



**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**

Chamber Ref: FTS/HPC/EV/25/4093 + FTS/HPC/EV/25/5228

**Re: Property at Candecraig, The Cross Road, Banchory, Devenick, Aberdeen,
AB12 5YD (“the Property”)**

Parties:

**Mr William Boyle, Mrs Jill Boyle, both residing at Flat 10, 16 Union Street,
Edinburgh, EH1 3AB (“the Applicants”)**

**Mrs Susan McKenzie-Stewart, Mr Colin McKenzie-Stewart, both residing at
Candecraig, The Cross Road, Banchory, Devenick, Aberdeen, AB12 5YD; (“the
Respondents”)**

Tribunal Members:

Jim Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for the order for possession should
be granted**

Background

1. By applications dated 24 September 2025 and 2 December 2025 the applicants sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The applications were accepted by the tribunal and referred for determination.
3. A Case Management Discussion (CMD) was fixed for 3 March 2026, and appropriate intimation of that hearing was given to both parties. The eviction

applications were conjoined and heard together with a payment application under tribunal reference FTS/HPC/CV/25/4324

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 3 March 2026 via telephone case conference. The applicants were both present and were represented by their letting agent, Mr Raphael Bar from DJ Alexander. The Respondents were both present.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the parties with regard to the applications.
7. Mr. McKenzie-Stewart indicated that he had no grounds to dispute the applications for eviction.
8. He indicated that his wife's health had been deteriorating and that she is currently being examined in connection with a potential diagnosis of dementia
9. He accepted that the level of arrears was correctly stated by the applicants in their most recent submission
10. He indicated that until November 2024 he had been working in the offshore oil industry but had been made redundant. Since then, he has done some "ad hoc" work and he is currently in discussions regarding potential interviews to return to work. He indicated that he may be able to obtain a job initially at a day rate but with the prospect of a full-time post at a significant salary.
11. He confirmed that he had approached the local council for help when he had been served with the initial notice and has effectively been advised that he cannot obtain that help unless and until an eviction order is granted. He is looking to obtain housing which will enable his wife to be supported if he is able to return to offshore work.
12. At present he has no income from work but is obtaining Universal Credit and his wife has a retirement pension. He is 65 years of age, and his wife is 79 years of age.
13. Mr. Bar for the applicants indicated that they wished to seek the eviction orders. He indicated that he had been trying to discuss matters with the respondents since arrears had started to accrue but that they had failed to engage with him and provide him with any updates regarding their situation. It was his view that the order should be granted to bring an end to the current situation and that any further delay would simply increase the ongoing debt and would not assist the respondents.

14. Mr Boyle indicated that he was 65 years old and that his wife was aged 55. He is semi-retired and has been since January 2020. Their income is effectively the rent from the property. They wish to sell the property to realise the capital within it in order to fund their retirement. The property has a very small mortgage remaining and will be subject to capital gains tax upon sale. In recent months, both Mr and Mrs Boyle have had to draw funds from their pension savings as rent has not been paid.
15. Parties agreed that there had been some initial discussion in early 2025 about a possible sale of the property to the respondent. It was accepted by the Respondents that they could not afford to purchase the property.
16. Mr McKenzie-Stewart indicated that he is now receiving Universal Credit and the maximum housing element of that would be £465 per month. He agreed this would not come remotely close to covering the ongoing rent.
17. Mr Boyle indicated that he had recently instructed solicitors who had carried out certain checks against the respondents and he has been advised that they have no visible assets and unlikely to be able to repay the arrears which have accrued.
18. On further questioning Mr McKenzie-Stewart agreed that it might actually help the respondents if the eviction order was to be granted as that was the only way in which they could obtain assistance from the local council in securing alternative housing
19. Both parties were questioned with regard to the possibility of a delay being made in respect of any eviction order and both agreed that any delay would not be of significant help
20. The respondents confirmed that they wished the order for eviction to be made.

Findings in Fact

21. The Applicants are the registered owners of the property.
22. The Applicants and the Respondents, respectively the landlord and tenant, entered into a tenancy of the property which commenced on 15 May 2023.
23. The tenancy was a private residential tenancy in terms of the Act.
24. The initial agreed monthly rental was £2,000. It increased to £2,160 with effect from September 2024 and to £2,419.20 with effect from November 2025.

25. On 26 June 2025 and 9 October 2025, the applicants served upon the respondents notices to leave as required by the Act.
26. The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
27. The notices were correctly drafted and gave appropriate periods of notice as required by law.
28. The notices each set out one of the grounds contained within schedule 3 of the Act, namely ground 1 (that the landlord intends to sell the property) in the notice served in June 2025 and ground 12 (that the tenant had been in arrears of rent for three or more consecutive months) in the notice served in October 2025
29. Arrears had started to accrue in June 2025 and at the date of the lodging of the application arrears amounted to £8,640
30. The amount of rent arrears at the date of the CMD was £20,736
31. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
32. The basis for the order for possession on ground 12 was thus established.
33. The applicants are entitled to sell the property and intend to do so.
34. The basis for the order for possession on ground 1 was thus established

Reasons for Decision

35. The order for possession sought by the landlord was based on two grounds specified in the Act and properly narrated in the notices served upon the tenant. The tribunal was satisfied that the notices had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon those grounds.
36. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears. Since on or around June 2025, the respondents have failed to pay the rent as it fell due and significant arrears have accrued.
37. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significant. The ground for eviction based on rent arrears was accordingly established.

38. The applicants intend to sell the property at market value or at least put it up for sale, within 3 months of the tenant ceasing to occupy.
39. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on either of grounds 1 and 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
40. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

41. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
42. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. The arrears as at the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondents.
43. The tribunal accepts that the landlord is entitled to sell the property and wishes to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. The applicants seek an eviction order to allow them to recover possession of the property and to place it on the market for sale.
44. In this case the tribunal finds that it is reasonable to grant the order. The balance falls heavily in favour of the applicants. They are entitled to sell the property, and they wish to sell the property to release funds for their retirement. They have indicated that wish to the respondents for a period of at least a year.

Additionally, there are rent arrears which have accrued since June 2025 and they are now at an extremely high level and likely to be irrecoverable.

45. The respondents will be assisted in obtaining alternative accommodation when an eviction order is granted and they face actual homelessness.
46. The granting of the order may therefore ultimately (and almost counter intuitively) benefit the respondents in their attempts to obtain alternative suitable accommodation
47. The tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

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.

Mr Jim Bauld

04 March 2026

Legal Member/Chair

Date