

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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**

**Chamber Ref: FTS/HPC/EV/25/0253**

**Re: Property at 158 Ainslie Road, Cumbernauld, G67 2EE (“the Property”)**

**Parties:**

**Ms Elizabeth Shields, 17 Lomond Crescent, Cumbernauld, Glasgow, G67 4JJ  
 (“the Applicant”)**

**Mr Stuart MacKenzie, 158 Ainslie Road, Cumbernauld, G67 2EE (“the  
Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that that the application for the order for possession  
should be granted**

**Background**

1. By application dated 21 January 2025 the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 4 April 2025 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) was set to take place on 18 September 2025 and appropriate intimation of that hearing was given to both parties. Service on the respondent was effected by sheriff officers on 8 August 2025.

### **The Case Management Discussion**

4. The Case Management Discussion (CMD) took place on 18 September 2025 via telephone case conference. The applicant was not present but was represented by her solicitor. Ms. Jennifer Anderson of Clarity Simplicity, solicitors, Glasgow.. The Respondent did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant's representative with regard to the application.
7. She confirmed that she wished the order for eviction to be made.

### **Findings in Fact**

8. The Applicant is the registered owner of the property.
9. The Applicant and the Respondent, as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 April 2022.
10. The tenancy was a private residential tenancy in terms of the Act.
11. The agreed monthly rental was £425.
12. On 16 October 2024 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by sheriff officers and the notice became effective on 10 January 2025.
13. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
14. The notice was correctly drafted and gave appropriate periods of notice as required by law.
15. The notice set out two of the grounds contained within schedule 3 of the Act, namely ground 1 (that the landlord intends to sell the property) and ground 12 (that the tenant had been in arrears of rent for three or more consecutive months)

16. Arrears had started to accrue in April 2024 and at the date of the lodging of the application arrears amounted to £4,675
17. The amount of arrears at the date of the CMD was £7,6590
18. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
19. The basis for the order for possession on ground 12 was thus established.
20. The applicant is entitled to sell the property and intends to do so.
21. The basis for the order for possession on ground 1 was thus established

### **Reasons for Decision**

22. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
23. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since on or around April 2024, the respondent has failed to pay the rent as it fell due and significant arrears have accrued.
24. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significant. The ground for eviction based on rent arrears was accordingly established.
25. The applicant intends to sell the property at market value or at least put it up for sale, within 3 months of the tenant ceasing to occupy.
26. The applicant is the grandmother of the respondent. The tenancy was initially created to allow the respondent to occupy the property as a precursor to him purchasing the property from the applicant. The respondent has been unable to purchase the property and since April 2024 has failed to pay any ongoing rent. The relationship between the parties has broken down completely. The respondent has failed to respond to any contact from either of the applicant directly or the solicitor instructed by the applicant.
27. The applicant has always intended to sell the house and had never intended to be a landlord. The creation of the tenancy was intended to lead to a situation

with the respondent purchased the property. The applicant wished to help her grandson. The respondent has failed to take any steps in this regard and the applicant wishes to sell the property. The applicant is retired and wishes to utilise the funds which can be obtained from the sale proceeds of property to assist in her retirement. The respondent is a single man with no children who lives alone and self-employed. There are no apparent health or vulnerability issues in respect of the respondent

28. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
29. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
30. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. The respondent has have provided no explanation for the failure to fully meet the rental obligations. The arrears as the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondent.
31. The tribunal accepts that the landlord is entitled to sell the property and wishes to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. The applicant seeks an eviction order to allow her to recover possession of the property and to place it on the market for sale. That has been her intention even when granting the tenancy. The respondent was well aware of the applicant's intentions.
32. The respondent has have lodged no written representations with the tribunal despite being offered the opportunity to do so. He failed to attend the CMD.
33. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

***"[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he***

***thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.***

34. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties I
35. In this case the tribunal finds that it is reasonable to grant the order. The balance falls heavily in favour of the applicant. She wishes to sell the property and has wished to do so for a number of years. Arrears are now at an extremely high level and likely to be irrecoverable.
36. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

## **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.**

# **Jim Bauld**

**Legal Member/Chair**

**Date: 19 September 2025**