



**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 Act”) Rule 109 of The First-tier Tribunal  
for Scotland Housing and Property Chamber (Procedure) Regulations 2017  
 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/25/4071**

**Re: Property at 2A, Bonella Street, Carnoustie, DD7 6AF (“the Property”)**

**Parties:**

**Ms Marnie Diane McKinley, 12, Guthrie Street, Carnoustie, DD7 6EL (“the Applicant”) per her representatives Louise Todd Property Management, 1st Floor, 87, Commercial Street, Dundee, DD1 2AB (“the Applicant’s Representatives”)**

**Andrew Stephan Mulholland and Brogan Christian Rose Jensen, 2A, Bonella Street, Carnoustie, DD7 6AF (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision (in absence of the Respondents)**

**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 23 September 2025 and 3 October 2025 (“the Application”), the Applicant’s Representatives applied to the Tribunal on her behalf for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
  - i) copy private residential tenancy agreement between the Parties showing an initial monthly rent of £1,100.00 and an entry date of 28 February 2025;
  - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 22 August 2025 with proof of issue;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council being the relevant local authority;
  - iv) copy rent ledger statement showing arrears of £6,600.00 due and owing as at September 2025 and a pattern of non-payment of rent since the entry date;
  - v) copy pre-action requirement letter sent to the Respondents.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 6 January 2026 at 14.00 by telephone conference and intimated to the Parties, and in particular, on the Respondents by Sheriff Officer on 11 November 2025.
4. Prior to the CMD, the Applicant’s Representatives lodged an updated rent statement showing that the rent due and owing had increased to £11,000.00.
5. On 5 January 2026 at 16.03, the first named Respondent, Mr. Mulholland, wrote to the Tribunal requesting that the CMD be postponed for a week stating that his legal representative could not be present due to a family bereavement.

No supporting information or documentation accompanied the request. The Tribunal responded that the CMD would proceed and that Mr. Mulholland could make his request to postpone in person.

## **CMD**

6. The CMD took place on 6 January 2026 at 14.00 by telephone. The Applicant, Ms. McKinley, was not present and was represented by Ms. Todd of the Applicant's Representatives. Neither Respondent was present and neither was represented. Neither submitted written representations. The Tribunal was satisfied that the Respondents had been made aware of the CMD and that they ought to attend and so proceeded in their absence.
7. The Application was heard alongside application FTS/HPC/CV/25/4869 between the same Parties seeking an Order for payment of rent due and owing in respect of the Property.
8. Ms. Todd for Ms. McKinlay confirmed that an Order for eviction is sought. The Tribunal explained that it required to be satisfied that the correct statutory process had been carried out, that the Ground for the Application was satisfied and that it was reasonable to grant the Order. In this regard, the Tribunal advised that it was satisfied that the correct procedure had been carried out and that there was supporting evidence for Ground 12.
9. The Tribunal asked Ms. Todd to provide information on the tenancy. Ms. Todd explained that the Property is one of two rental properties owned by Ms. McKinley and that a mortgage is secured against the Property. She pointed out that no rent has been paid since the first month of the tenancy. From her own knowledge, Ms. Todd stated that the Respondents have a history of non-payment of rent. She stated that although Ms. McKinley had agreed to amend the rent due to date to coincide with Mr. Mulholland's wage payment dates, no rent had been paid.

10. With regard to the Respondents, Ms. Todd stated that there had been no response to the pre-action letters. She stated that, around November 2025, the second named Respondent, Ms. Jensen, had contacted her stating that Mr. Mulholland had vacated that Property and had asked that a new tenancy be given to Ms. Jenson alone. Ms. Todd stated that given the level of arrears, neither she nor Ms. McKinley agreed to this.
11. With regard to the Respondents' personal circumstances, Ms. Todd was uncertain if they had any dependants. She stated that contact with the DWP had not resulted in direct payments. She understood Mr. Mulholland to be in employment.

### **Findings in Fact**

12. 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 Parties commencing on 28 February 2025;
  - ii) The monthly rent is £1,100.00;
  - iii) The current rent arrears amount to £11,000.00;
  - iv) Rent has been in arrears for more than three consecutive months;
  - v) The correct statutory procedure has been carried out;
  - vi) The Applicant relies on regular payment of the full rent to meet her financial commitments secured on the Property.

### **Issue for the Tribunal**

13. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. 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**

14. The Tribunal had regard to all the information before it and to its Findings in Fact.
15. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
16. The Tribunal, having no evidence in respect of issues with state benefits, was satisfied that the Respondents being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
17. The Tribunal noted that Government Guidance on pre-action protocols for notices issued after 1<sup>st</sup> October 2022 had been complied with.

18. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion ....including making a decision*”. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.

19. The Tribunal then had regard to the circumstances of the Parties.

20. 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.

21. The Tribunal then looked to balance the rights and interests of both parties.

22. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondents has been in rent arrears throughout the tenancy and has failed to pay rent in almost a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.

23. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondents would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.

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**

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**Legal Member/Chair**

**6 January 2025**

**Date**