



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”)

Chamber Ref: FTS/HPC/EV/25/1766

Re: Property at 56 Kelburn Avenue, Fairlie, Largs, KA29 0AU (“the Property”)

Parties:

Ms Shirley Paterson, The Auld Exchange, School Brae, Fairlie, Largs, KA29 0DE (“the Applicant”)

Mr Sarbast Hamza, Miss Sahem Mostafa Saleem, 56 Kelburn Avenue, Fairlie, Largs, KA29 0AU; 56 Kelburn Avenue, Fairlie, Largs, KA29 0AU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of grounds 11 and 12 of schedule 3 of the 2016 Act are met in this case.

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 grounds 11 and 12 as the grounds for eviction, stating the Respondents had breached the terms of the tenancy agreement and were in rent arrears. The application was conjoined with an application for a payment order under reference FTS/HPC/CV/25/1774 as the applications related to the same tenancy and same parties.

- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 30 October 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 Respondents by sheriff officers on 22 September 2025.
- 3 Both parties were invited to make written representations. On 26 September 2025, 10 October 2025 and 16 October 2025 the Tribunal received written representations from the Applicant. On 2 October 2025 the Tribunal received written representations from the first Respondent.

The CMD

- 4 The CMD took place by teleconference on 30 October 2025. Mr Calum Haswell of James Guthrie & Co LLP represented the Applicant, who was present on the call. The Respondents were not in attendance. The Applicant advised that she had not had any contact with the Respondents since February this year. The Tribunal noted the response to the application which indicated they had received the case papers and CMD notification. They had provided no explanation to the Tribunal as to the reason for their absence. The Tribunal was therefore satisfied that they had been given proper notice of the CMD under Rule 17(2) of the Rules and determined to proceed in their absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form
 - (ii) Tenancy agreement between the parties dated 23 August 2024 with inventory of contents;
 - (iii) Notice to leave dated 14 March 2025 and proof of delivery to the Respondents by recorded delivery mail;
 - (iv) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 (“section 11 notice”) and proof of delivery to North Ayrshire Council;
 - (v) Rent statement;
 - (vi) Copy letter from the Applicant to the Respondents dated 28 October 2024;
 - (vii) Statement from A.Mcintyre, Electrical Contractor dated 12 December 2024;
 - (viii) The Applicant’s written representations dated 26 September 2025, 10 October 2025, and 16 October 2025.
 - (ix) The Respondent’s written representations dated 2 October 2025.
- 6 The Tribunal explained the purpose of the CMD and proceeded to hear submissions from Mr Haswell on behalf of the Applicant.
- 7 Mr Haswell advised that the Applicant sought an eviction order on grounds 11 and 12. There had been no change in the position regarding ground 11 since submission of the application. The Respondents continued to have an electricity supply to the garage, and continued to keep a chicken coop. They had done so without the prior consent of the Applicant. This was in breach of their obligations under the tenancy agreement. With regard to ground 12, the

Respondents had last paid rent in November 2024. Mr Haswell referred to the updated rent statement which confirmed arrears of £14,375 as at 26 September 2025. The rent for October had since fallen due resulting in an increased balance of £15,725.

- 8 Mr Haswell referred to the Respondents' written representations. He noted their statement that the rent was paid in cash in full and on time, therefore they did not have formal bank records. Mr Haswell referred to the bank statements produced by the Applicant which showed the Respondents had paid rent by bank transfer in the initial months of the tenancy. The Respondents' statement was therefore untrue. Similarly, the Respondents' allegation that the Applicant had consented to the chicken coop and the electricity supply to the garage was wholly denied by the Applicant, and again this was supported by the documentary evidence. The Respondents had made reference to inappropriate and intrusive conduct by the Applicant. Mr Haswell referred to the excerpt text messages produced which showed the Applicant had acted as a reasonable landlord in her dealings with the Respondents and had tried to correct issues that had been brought to her attention. The Respondents' position had no merit and on that basis Mr Haswell invited the Tribunal to grant an eviction order.
- 9 In response to questions from the Tribunal, the Applicant confirmed that the Respondents had two young children residing with them. There were a lot of people going to and from the property therefore she was unable to confirm for certain who else was residing there. The Applicant owned several businesses in Largs, including two barber shops. In January of this year he had started another business renting properties which the Applicant understood he was operating from a residential address in the town. As far as the Applicant was aware the Respondents were not entitled to any relevant benefits. There had been no suggestion of this at any point during the tenancy.
- 10 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the proceedings and confirming the outcome.

Findings in fact

- 11 The Applicant is the owner and landlord, and the Respondents are the tenants, of the property in terms of a private residential tenancy agreement which commenced on 26 August 2024.
- 12 The Applicant has given the Respondents a notice to leave which includes grounds 11 and 12.
- 13 The Applicant has given the local authority a section 11 notice at the time of making this application to the Tribunal.
- 14 The contractual rent for the property is £1350 per month.
- 15 There are rent arrears in the sum of £15,725 as at the date of this decision.

- 16 The rent account has been in arrears since 26 November 2024.
- 17 Between 26 August 2024 and 26 November 2024 the Respondents paid rent to the Applicant by bank transfer.
- 18 The rent arrears are not known to be a result of any failure or delay in the payment of a relevant benefit.
- 19 The Applicant has contacted the Respondents regarding the rent arrears and has reminded them of their rental obligations.
- 20 In terms of clause 2.6 of the tenancy agreement the Respondents agreed not to make any alterations or additions to the property without the Applicant's prior written consent. In terms of clause 2.13 of the said tenancy agreement the Respondents agreed not to keep any animals on the property without the Landlord's consent.
- 21 The Respondents have erected a chicken coop to the rear of the property and have kept chickens without the consent of the Applicant. The chicken coop has been attached to the external wall of the property. The Applicant has written to the Respondents requiring that the chicken coop and chickens be removed. The Respondents have failed to comply with this request.
- 22 The Respondents have installed electricity to the garage without the consent of the Applicant. The Respondents did this themselves by drilling through the external wall of the house and connecting the supply via a bedroom socket. The wiring used did not comply with safety standards and is unearthed. The Respondents have created a dangerous fire hazard by carrying out this work. The Respondents have put the Applicant's insurance cover at risk. The Applicant has advised the Respondents that the installation is not permitted. The Respondents have failed to cooperate with the Applicant in rectifying the issue.
- 23 The Respondents reside in the property with two children.
- 24 The first Respondent operates two barber shops in Largs. The first Respondent started a property rental business in January of this year.

Reasons for decision

- 25 The Tribunal was satisfied it had sufficient information to make relevant findings in fact based on the oral and written submissions and documentary evidence before it. The Respondents had been clearly advised in the CMD notification that the Tribunal could proceed to a decision at the CMD. They had provided no explanation for their failure to attend the discussion and had not sought to submit any evidence to the Tribunal to counter the documentary evidence submitted by the Applicant. The Tribunal was therefore satisfied it could reach a decision in the absence of the Respondents and in the absence of a hearing under rule 18 of the Rules. The Respondents' submissions did not in their

current form disclose any stateable or credible defence to the application and there were therefore no issues to be resolved that would require a hearing to be fixed.

26 Section 52 of the 2016 Act states that *“an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant”*. The Tribunal was satisfied based on the documentary evidence before it that the Applicant has given the Respondents a notice to leave that complies with the requirements of the 2016 Act. The Tribunal was further satisfied that the Applicant has given the local authority a section 11 notice in accordance with the requirements of section 56 of the 2016 Act.

27 The Tribunal went on to consider the wording of the eviction grounds relied upon in this case.

28 Ground 11 is in the following terms:-

“11 (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”

29 The Tribunal was satisfied that the Respondents were in breach of the terms of the tenancy agreement based on its findings in fact. Whilst they had stated that they had the Applicant’s consent to keep the chicken coop and install electricity to the garage, the documentary evidence produced by the Applicant, in particular the correspondence to the Respondents and excerpt text messages, clearly show that the Applicant had raised the issues with them. There was no evidence from the Respondents to suggest consent on the Applicant’s part.

30 Ground 12 is in the following terms:-

“(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.”

- 31** The Tribunal accepted based on the rent statements produced that the rent account has been in arrears for more than three consecutive months. Whilst the Respondents had sought to dispute this in their written submission, the Tribunal found their explanation completely lacking in credibility. The Applicant had produced evidence to show that the Respondents had in fact made payments of rent by bank transfer, therefore their claim that payments had been made in cash appeared to be untrue. The Tribunal also found it difficult to accept that they would have paid over significant sums of money to the Applicant without obtaining some form of receipt. The Tribunal therefore accepted the Applicant's position as fact based on the documentary evidence before it.
- 32** The Tribunal went on to consider whether it was reasonable to make an eviction order on account of these facts, which requires the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to them.
- 33** The Tribunal took into account the nature of the tenancy breaches. It could reasonably assume that the keeping of chickens in the property would likely be something that could give rise to a level of nuisance to neighbours. However, of greater concern was the electricity supply to the garage. This had been done without any electrical certification. The statement from the Applicant's electrical contractor highlighted that it was a dangerous fire hazard. As a result of the work carried out by the Respondents, there was a risk that the Applicant's insurance would be invalid. The Tribunal therefore considered this to be a

serious breach of the Respondents' obligations under the tenancy agreement to which significant weight could be applied as a factor relevant to reasonableness.

- 34** The Tribunal also gave significant weight to the Respondent's breach of their rental obligations. Payment of rent is a fundamental obligation of any tenancy. The Respondents have repeatedly failed to pay rent over a prolonged period. It is nearly a year since any payments were received by the Applicant. The arrears are now significant, standing at just over £15,000. The Tribunal took into account the fact that the arrears do not appear to be due to any failure, or delay, in the payment of a relevant benefit. The Applicant had also alerted the Respondents to the arrears and their rental obligations and the Tribunal considered that to be sufficient compliance with the rent arrears pre-action protocol in this particular case.
- 35** The Tribunal considered the Respondents' circumstances, noting that they resided in the property with two young children. However, whilst the risk of homelessness to the Respondents' family was a cause for concern, based on their business interests the Tribunal could reasonably conclude that they would have some form of access to alternative accommodation. If not, the Tribunal was aware that the local authority would have a duty to offer them advice and assistance if an eviction order were granted.
- 36** The Tribunal could identify no other factors relevant to reasonableness in the Respondent's submissions. They had made reference to the Applicant's conduct, however the text messages between the parties directly contradicted their account of events by showing the Applicant to have been reasonable in her dealings with them. They had made reference to repairs but did not provide any evidence that these issues had been notified to the Applicant, nor that they were withholding rent as a result. Their primary position was that rent had been paid which the Tribunal does not accept for the aforementioned reasons. The Tribunal concluded therefore that the impact of eviction on the Respondents and their family did not outweigh the other factors identified by the Tribunal.
- 37** Accordingly, having weighed those factors relevant to reasonableness the Tribunal concluded that the balance weighs in favour of making an eviction order in this case.
- 38** The Tribunal therefore determined that grounds 11 and 12 had been met and determined to make an eviction order. 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.

Ruth O'Hare

Legal Member/Chair

Date: 30 October 2025