



**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/24/5781

**Re: Property at 15 Menzies Avenue, Cumnock, Ayrshire, KA18 3DD (“the
Property”)**

Parties:

**Mr Paul Mcanally, 15 Douglas Brown Avenue, Ochiltree, KA18 2PP (“the
Applicant”)**

**Ms Laura McLatchie, 15 Menzies Avenue, Cumnock, Ayrshire, KA18 3DD (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had 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 ground 12 as the ground for possession, stating that the Respondent had failed to pay rent. The application was conjoined with an application for a payment order under reference FTS/HPC/CV/24/5782 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 14 July 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 16 April 2025.
- 3 The Tribunal invited both parties to make written representations. On 25 June 2025 the Applicant’s representative, Wallace Hodge Solicitors, submitted an updated rent statement. No written representations were received from the Respondent.

The CMD

- 4 The CMD took place on 14 July 2025 at 10am by teleconference. Mr Stephen Ferry of Wallace Hodge Solicitors represented the Applicant. The Respondent did not join the call. Mr Ferry advised that the Applicant had last spoken with her on 1 July 2025. She had confirmed her awareness of the CMD but did not indicate her intentions regarding the matter. The Tribunal noted that she had been given proper notice of the CMD under 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 her 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) Notice to leave and proof of delivery upon the Respondent;
 - (vi) Section 11 notice and proof of delivery upon the local authority;
 - (vii) Rent statements; and
 - (viii) Copy correspondence from the Applicant to the Respondent in accordance with the rent arrears pre-action protocol.
- 6 The Tribunal explained the purpose of the CMD and proceeded to hear submissions from Mr Ferry on the application. The following is a summary of the key elements of the submissions and does not constitute a verbatim account.
- 7 Mr Ferry confirmed that the Applicant sought an eviction order. The arrears now stood at £3740.20. Mr Ferry made reference to the updated rent statement. The tenancy had commenced on 21 September 2023. The Respondent had failed to pay rent consistently over the term of the tenancy. She last paid rent on 13 April 2025. Mr Ferry referred to the letters that had been sent to the Respondent in compliance with the rent arrears pre-action protocol, and the notice to leave which had been served upon her by sheriff officers in October 2024. The Respondent had repeatedly promised to address the rent arrears but had failed to do so. The arrears were not a consequence of a failure or delay in the payment of housing benefit. The Respondent was in full time employment. She resided in the property with her three children, two of whom were school

age. The Applicant was not aware of any vulnerabilities. The Applicant did not know if the Respondent had been offered accommodation by the local authority, however it was presumed that the local authority would have been in touch with her in response to the section 11 notice.

- 8 Mr Ferry addressed the Applicant's circumstances. This was the only rental property the Applicant owned. It had been his former marital home. The Applicant had vacated the property after separating from his wife. He had faced difficulties in paying the mortgage for the property, which he resolved by letting the property. The previous tenant had left the property in a poor condition. The Applicant had incurred costs in getting the property back to a reasonable standard. The Applicant was suffering significant financial hardship. He relied upon the rent to meet the mortgage payments and cover his expenses. The rent arrears were no longer sustainable. It was reasonable to make an eviction order.
- 9 The Tribunal adjourned the CMD to deliberate, at which point Mr Ferry left the call, before resuming the discussion and confirming its decision.

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 21 September 2023.
- 11 In terms of Clause 8 of the tenancy agreement the Respondent undertook to pay rent at the rate of £595 per calendar month in advance.
- 12 The Respondent has failed to pay rent as agreed. As at the date of this decision rent arrears of £3,740.20 have accrued. No rent has been paid by the Respondent since 13 April 2025.
- 13 On 24 October 2024 the Applicant served a notice to leave upon the Respondent by sheriff officers. The notice to leave included ground 12 of schedule 3 of the 2016 Act and stated that an application would not be made to the Tribunal any earlier than 23 November 2024.
- 14 On 18 December 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to East Ayrshire Council by recorded delivery mail.
- 15 The Applicant has written to the Respondent highlighting the arrears and the Respondent's rental obligations. The Applicant has offered to enter into payment plans with the Respondent and has directed her to agencies for advice and support.
- 16 The arrears are not known to be a result of any failure or delay in the payment of a relevant benefit to which the Respondent may be entitled.

- 17 The Applicant has a mortgage over the property. The Applicant relies upon the rent to cover the mortgage payments and property costs. The rent arrears are causing the Applicant significant financial hardship.
- 18 The Applicant has no other rental properties. The property was the Applicant's former marital home.
- 19 The Respondent is in full time employment. The Respondent resides in the property with her three children, two of whom are school age.

Reasons for decision

- 20 The Tribunal took into account the application and supporting documentation, written representations, and the submissions from Mr Ferry at the CMD, and considered it could make relevant findings in fact in order to reach a decision on the application. The Respondent had not sought to challenge the information presented by the Applicant and there were therefore no issues to be resolved that would require a hearing to be fixed.
- 21 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 whether ground 12 of schedule 3 of the 2016 Act had been met in this case.
- 22 The Tribunal considered the wording of ground 12:-
 - "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.”*

- 23 The Tribunal accepted based on the rent statements produced by the Applicant that the Respondent had been in arrears for three or more consecutive months. There was no contradictory evidence before the Tribunal. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the rent arrears in this case.
- 24 The Tribunal gave significant weight to the extent of the Respondent's breach of her rental obligations. Payment of rent is a fundamental obligation of any tenancy. The arrears were now significant, amounting to just over six months rent. The Tribunal also took into account the impact of the arrears on the Applicant. The Tribunal accepted that the rent arrears were causing him significant financial hardship, as he relied upon the rent to meet his mortgage payments. The Tribunal accepted that he was not a professional landlord, and that he would be unable to sustain the arrears for much longer.
- 25 The Tribunal carefully considered the Respondent's circumstances. The information the Tribunal had about the Respondent was limited, as she had chosen not to participate in the proceedings. However, the Tribunal was content to accept the submissions from Mr Ferry on this point, which were clear and consistent. There was no evidence to suggest that the arrears were due to any failure or delay in payment of relevant benefits, to which the Respondent

may be entitled. The Tribunal accepted that she was in full time employment. There appeared to be no reasonable explanation as to why she 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, and had offered to enter into payment plans. Despite the Applicant's efforts, the Respondent had failed to take adequate steps to address the arrears. Whilst the Tribunal had concerns about the risk of homelessness to the Respondent and her three children, it was aware that the local authority would have obligations towards them if an eviction order was granted by the Tribunal.

26 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.

27 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.

R O'Hare

14 July 2025

Legal Member/Chair

Date