



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/EV/25/2658

Re: Property at Flat 2/1, 40 Burnbank Road, Hamilton, Lanarkshire, ML3 9AQ (“the Property”)

Parties:

Mrs. Elizabeth McCutcheon residing at 14 Ochiltree Drive, Hamilton, Lanarkshire, ML3 9NH and Mr. James Larkin residing at 5 Barr Grove, Uddingston, Lanarkshire, G71 6TL, together the Executors Nominate of the late Miss Mary Higgins, (“the Applicants”) per their agents, Whyte Fraser Limited, solicitors, PO Box 19118, Motherwell ML1 9FU (“the Applicants’ Agents”)

Miss Coleen Devlin, Flat 2/1, 40 Burnbank Road, Hamilton, Lanarkshire, ML3 9AQ (“the Respondent”) per her representative, Hamilton Citizens Advice Bureau (“the Respondent’s Representatives”)

Tribunal Members:

Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between 19 June 2025 and 24 July 2025 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 1 and 12 of Schedule 3 to the 2016 Act, that the landlord intends to sell the let Property and that the tenant has been in rent arrears for three or more consecutive months.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the late Miss Higgins and the Respondent showing an initial monthly rent of £350.00 and an entry date of 7 March 2020;
 - ii) copy Notice to Leave in terms of Grounds 1 and 12 of Schedule 3 to the Act dated 23 January 2025 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to South Lanarkshire Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £3,500.00 due and owing at May 2025;
 - v) pre-action requirement letters sent to the Respondent; and
 - vi) evidence of an intention to sell the Property.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 8 December 2025 at 14.00 by telephone conference and intimated to the Parties. Prior to the CMD, the Applicants’ Agents lodged an updated rent statement amending the rent due and owing to £5,950.00 to the date of the CMD.

CMD

4. The CMD took place on 8 December 2025 at 14.00 by telephone. The Applicants were both present and were represented by Mr. Buttery of the Applicants' Agents. The Respondent was not present and was represented by Mr. Martin Roberts of the Respondent's Representatives.
5. Application CV/25/2669 relating to the same Parties and Property was heard at the CMD.
6. The Tribunal explained that the purpose of the CMD was to discuss the Applications, to determine if further procedure was required or if a decision could be made by the Tribunal. In that regard, Mr. Roberts advised that the Application was not opposed.
7. As the Tribunal required to be satisfied that it was reasonable to grant the Order, the Tribunal asked Mr. Roberts to provide information on the Respondent. Mr. Roberts explained that the Respondent, Ms. Devlin, is a single person with no dependents. She is in part-time employment, receives Universal Credit and has no special or additional needs. He advised that arrears of rent accrued after Miss Higgins' death as Ms. Devlin was unsure where to make payment. Mr. Roberts stated that Ms. Devlin accepted the level of rent due and accepted that the Applicants intended to sell the Property. Mr. Roberts explained that Ms. Devlin is now receiving advice and assistance from Money Matters. He advised that Ms. Devlin has secured a new build flat from South Lanarkshire Council and expects to be able to take entry to the flat on or around 16 December 2025.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Respondent and the late Miss Higgins commencing on 7 March 2020 at a monthly rent of £350.00;
 - ii) There are rent arrears of £5,950.00 equating to 17 months' rent;

- iii) The Applicants intend to sell the Property;
- iv) The correct statutory procedure has been carried out;
- v) The Respondent is a single person in part-time employment with no additional needs;
- vi) The Respondent has secured alternative accommodation.

Issue for the Tribunal

9. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Grounds 1 and 12 of Schedule 3 to the Act as set out in the Application.
10. Ground 1 states: *“It is an eviction ground that the landlord intends to sell the let property.(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord (a)is entitled to sell the let property, (b)intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it and (c)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”*
11. Ground 12 states *“(1)It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a)the tenant has accrued rent arrears under the tenancy in respect of one or more periods, (b)the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and (c)the Tribunal is satisfied that it is reasonable to issue an eviction order. (3)In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider (a)whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, (b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022). (4)For the purpose of this paragraph (a)references to a relevant benefit are to (i)a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (ii)a payment on account awarded under regulation 93 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.”

Decision and Reasons for Decision

12. The Tribunal had regard to all the information before it and to its Findings in Fact.
13. The Tribunal, having no evidence in respect of state benefits, was satisfied the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
14. The Tribunal noted that the Applicants had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1st October 2022.
15. The Tribunal noted that as Executors Nominate in the Estate of the late Miss Higgins the Applicants are not only entitled to sell the Property but are bound to sell the Property to discharge their duties to the Executory Estate and that they intend to do so.
16. The statutory grounds and procedures being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
17. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
18. The Tribunal then had regard to the circumstances of the Parties.

19. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
20. The Tribunal then looked to balance the rights and interests of both parties.
21. The Tribunal took the view that the Applicants are entitled to rely on the rental income in order to discharge their duties to the Executor Estate. The Tribunal had regard to the fact that the Respondent has not made payment since the death of Miss Higgins and has no sound reason to fail to pay the rent due. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
22. The Tribunal took the view that the Applicants are entitled to sell the Property to discharge their duties to the Executor Estate. In any event, the Respondent does not dispute the intention to sell, nor does she oppose the Application.
23. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent has secured alternative accommodation.
24. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.
25. This decision is 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.

Karen Moore

Legal Member/Chair

8 December 2025

Date