

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/3059

Re: Property at 81 Oban Drive, Flat 0/2, Glasgow, G20 6AD (“the Property”)

Parties:

Mr Blair Boyd, 20 Learmonth Street, Falkirk, FK1 5AG (“the Applicant”)

Ms Kerry Scott, 81 Oban Drive, Flat 0/2, Glasgow, G20 6AD (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondent. The Tribunal delayed execution of the order until 19 January 2026.

1. An application was received on 3 July 2025 from the Applicant under Rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’). This stated in error that the Applicant was seeking recovery of the property under Ground 8.
2. Attached to the application form were:
 - (i) Copy private residential tenancy agreement between the parties, which commenced on 1 December 2023.
 - (ii) Copy Notice to Leave dated 31 May 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 30 June 2024, together with Royal Mail proof of delivery dated 1 June 2025.
 - (iii) Copy pre-action requirements emails sent by the Applicant to the Respondent on 23 and 27 May 2024.

3. Further to a request from the Tribunal administration, the Applicant provided further information on 2 August 2024, namely:
 - (i) An amended application form stating that the application was made under ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act.
 - (ii) Rent statement showing the Respondent's outstanding rent arrears to be £4800 as at 1 August 2024.
 - (iii) Copy notice to Glasgow City Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email dated 2 August 2024.
4. The application was accepted on 29 August 2024.
5. A case management discussion (CMD) was scheduled for 5 March 2025. Written representations were submitted by the Applicant on 24 February 2025, and by the Respondent's representative on 12 and 25 February and 5 March 2025.

The case management discussion

6. The CMD was held by teleconference call on 5 March 2025. The Applicant was present on the call and represented himself. The Respondent was present on the call and was represented by Ms Karolina Dziedzic of Legal Services Agency Ltd.
7. The Respondent disputed that the Notice to Leave had been validly served and raised various issues relating to the condition of the property. She said that as the Applicant had not carried out required repairs at the property, she had been forced to instruct repairs herself. Her position was that the rent claimed by the Applicant should be abated in full. The Applicant said that the Respondent was in breach of contract by carrying out unauthorised repairs to the property.
8. The Respondent said that going forward, she intended to pay rent but that she wished a rent reduction for the past months when the property did not meet the repairing standard and reimbursement for the money she had spent carrying out the repairs. She said that the rent should be reduced to £350 per month for the period that the property was in need of repair.
9. The previous Tribunal decided that in light of the issues and the disputed facts, it would be necessary to determine the application at a hearing. The previous Tribunal issued a direction to the parties on 5 March 2025, directing them to provide further information at least 14 days before the hearing. A response to the direction was received from the Applicant on 20 March 2025.

The initial hearing

10. The present Tribunal held a hearing at Glasgow Tribunals Centre on 22 July 2025 to consider the application. The hearing was scheduled for the same time as a CMD on the conjoined civil proceedings application (reference no: CV/25/0968).
11. The Applicant was present at the hearing and represented himself. The Respondent was not present at the start of the hearing and was represented by Ms Dziedzic.
12. The Tribunal had not received a response from the Respondent to the previous Tribunal's direction prior to the hearing. It became apparent immediately before the hearing that Ms Dziedzic had in fact submitted a response to the direction on behalf of the Respondent on 16 July 2025. It appeared that this had not been received and had therefore not been sent to the Tribunal.
13. Ms Dziedzic apologised for the late submission of the documents. She explained that the delay had been due to several factors. Firstly, she had been awaiting the completion of an independent architect's report, which was essential in determining whether the property meets the tolerable standard. There had also been difficulties in obtaining an Environmental Health survey previously conducted at the property. These documents were required in order to calculate the amounts relating to the rent due and the cost of repairs which the previous Tribunal had directed the Respondent to provide. She had also been awaiting further information from the Respondent.
14. Ms Dziedzic asked the Tribunal to accept the late submissions in light of the reasons given for the delay. The Legal Member noted that the submissions totalled over 130 pages, and that it would not therefore be possible for the Tribunal to read through them during the hearing.
15. Ms Dziedzic asked the Tribunal to postpone the hearing to a later date, to allow for the submissions to be considered. The Applicant opposed any postponement of the hearing, pointing out that his application had been submitted over a year ago and expressing the view that the Respondent had had plenty of time to respond to the direction. He expressed concern that the rent arrears would continue to increase before any postponed hearing.
16. Following a brief adjournment, the Tribunal informed the parties that it had decided to continue the hearing to a later date to allow it to read and consider the Respondent's submissions. While it acknowledged the Applicant's objections, the Tribunal considered that the information submitted, which the previous Tribunal had directed should be provided, was likely to be important

in allowing it to make a decision on the matter. The Tribunal was therefore satisfied that there was good reason to accept the evidence.

17. The Respondent arrived late towards the end of the adjournment. The Tribunal decided that it was able to consider the two preliminary issues which had been raised by the Respondent regarding the competency of the proceedings. Written submissions on these points had been received from both parties.
18. The Tribunal heard evidence from both parties on these two preliminary matters, as set out below. Having considered their submissions on these following the initial hearing, and bearing in mind the overriding objective, the Tribunal decided that the application was valid and should proceed. The Tribunal's reasons for that conclusion are set out later in this decision.
19. The Tribunal also proceeded with the CMD on the accompanying civil proceedings application. It decided to fix a hearing on that application, given the issues disputed between the parties. A conjoined in-person hearing on both applications was fixed for 6 November 2025.

Preliminary issues

1. Pre-application emails sent by the Applicant regarding the arrears were not received by the Respondent

20. The Applicant had submitted two emails which he had sent to the Respondent on 23 and 27 May 2024, at the email address stated for her in the tenancy agreement. These emails were intended to address the pre-action requirements for a ground 12 application. In the email of 23 May, which was headed "rent arrears", the Applicant advised the Respondent that she was in three months' rent arrears. He also stated that given the issues at the property, he was willing to reduce the rent for these months from £800 to £350 in recognition of the inconvenience caused. He said that if he had not received payment of £1050 for these 3 months by 30 May 2024, he would issue a Notice to Leave. The email of 27 May included information on tenants' rights, information and advice.
21. The Respondent said that she had not received these emails. They had been sent from a different email address to that specified in the tenancy agreement for communication between the parties. All prior emails and WhatsApp messages which she had received in relation to the tenancy had been sent by the Applicant's son, Mr Santiago Boyd ("Mr Boyd Jr"), who was named in the tenancy agreement as the Applicant's agent. The email address provided for communication in the tenancy agreement was Mr Boyd Jr's email address.

22. The Respondent had received the emails from Mr Boyd Jr because she had an alert set up on her phone for these. She had not saved the Applicant's address as a safe sender. She accepted that she was aware that the Applicant was her landlord. She had since searched for the emails sent by the Applicant, but had no record of them, and believed that one or both of them may not have been delivered.
23. The tenancy agreement stated in the paragraph on communications: *To ensure all emails can be received and read in good time, the Landlord Agent and Tenant(s) agree to inform each other as soon as possible of any new email address which is to be used instead of the email address notified in this Agreement.*"
24. The Respondent said that the Applicant had not informed her of any change to this email address. She said that, had she been aware of the offer made by the Applicant in his email of 23 May, she would have accepted it and the issue would have been resolved. She had previously asked for a rent abatement due to the repairs issues. If she had thought the Applicant would agree to reduce the rent, she would have engaged with him.
25. The Applicant submitted that surely anyone receiving an email headed "rent arrears" from their landlord would look at it. He explained that he had fallen out with his son at that point and had taken over dealing with the tenancy from him. He conceded, however, that he had not notified the Respondent that he had done so, nor that the email address for communication about the tenancy had changed from Mr Boyd Jr's to his own.

2. The Notice to Leave was not validly served on the Respondent

26. Ms Dziedzic told the Tribunal that the Respondent's position was that the Notice to Leave had not been validly served on her. Firstly, the tenancy agreement clearly stated that all communications between the parties, including notices to be served by one party on the other, would be sent by email. Prior to the Notice to Leave being sent by recorded delivery, all correspondence had been by email or WhatsApp messages from Mr Boyd Jr.
27. The Tribunal noted that the tenancy agreement appeared to be based on the standard private residential tenancy agreement (PRT) template. The paragraph headed "Communication" stated as follows:

"The Landlord Agent and Tenant agree that all communications which may or must be made under the Act and in relation to this agreement, including notices to be served by one party on the other will be made in writing using:

Hard copy by personal delivery; OR ✓ the email addresses set out in clauses 2 and 1.”

No tick boxes were included as would usually appear in the standard template.

28. Ms Dziedzic submitted that the “tick” symbol before the mention of email addresses was quite clear, and that there was no such “tick” before the reference to hard copy by personal delivery. The parties had therefore agreed that any notices would be served by email. Service of the Notice to Leave by recorded delivery was therefore invalid. She pointed to two First-tier Tribunal authorities (*Higgins v Riley and Harley* EV/19/2868 and *Scott v Hards* EV/19/3690) where the Tribunal had rejected applications because the Notice to Leave had not been served by the means agreed in the tenancy agreement.
29. The Applicant said that he had used a ‘generic’ PRT agreement. He was unsure where he had got it from, but he thought it was probably from the Scottish Government website. He had not noticed the “tick”, but he had not added it. He had produced a First-tier Tribunal decision (*Delaney v Ross and Barron* EV/21/1707). In that case, the Tribunal had accepted that the Notice to Leave which was sent by recorded delivery had been validly served, even though the tenancy agreement provided that all communications in relation to the tenancy would be by email.
30. Ms Dziedzic pointed out that in that case, there was no challenge to the validity of the notice by the Respondents, who had indicated their intention to move out of the property. The situation was accordingly different to the present case, where the Respondent did wish to dispute the validity of the notice.
31. The Applicant argued that the provisions on service of the Notice to Leave, in terms of section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010, are unclear. He argued that the notice had been validly served. In his view, the most important consideration was ensuring that the Respondent received the notice safely and securely.
32. Because he did not want to issue a Notice to Leave, he had offered to reduce the rent for the months during which the Respondent had not paid it, to allow her to stay in the tenancy. The Respondent had raised the repairs issues in January, and he had carried out the repairs in February, but he had received no response to his emails from the Respondent. He had not received any notification to indicate that they had not been received. He was therefore unsure as to whether the Respondent was still at the same email address, and felt that it was safer to send the notice by recorded delivery, to ensure she received it.

33. The second point made by the Respondent was that, while she did not dispute that the Notice to Leave had been sent by recorded delivery, she said that she had not received it. The signature which said "Scott" on the proof of delivery provided by the Applicant was not in her handwriting.
34. Because she had not received either the Applicant's emails or the Notice to Leave, she was unaware of the eviction application until she received the notification of the CMD, which was served on her by sheriff officer on 23 January 2025.
35. The Applicant submitted that the photograph on the proof of delivery from Royal Mail clearly showed that the notice (which was dated 31 May 2025) had been delivered on 1 June 2025. The notice had been put through the storm door outside the flat, which was closed. It would have fallen onto the ground on the inside of the storm door, and no-one else would have been able to access it.
36. The Respondent said that the photograph showed the letter sticking out of the letter box. It was clear it was a recorded delivery letter. She suggested that someone may have taken it, thinking that there was money in it. There had been a lot of parcel thefts reported by other residents in the building.
37. The Respondent also suggested that the storm door may not have been locked. There was only a yale lock on the door, which had not always worked properly at that time, so she may have just pulled it closed. There was no sign of forced entry. The main door to the building was not secure, and anyone could go in or out of the building. The letterbox was very narrow, and letters were sometimes left folded in half and sticking out of the letterbox, as shown in the photograph.
38. The Applicant said that he did not believe the postal worker had left the letter sticking out of the letterbox. It had probably been left there while a photograph was taken to prove that it had been delivered, and then pushed through. He submitted that no-one would break open the storm door just to get a recorded delivery letter.
39. The Respondent accepted that she was unable to prove definitively that the notice to leave had not been delivered.

The Tribunal's direction of 27 July 2025

40. The Tribunal issued a direction to the parties on 27 July 2025, directing them to provide further information by 23 October 2025. Responses were received from the Applicant on 25 August 2025 and from the Respondent's representative on 23 October 2025.

The continued hearing

41. The Tribunal held the continued hearing at Glasgow Tribunals Centre on 10 November 2025 to consider both the present application and the conjoined civil proceedings application. The Applicant was present at the hearing and represented himself. The Respondent was present at the hearing and was again represented by Ms Dziedzic. Mr Boyd Jr also gave evidence as a witness on behalf of the Applicant. A Legal Member of the Tribunal, Mrs Lauren Rae, was also present at the hearing as an observer.

Issues before the Tribunal

42. The two primary issues before the Tribunal were:
- 1) Whether the requirements to establish ground 12 were met.
 - 2) If those requirements were met, whether it was reasonable to grant an order for eviction in all the circumstances of the case.

The Applicant's submissions

43. The Applicant asked the Tribunal to grant an eviction order in his favour against the Respondent. The Respondent had paid the rent during the first three months of her tenancy. She had then paid no rent from March 2024 to date. As at the date of the hearing, she owed a total of £15450 to the Applicant. He accepted that repairs had been required to the property early in her tenancy. This was reflected in his rent statement, which showed that he had charged a reduced rent of £350 for the months from March-May 2024. The required repairs had been carried out in February and March 2024, but the Respondent had still refused to pay any rent. She had therefore breached the tenancy agreement.
44. Mr Boyd Jr's first experience of managing a property had been acting as the Applicant's agent for this property. He had only begin acting as an agent for this property around 6 months before the start of the Respondent's tenancy. The Applicant's relationship with his son had broken down due to the difficulties experienced with the tenancy, and he had taken over the management of the tenancy. He had then sent the emails of 24 and 27 May 2024 to the Respondent. When he received no response to these, he served the Notice to Leave on 1 June 2025.
45. The Applicant's original position was that the repairs had all been carried out. He admitted at the continued hearing, however, that there was rising damp in the property caused by the drainage in the void under the floorboards. He

maintained that the repairs required were common repairs and were therefore the property factor's responsibility. He expressed doubts as to the likely effectiveness of inserting a damp proof course in an old tenement property.

46. Mr Boyd Jr told the Tribunal that his contractors, Parks Plumbing and Electrical ("Parks"), had carried out various works that were required. They had told him that the water leakage under the property was a common insurance issue and that they could not do the work without the property factor's consent. He had been contacting James Gibb, the property factor for the tenement, every day, but things had not been resolved. The Applicant said that he had complained to James Gibb and had even considered making a property factor application to the First-tier Tribunal, but thought that there was no point after issuing the Notice to Leave.
47. Mr Boyd Jr said that he had first offered to reduce the Respondent's rent to £700 a month in February 2024. He said that while the repairs were ongoing, she would not need to pay the rent. Then he said he would reduce the rent by 15%, and told the Respondent to pay half of the rent in March 2024. He had wanted to get the matter resolved as soon as possible for the Respondent.
48. The Applicant said that the property had been renovated around four years ago. He and Mr Boyd Jr had tried their best to resolve the repairs issues, but that there had been conflicting reports from different contractors about the nature of the issues and how they should be addressed. He said that if the Respondent had paid her rent, he would have spoken again to James Gibb regarding the drainage. He said repeatedly that he refused to do the repairs while the rent was not being paid.
49. The Applicant conceded that he had not visited the property at any stage since before the Respondent's tenancy began. He said he trusted his contractors, and Mr Boyd Jr had kept him updated on what was happening with the property. He conceded that the windows in the property may have required replacement in the future, but he believed that they had been adequate. The windows had not been mentioned in the various survey reports and had not been raised with him by either his contractor or the Respondent. He had been shocked that the Respondent had decided to put in new windows without his permission. He was concerned that the windows may not meet the planning regulations as the property was in a conservation area.
50. The Applicant said that there is no mortgage over the property, which he inherited. He pays around £2000 per year in property factor's fees for the property, however. His relationship with his son had broken down as a result of the issues with this tenancy. Mr Boyd Jr is currently unemployed. They had

shared the rent for the property between them, and because the Respondent had not paid the rent. Mr Boyd Jr had no income. The Applicant confirmed that he owns one other rental property, which he also inherited. He is semi-retired.

51. He was concerned that the Respondent could continue to live in the property without paying any rent. He questioned why she had not left the property if it was as bad as she said it was. He considered that he had complied with the pre-action requirements by sending the emails of 24 and 27 May 2024 to the Respondent. He had not received any notification that these had not been delivered.

The Respondent's submissions

52. Ms Dziedzic told the Tribunal that the Respondent's position was that none of the rent for the period from March 2024 to date was lawfully due to the Applicant, due to the ongoing disrepair issues within the property and his failure to address these within a reasonable time.
53. The Respondent had become aware shortly after moving into the property that there were ongoing issues with dampness and water ingress. She had first reported this to Mr Boyd Jr on 17 January 2024. Mr Boyd Jr then contacted James Gibb regarding the issues raised by the Respondent. James Gibb instructed Columbus Facilities Maintenance ("Columbus") to inspect the property. On 10 February 2024, Columbus sent a note of its initial survey to James Gibb. This stated that the kitchen and bathroom walls showed signs of dampness and water damage.
54. In early February 2024, Parks had discovered that the kitchen and bathroom waste pipes in the property had not been connected up properly and that there was a leak below the bath. This had resulted in water pouring into the solum of the tenement building below the property. The Applicant's contractors had told the Respondent that the floors in the kitchen and bathroom needed to be replaced. Repairs had then been carried out in the bathroom and kitchen by Parks. Further urgent repairs had been scheduled for 12 February 2024, but had then been cancelled. The Applicant had offered the Respondent a small reduction in the rental charge from £800 to £700 per month, but he advised that the Respondent would need to cover the cost of a dehumidifier. This offer was not accepted by the Respondent.
55. Prior to this, she had been advised by Parks not to use the shower, as the bath could fall through the existing floor. She was unable to use the shower for about 6 weeks until the repairs were carried out. She was also unable to use the toilet

for about a week as a Parks employee had stood on it and broken it. She paid to have it repaired as Mr Boyd Jr had said that he would not fix it.

56. The Respondent had then complained that all of the required repairs had not been done. Two site surveys carried out by Columbus at the instruction of James Gibb (the second being dated 1 March 2024) had identified dampness issues which were the Applicant's sole responsibility. A further report from Alliance Timber Specialists ("Alliance") had been commissioned by James Gibb in August 2024. This also made clear that most of the works required to address the dampness were the Applicant's responsibility, because it was his contractor who did not fit the pipes properly. She believed that the Applicant had also instructed a separate survey but she had never seen any report on this.
57. Mr Thomas Banks from Glasgow City Council Environmental Health Department visited the property on 5 March 2024, following a complaint from the Respondent. He found evidence of dampness in several areas within the property and indicated that it was below the repairing standard. The Respondent informed Mr Boyd Jr about this assessment. He said that there were issues with the common buildings insurance and then with James Gibb. He said that the other owners in the block would not pay for the communal repairs which were needed. He kept blaming the property factor and his insurance for the failure to carry out the works.
58. Although the pipes were replaced and fixed, nothing was done to address the dampness under the floor. This resulted in the continued presence of mould and dampness in the property. The Respondent had to move her belongings into the living room due to the mould and dampness, and had to dispose of some items.
59. The Respondent informed Mr Boyd Jr in March 2024 that she was withholding her rent until the repairs were carried out. She had sent him an email notifying him of the repairs which required to be undertaken on 21 February 2024.
60. She had not made a repairing standard application to the First-tier Tribunal. She had taken advice and was aware of the possibility of making such an application. She had told Mr Boyd Jr on 5 March 2024 that she intended to apply to the Tribunal, but he had threatened her with eviction if she did so. She was worried that she would make herself homeless, and had therefore decided not to make such an application. She had sent Mr Boyd Jr a further notification of the necessary repairs using the template letter suggested by Shelter Scotland on 30 March 2024. He had refused to carry out the required repairs and continued to blame the property factor for the lack of progress.

61. She felt unable to move out of the property, as she had spent all of her savings in making the initial move. She had also found it very difficult to get a private tenancy because she was in receipt of Universal Credit and Carer's Allowance. Both Shelter and the CAB had told her that a tenant can do repairs themselves if the property is below the tolerable standard, which the various surveys had said it was. She "felt stuck between a rock and a hard place" and therefore felt that she had to carry out the repairs herself. In some of his messages, Mr Boyd Jr had appeared to suggest that she should do the repairs herself.
62. Both Parks and Mr Banks had told her the windows were completely rotten. Columbus also mentioned them in its first report. She had included the windows in her notifications to the Applicant of 21 February and 25 March 2024. She had replaced the windows at a cost of £2500 because she felt that this was one thing that she was able to do without the property factor's involvement. She had realised also that the bedroom window did not lock and she did not feel safe. She had the front windows repaired rather than replaced.
63. The Respondent had also spent £2200 on work to temporarily repair plasterwork in the kitchen. She had spent around £3000 in total on various other works, including painting and decoration, lock repairs, toilet and boiler repairs, all as detailed in the 'schedule of loss' submitted by her representative. This also detailed a further sum of over £2000 which she had spent on other items such as dehumidifier bags, which were required due to the ongoing dampness issues, and over £1500 worth of her belongings which had been damaged.
64. Taken together with the sums included in the schedule of loss for inconvenience caused to her, these amounted to more than the rent which would have been due. She had spent a lot of her time trying to resolve matters. She had always paid her rent in the past, and had the outstanding repairs been carried out, she would have started paying the rent again immediately. Yet the property remained below the tolerable standard, as demonstrated by the independent architect's report of July 2025 which she had produced. While she did not actually seek to claim any compensation from the Applicant for inconvenience, she considered that she was entitled to a full abatement of rent. She took the view that all of the sums detailed in the "schedule of loss" effectively cancelled out any rent which was otherwise due.
65. Moving from Stirling to Glasgow to live in the property had been a big step for her. She had moved there following a relationship breakdown and wished to be closer to her son who was at university there. She had decided to take a career break to care for her sick father and grandmother, who both live in Clackmannanshire. She had hoped that her grandmother, who has dementia,

would be able to stay with her at the property at weekends, but she had been unable to do so due to the state of disrepair.

66. Ms Dziedzic said that the Respondent had been withholding rent since the initial hearing in July 2025 on the advice of her representative, and has placed this in a separate bank account. She also made a repairing standard application to the Tribunal regarding the outstanding repairs on 27 October 2025.

67. The Respondent told the Tribunal that all of the rooms in the property are currently habitable, provided that she runs a dehumidifier in every room. There is still water ponding underneath the building, and she had been advised that the heating in the property draws some of this water up into the property from under the building. She is unable to use the washing machine or dry clothes in the property due to worries about damp and condensation. She cannot use the kitchen beyond making toast and tea.

68. The Respondent has suffered various health issues since moving into the property. She is on medication for depression. She has also had recurrent urinary tract infections, an overactive bladder and throat and chest infections, which have been caused or exacerbated by living in damp conditions.

69. She is now caring for her 10 month old grandchild five nights per week on a temporary basis. Because she does not wish to expose her grandchild to the conditions in the property, they are both living in her father's two bedroom flat, which is very cramped, five days a week. She is only staying at the property two nights a week. She said that she would live there full time, if she could have her grandchild living there and have her grandmother to visit.

70. If she had somewhere else to go, she would leave the property, but is unable to do so. She cannot return to work due to her caring responsibilities. She had not made a homelessness application, as both Glasgow City Council and a housing association in Clackmannanshire told her not to get in touch until she has an eviction order. She would prefer to stay in Glasgow if possible.

71. The Respondent confirmed that she had not experienced any issues with the delay or failure in the payment of benefits while living in the property.

Findings in fact

72. The Tribunal made the following findings in fact:

- The Applicant is the owner and registered landlord of the property.

- There is a private residential tenancy in place between the parties, which commenced on 1 December 2023.
- The rent payable under the tenancy agreement is £800 per calendar month, payable in advance on the first day of each month.
- The tenancy agreement stated that the landlord's email address for communication between the parties was Mr Boyd Jr's email address
- The Applicant took over management of the tenancy from Mr Boyd Jr sometime between March and May 2025. He did not notify the Respondent of this. He did not notify her that the email address for communication regarding the tenancy had now changed.
- The Notice to Leave was validly served on the Respondent by recorded delivery on 1 June 2024.
- The property is a ground floor flat within a four storey sandstone tenement.
- The Respondent first contacted Mr Boyd Jr on 17 January 2024 to report concerns about mould and dampness issues at the property.
- During February/March 2024, Parks carried out various works in the property. These included repairs in the bathroom and kitchen, and repairs to the heating system.
- Mr Boyd Jr contacted James Gibb regarding the issues raised by the Respondent.
- James Gibb instructed Columbus to inspect the property. On 10 February 2024, Columbus sent a note of its initial survey to James Gibb. This stated that the kitchen and bathroom walls showed signs of dampness and water damage.
- Columbus then attended the property to investigate the requirement for external drainage at the front and rear of the tenement. It inspected the solum of the building and found that there was an issue with the drainage from the property below the floor. Its survey report recommended that action be taken to address issues with the plumbing, shower screen and windows.
- Mr Thomas Banks of Glasgow City Council Environmental Health Department attended the property on 5 March 2024 following a complaint about dampness by the Respondent. He found evidence of dampness in several areas within the property.
- The Respondent sent emails to Mr Boyd Jr notifying him of the required repairs on 5 and 30 March 2024. The repairs were not carried out. The Respondent did not make a repairing standard application at that time.
- A further survey report by Alliance was commissioned by James Gibb. In its report of 29 August 2024, Alliance found evidence of rising dampness within the property. It recommended the insertion of a new chemical damp proof course to certain walls within the property.
- The Respondent's representative commissioned an independent architect's report from Dr Stirling Howieson regarding the property. His report of 1 July

2025 found that the property was suffering from extensive rising dampness on all external and internal walls, and was below the tolerable standard. It made a number of recommendations regarding remedial measure which should be carried out.

- The Respondent made a repairing standard application to the First-Tier Tribunal on 27 October 2025.
- The Respondent has been in rent arrears continuously since March 2024.
- The Respondent is currently living in the property only two days per week. She is living with her father for the other five days as she is currently caring for her infant grandchild.
- The Respondent's being in arrears of rent over the period in question is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

Reasons for decision

73. In making its decision, the Tribunal carefully considered all of the written and oral evidence before it as at the date of the continued hearing. The Tribunal applied the civil burden of proof, which is the balance of probabilities.

Preliminary issues

1. Pre-application emails sent by the Applicant regarding the arrears were not received by the Respondent

74. It is clear that before contacting the Respondent by email on 24 and 27 May 2024, the Applicant should have notified her: 1) that he was taking over from Mr Boyd Jr regarding the tenancy and 2) of the change of email address to be used in relation to the tenancy, as provided for in the tenancy agreement. He admitted that he had not done so, however.

75. The Respondent said that she had not received these emails, although the Applicant said that they had not been returned to him. It appeared to the Tribunal that there was a lack of clarity over communications between the parties. Prior to the emails sent by the Applicant in May 2024, communications between the parties had mainly been by email and WhatsApp messages from Mr Boyd Jr. The Respondent had therefore already accepted communications regarding the tenancy in a form other than email i.e. WhatsApp messaging. She also said that she was never sure whether she was talking to the Applicant or Mr Boyd Jr. It was clear that in some of the emails Mr Boyd Jr had replied to the Respondent, stating that he was the Applicant and signing the Applicant's name at the end. In some of the later emails to Mr Boyd Jr, the Respondent had copied in the Applicant. This suggested that she had previously sent emails to the Applicant himself.

76. The Tribunal does not consider, however, that this lack of clarity with regard to email communication between the parties is directly relevant to the validity of the application. There is no general requirement to notify a tenant of an intention to serve a Notice to Leave before doing so. Where it is relevant, however, is in considering the extent to which the Applicant complied with the pre-action requirements as part of the assessment of reasonableness below.

2. *The Notice to Leave was not validly served on the Respondent*

77. The Tribunal first considered whether the tenancy agreement provided for notices to be sent between the parties by email. It accepted that there was a ✓ (tick) symbol before “*the email addresses set out in clauses 2 and 1.*” The word ‘or’ could, however, be read as stating that either hard copy/personal delivery or email service was permitted.

78. The Tribunal noted the Applicant’s evidence that he had not added the tick, and had not previously been aware that there was a tick in the document. It also noted that no tick boxes were present, as usually appear on the standard PRT template. The Tribunal considered that the tenancy agreement could be read as stating that communication was to be either by hard copy by personal delivery OR by the email addresses set out in clauses 2 and 1 of the tenancy agreement.

79. The Tribunal noted that there are no provisions in the 2016 Act as regards the services of notices under the Act. Accordingly, section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies here. This states:

26. *Service of documents*

(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression “serve”, “give”, “send” or any other expression is used).

(2) The document may be served on the person—

(a) by being delivered personally to the person,

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c. 26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(4) For the purposes of subsection (2)(b), the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the person.

(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

80. Both parties submitted First-tier Tribunal authorities in support of their arguments. The Tribunal is aware that some applications have been rejected at the sift stage because the Applicant purported to serve the Notice to Leave in a manner other than that specified in the tenancy agreement. The Tribunal is not, however, aware of any binding Upper Tribunal authority on this point.

81. In this case, however, the Tribunal determines that the tenancy agreement allows for notices to be served by personal delivery, recorded delivery *or* email. It accepts the Applicant's argument that, given the lack of response to his previous emails, he felt that sending by recorded delivery was the safest and most secure method of ensuring that the Respondent received the notice.

82. The Respondent did not dispute that the Notice to Leave had been sent by recorded delivery. Following the initial hearing, the Applicant provided a certificate of posting at the Tribunal's request, which showed that he had sent the notice by recorded delivery to the property address on 31 May 2024.

83. He had also provided a photograph of the letter having been put through the letterbox at the property, which was obtained from Royal Mail. The Respondent did not dispute that the photograph was of the storm door of the flat. She argued, however, that she had not received the Notice to Leave. She disputed that the signature provided was hers. She said that, had she thought that she was about to be evicted, she would not have gone ahead and instructed the repairs.
84. In terms of section 26(5) of the 2016 Act, where a document is sent by recorded delivery, it is taken to have been received 48 hours after it is sent *unless the contrary is shown*. While the Respondent put forward various possible explanations as to why she had not received the notice, she was unable to prove that it had not been delivered. The Tribunal considers that, on the balance of probabilities, the Notice to Leave was delivered to the property, and was pushed through the storm door after the photograph was taken. It is unclear whose signature was on the proof of delivery, but it is most likely to have been added by the postal worker who delivered it.
85. The Applicant has demonstrated that he sent the notice by recorded delivery and that it was delivered to the property by Royal Mail. It is difficult to see what more he could have done in the circumstances.
86. The Tribunal therefore determines, on the basis of the available evidence, that on the balance of probabilities the Notice to Leave was validly served on the Respondent on 1 June 2025.

Have the requirements of ground 12 been met?

87. The Tribunal considered whether Ground 12 (rent arrears) had been met. Ground 12 states:

Rent arrears

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.

88. The Tribunal noted from the rent statements provided by the Applicant that on the face of it, the Respondent has been in rent arrears continuously since March 2024. The Respondent disputed this, however. She submitted at the continued hearing that none of the rent charged by the Applicant for the period from March 2024 to date was lawfully due.
89. While the Tribunal accepts that the Respondent may have a claim for abatement of some of the rent arrears claimed by the Applicant, it is not required to calculate the exact amount of any arrears due by the Respondent in relation to the eviction application. Exactly how much rent is due to be paid will be considered further by the Tribunal in determining the civil proceedings application. Ground 12 requires only that the tenant has been in rent arrears for three or more consecutive months.
90. There are some inconsistencies in the Respondent's position regarding whether she is due to pay any of the sum claimed. She maintains that no rent at all is lawfully due. Yet she said at the CMD that the rent should be reduced to £350 per month for the period that the property was in need of repair. In her email to Mr Boyd Jr of 21 February 2024, she proposed a rent reduction of 50% as she was only able to use 2 out of 4 rooms in the property. Her written representations stated that she was keen to enter a repayment plan with the Applicant. She told the Tribunal that had she received the Applicant's email offering a rent reduction to £350 for the months from March-May 2024, she would have accepted it.
91. As Sheriff Jamieson noted in the Upper Tribunal decision of [Zhao v Dunbar \[2022\] UT 25](#), awarding compensation for inconvenience in housing cases is not an exact science and each case must turn on its own facts and circumstance. He also notes, however, that such awards have tended historically to be quite low, and refers to the examples set out in paragraph 7.69 of Robson and Combe, Residential Tenancies (4th ed. 2019). These awards average, before inflation, between £30 and £70 a month for the more severe cases of inconvenience. Amongst the most generous awards noted in Robson and Combe was in the case of *Christian v Aberdeen City Council 2005 Hou. L. R. 26*, a dampness case, in which the pursuer was awarded £2,750 in 2005 for

inconvenience lasting for nearly four years. He observed that this figure represents no more than £60 a month, or approximately £100 a month adjusted for inflation in 2022.

92. The Tribunal also notes that, had the Respondent made a repairing standard application to the First-tier Tribunal after she first notified Mr Boyd Jr of the repairs issues, the maximum amount of any rent relief order which the Tribunal could have made would be 90%. The Tribunal can only make such an order where firstly it makes a Repairing Standard Enforcement Order (RSEO) against the landlord, and secondly, the landlord fails to comply with the RSEO. So even in that event, the tenant would be liable to pay at least 10% of the monthly rent.
93. It is therefore clear to the Tribunal that the Respondent is due to pay some part of the rent charged during the period in question. She has been living in the property at least part of the time during that entire period. The Tribunal therefore finds that as at the date of the continued hearing, the Respondent had been in rent arrears for three or more consecutive months.

Reasonableness

94. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. In doing so, it took into account all of the evidence before it.
95. Firstly, the Tribunal was satisfied on the basis of the evidence before it that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. It was not, however, entirely satisfied that the Applicant had complied with the pre-action requirements. While his emails to the Respondent of 24 and 27 May 2024 were clearly intended to meet these requirements, they had not been sent from the email which has been agreed in the tenancy agreement. The Applicant had not notified the Respondent of the change of email address, and there was some doubt as to whether she had received them. While it is not necessarily fatal to the application, the extent to which the Applicant met the requirements is a factor which the Tribunal must consider in deciding whether it is reasonable to grant an eviction order.
96. The Tribunal noted that, regardless of the amount of rent which it ultimately finds that the Respondent is due to pay, the Applicant had received no rent at all from the Respondent in over 18 months. This has had a financial impact on the Applicant, who still has other costs to pay in relation to the property. It has also impacted on the livelihood of Mr Boyd Jr.
97. The Respondent is required under the terms of the tenancy agreement to pay the agreed rent to the Applicant. She has not done so. She told Mr Boyd Jr that she was withholding the rent until the repairs were carried out. This is a remedy open to a tenant if the landlord is in breach of their obligations under the tenancy agreement. It is clear, however, that the Respondent had not in fact been

withholding the rent, but had spent much of it on carrying out repairs. She told the Tribunal at the continued hearing that she had been paying the withheld rent into a separate bank account since the initial hearing in July. No evidence of this was produced, however. When she was asked to provide proof, her response was vague, stating only that her father was holding the funds.

98. It is not for this Tribunal to determine whether the Applicant has failed to comply with the repairing standard. There are, however, several independent reports before the Tribunal, which conclude that there are serious dampness issues within the property. The Applicant himself admitted this, but said that he would not carry out repairs unless the Respondent paid her rent. It is the Applicant's responsibility as a landlord to ensure that the property meets the repairing standard, regardless of whether or not the rent is being paid. It therefore appears likely that the Applicant was also in breach of his responsibilities under the tenancy agreement.
99. The statutory remedy available to the Respondent was to make an application for a determination on whether the Applicant had failed to comply with the repairing standard. She had obtained advice and researched her repair obligations as early as March 2024, and should have pursued the statutory remedy through the First-tier Tribunal at that stage.
100. The Tribunal asked her at the initial hearing in July 2025 why she had not made a repairing standard application. She said that this was because Mr Boyd Jr threatened her with eviction. This is not consistent with her decision to withhold all rent for a prolonged period, an action which was far more likely to prompt eviction proceedings. The Notice to Leave was served in June 2024, and the Respondent was notified of the CMD in January 2025. Yet it took her until 27 October 2025 to make a repairing standard application.
101. Rather than making a repairing standard application, the Respondent took it upon herself to carry out repairs to the property. She spent significant sums on this work rather than paying her rent. She carried out unauthorised alterations to the property. She installed replacement windows without the landlord's consent, constituting an alteration to the fabric of the property and a breach of her tenancy agreement. She also carried out plastering and sealing works to the kitchen wall. She did not notify the Applicant that she intended to carry out either of these repairs before doing so. While Mr Boyd Jr had appeared to suggest in some of his emails that she should do the repairs herself, he had also asked her to send him quotes for these in advance.
102. The Tribunal also noted that the Respondent now resides with her father in Clackmannanshire for approximately five days a week, returning to the property only at weekends. While she said that this was due to the poor state of the property, her principal residence therefore currently appears to be elsewhere. She has significant caring responsibilities for her father, grandmother, and now

her grandchild in Clackmannanshire, which she describes as a forty-minute journey from the property. She also states that she cannot bring the grandchild to the flat due to its condition. This further supports the conclusion that her main residence and day-to-day life are now centred elsewhere.

103. The Tribunal also took into consideration that, while there are conflicting expert opinions regarding the causes and scope of the dampness, the Respondent's architect recommends extensive remedial works, including stripping plaster throughout and installing a solum membrane. These are substantial and disruptive measures, and if carried out, whether as a resolute of an RSEO or otherwise, it is unlikely that the Respondent would be able to continue to occupy the property during these works.
104. The Tribunal gave particular weight to the significant rent arrears owed by the Respondent to the Applicant, and her failure to pursue the appropriate statutory remedy. It also gave weight to the fact that the Respondent had carried out repairs and alterations to the property without the Applicant's prior knowledge of consent. While it is the Applicant's responsibility to carry out any required repairs, and the Respondent clearly found herself in a difficult position, her actions were not reasonable or appropriate.
105. The Tribunal decided that in light of all the above considerations, it was reasonable in all the circumstances to grant an order for eviction in favour of the Applicant against the Respondent.
106. The Tribunal considered that in light of the upcoming Christmas period, it would be reasonable to delay execution for a month beyond the standard 30 day period, until 19 January 2026.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delays execution of the order until 19 January 2026.

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.



Legal Member/Chair

17 November 2025

Date

