

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/24/5284

Re: Property at 1 Bracken Brae, Lesmahagow, ML11 0AZ (“the Property”)

Parties:

Miss Christine Whitefield, 51 Coalburn Road, Coalburn, ML11 0LH (“the Applicant”)

Mr Darroch Struthers, 1 Bracken Brae, Lesmahagow, ML11 0AZ (“the Respondent”)

Tribunal Members:

Alan Strain (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 the application for eviction and recovery of possession be granted.

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicant’s intention for her daughter to live in the Property and for eviction and recovery of possession on Ground 5 of Schedule 3 to the Act.

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 15 November 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 May 2021;
3. Notice to Leave dated 14 August 2024 and served by Sheriff Officers on the same date;
4. Section 11 Notice and letter served on the local authority dated 13 November 2024;
5. Affidavit of the Applicant and her daughter sworn 10 January 2025;
6. Sheriff Officer Certificate of Service of CMD Notification on the Respondent dated 10 January 2025;

7. Rent Arrears Statement.

Case Management Discussion (CMD)

The case called for a CMD by telephone on 31 July 2025. The Applicant did not participate but was represented by her Letting Agent, Ms Young. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but he did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Tribunal decided that it was fair and reasonable to proceed in the Respondent's absence.

Ms Young confirmed that the Respondent was in rental arrears as at the date of the CMD in the sum of £7,400. No rent has been paid since 4 June 2024. This is also the subject of the conjoined case EV/25/0054 under Ground 12.

To the Applicant's knowledge, the Respondent lives in the Property with his Partner and is in employment. He is not in receipt of Universal Credit or other rental assistance.

The Applicant is unaware of any disability or vulnerability.

The Applicant is a commercial landlord with a number of properties.

The Respondent has not engaged or offered any payment plan.

The Respondent continues to occupy the property rent-free.

The Applicant requires the Property for her daughter to live in for the reasons set out in their respective affidavits and in the application.

Decision and Reasons

The Tribunal considered the documentary evidence and information provided.

The Tribunal had regard to the terms of Ground 5:

Family member intends to live in property

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) "a qualifying relative" means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person ("A") is to be regarded as the child of another person ("B"), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

In so far as material the Tribunal made the following findings in fact:

1. The parties let the Property under a Private Residential Tenancy Agreement (**PRTA**) commencing 10 May 2021;
2. Notice to Leave dated 14 August 2024 was served by Sheriff Officers on the same date;
3. A Section 11 Notice was served by email on the local authority on 13 November 2024;
4. The Applicant's daughter intends to occupy the Property as her home;
5. The Applicant has other rental Properties;
6. The Respondent has not paid rent since 4 June 2024 and is currently in arrears of £7,400. He lives in the Property with his Partner, is in employment and not in receipt of benefits to the Applicant's knowledge.

The Tribunal were satisfied that Ground 5 had been established.

The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal determined that it would be reasonable to grant the order sought in the circumstances bearing in mind the daughter's need for the Property to live in and the substantial rent arrears that had been accumulated and were not being addressed.

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.

A Strain

31 July 2025

Legal Member/Chair

Date