



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/0996

Re: Property at 105 Hazel Road, Cumbernauld, G67 3BW (“the Property”)

Parties:

Khanna Properties LTD, Raleigh House, 1 Golf Road, Glasgow, G76 7HU (“the Applicant”)

Mrs Mary Waugh, Mr Alexander Waugh and Mr Sean Kennedy, 105 Hazel Road, Cumbernauld, G67 3BW (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 105 Hazel Road, Cumbernauld, G67 3BW under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for an order for repossession of the Property under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The action is based on

Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (Rent arrears).

2. A Case Management Discussion (“CMD”) was held on 4 February 2026. The Applicant was represented by Mrs Alison Spence from McTurk and Muir Lettings Ltd. The Respondent Mrs Mary Waugh appeared and confirmed that she was appearing also for the other Respondents, her husband Mr Alexander Waugh and her son Mr Sean Kennedy. During the CMD Mrs Waugh accepted that the arrears were £9759.63. Mr Waugh had set up a direct debit to pay £960 per month which comprised rent of £924 and £36 per month towards the arrears. She stated they had had no heating or hot water since July 2025, that the back door was broken and the bathroom was in a state with the sink coming off the wall. She also stated bath panel had come off when they moved in and there was a bottle of urine behind the bath panel which she stated must have been left by workman before they moved in in July 2023. She was not paying rent due as she was fed up reporting repairs to the letting agent and they were not done. In the circumstances it was clear to the Tribunal that there was a dispute-
 - i) as to whether the Applicants had breached their obligation in relation to repairs;
 - ii) whether in all the circumstances rent was lawfully due;
 - iii) whether the Respondents were entitled to withhold payment of rent;
 - iv) whether the Applicants had established that there was a ground to evict in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 and;
 - v) if so, whether it was reasonable to evict.

Hearing

3. An in-person Hearing took place at the Glasgow Tribunal Centre on 12 March 2026. Mrs Alison Spence from McTurk and Muir Lettings Ltd appeared for the Applicant. She was accompanied by Mr Alexander McTurk. The Respondents all appeared. Mrs Waugh confirmed she would speak on their behalf. Mr Waugh and Mr Kennedy confirmed they were happy for her to do so. The case was heard together with a case for recovery of rent arrears under reference FTS/HPC/CV/25/0999.
4. The Tribunal had before it a Private Residential Tenancy Agreement between the parties dated 25 July 2023, an email to Mary Waugh dated 2 August 2024, an undated letter to the Respondents, a Recorded Delivery Certificate of Posting dated 3 August 2024, a Proof of Delivery dated 7 August 2024, a letter to the Respondents with dated 9 August 2024, an email to Mary Waugh dated 9 August 2024, a Recorded Delivery Certificate of Posting dated 9 August 2024, a Proof of Delivery dated 10 August 2024, a Notice to Leave dated 27 January 2025 with a letter to the Respondents and a Recorded Delivery Certificate of Posting, an email dated 27 January 2025 addressed to Mary Waugh, a Proof of Delivery dated 30 January 2025, a rent statement to 6 March 2025 showing arrears of £4,115.53 and an email dated 6 March 2025 addressed to North Lanarkshire Council with a Notice under Section 11 of the

Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

5. In response to a Notice of Direction issued by the Tribunal, Mrs Spence lodged an up to date rent statement to 5 March 2026, various text and Whats App messages, an Inventory and Check-In Report dated 25 July 2023, an Inspection report dated 2 September 2025 with an email to the Applicant dated 3 September 2025 and an Inspection report dated 20 January 2026 with an email to the Applicant dated 23 January 2026. The Tribunal also considered these documents.

Evidence of Mrs Spence

Rent arrears

6. Mrs Spence advised that with reference to the rent statement lodged the arrears had increased to £10 683.53. The last payment was for £960 paid on 2 February 2026. Another month's rent of £924 had become due on 25 February 2026. Despite Mr Waugh advising he had set up a Direct Debit for £960 nothing had been paid since 2 February 2026.
7. She explained that when there was no payment in February, she phoned Mr Waugh and asked him when they could expect payment. He had advised her it might come off at the end of March.

Repairs

8. With regard to the complaint that the Respondents had had no hot water since July 2025 Mrs Spence referred the Tribunal to the inspection report dated 2 September 2025 and to the email then sent to the Applicant which showed that at that stage there had been no complaint about no heating or hot water. The email to the Applicant of 3 September 2026 stated the Respondents had reported that the front handle was loose and difficult to lock, that the rear door did not lock properly, that both the radiator and sink in the bathroom were leaking and that the bath panel was loose from the bath. Mrs Spence went on to contrast that with the inspection carried out on 20 January 2026 and the email to the Applicant dated 23 January 2026 which showed that the Respondents had reported that there was no heating or hot water. The Tribunal also noted there were other repairs reported on 23 January 2026 including the broken front door handle previously reported, the difficult to lock and unlock rear door previously reported, the kitchen to living room double door not shutting properly, the bathroom sink pipe previously reported, the leak from the bathroom radiator previously reported and the bath panel which had also been previously reported. When questioned by the Tribunal as to why the repairs regarding the handles, the rear door not locking properly, the bathroom sink and radiator leaks and the bath panel had not been repaired between the inspection on 2 September 2025 and the inspection on 20 January 2026 Mrs Spence explained that the Applicant was not minded to carry out any repairs when the Respondents were in rent arrears.

9. Mrs Spence also explained that she had contacted Mrs Waugh by Whats App and by text about the arrears, but never received any response. Mrs Waugh had never complained that there was no heating or hot water. The Tribunal noted the various text messages and Whats App messages to Mrs Waugh.
10. Mrs Spence explained that since the last CMD repairs have been carried out by the joiner and plumber. The boiler had been making a noise. The leak in the bathroom is still to be repaired as the plumber needed to order parts. This has been rebooked for next week.
11. In answer to further questions by the Tribunal, she also explained that there had possibly been some attempt to fix the doors in the Property but due to the amount of personal possessions in the Property there was not a lot of room to work. She accepted that the bath panel had not been attended to since the start of the tenancy. She had no knowledge of there being a bottle of urine behind the bath panel.

Mrs Waugh's evidence

Rent arrears

12. Mrs Waugh for the Respondents accepted that the arrears of £10 683.53. When questioned by the Tribunal as to why there had been no payment of £960 in February, Mr Waugh intervened and explained he did not know why that had not been made. However, on being questioned by the Tribunal he had not contacted the bank to see why the payment had not been made. When questioned by the Tribunal as to whether they felt able to clear the arrears Mrs Waugh stated they intended to do so by paying extra whenever they could.

Repairs

13. Mrs Waugh explained she was fed up with the Landlord not carrying out repairs. She accepted that since the CMD repairs had been carried out; they had been told not to use the bathroom sink which was coming away from the wall. The movement had disturbed a pipe which had leaked into the kitchen. The kitchen ceiling was bulging. They had heating and hot water.
14. The Tribunal queried when she had first reported they had no heating or hot water. She explained she phoned the letting agents' office at the beginning of January to complain. Mr Waugh explained that when they put the heating on the boiler made a banging noise. Mrs Waugh explained the house was freezing and they kept reporting it. The Gas Board had been out to look at the boiler and advised they would speak to the letting agent and the landlord about the boiler. Mrs Waugh did not get any paperwork from the Gas Board.
15. She went onto explain that it was the summer of 2025 when they first reported they were getting no heating. Mr Waugh explained they had switched the heating off as it was on a timer and when they came to switch the boiler back on to get hot water the boiler made a noise. They were getting hot water. It

was probably September 2025 when they first reported it. Mrs Waugh explained she had reported it to the inspector in September.

16. The Tribunal queried why they had stopped paying rent at the end of 2024. Mrs Waugh reiterated she was fed up asking for repairs to be carried out. The door handle was coming off. They had reported the doors. A joiner would come out and once told them he would get a new lock but he did not. She was fed up with tradesman not turning up. She could not use the cooker as there was water coming through. On further questioning she confirmed she had not told the letting agents she was withholding rent. She accepted that was probably not the right thing to do. They did not have the money put aside to clear the arrears.
17. With regards to their overall financial circumstances Mr Waugh explained he was paid every four weeks from Tesco and made over £1000 net but could not be more specific as to what his basic wage was. He would get more if he worked overtime. Mrs Waugh explained she received £26 per week child benefit and that she was struggling with the change from working tax credits to Universal Credit. Mr Kennedy contributed £300 per month. He lived in Holytown. When questioned by the Tribunal as to whether they were also in arrears with their electricity and gas, Mrs Waugh confirmed they were.
18. The Tribunal queried whether she had sought any assistance from the Local Authority. She advised she had gone as far as she could with an online form which asked for a date of eviction. She wanted to stay in the Property as their son was at the local primary school. She had made a housing application to South Lanarkshire Council just before Christmas as her parents lived in Hamilton and she cared for a friend in Blantyre where they had previously lived.
19. The Tribunal asked Mrs Spence questions arising from the Respondents' evidence. She explained that the boiler was brand new when they moved in. They had never been contacted by British Gas. The gas had not been capped and the repairs to the boiler had been carried out. There may have been reports about the door handles, but she could not remember the details. During all the time that she had texted Mrs Waugh she had never mentioned repairs. She spoke to her about the arrears at the beginning of 2025 and at that stage Mrs Waugh had explained they had had a family bereavement and had to pay for the funeral. She had told Mrs Spence they were due money from an inheritance, with a view to clearing the arrears, but no payment had been made.

Findings in Fact

20. The parties entered into a Private Residential Tenancy Agreement commencing on 25 July 2023. In terms of Clause 8 of the tenancy agreement the rent was £825. The current rent is £924.

21. The Respondents have fallen into rent arrears. The current arrears are £10 683.53. The last payment to account was on 2 February 2026 for £960.
22. The Applicant's letting agent sent letters to the Respondents regarding the rent arrears on 2 and 9 August 2024.
23. On 27 January 2025 the Applicant's letting agent served a Notice to Leave by way of email on the Respondents and by recorded delivery post. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 based on the Respondents' rent arrears. The date on the Notice to Leave is 26 February 2025.
24. The Applicant's letting agent sent numerous text messages and Whats' App messages to Mrs Waugh regarding the arrears.
25. Mr Waugh set up a Direct Debit for £960 in January 2026. Two payments of £960 were received on 29 January 2026 and on 2 February 2026. Mr Waugh has not made any enquiries with his bank to query why the Direct Debit for the 25 February 2026 had not been paid.
26. At the start of the tenancy the bath panel was coming away from the bath. This was recorded in the check -in report. The Applicant did not repair the bath panel.
27. An inspection of the Property was carried out on 2 September 2025. The Respondents reported that the front door handle was loose and difficult to lock, the rear door did not lock properly, that both the radiator and sink in the bathroom were leaking and that the bath panel is loose from the bath. The Applicant did not carry out these repairs despite being advised by email on 3 September 2025 that the Respondents had reported these during the inspection. The Applicant advised he was not inclined to carry out repairs due to rent arrears and did not carry out these repairs within a reasonable period of time.
28. An inspection of the Property was carried out on 20 January 2026. The Respondents reported that the front door handle was broken and difficult to lock, the rear door did not lock, that the living room/kitchen door did not shut properly, that the bathroom radiator was leaking, that the sink in the bathroom was broken, that the bath panel was loose from the bath and that there was no heating or hot water. The Applicant has since carried out these repairs with the exception of the leak to the bathroom sink which is still in progress.
29. All repairs identified in the report of 20 January 2026 have been carried out with the exception of the leak in the bathroom sink which is currently being attended to.
30. The Respondents did not put the Applicant on notice they were withholding rent at any stage of the tenancy. The Respondents have not put aside the rent withheld. Rent was lawfully due throughout the tenancy.

31. Mr and Mrs Waugh live in the Property with their son who attends the local primary school. Mr Kennedy has moved out of the Property. The Respondents have a housing application with South Lanarkshire Council.
32. Mr Waugh's net monthly wage is over £1000. Mrs Waugh receives £26 per week child benefit. Mr Kennedy contributes £300 per month. The Respondents cannot afford to continue to live in the Property.
33. The Applicant's letting agent served a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 on North Lanarkshire Council on 6 March 2025.

Reasons for Decision

34. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
35. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).
36. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
37. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.
38. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. Section 54(2) specifies the relevant period in relation to a Notice to Leave begins on the day the tenant receives the notice to leave from the landlord and in the case of an action based on Ground 12 (rent arrears) expires on the day falling after 28 days. Section 62 (5) assumes the Notice to Leave is received 48 hours after it is served. The Notice to Leave was served on the Respondents by email on 27 January 2025 and is assumed to have been

received on 29 January 2025. The Notice to Leave specifies the date the Applicant expects to become entitled to make an application for an eviction order namely 26 February 2025. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

39. The Tribunal considered the Respondents had accepted the rent arrears. The Tribunal found that the Applicant had established a case under Ground 12. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
40. The Tribunal noted the pre action letters sent on 2 and 9 August 2024 and the numerous text and Whats App messages sent by Mrs Spence to Mrs Waugh regarding the arrears. It was clear to the Tribunal that Mrs Spence had tried her best to get the Respondents to engage with her from 2024 and throughout 2025. When Mr Waugh finally set up a Direct Debit for £960 per month in January 2026 the arrears were at such a high level, which based on the Respondents' income they would never be able to clear, despite Mrs Waugh's good intentions. Unfortunately, it appeared to the Tribunal that the Respondents simply could no longer afford to live in the Property. They had utilities' debt on top of the rent arrears. The Tribunal struggled to see how the Respondents could ever practically clear the arrears based on their current income.
41. The Tribunal considered the Respondents' position that they had withheld rent as repairs had not been carried out by the Landlord. Whilst it was clear that the bath panel had been loose from the beginning of the tenancy and had not been replaced and whilst it was accepted that there may have been complaints regarding loose door handles which may not have been attended to on occasions throughout the tenancy, the Respondents had never put the Applicant or the letting agents on notice that they were withholding rent due to a lack of these repairs. Even had they done so, the Respondents would be obliged to pay any withheld rent as all repairs with the exception of the sink repair which was still being attended to, had been completed. The Tribunal found that the Respondents' evidence with regard to when they had first reported that they had no heating or hot water to be confusing. What was clear was that the inspection report did not state there was no heating or hot water in September 2025 but the report from January 2026 clearly stated that there was no heating or hot water. Had the Tribunal found that there had been no heating or hot water from September 2025 which had not been repaired by the Applicant within a reasonable period of time, the Tribunal would have been inclined to award an abatement of rent. Regardless of the Respondents being in rent arrears, the Applicant nevertheless has a duty to ensure the Property meets the Repairing Standard throughout the tenancy. The minor repairs that went unattended between September 2025 and January 2026 do not merit an abatement of rent.
42. The Tribunal gave considerable weight to the fact that the arrears were excessive. Whilst the Respondents have a son of primary school age the

Tribunal gave weight to the fact that Mrs Waugh had put in a Housing Application to South Lanarkshire Council which would suggest that they would be prepared to move to another area, despite her saying she wished to stay in the Property as her son went to the local primary school. However, the arrears were substantial with no realistic prospects of ever being cleared. That was an overwhelming factor to which the Tribunal gave considerable weight.

43. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with evidence from both parties, that the balance of reasonableness in this case weighted towards the Applicant.

44. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondents is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

45. The Tribunal granted an Order of eviction. 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.

Shirley Evans

Legal Chair

14 March 2026

Date