



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/0904

Re: Property at Larch, 6 Kindeace Highland Lodges, Invergordon, IV18 0LL (“the Property”)

Parties:

Mr Iain MacBeath, Woodlands, Kindeace, Invergordon, IV18 0LL (“the Applicant”)

Mr Paul Walsh, Miss Reanna Larrea, Larch, 6 Kindeace Highland Lodges, Invergordon, IV18 0LL (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 28 February 2025, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears for three consecutive months) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, a Rent Statement and evidence regarding the ‘pre-action protocol’. An application for payment of rent arrears was submitted at the same

time and was conjoined with this application. Both applications proceeded together through the Tribunal process.

2. Following initial procedure, on 28 March 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion ("CMD") was fixed for 19 August 2025. The application and details of the CMD scheduled were served personally on the Respondent by Sheriff Officer on 7 July 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations by 24 July 2025. None were lodged prior to the CMD.
4. On 4 August 2025, the Applicant's representative lodged a request on behalf of the Applicant to increase the sum claimed in the payment application from £6,000 to £8,500, being the increased balance now owing in respect of rent arrears, together with an updated Rent Statement in support.

Case Management Discussion

5. The CMD took place by telephone conference call on 19 August 2025 at 2 pm. In attendance were the Applicant, Mr Iain McBeath and his solicitor, Mr Duncan McFadyen of ELP Arbuthnott McClanachan. A trainee solicitor from that firm was also in attendance as an observer and did not participate in the CMD. The Tribunal delayed the commencement of the CMD for over five minutes to give the Respondent an opportunity to join late but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr McFadyen confirmed that orders were sought in both applications today. He confirmed that rent arrears continue to accrue and, although the sum claimed in the payment application was increased to £8,500 recently, the actual amount of the arrears is now £9,000 as a further month's rent of £500 is now due. It is only the sum of £8,500 that is sought today. There has been no further contact from the Respondents so the situation remains the same as stated in the correspondence already lodged. There was never any specification by the Respondents regarding the repairs issues mentioned. The only repair required that the Applicant is aware of was a communal repair to the septic tank which serves the Property and some surrounding properties. However, this issue was attended to as a common repair at the relevant time. The Applicant's position is, therefore, that any deterioration in the condition of the Property must have been caused by the Respondents. The Respondents are not known to have any children living with them but are understood by the Applicant to have been using the Property for the housing and breeding of dogs. Otherwise, Mr McFadyen was not aware of the Respondent's personal or financial circumstances. He confirmed that rent has not been paid now for a period of 17 months and that this is clearly having a massive impact of the Applicant's finances. This Property was supposed to be rented out as a holiday let and the Applicant expected to be receiving rental income from it.

7. Mr McBeath added some further detail. He has not had any recent contact from either of the Respondents. He was aware that the male was a joiner to trade and his partner worked as a housekeeper in a hotel in Invergordon. He does not know anything of their current circumstances. They are definitely still residing in the Property. He knows this because his own property is close by and there is a shared access. Mr McBeath confirmed that the situation has caused him a lot of stress, as well as the financial impacts of the rent not being paid. He explained that he had originally let the property on a temporary basis to the Respondent's brother, during the Covid period, and then he had let the Respondents move in, without Mr McBeath's consent. Mr McBeath had then agreed to let them stay on to give them time to find alternative accommodation. However, they have instead stayed in the Property and stopped paying their rent, which they did initially pay. Mr McBeath confirmed that the Respondents had two dogs, which have had at least one litter of puppies. At one point, there were six dogs in the Property but he thinks the puppies were sold and they now just have the two dogs again. Some of the neighbouring lodge owners have complained about the Respondents allowing their dogs to defecate in the nearby woods. Mr McBeath stated that he wants to move on from this situation, recover his Property and let it as a holiday chalet which had always been the intention. He confirmed that he owns one other of the chalets which he lets out but that the other chalets in the vicinity are owned by other people.
8. In summing up, Mr McFadyen confirmed that there is no suggestion here that the rent arrears are due to a delay or failure in state benefits being paid to the Respondent. He also confirmed that the Applicant had complied with the 'pre-action protocol' in respect of the rent arrears and referred to the supporting correspondence lodged in this regard.
9. The Tribunal Members adjourned to discuss the applications in private. On re-convening, it was confirmed that the Tribunal was satisfied that the ground for eviction was met and also that it was reasonable to grant the order in all the circumstances of the case. There was some brief discussion regarding the procedures to follow. Parties were thanked for their attendance and the CMD was concluded.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the joint tenant of the Property by virtue of a Private Residential Tenancy which commenced on or around 6 June 2022.
3. There is no written tenancy agreement as a previous tenant of the Property allowed the Respondent to take up occupation, without the consent of the Applicant.
4. The rent due in respect of the tenancy was agreed at £500 per calendar month.

5. Rent was initially paid until February 2024 when the monthly rental payment was missed and then paid late during March 2024.
6. No rental payments have been made since and no payments have been made towards the rent arrears which have accrued.
7. The last payment towards rent was made on 15 March 2024 in the sum of £500.
8. Arrears amounted to £5,000 when the Notice to Leave was served in December 2025; £6,000 when this application was lodged; £6,000 as at 4 August 2025; and currently amount to £9,000.
9. The Applicant and subsequently his solicitors have sought to engage with the Respondent concerning the rent arrears and issued communications to them in respect of the 'pre-action protocol'.
10. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by post, sent on 20 December 2025 and delivered/signed for on 24 December 2024.
11. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 20 January 2025.
12. The Tribunal Application was submitted on 28 February 2025.
13. The Respondent has remained in occupation of the Property.
14. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
15. The Respondent has been in rent arrears for three or more consecutive months.
16. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
17. The Respondent emailed the Applicant's solicitor on 1 December 2024, in response to correspondence sent to them, stating that they were withholding rent due to the condition of the Property.
18. The Applicant had not received any prior communication from the Respondent regarding issues with the condition of the Property or outstanding repairs.
19. The Respondent was called upon by the Applicant to provide further specification of their claim but failed to do so and have not engaged further with the Applicant or his solicitor.
20. The Respondent did not lodge any written representations with the Tribunal or attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the procedural background to the application, the further written representations lodged on behalf of the Applicant recently and to the oral representations at the CMD by both the Applicant and his solicitor.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the relevant provisions of the 2016 Act.
3. Although there was no written tenancy agreement between the parties, the Tribunal was satisfied that there was a Private Residential Tenancy in place from in or around 6 June 2022 when the first rental payment was made by the Respondent and that the agreed monthly rental was £500 per calendar month.
4. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12, and was satisfied that all requisite elements of that ground had been met. The Tribunal was satisfied that the Respondents have not vacated the Property, that there were now substantial rent arrears amounting to £9,000 and that the rent had been continuously in arrears for a lengthy period of time, namely 17 months, during which no payments have been received towards rent or the arrears which have accrued. The rent had been in arrears for a period exceeding three consecutive months when notice was served.
5. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and given the circumstances of both parties as far as known to the Tribunal, and to do so at this stage. There was no indication that the Respondents' failure to pay rent was due to any failure/delay in payment of state benefits and it was clear from the 'pre-action protocol' documentation and other correspondence lodged that the Applicant and his solicitor had sought to communicate with the Respondents regarding the arrears. The Respondents had not engaged with the Applicant, other than on one occasion in December 2024 to allege that rent was not being paid due to the condition of the Property. The Tribunal heard directly from the Applicant in this regard and accepted his assertion that he had not previously been contacted by the Respondents regarding either the condition of the Property or to report any alleged outstanding repair issues. When asked to provide further details or evidence, the Respondents had not further engaged. The Tribunal noted that they had stopped making rental payments as from March 2024 and had paid nothing since. The Tribunal also noted from the Applicant how this tenancy had first come about and also that he had reluctantly agreed to allow the Respondents to remain in occupation on the basis that they would be seeking alternative accommodation. The Respondents had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent.

The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

19 August 2025
Date