



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/25/0005

Re: Property at 3 Berridale Avenue, Glasgow, G69 7BT (“the Property”)

Parties:

Mr Andrew Conn and Mrs Chantelle Conn, 14 Shore Street, Glasgow, G40 4ES (“the Applicant”)

Ms Maureen McConway, 3 Berridale Avenue, Glasgow, G69 7BT (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (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 31 December 2024, 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 tenancy agreement and prior tenancy agreement, Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, 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 thereafter proceeded together through the Tribunal process.

2. Following initial procedure, on 24 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 25 August 2025. The application and details of the CMD scheduled were served on the Respondent by Sheriff Officer on 10 July 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations but none were lodged prior to the CMD.

Case Management Discussion

4. The CMD took place by telephone conference call on 25 August 2025 at 10am. In attendance was Mr Paul Cruikshank, Solicitor, from Ian C McCarthy solicitors on behalf of the Applicant. The Tribunal delayed commencement of the CMD for 5 minutes to give the Respondent an opportunity to join late but she did not do so.
5. Following introductions and introductory remarks by the Legal Member, Mr Cruikshank explained the background to the applications. He stated that, around late May/early June 2025, before notifications were issued regarding these CMDs, the Respondent's adult child contacted the Applicant directly on behalf of the Respondent to say that they were not returning to the tenancy Property and were living elsewhere. On Mr Cruikshank's advice, a written renunciation was sought from the Respondent but this has not been received. A neighbour had also contacted the Applicant around May 2025 to complain about a smell from the Property which they thought was not empty. The Applicant attended at the Property and found the door left unlocked. It no longer appeared to be occupied but a number of the Respondent's belongings were left behind. There was rubbish left around the Property which was found to be in poor condition and to have sustained water damage to the fabric of the building. The Applicant's insurers have been involved in assessing the damage but there has not been much they could do to rectify this when the tenancy was still ongoing. In order to keep themselves right, the Applicant wishes to obtain a formal eviction order before fully taking back possession of the Property as the keys were not returned and the Respondent had not formally vacated or signed a renunciation of her tenancy rights.
6. There was discussion regarding the background to the tenancy and the rent arrears which had arisen. Mr Cruikshank stated that there was a previous tenancy agreement in place (a Short Assured Tenancy) from 2007. Arrears accrued in early 2022 when no rent was paid for a period of five months. The Applicant sought to resolve the situation with the Respondent, who explained that the reason for the arrears was to do with an emergency family situation. The parties had negotiated the terms of a fresh tenancy (a Private Residential Tenancy) in respect of which the rent was £550 but the Respondent agreed to pay an additional £100 per month in order to clear the arrears which had accrued. Initially payments were made for a period but then stopped altogether.

after December 2022. Arrears have continued to accrue since then and the non-payment of rent was at the end of its second year and arrears amounted to £15,450 when these applications were submitted to the Tribunal. Reference was made to the Rent Statement lodged and Mr Cruikshank was able to explain the way the figures had been calculated and shown in the statement. He was not, however, able to explain why the amount shown for the rent in the early part of the statement (which related to the previous tenancy agreement) was only shown as £550, although the rent due in terms of the previous tenancy was stated in that agreement to be £562. It was explained that no further payments had been made to the rent account and that the arrears now amounted to more than £15,450. However, Mr Cruikshank was aware that the Tribunal could only consider making a payment order today in the original sum sought as there had been no application submitted to the Tribunal in advance of the CMDs requesting to increase the sum sought.

7. As to the Respondent's circumstances, Mr Cruikshank stated that the Applicant understood her to be in employment in retail throughout the tenancy and were not aware of the Respondent being in receipt of any state benefits over and above her earnings. She had lived at the Property with her two adult children and the Applicant was unaware of the Respondent or her children having any health issues. They notified the local authority of the eviction application by way of the Section 11 notice but are not aware whether the Respondent has been re-housed by the local authority or not. She has failed to engage consistently with the Applicant who had delayed taking this action as she had been their tenant for a long time and they thought they had managed to resolve the arrears situation by way of the new lease arrangement. The Applicant had always tried to be fair and reasonable to the Respondent.
8. The Applicant's circumstances are that they let out two other properties. Although they no longer pay a mortgage over this Property, they were still paying the mortgage during the period when arrears first arose. The amount of arrears has clearly had a significant impact on their finances but the main impact has been the distress caused to the Applicant which has been ongoing for some time and has been worsened by the fact that the Property is in serious disrepair and damage has been caused. This needs to be rectified before the Applicant can consider selling the Property.
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. Mr Cruikshank was thanked for his attendance and the CMD was concluded.

Findings in Fact

1. The Applicant is the joint owner and landlord of the Property.

2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 30 June 2022, although had occupied the Property since 2007 in terms of a previous tenancy.
3. The rent due in respect of the tenancy was £550 per calendar month.
4. Rent arrears had accrued during the previous tenancy and amounted to in or around £2,750 when this tenancy was entered into.
5. Rent was initially paid at the commencement of this tenancy at the rate of £550, with an additional £100 paid in addition towards the arrears which had previously accrued.
6. The last payment towards rent and arrears amounted to £650 on 28 December 2022.
7. No payments have since been made and arrears have been accruing continuously since then.
8. Arrears amounted to £11,600 (£8,850 in respect of this tenancy) when the Notice to Leave was served in May 2024 and £15,450 (£12,700 in respect of this tenancy) when this application was lodged in December 2024.
9. Arrears now exceed £15,450.
10. The Applicant had sought to engage with the Respondent concerning the rent arrears and thought they had resolved the situation by way of entering into a payment arrangement with her.
11. The Respondent initially adhered to the payment arrangement but then no more payments were received after December 2022.
12. The Applicant's solicitor issued a communication to the Respondent in respect of the 'pre-action protocol'.
13. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by recorded delivery post in terms of the tenancy agreement, posted on 31 May 2024 and 'signed for' on behalf of the Respondent on 1 June 2024.
14. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 1 July 2024.
15. The Tribunal Application was submitted on 31 December 2024.
16. The Respondent has remained in occupation of the Property, although may recently have removed or partially vacated.

17. 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.
18. The Respondent has been in rent arrears for three or more consecutive months.
19. 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.
20. The Respondent did not lodge any written representations with the Tribunal nor 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 and to the oral representations at the CMD by the Applicant's 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 tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12, and was satisfied in that all requisite elements of that ground had been met. The Tribunal was satisfied that the Respondent has not properly vacated the Property or returned the keys, that there were now substantial rent arrears amounting to in excess of £15,450 and that the rent had been continuously in arrears for a very lengthy period of time. The rent had been in arrears for a period exceeding three consecutive months when notice was served and remains so.
4. 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 Respondent's failure to pay rent was due to any failure/delay in payment of state benefits and it was clear that the Applicant had sought to engage with the Respondent regarding the arrears and had taken steps to try and resolve the situation by entering into a payment arrangement with her. The Respondent had not engaged consistently, adhered to the payment arrangement entered into nor taken any other steps to resolve the arrears situation. She had not cooperated in properly notifying the Applicant that she was giving up the tenancy or fully vacating. She appeared to have left a number of belongings in the Property, left it unlocked and also in poor condition and damaged by a water leak. The Applicant was informed by the Respondent's adult son that she and they were now living elsewhere but the Applicant has no further details and had not been supplied with any forwarding address. The Respondent 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.

N Weir

Legal Member/Chair

25 August 2025
Date