



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/4073

Re: 6 Five Roads, Kilwinning, KA13 7JX ('the Property')

Parties:

Nestwell Property Ltd having its registered office at 47 Bank Street, Irvine, KA12 0LL and Jamie Stewart residing at 118 Overmills Road, Ayr, KA7 3LQ ('the Applicant')

Caitlyn Burns residing at 6 Five Roads, Kilwinning, KA13 7JX ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) and Jane Heppenstall (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 12th August 2024. The application stated that the ground for eviction was as follows:

'Tenant is in rent arrears over three consecutive months.'

1.3 Documents lodged with the Tribunal were:-

- Private Residential Tenancy Agreement between the parties dated 23rd December 2022.

- A rent statement dated 27th November 2024 for the period 29th November 2023 to 18th November 2024 showing arrears of £900.
- Notice to Leave dated 11th June 2024 advising the Respondent that an application for an eviction order on the ground that there has been rent arrears over three consecutive months will not be submitted to the Tribunal before 12th July 2024.
- A copy of an email dated 11th June 2024 to the Respondent sending her the Notice to Leave.
- Section 11 Notice addressed to North Ayrshire Council.
- Email to North Ayrshire Council dated 9th August 2024 attaching the section 11 Notice.
- Copies of Pre action emails sent to the Respondent dated 26th January 2024, 25th March 2024, 19th April 2024, 7th May 2024, 3rd June 2024, 3rd June 2024.

2. By Notice of Acceptance by, James Bauld, Convener of the Tribunal, dated 5th February 2025 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 3rd September 2024 and 7th January 2025) to a Tribunal.

3. The application called for a case management discussion on 28th July 2025 but the parties did not attend and the application was dismissed. The decision to dismiss the application was recalled in terms of the decision of the previous Tribunal (McLauLaughlin) dated 19th August 2025.

4. Additional Productions lodged by the Applicant.

4.1 An updated rent statement was lodged with the Tribunal on 20th January 2026 for the period 30th November 2023 to 31st December 2025 showing arrears of £2675.

4.2 A copy of email correspondence between the parties was lodged with the Tribunal on 23rd January 2026.

5. Case Management Discussion

5.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 23rd January 2026.

Jamie Stewart attended the CMD on behalf of himself and as Director of Nestwell Property Ltd.

The Respondent also attended the CMD.

5.2 As a preliminary matter Mrs Taylor referred to the documents that had recently been lodged by Mr Stewart. Miss Burns advised that she had not seen the updated rent statement but she confirmed that the current arrears amounted to £2675.

Mr Stewart advised that the copy correspondence he produced on 23rd January 2026 had previously been produced to the Tribunal.

As Miss Burns confirmed that the rent arrears figure was correct and as the email correspondence provided by Mr Stewart on 26th January 2026 had been previously produced the Tribunal consented to these documents being lodged late.

5.3 Mr Stewart advised the Tribunal as follows:

5.3.1 The rent arrears have been increasing since October 2024.

5.3.2 The rent arrears amount to £2675.

5.3.2 The rent arrears situation is causing him stress as he has bills to pay and he is going through a separation. He needs to sell the Property. Miss Burns has made no attempt to pay the arrears or explain why the recent rent payments were in the sum of £375 when the rent due amounts to £475 per month.

5.3.3 He feels that Miss Burns is taking advantage of the situation and he wishes the Tribunal to grant the eviction order.

5.4 Miss Burns advised the Tribunal as follows:

5.4.1 She is not opposing the eviction.

5.4.2 She had been unwell when the rent arrears first started. She made a lump sum payment of £1400 on 1st July 2024 which left an outstanding balance at that time of £400. She is in receipt of universal credit and she has money set aside to pay the rent arrears.

5.4.3 She has applied to the Local Authority for rehousing and is top of the priority list.

6. Decision

6.1. Requirements of Section 109 of the Procedure Rules.

6.1.1 The Tribunal confirmed that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

- (i) the name, address and registration number of the Landlord.
- (ii) the name and address of the Landlord.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the tenant is in rent arrears over three consecutive months.

The Tribunal accepted that this is Ground 12 of Schedule 3 of the 2016 Act.

6.1.2 The Tribunal confirmed that the application complied with the requirements of Section 109(b) of the Procedure Rules:

- (i) evidence showing that the eviction ground or grounds had been met.

The required rent statements have been provided showing rent arrears over three consecutive months.

- (ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017.

The Notice to Leave was dated 11th June 2024 and advised the Tenant that the Applicant intends to apply to the Tribunal for an eviction order in respect of the property on the basis of Ground 12 (The Tenant is in rent arrears over three consecutive months). It also advised that an application would not be submitted to the Tribunal for an eviction order before 12th July 2024.

The Tenancy commenced on 23rd December 2022. As at 11th June 2024 (the date of the Notice to Leave) the Tenant had resided in the property for more than six months. The application for eviction was based on Ground 12 of Schedule 1 of the 2016 Act and therefore twenty eight days notice was required.

The Landlord served the Notice to Leave on the Tenant by email on 11th June 2024 and correctly gave the Tenant a minimum of twenty eight days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal confirmed that a copy of the required notice had been provided.

6.1.3 The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord as required by Section 109(c) of the Procedure Rules.

6.2 The Tribunal made the following findings in fact:

6.2.1 The Respondent is Tenant of the Property in terms of the lease between the parties.

6.2.2 The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

6.2.3 The start date of the Tenancy detailed in the lease was 23rd December 2022.

6.2.4 Applicants are Landlords of the Property.

6.2.5 Nestwell Property Ltd is heritable proprietor of the Property in terms of land certificate title number AYR10164. Jamie Stewart is a Director of Nestwell Property Ltd and the Landlord named on the lease.

6.2.6 The rent detailed in the tenancy agreement is £475 per calendar month, payable in advance.

6.2.7 The Notice to Leave was dated 11th June 2024 and it was served on the Respondent by email on 11th June 2024.

6.2.8 The Notice to Leave stated that the Respondent was in rent arrears over three consecutive months, which is Ground 12 of Schedule 3 of the Private Housing (Tenancies) Scotland Act 2016.

6.2.9 The rent account has been in arrears since February 2024.

6.2.10 The rent arrears as at the date of the application (12th August 2024) amounted to £975.

6.2.11 The rent arrears as at the date of the Notice to Leave (11th June 2024) amounted to £1425.

6.2.12 The rent arrears as at today's date (23rd January 2026) amount to £2675

6.2.13 The rent arrears were not due to the delay or failure in the payment of a benefit.

6.2.14 The Landlord had sent the Respondent pre action letters dated 26th January 2024, 25th March 2024, 19th April 2024, 7th May 2024 and 3rd June 2024.

6.3 In relation to the requirements of Ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal found as follows:

6.3.1. The Tribunal determined that the Respondent had been in arrears of rent for three or more months at the date of the Notice to Leave, the date of the Application to the Tribunal and at today's date.

6.3.2 The Tribunal found that the rent arrears were not due to a delay or failure in payment of a relevant benefit.

6.3.3 The Tribunal found that it was reasonable for the eviction order to be granted for the following reasons:

6.3.3.1 The amount of the rent arrears owing (being more than five months rent).

6.3.3.2 The fact that the rent account has been in arrears since February 2024.

6.3.3.2 The fact that the Applicant had issued preaction letters to the Respondent.

6.3.3.3 The fact that the Respondent does not oppose the application.

6.4 The Tribunal found in law that the ground in Schedule 3(12)(1) of the 2016 Act was met.

6.5 The Tribunal granted the eviction but determined that the Order should not to be executed prior to 12 noon on 24th February 2026.

7. 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.

Jacqui Taylor

Legal Member

23rd January 2026

