinary action. Ms. Brodie stated that she has been redeployed and could face losing her job as she is no longer reliable. She explained that she has had her duties reduced as she has not been able to carry out her senior role and train junior colleagues.
35. Ms. Brodie stated that she had hoped that she and Oliver could move into the Property as this would alleviate a lot of her problems. She confirmed that the Property was her family home from birth until she moved out aged 24 years. She stated that she would have support from family in the Property and, as the Property is in the same street as Oliver's father's family, Oliver would have a lot of relatives and friends. Ms. Brodie stated that the Property is not too far from his current school.
36. Again, although invited by the Tribunal, Miss Robertson had no questions for Ms. Brodie and did not wish to challenge her evidence.
37. Mr. Geddes, the partner of Mrs Brodie gave evidence in support of her. He stated that he is 61 years of age and runs his own business haulage company. He confirmed that he was aware of the background with Heather Robertson as a tenant at the Property and he was aware that Mrs. Brodie considered her a great tenant. He stated that he knew that Kirsty Robertson had arranged to pay the balance of the rent due by Heather. He had seen a bank statement showing a number of payments paid into it by Kirsty last year. He knew that it was a Royal Bank of Scotland account and that Mrs. Brodie

had not changed that account any time. He was aware that Kirsty Robertson had said that she had had difficulty getting payments through and that Mrs. Brodie had re-texted her the full bank details. He was also aware that Kirsty had said that she had received these details but had failed to make any payments. Mr. Geddes confirmed that he had been present with Mrs. Brodie about two months ago at the Property and confirmed that no conversation had taken place in respect of rent.

38. Again, although invited by the Tribunal, Miss Robertson had no questions for Mr. Geddes and did not wish to challenge his evidence.

Respondents' Evidence.

39. Miss Robertson, the Respondent, gave evidence on her own behalf. In answer to initial questions from the Tribunal she confirmed that she is 40 years of age, is single with no children, and has full time work as a registered veterinary nurse. She stated that her workplace is a 20 minute commute from the Property.
40. With regard to her personal circumstances, Miss Robertson said that she had previously had a management position but had to give this up when she had a breakdown following the end of a 13 year relationship. She had resided in Motherwell at that time, had felt isolated so wanted to move back to Glenmavis. She stated that she thought that she had an oral agreement with Mrs. Brodie to move into the property once her sister, Heather, had moved out. Miss Robertson stated that she began to move in to the Property around March and April 2024 but did not give up her previous tenancy until her sister ,Heather, had actually moved out. She stated that she planned to decorate the property and make it her own. At that time, she still understood that it was her sister's tenancy. She stated that her ex-partner had turned up at the Property and police had been involved.
41. Miss Robertson advised the Tribunal that she was taken aback and shocked when Mrs. Brodie had phoned her to say that she had to move out. She stated that her initial reaction was to speak to the Citizens Advice Bureau and the local housing office. She was told that she would have to have a letter confirming that she was to move out of the Property. Miss Robertson said at this point she had had a breakdown and was taking panic attacks which meant that she could not leave the house for months. She stated that she had to give up her job as she was the subject of disciplinary hearings over silly mistakes due to her mental health.
42. Miss Robertson insisted that she followed guidelines given by different people in respect of remaining in the property. She stated that she did not dispute that Cheryl wanted to move in. Miss Robertson stated that she had spent the extra money to furnish the Property as she thought she was going

to be living there for a long time. She stated that she has a support system in the area to help with her mental health.

43. Miss Robertson advised that she has no issue leaving the Property but cannot afford another property in that area and she does not have any cash to offer as a deposit for a private rental. She stressed that she has nowhere to reside and would end up sleeping on sofas and being a houseguest.
44. In answer to questions from the Tribunal, Miss Robertson stated that she had been off work last year for four months, had returned in January 2025 but was off work again after five weeks. She stated that now has a lower grade job earning around £2,000.00 monthly before tax and deductions. She stated that she was not certain of her actual take-home pay. Miss Robertson advised that she has contacted the local housing office who advise that that they would be able to provide temporary accommodation. Miss Robertson thought the private rented sector might be too costly at £700.00 per month for a one - bedroomed property and she might not be able to take her dog.
45. In answer to cross examination by Ms. McNicol, Miss Robertson did not accept that a tenancy had not been agreed or settled with Mrs. Brodie. She stated that the advice from Shelter was that she had a tenancy. Miss Robertson agreed that, when asked for a letter confirming that Miss Robertson had to move out, Mrs. Brodie provided this without question. Miss Robertson agreed also that, when contacted by Shelter, Mrs. Brodie had issued a formal Notice to Leave.
46. Ms. McNicol reminded Miss Robertson that, at the CMD, Miss Robertson had stated that rent had not been paid because Mrs. Brodie's bank had rejected it. Ms. McNicol pointed out that Miss Robertson now states that rent was not paid as she had been given advice not to pay rent. Miss Robertson maintained that she had attempted to pay rent but it had been rejected by the banking system. Miss Robertson agreed that she has not paid rent since July last year and has not retained the rent due in a bank account. She stated that, if the Application is refused and she remains in the Property, she would have to pay the rent with extra towards the arrears. In answer to Miss McNicol's questions, Miss Robertson agreed that it was not reasonable for Mrs. Brodie to be out of pocket for the rent and to wait for this to be repaid but explained that she has no other cash. Miss Robertson stated that she does not own any property and, if evicted, would have nowhere to live. With regard to her mother's house, she stated that her mother does not have a spare room as her nephew resides with her mother.

Summing Up

47. In summing up, Ms McNicol referred the Tribunal to the evidence given by Mrs. Brodie and her witnesses. She stressed that Mrs. Brodie had been endlessly patient whilst her family is in distress. Miss McNicol pointed out that Miss Robertson did not comply with the Tribunal's Direction or heed the comments at the CMD. In any event, she has full time employment and the means to secure another property and has not shown that it is reasonable for her to remain in this Property.
48. In summing up, Miss Robertson stated that she does not dispute the Ground and reasons for the Application. She stated that she could only ask that, if an Order is granted, she is given time to allow her to remove from the Property.

Findings in Fact

49. From all of the information before it including the oral evidence, the productions lodged and the Parties' written statements, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties commencing on or around April 2024;
 - ii) A valid Notice to Leave was issued on behalf of the Applicant to the Respondent;
 - iii) The Ground for the Notice to Leave is Ground 5, a family member intends to live in the Property;
 - iv) The Applicant has evidenced that her daughter, Cheryl Brodie, and grandson, Oliver, intend to live in the Property;
 - v) The Applicant does not own a portfolio of rental properties;
 - vi) The Applicant resides with her elderly mother as an unpaid carer;
 - vii) The Applicant's mother is in poor physical health and has Alzheimer's diseases;
 - viii) The Applicant is 61 years of age and is in employment;
 - ix) Cheryl Brodie resides with her ex-partner in a home which they own jointly;
 - x) Their six year old son, Oliver, resides with them;
 - xi) Cheryl Brodie's relationship with her ex-partner has broken down and is not amicable;
 - xii) Cheryl Brodie is unable to buy-out her ex-partner or to find alternative accommodation for herself and her son;
 - xiii) Cheryl Brodie has significant mental health issues exacerbated by her living situation with her ex-partner;
 - xiv) Oliver has developmental issues arising from his parents' living situation;
 - xv) Cheryl Brodie is in part-time employment;
 - xvi) Cheryl Brodie's employment is in jeopardy due to her living situation with her ex-partner;

- xvii) The Property was Cheryl Brodie's childhood home until she vacated it at age 24 years;
- xviii) Cheryl Brodie has family support in the locality of the Property;
- xix) Oliver's father's family reside in the locality of the Property;
- xx) Oliver's primary school is in commuting distance from the Property;
- xxi) The Applicant cannot provide alternative accommodation for Cheryl Brodie and Oliver other than in the Property;
- xxii) The Respondent is 40 years old and is unmarried;
- xxiii) The Respondent has had mental health issues;
- xxiv) The Respondent has no dependents other than her pet dog;
- xxv) The Respondent is in employment as a veterinary nurse and earns at least £2,000.00 per month;
- xxvi) The Respondent's place of employment is a 20 minute commute from the Property;
- xxvii) The Respondent has a family connection in the locality of the Property;
- xxviii) The Respondent has not paid rent to the Applicant since July 2024;
- xxix) The Respondent is in debt to the Applicant in the sum of £6,000.00;
- xxx) The Respondent has the financial means to make payment of the rent and arrears for the Property;
- xxxi) The Respondent has not offered or shown an intention to make payment of rent or arrears to the Applicant;
- xxxii) The Respondent has the financial means to secure alternative accommodation;
- xxxiii) The Respondent would vacate the Property if she secured alternative accommodation and
- xxxiv) The Respondent has made minimal effort to secure alternative accommodation.

Issue for the Tribunal

50. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 5 of Schedule 3 to the Act.

Decision and Reasons for Decision

51. The Tribunal had regard to all the information before it and to its Findings in Fact.

52. Having found that the Applicant intends her daughter and grandson to reside in the Property and that the Notice to Leave was issued properly, the Tribunal found that the eviction Ground has been met and the procedure followed.

53. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
54. The Tribunal then had regard to the circumstances of the Parties.
55. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
56. The Tribunal then looked to balance the rights and interests of both parties.
57. The Tribunal accepted the evidence of the Applicant and her witnesses as truthful and, given the stressful nature of their collective situation, to have been given in a candid and straightforward manner with no-one exaggerating any of the facts. The Tribunal accepted that the Applicant desires to assist her daughter and her grandson and cannot do so without having possession of the Property. The Tribunal had no difficulty in accepting that Ms. Cheryl Brodie and her 6 year old son require immediate rehousing and that the Property is eminently suitable for their needs.
58. The Tribunal had greater difficulty in accepting the Respondent’s evidence. The Tribunal accepted that she answered direct questions with a measure of truth but found her evidence that she had attempted to pay rent but the payments had been rejected, and, that she had been advised not to pay rent as the Applicant was not a registered landlord to lack credibility. The Tribunal did not accept her evidence that she had not received correspondence from the tribunal administration and viewed this as a possible attempt by her to postpone the proceedings to her advantage. Given that she has a reasonable level of earnings and no dependents, the Tribunal viewed the Respondent’s failure to pay rent and failure to retain rent which she ought to have paid to be a measure of her lack of good character and had little sympathy for her and the situation in which she now finds herself.
59. The Tribunal in weighing up the circumstances and needs of the Parties, considered it wholly reasonable that the Application, and so, the Order, be granted. The Tribunal found no reason, let alone a compelling reason, to justify refusing the Application and allowing the Respondent to remain in the Property.
60. The Tribunal had regard to the Respondent’s request to stay the effective date of the Order to allow her further time to find alternative accommodation

and saw no reason to do so. Accordingly the Tribunal granted the Order on the standard terms.

61. This decision is 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.

Karen Moore

Legal Member/Chair

18 July 2025
Date