



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/24/4783

Re: Property at 17 Haulkerton Crescent, Laurencekirk, AB30 1FB (“the Property”)

Parties:

Mrs Susan Barrie, Glensaugh Lodge, Fettercairn, Laurencekirk, AB30 1HB (“the Applicant”)

Mr Raymond Adams, 17 Haulkerton Crescent, Laurencekirk, AB30 1FB (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of grounds 11 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) have been met, 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 grounds 11, 12 and 14 of schedule 3 of the 2016 Act as the grounds for possession. The application was conjoined with an application under Rule 111 of the Rules for a payment order under reference FTS/HPC/CV/25/4798, as the applications related to the same parties and same tenancy.

- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 22 July 2025 at 2pm. The Tribunal gave notice of the CMD to the parties. Said notice was served upon the Respondent by sheriff officers on 16 April 2025.
- 3 Both parties were invited to make written representations. No written representations were received in advance of the CMD.

The CMD

- 4 The CMD took place on 22 July 2025 by teleconference at 2pm. The Applicant joined the call. The Respondent did not. The Tribunal noted that he had been given notice of the CMD in accordance with Rule 17(2) of the Rules. The Tribunal therefore delayed the start time of the CMD for a short period before determining to proceed in his absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet confirming the Applicant’s ownership of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant’s landlord registration;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Chronology of events;
 - (vi) Notice to leave and proof of delivery upon the Respondent by email and recorded delivery mail;
 - (vii) Section 11 notice to Aberdeenshire Council and proof of delivery;
 - (viii) Emails between the Applicant and Respondent;
 - (ix) Rent statement; and
 - (x) Copy correspondence from the Applicant to the Respondent in accordance with the rent arrears pre-action protocol.
- 6 The Tribunal proceeded to hear submissions from the Applicant on the application. For the avoidance of doubt the following is a summary of the key elements of the submissions and not a verbatim account.
- 7 The Applicant explained that issues with the tenancy had arisen when the Respondent began refusing access to the property for safety inspections. The Applicant had not gained access to the property since September 2022. She had made multiple requests to the Respondent by email, which was his preferred communication method. She had issued formal notices and a solicitor’s letter. She had ultimately applied to the Tribunal for right of entry last year. This had been unsuccessful. On attending the property with the Tribunal member, contractors and police, the Respondent had been verbally abusive and it would have been impossible for the contractor to complete the work. The Applicant was therefore seeking an eviction order under ground 11 in light of the Respondent’s breach of his tenancy obligations with regards to access. The Applicant also sought eviction in terms of ground 14. The Respondent had been very abusive to those present who attended the property in respect of the Tribunal’s right of entry application. He had also been rude to the Applicant in

his email correspondence. The Applicant referred to the emails submitted with the application in support of this. The Applicant felt she had been reasonable. She had been concerned about the Respondent. He resided on his own and did not appear to have contact with anyone else.

- 8 The Applicant confirmed that the application also relied upon ground 12. The Respondent was in rent arrears. When the application was submitted to the Tribunal the arrears stood at £2364. They had since increased to £6722. The Respondent had stopped paying completely in April 2025. The Respondent was not in employment. There was no suggestion that he was due any benefits. When the tenancy commenced the Respondent advised the Applicant that he was training to be an accountant, and that he had funds from the sale of a property that he would be relying upon for income. His rent payments had been consistent for the first four years of the tenancy. However, it appeared the money had since ran out. The Applicant confirmed that the property was a three bedroom bungalow. The Respondent lived alone. The Applicant believed he was in his 50s. He had no known physical ailments. The Applicant had received a letter from the council's housing department advising that he had applied for social housing, so it appeared they were aware of his situation.
- 9 The Tribunal adjourned the CMD, at which point the Applicant left the call, before resuming the discussion and confirming the outcome.

Findings in fact

- 10 The Applicant is the landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement which commenced on 9 January 2018.
- 11 On 10 September 2024 the Applicant sent the Respondent a notice to leave by email and recorded delivery mail. The Respondent consented to the use of email for the delivery of notices under the terms of the tenancy agreement.
- 12 The notice to leave included grounds 11, 12 and 14 and stated that an application would not be made to the Tribunal any earlier than 11 October 2024.
- 13 In terms of clause 7 of the said tenancy agreement the Respondent undertook to pay rent of £795 per calendar month. The rent was increased to £800 per calendar month on 9 July 2024.
- 14 The Respondent has failed to pay rent as agreed. The Respondent's payments to the rent account have been sporadic and inconsistent. As at the date of this decision arrears of £6722 have accrued.
- 15 The rent arrears are not known to be due to any delay or failure in the payment of a relevant benefit.

- 16 The Applicant has communicated with the Respondent regarding the rent arrears in accordance with the rent arrears pre-action protocol.
- 17 The Applicant has sent the local authority a notice under section 11 of the Homelessness etc (Scotland) Act 2003.
- 18 In terms of clause 19 of the said tenancy agreement the Respondent agreed to allow reasonable access to the let property for an authorised purpose upon being given at least 48 hours notice, or where access is required urgently.
- 19 The Respondent has repeatedly refused to allow the Applicant and her contractors access to the property upon being given at least 48 hours notice for the purpose of carrying out gas and electric safety checks and property inspections.
- 20 The Applicant applied to the Tribunal for right of entry to the property in December 2023. The Respondent continued to refuse access. The Applicant decided not to proceed with forcing entry, and to instead seek repossession of the property.
- 21 The Respondent resides alone. The Respondent has no known physical health conditions. The Respondent is believed to be in his 50s.

Reasons for decision

- 22 The Tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application following the CMD and in the absence of a hearing in terms of rule 18 of the Rules. The Respondent had not sought to challenge the terms of the application, and had not put forward anything to contradict the Applicant's evidence, which the Tribunal accepted as fact.
- 23 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondent 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 at the time of making this application. The Tribunal therefore considered the grounds for possession relied upon in this case.
- 24 Grounds 11, 12 and 14 of schedule 3 are in the following terms:-

"Ground 11

(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.

Ground 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.”

Ground 14

(1) It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.

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

(a) the tenant has behaved in an anti-social manner in relation to another person,

(b) the anti-social behaviour is relevant anti-social behaviour,

(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and

(c) either—

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3) For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—

(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,

(b) pursuing in relation to the other person a course of conduct which—

(i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or

(ii) amounts to harassment of the other person.

(4) In sub-paragraph (3)—

• “conduct” includes speech,

• “course of conduct” means conduct on two or more occasions,

• “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.

(5) Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—

(a) who it was in relation to, or

(b) where it occurred.

(6) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.”

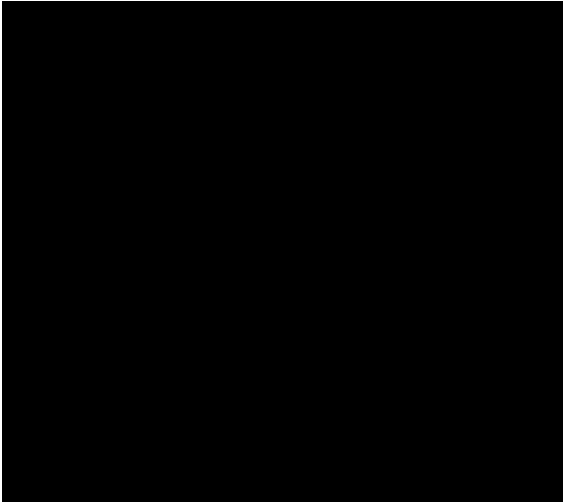
- 25 The Tribunal accepted that the Respondent had failed to comply with the terms of the tenancy agreement, which required him to allow access to the Applicant upon being given reasonable notice. His persistent breach of his tenancy obligations had resulted in the Applicant pursuing an application for right of entry, which was ultimately unsuccessful because of the Respondent’s conduct.
- 26 The Tribunal also accepted based on the rent statements produced by the Applicant and her submissions at the CMD that the Respondent had been in arrears for three or more consecutive months.
- 27 The Tribunal considered the wording of ground 14. Whilst the Tribunal accepted on the balance of probabilities that the Respondent had been verbally abusive towards those who attended the property in August 2024 to exercise the Applicant’s right of entry, the Tribunal was not persuaded on the basis of the evidence before it that this amounted to a course of anti-social conduct on

the Respondent's part, being conduct on two or more occasions. The Respondent's tone and language in his communications with the Applicant, whilst rude and abrasive, did not in the view of the Tribunal reach the bar for antisocial conduct as defined by paragraph 14(3) of schedule 3 of the 2016 Act.

- 28 Accordingly, having been satisfied that paragraphs 1 of grounds 11 and 12 had been met in this case, the Tribunal considered whether it would be reasonable for an eviction order to be granted on account of those facts.
- 29 The Tribunal gave significant weight to the extent of the Respondent's breach of his tenancy obligations. Payment of rent is a fundamental obligation of any tenancy, as is the obligation to allow access to ensure the Applicant can fulfil her repairing duties under the Housing (Scotland) Act 2006. The arrears were now significant. The Respondent had paid nothing to the rent account since April 2025. Furthermore, he had failed to allow the Applicant access to the property for nearly three years, despite her best efforts. These were factors to which the Tribunal gave significant weight.
- 30 The Tribunal carefully considered the Respondent's circumstances. The information the Tribunal had about the Respondent was limited, as he had chosen not to participate in the proceedings. However, the Tribunal was content to accept the submissions from the Applicant on this point, which were clear and consistent. There was no evidence that the rent arrears were due to any failure or delay in payment of relevant benefits, to which the Respondent may be entitled. There was no reasonable explanation as to why he had failed to pay rent as agreed. The Tribunal took into account the fact that the Applicant had attempted to engage with the Respondent in accordance with the rent arrears pre-action protocol. Despite the Applicant's efforts, the Respondent had failed to take adequate steps to address the arrears. The Tribunal also took into account the efforts the Applicant had made to try and gain entry to the property, which included applying to the Tribunal for right of entry, all to no avail.
- 31 Whilst the Tribunal had concerns about the risk of homelessness to the Respondent, it took into account the fact that the Respondent appeared to have applied for rehousing via the local authority. There were no dependents residing with him who would be at risk, and no evidence of any health conditions that would render him particularly vulnerable. The Tribunal was also aware that the local authority would have obligations to offer the Respondent advice and assistance if an eviction order was granted by the Tribunal.
- 32 Accordingly, having considered the above factors as relevant to the issue of reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 33 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.



29 July 2025

Date