

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/25/2728

Re: Property at 35 Meikleholmside, Langholm, Dumfriesshire, DG13 0PW (“the Property”)

Parties:

Mrs Tracy Mitchell (nee Little), Longwood, Langholm, Dumfriesshire, DG13 0LH (“the Applicant”)

Mr John Cook, present whereabouts unknown (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory grounds 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 on 23 June 2025 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 10, 11 and 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 £400.00 and an entry date of 3 February 2020;
 - ii) copy Notice to Leave in terms of Grounds 10, 11 and 12 of Schedule 3 to the Act dated 15 April 2025 with proof of issue;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dumfries and Galloway Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £2,592.00 due and owing as at 3 April 2025 and a pattern of non-payment of rent since October 2024;
 - v) copy text messages and letters sent to the Respondent in satisfaction of the pre-action protocol;
 - vi) copy trace reports showing the Respondent to work as a chef on the Isle of Harris in or around April 2025.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 8 January 2026 at 14.00 by telephone conference and intimated to the Parties, and in particular, on the Respondent by advertisement on the Tribunal Chamber website.

CMD

4. The CMD took place on 8 January 2026 at 14.00 by telephone. The Applicant, Mrs. Mitchell, was present and was unrepresented. The Respondent was not present and was not represented. He did not submit written representations. The Tribunal was satisfied that the proper service of the Application and notice of the CMD had been given and so proceeded in his absence.
5. Mrs. Mitchell 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 Grounds for the Application were 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 the Grounds.

6. The Tribunal asked Mrs. Mitchell to provide information on the tenancy. Mrs. Mitchell explained that she first became aware of a difficulty with Mr. Cook, the Respondent, in November 2024 when he stopped paying rent. She explained that she had had no response from him, which was unusual as he previously responded when rent was paid late, and has no contact from him since. Mrs. Mitchell stated that, having made enquiries with neighbours and having visited the Property, she became aware that that it appeared unoccupied.
7. Mrs. Mitchell confirmed that no rent had been paid since October 2024 and that Mr. Cook had vacated the Property, failing to reside there as his principal home and failing to notify Mrs. Mitchell as landlord of prolonged absences.
8. With regard to the Respondent, Mrs. Mitchell stated that there had been no response to the pre-action letters. Mrs. Mitchell stated that, around 19 December 2025, an officer from Dumfries and Galloway Council homeless section had contacted her asking if Mr. Cook could contact her to discuss the tenancy, and, although she had agreed to this, no contact was made.
9. With regard to Mr. Cook's personal circumstances, Mrs. Mitchell advised that he is the sole tenant but understood that his daughter might have resided with him from time to time.

Findings in Fact

10. 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 3 February 2020;
 - ii) The monthly rent is £400.00;
 - iii) Rent has not been paid since October 2024 and so rent is in arrears for more than three consecutive months;
 - iv) The Respondent has ceased to occupy the Property;

- v) The Respondent's failure to occupy the Property is in breach of the tenancy agreement between the Parties;
- vi) The correct statutory procedure has been carried out;
- vii) The Applicant relies on regular payment of the full rent to meet her financial commitments secured on the Property.

Decision and Reasons for Decision

11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. The statutory grounds 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.
13. With regard to Ground 12, the Tribunal, having no evidence in respect of issues with state benefits, was satisfied that 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. The Tribunal noted that Government Guidance on pre-action protocols for notices issued after 1st October 2022 had been complied with.
14. 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.
15. The Tribunal then had regard to the circumstances of the Parties.
16. 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.
17. The Tribunal then looked to balance the rights and interests of both parties.

18. The Tribunal noted that, although the Respondent no longer resides at the Property, he has failed to contact the Applicant to terminate the tenancy properly, leaving the Applicant unable to obtain access to the Property and unable to relet the Property and unfound this to be an unacceptable situation for the Applicant.

19. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal's view is that level and duration of the Respondent's rent arrears has had a significant detrimental financial impact on the Applicant and is not tenable for either Party.

20. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent 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.

21. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

22. 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 January 2025

Date