



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

Chamber Ref: FTS/HPC/EV/25/0976

Re: Property at Harefield, Shannochie, Isle of Arran, KA27 8SJ (“the Property”)

Parties:

Samantha Payn, 12 Easdale Island, Oban, Argyll and Bute, PA34 4TB (“the Applicant”)

Martin Gallacher, Harefield, Shannochie, Isle of Arran, KA27 8SJ (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction. The Tribunal determined that it was reasonable to suspend enforcement of the order until 31 October 2025.

Background

1. By application dated 5 March 2025 the applicant seeks an order for eviction, relying on ground 1 (landlord intends to sell) and ground 12 (rent arrears for three or more consecutive months) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was conjoined with an application seeking an order for payment in respect of rent arrears under reference FTS/HPC/CV/25/0977.
2. The applicant lodged the following documents in advance of the case management discussion (“cmd”):

- Private residential tenancy agreement
- Notice to leave
- Section 11 notice to local authority
- Rent statement
- Pre Action Requirements correspondence
- Correspondence between the parties regarding the joint tenancy
- Estate agency agreement

Case management discussion - 23 July 2025 - teleconference

3. A case management discussion ("cmd") took place via teleconference on 23 July 2025. The applicant was represented by Mr Deane, solicitor, Bannatyne Kirkwood France & Co. The respondent attended on his own behalf.
4. Mr Deane sought an order for eviction relying on both grounds. He stated that the applicant is a self employed translator. Their earnings from employment had decreased due to the increased use of technology for translation purposes. He stated that the applicant sought to sell the property as part of their retirement planning. The applicant is 65 years old. The property is their sole rental property. The applicant does not wish to continue to be a landlord after retirement. Mr Deane also stated that the applicant's husband has a chronic medical condition which has also been a factor in the decision to sell the property. Mr Deane stated that the applicant had complied with the pre-action requirements. The respondent had made no offer to repay the arrears which continued to increase. He stated that the respondent was now receiving Universal Credit. There was a shortfall in the payment which the respondent had not made up. In the circumstances, Mr Deane stated that it was reasonable that an order be granted.
5. Mr Gallagher did not oppose an order for eviction but sought a suspension of the period before enforcement to allow alternative accommodation to be obtained. He sought a 6 month suspension of enforcement of the order. Mr Gallagher stated that the property had been a source of stress to him and his family as it was in a poor state of repair. He stated that he had sought advice from North Ayrshire Council. He had made an application for housing and had been awarded priority due to his partner's ill health and the threat of

homelessness. Mr Gallagher stated that there was a shortage of emergency accommodation on Arran and sought extra time for accommodation to be sourced. Mr Gallagher resides with his partner, Carolanne Miller and their 2 children aged 5 and 6. Both children attend schools on Arran. Mr Gallagher stated that arrears had built up after he had left his previous employment. Due to a sanction that had been applied to his Universal Credit he had been unable to make payments towards the rent account. He stated that the sanction had now been lifted and stated that if the order was suspended he would make payment of rent until the date of enforcement.

6. Mr Gallagher stated that he wished to remain on Arran as he intended to start a business on the island.
7. Mr Gallagher stated that his partner suffered from significant health issues which were currently preventing her from working.
8. Mr Gallagher accepted that the sum of £2110 was due in rent arrears as at the date of the cmd.

Findings in fact and law

9. Parties entered into a private residential tenancy agreement with a commencement date of 12 November 2020.
10. Monthly rent due in terms of the agreement is £570.
11. Rent arrears as at 23 July 2025 amounted to £2110.
12. The rent account has been in arrears since 12 March 2024.
13. The respondent is receiving universal credit housing costs payment of £475 per month.
14. The applicant complied with the pre-action requirements set out in the Rent Arrears Pre Action-Requirements (Coronavirus) (Scotland) Regulations 2020.
15. The applicant signed an estate agency agreement with Arran Estate Agents on 23 January 2025.
16. The applicant intends to sell the property as part of their retirement planning.
17. The respondent does not seek to defend the application.
18. The respondent has submitted an application for housing to North Ayrshire Council. He has been awarded priority based on his partner's medical issues and the threat of homelessness.

19. The respondent resides with his partner who has significant health issues and their 2 children aged 5 and 6.
20. Ground 12, in schedule 3 of the 2016 Act has been established.
21. Ground 1, in schedule 3 of the 2016 Act has been established.
22. It is reasonable to grant an order for eviction
23. It is reasonable to vary the date of enforcement of the eviction order until 31 October 2025.

Reasons for the decision

24. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

25. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

26. Ground 1 states:

(1) It is an eviction ground that the landlord intends to sell the let property.

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

(1) applies if the landlord—

(a) is entitled to sell the let property,

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

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

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

27. The applicant had submitted an estate agency contract in respect of the sale of the property which the Tribunal accepted as evidence that the applicant intends to sell the property.

28. Ground 12 states:

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.

29. The Tribunal was satisfied on the basis of the undisputed rent statement that there had been arrears of rent for a period in excess of three months. The respondent did not dispute the level of arrears at the cmd.
30. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against
31. The Tribunal had regard to the application, the documents lodged by the applicant and oral submissions at the cmd.
32. The Tribunal determined that the correspondence sent to the respondent complied with the pre-action requirements.
33. In light of the lack of opposition from the respondent the Tribunal determined that it was reasonable to grant an order for eviction on both grounds.
34. In relation to the respondent's request to vary the date of execution to allow a period of 6 months for him to find alternative accommodation the Tribunal determined that 3 months and 1 week was a reasonable period to defer execution. The Tribunal gave weight to the respondent's household's personal circumstances and the fact that the respondent had been active in his search for accommodation. He had been awarded priority points from the local authority. The Tribunal gave weight to the fact that the respondent was not defending the action.
35. The Tribunal took into account that the notice to leave had been served on 8 October 2024 and that the respondent had been aware of the applicant's intentions for some time. The Tribunal also gave weight to the negative impact of a 6 month delay on the applicant in light of their personal and financial circumstances and retirement planning. There was a risk that rent arrears would continue to rise while the respondent resided in the property.
36. The Tribunal determined that in light of the foregoing factors 3 months and 1 week was a reasonable period of time to allow the respondent to remove from the property.

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.



Date: 23 July 2025