

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)**

Chamber Ref: FTS/HPC/EV/25/2156

**Re: Property at Ardgowan House, 14A Cutsburn Road, Stewarton, KA3 5PD
("the Property")**

Parties:

**Mrs Patricia Morrissey, Mr Jeremiah Morrissey, 2/7 Aitken Street, Sunbury,
Victoria, 3429, Australia ("the Applicant")**

**Mr Michael Newman, Ardgowan House, 14A Cutsburn Road, Stewarton, KA3
5PD ("the Respondent")**

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that**

BACKGROUND

1. By Lease dated 17 May 2024 the Applicants let the Property to the Respondent.
2. The start date of the tenancy was 17 May 2024.
3. The rent is £1,500.00 per calendar month.
4. A Notice to Leave dated 11 February 2025 was served upon the Respondent. The Notice to Leave intimated the Applicants were seeking vacant possession on the ground the landlords intended to sell the Property.
5. Following service of the Notice to Leave rental payments stopped for a period of three months. Thereafter, while some rental payments were made, the

maximum amount paid in any calendar month was £455.02. The shortfall in rental payments, therefore, was not less than £1,000.00 per month.

6. An application seeking an order for eviction was presented to the Tribunal. The Application to the Tribunal could proceed only on the basis of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 on the basis that was the only ground of eviction referred to in the Notice to Leave. As at the date of the Application to the Tribunal, however, arrears of rent amounted to £5,546.30.
7. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
8. Prior to the Case Management Discussion the Applicants agents forwarded an updated rent statement to the Tribunal. As of 3 October 2025, arrears of rent amounted to £9,351.20.
9. In advance of the Case Management Discussion the Respondent's representatives forwarded written submissions to the Tribunal. The written submissions intimated that an eviction order was opposed on grounds that it was not reasonable for such an order to be granted. In support of that position it was stated:-
 - The Respondent is a single man with shared custody of his two teenage children who reside with him three nights per week.
 - Due to certain personal matters relating to one of the children, it is submitted that disruption to home life should be kept to a minimum.
 - The Respondent is suffering from a medical condition which causes him widespread pain throughout his body and can affect cognitive abilities.
 - The Respondent's mental health has been affected. He became withdrawn and isolated.
 - The Respondent has difficulty walking and managing daily activities.
 - The Respondent is currently awaiting a specialist consultation from the muscular and skeletal department of NHS.
 - The Respondent has been unable to work and is reliant on state benefits.
 - It is unlikely the Respondent will be able to return to work any time soon.
 - The Respondent's health has been such that he has only recently been able to make enquiries into assistance available to him.
 - The Respondent will now be supported to make an application for homeless status and to make enquiries about other accommodation.
10. Having regard to the various factors referred to, it was submitted within the written representations that a Hearing should be assigned.

THE CASE MANAGEMENT DISCUSSION

11. The Applicants did not participate personally in the Case Management Discussion but were represented by Miss M Archibald of Wallace Hodge & Co, Solicitors, Ayr. The Respondent did not participate personally in the Case Management Discussion but was represented by Mr D Anderson of Ayr Housing Aid Centre.

The Applicants

12. Miss Archibald moved the Tribunal to grant an order for eviction. She submitted that it was reasonable that such an order be granted having regard to the following facts:-

- The Applicants now reside in Australia, having moved there in 2019 on four year temporary working visas.
- The Applicants obtained citizenship of Australia in July 2024. The Applicants wish to sell the Property to fund the purchase of their own home in Australia. They have been unable to purchase a home there until they obtain citizenship.
- The Applicants are currently paying monthly rental of \$3,429 equating to £1,750.00 per month, for their current rented property.
- They are paying storage costs in the sum of £3,370.00 per annum for their property in Ayrshire.
- They are paying home insurance costs of £1,547.00 for the Property.
- There is no mortgage on the Property and, as such, the entire sale proceeds will be available to fund the purchase of a property in Australia.
- Mr Morrissey is 61 and is still working full time. He requires to work full time to fund the Applicants' accommodation and other costs in Australia.
- He has medical conditions also, in particular he has spinal issues with nerve problems causing pain. He has weakness in his right leg and is receiving physiotherapy.
- Mrs Morrissey suffers from multiple sclerosis.
- Mr Morrissey's current employer is reducing its work force and Mr Morrissey may be made redundant, again increasing the need for funds from the Property to be made available to enable a property to be purchased in Australia.
- Consideration has been given to selling the Property with the Respondent as a sitting tenant. This is not a viable option due to the fact the Respondent is not making payment of full rent.
- In referring to the suggestion that it is not reasonable to grant an eviction order having regard to the health issues affecting the Respondent, it is noted that the Property is a large property, it is a 5 bedroomed villa which has two staircases within it. Having regard to the health conditions of the Respondent referred to within the written submissions, a smaller property, which is less expensive, would undoubtedly be better for the Respondent.
- While rent arrears do not form the basis of the Application for an eviction order, it is a matter of fact that there are arrears of rent. Since

the most recent rent statement was forwarded to the Tribunal, a further rental payment has been missed. Arrears of rent now stand at £10,416.18.

The Respondent

13. On behalf of the Respondent, Mr Anderson moved the Tribunal to assign a Hearing. He referred to the various medical conditions referred to within his written submissions and suggested that further information in relation to those would be able to be provided to the Tribunal at a hearing to enable a more informed decision to be made.
14. It was noted by the Tribunal that there was no challenge to the suggestion that the Respondents intended to sell the property.
15. It was noted by the Tribunal that Mr Anderson on behalf of the Respondent, accepted there were significant arrears of rent. Indeed, the written submissions provided to the Tribunal made it clear that the Respondent was now unemployed, in receipt of benefits, was unlikely to be fit to work any time soon and, in the circumstances, was not likely to be in a position to make payment of rent in full on an ongoing basis. In the circumstances, arrears of rent would only increase on an ongoing basis.
16. In relation to the rental payments, Mr Anderson drew attention to a policy of insurance which had been provided to the Tribunal by the Applicants' agents. This insurance policy confirmed that the Applicants were insured against missed rental payments up to a maximum of £36,000.00 over a two year period. He asserted, therefore, that the Applicants would not lose out financially and, on that basis at least, there will be no prejudice to the Applicants in a Hearing being fixed at a later date.
17. Mr Anderson advised the Tribunal that his organisation was actively assisting the Respondent in identifying suitable alternative accommodation. Mr Anderson acknowledged that the current property was not suitable for the Respondent in the longer term but that it was reasonable that a period of time be allowed to him to identify and secure suitable alternative accommodation and the fixing of a Hearing would allow for that also.
18. Mr Anderson submitted to the Tribunal that when medical issues are raised and the issue of reasonableness is put in issue as a result; it is normal practice for the Tribunal to assign a Hearing.

Discussion

19. In relation to whether proceedings should be adjourned to a Hearing, the Tribunal determined that it was not appropriate to adjourn proceedings to a Hearing. Mr Anderson had provided written submissions to the Tribunal outlining medical issues affecting the Respondent. There was no challenge to this by the Applicants. Adjourning to a Hearing to obtain further information in relation to medical conditions which were not in dispute would not serve any useful purpose for the Tribunal.

20. Separately, there was no challenge to the basis of the Application, that being that the Applicants wished to sell the Property. The reasons provided for that decision by the Applicants was not the subject of any challenge either.
21. Having regard, therefore, to the fact that the facts of the case were not in dispute on either side, the Tribunal concluded that it had all relevant information before it at the Case Management Discussion to enable it to proceed to determine the case.

Decision

22. The Tribunal thereafter considered the case on its merits and determined that it was appropriate to grant an order for eviction but, at the request of the Respondent and with the consent of the Applicant, deferred the date of enforcement of the order for eviction until 30 January 2026.

23. In determining it is reasonable to do so, the Tribunal had regard to the following:-

- a. The Applicants wish to sell the Property and proof of their intention to do so was provided to the Tribunal.
- b. The Applicants wish to sell the Property as they now reside in Australia and require the free proceeds from the sale of the Property to fund the purchase of their intended residence in Australia.
- c. The intention to sell and the reasons for the same were not the subject of any challenge by the Respondent.
- d. The Property is a substantial property, being a detached villa with 5 bedrooms and two separate staircases within it.
- e. The medical issues affecting the Respondent were not in dispute.
- f. The medical issues affecting the Respondent cause him difficulty walking. In the circumstances, residing within a large villa, set over a number of floors, with two separate staircases, is not suitable accommodation for the Respondent.
- g. While arrears of rent did not form the basis of the Application to the Tribunal, the existence of arrears was not in dispute.
- h. Arrears of rent were now at a sum of more than £10,000.00 and were increasing at a rate not less than £1,000.00 per calendar month.
- i. The Applicant is unfit for work, is in receipt of state benefits and, in the circumstances, is not likely, at any point in the near future, to be able to afford rental payments.
- j. Having regard to the fact the Applicant is the sole tenant of the Property, he will be unable to secure any housing benefit or housing element of Universal Credit which will cover rental payments for the Property.
- k. The inability of the Respondent to make payment of rent is a factor to be considered in determining whether it is reasonable to grant an order for eviction. The inability to pay rent at present and in the future clearly mitigates in favour of the Applicant.
- l. While there is, in this case, a policy of insurance which may compensate the Applicants for missed rental payments, that does not change the fact that the Respondent is unable to meet his rental commitments.

- m. Having regard to the medical conditions affecting the Respondent, and the fact that, in normal course, an order for eviction would become enforceable during December 2025, shortly before the festive holiday period, the Tribunal determined it was reasonable to defer the date of enforcement of an order for eviction until 30 January 2026 to afford additional time to the Respondent to secure suitable alternative accommodation.
- n. The deferral of the date of enforcement was consented to by the Applicants.

DECISION

The Tribunal granted an order against the Respondent(s) for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 1 of Schedule 3 to said Act.

Order not to be executed prior to 12 noon on 30th 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.

Virgil Crawford

Legal Member/Chair

Date: 7th November 2025