



**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/24/5172**

**Re: Property at 90 Marley Hill Avenue, Stonehouse, Larkhall, South Lanarkshire, ML9 3JQ ("the Property")**

**Parties:**

**Mr John Markey, 3 Manse Court, Stonehouse, Larkhall, South Lanarkshire, ML9 3NX ("the Applicant")**

**Miss Stacey Wallace, 48 Townhead Street, Stonehouse, Larkhall, South Lanarkshire, ML9 3EL, 90 Marley Hill Avenue, Stonehouse, Larkhall, South Lanarkshire, ML9 3JQ ("the Respondent")**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the provisions of ground 10 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 51(4) of the 2016 Act, the private residential tenancy between the parties will end on 26 February 2026.

**Background**

- 1 This is an application for an eviction order. The Applicant applied under rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") which applies to possession of assured tenancies under section 19 of the Housing (Scotland) Act 1988.

- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 8 July 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers.
- 3 Both parties were invited to make written representations. No written representations were received in advance of the CMD.

### **The CMDs**

- 4 The CMD took place on 8 July 2025 by teleconference. The Applicant was represented by Ms Jordan Markey. The Respondent also joined the call. The following is a summary of the key elements of the submissions.
- 5 The Applicant’s position was that the Respondent was not occupying the property, that she had allowed the property to fall into disrepair, that she was not maintaining the garden, and that she was causing a nuisance to neighbours by allowing dampness to form and extend into a neighbouring property. Ms Markey had been in direct contact with the Respondent and had spoken with the Respondent’s mother.
- 6 The Respondent provided an overview of her position, stating that the property had suffered from issues of disrepair since around 2012. She mentioned particular issues with the boiler, the heating and hot water, and the shower. The Respondent claimed to have notified the former joint landlord of the property who had since passed away. The Respondent was undecided as to whether she wished to return to the property. She had issues with her mental health. She was disabled and in receipt of benefits.
- 7 Having heard from the parties the Tribunal determined to adjourn the CMD as the Respondent’s position was unclear and it was apparent she could benefit from professional advice. The Tribunal further determined to issue a direction to parties. The Respondent was directed to produce written representations setting out her position in respect of the application. In particular, the Respondent was directed to specify (i) the disrepair, (ii) when it arose, (iii) when it was intimated to the Applicant, (iv) who, and by what medium, it was so intimated, and (v) what has been done to address those issues. The Applicant was directed to undertake an inspection of the property and produce a report on its condition, and in particular (i) whether the boiler was in proper working order, and (ii) whether the shower is suffering from an electrical fault. The Tribunal strongly recommended the Respondent take proper legal advice on the application.
- 8 The second CMD took place on 23 January 2026. The Applicant was again represented by Ms Markey. The Respondent joined the call.
- 9 As a preliminary issue, the Tribunal confirmed that both parties agreed that the tenancy in place between them was a private residential tenancy. The Respondent had signed a new tenancy agreement in 2022. Ms Markey

confirmed that the Applicant was relying upon grounds 10 and 11 as the grounds for possession as reflected in the notice to leave. The Tribunal therefore determined to proceed under rule 109 of the Rules.

- 10 The Tribunal proceeded to hear submissions on the application. The following is a summary of the key elements of the submissions.
- 11 The Tribunal noted that, whilst the Respondent had sent various emails to the Tribunal following the previous CMD, she had not provided a full written response to the application as required by the Direction. The Tribunal asked the Respondent if she had sought legal advice. She had not. The Tribunal asked what her position was on the application. The Respondent explained that she would like to return to the property but understood that may not be possible. She had applied for accommodation with the local authority. The local authority had advised that they would prioritise her application due to her mental health, and that an eviction order would give her additional priority. She is due to meet with the local authority next week. The Respondent confirmed that she had not resided at the property since 2022. She was unable to give details on when the disrepair at the property occurred, and when she first contacted the landlord, as she has changed phones since then. She confirmed that a contractor was due to visit the property next week to fix the boiler. She advised that since 2022 she has been staying with her mother, her son, and friends.
- 12 Ms Markey maintained the Applicant's request for an eviction order. The Respondent had not lived at the property for some time.
- 13 The Tribunal adjourned the CMD to deliberate, at which point the parties left the call, before resuming the discussion and confirming the outcome.

### **Findings in fact**

- 14 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement.
- 15 The Applicant has sent the Respondent a notice to leave which includes grounds 10 and 11.
- 16 The Applicant has sent the local authority a section 11 notice as required by section 56 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 17 The Respondent has not occupied the property as her only or principal home since 2022.
- 18 There is no evidence that the Respondent has notified the Applicant of any repairs required to the property prior to the making of this application.

## Reasons for decision

- 19 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMDs. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing to be fixed. The Tribunal was satisfied that both parties had been given ample opportunity to seek legal advice regarding their respective positions on the application but had chosen not to do so.
- 20 The Tribunal considered the wording of section 51:-

### ***“51 First-tier Tribunal's power to issue an eviction order***

*(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2)The provisions of schedule 3 stating the circumstances in which the Tribunal may... find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3)The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4)An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”*

- 21 Section 52 of the 2016 Act goes on to state that “*an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*” The Tribunal had before it a copy of a notice to leave that had been sent to the Respondent which cites grounds 10 and 11 of schedule 3 of the 2016 Act. The Tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 22 The Tribunal considered ground 10 of schedule 3 of the 2016 Act:-

### *“Not occupying let property*

*10(1)It is an eviction ground that the tenant is not occupying the let property as the tenant's home.*

*(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a)the let property is not being occupied as the only or principal home of—*

*(i)the tenant, or*

*(ii)a person to whom a sub-tenancy of the let property has been lawfully granted,...*

*(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

*(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3)."*

- 23 The Respondent accepts that she is not occupying the property as her only or principal home and has not done so since 2022. Whilst she referenced issues of disrepair, she is unable to evidence that she notified the Applicant of this, except for a series of texts that post-date the raising of these proceedings. The Tribunal was therefore satisfied that paragraphs 2(a) and (b) are met in this case.
- 24 The Tribunal went on to consider whether it was reasonable to make an eviction order on account of the facts in this case.
- 25 The Respondent has not occupied the property for around four years. The Tribunal considered this fact outweighed any other factors relevant to reasonableness in this case. The Tribunal found it difficult to understand why she, or others on her behalf, would not have acted in the last few years to enforce any repairs that may have been required to facilitate her return to the property. The Respondent has clearly had access to alternative accommodation during that time therefore the Tribunal was satisfied that the eviction order would not render her homeless. The Respondent is also progressing an application for rehousing with the local authority and the making of an eviction order will assist her by prioritising her application. The Tribunal noted that the relationship between the parties has deteriorated significantly and took the view that it would be in both of their interests for the tenancy to end, particularly in view of the length of time the property has remained empty.
- 26 Accordingly, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 10 had been met.
- 27 For the avoidance of doubt, having been satisfied that ground 10 was met, the Tribunal made an eviction order and did not therefore require to consider the provisions of ground 11.
- 28 The decision of the Tribunal was 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.**

**Ruth O'Hare**

**23 January 2026**

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**Legal Member/Chair**

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**Date**