



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/3297

Re: Property at 20 Walton Crescent, Dollar, FK14 7HX (“the Property”)

Parties:

Mrs Isobel MacFarlane, 12 Graham Place, Dollar, FK14 7HZ (“the Applicant”)

Mr Kenneth Garland, 20 Walton Crescent, Dollar, FK14 7HX (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”) which took place by telephone conference on 2 April 2026 the Applicant was in attendance and was represented by Mrs Claire Hodgson of Brittany Claire Hodgson. The Respondent was not present or represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that -

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property along with her husband, Mr John Macfarlane.
- ii. The application concerns a Private Residential Tenancy (“PRT”) entered into between the parties relative to the Property that commenced on 6 September 2019.
- iii. In terms of the PRT the rent was agreed to be £700 per calendar month.
- iv. On 4 March 2025, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 30 May 2025 on the basis

of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").

- v. This application is dated 1 August 2025.
- vi. Subsequent to the raising of this application on 29 August 2025 the Applicant served on the Respondent a further Notice to Leave requiring the Respondent remove from the Property by 29 September 2025 on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vii. A pre action protocol communication was issued to the Respondent by email on 29 August 2025.
- viii. The Applicant has served on Clackmannanshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD Mrs Hodgson made the following submissions in response to questions from the Tribunal:-

- i. The Respondent is believed to be still in occupation of the Property. Approximately 2 weeks ago a neighbour reported the Respondent packing a removal vehicle with belongings but the Applicant is not sure if he has completely left.
- ii. The Respondent lives in the Property alone.
- iii. In terms of his age the Respondent is in his 50s.
- iv. He is self-employed.
- v. The rent arrears are £8,400 as at the CMD.
- vi. The Respondent has made no payments since March 2025.
- vii. The Applicant has received no requests for references from potential new landlords.
- viii. The Applicant and her husband have no other rental properties.
- ix. There is no mortgage over the Property.
- x. The Property has 2 bedrooms and is semi-detached.
- xi. The Applicant and her husband are in their 80s.
- xii. They are no longer able to manage an rental property and wish to get their affairs in order.
- xiii. Evidence of the Applicant's intention to sell the Property is the Terms of Business paperwork from Hodgson Homes signed by the Applicant and her husband on 26 August 2025.
- xiv. There has been no engagement from the respondent at all following the Notices to Leave or the pre action protocol letters.
- xv. The rent due by the respondent has not been paid by state benefits.

Findings in Fact

The Tribunal made the following findings in fact –

Reasons for decision

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicant within the application papers and orally by Mrs Hodgson at the CMD was not challenged and was accepted by the Tribunal.

Permission under Section 52(5)(b) of the 2016 Act

The application bears to proceed upon Grounds 1 and 12 of Schedule 3 of the 2016 Act.

As at the date of the application, however, no Notice to Leave had been served under Ground 12. A Notice to Leave based upon Ground 12 was served after the application was lodged with the Tribunal. The Respondent ceased paying rent after the Ground 1 Notice to leave was

served in early April 2025. It was reasonable for the Applicant to serve a further Notice to Leave thereafter under Ground 12 given the ongoing accrual of rent arrears. That Notice to Leave expired towards the end of September 2025. The arrears have continued to build throughout. The Respondent has not engaged.

In the circumstances the Tribunal gives permission for the application to proceed upon Ground 12 as well as Ground 1 in terms of Section 52(5)(b) of the 2016 Act.

Ground 1

Ground 1 of Schedule 3 of the 2016 Act states:-

- "(1) It is an eviction ground that the landlord intends to sell the let property.*
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
- (a) is entitled to sell the let property,*
 - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
 - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies signed Terms of Business of Hodgson homes relative to the marketing and sale of the Property. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account the following:-

- i. There are very significant arrears of rent now due by the Respondent.
- ii. He has made no payments since March 2025.
- iii. The Applicant and her husband are elderly and wish to put their affairs in order.
- iv. The Applicant and her husband have no other rental properties.
- v. The Respondent has failed to engage at all.

On that basis the Tribunal considered it reasonable to grant an eviction order in terms of Ground 1 of Schedule 3 of the 2016 Act.

Ground 12

Ground 12 of Schedule 3 of the 2016 Act states:-

- "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
- (a) for three or more consecutive months the tenant has been in arrears of rent, and*
- (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider*
- (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
- (5) For the purposes of this paragraph—*
- (a) references to a relevant benefit are to—*
- (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
- (ii) a payment on account awarded under regulation 91 of those Regulations,*
- (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,*
- (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,*
- (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*
- (6) Regulations under sub-paragraph (4)(b) may make provision about—*
- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*
- (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*
- (c) such other matters as the Scottish Ministers consider appropriate.*

The rent arrears accrued considerably exceed 3 consecutive months.

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order. The Tribunal took into account the following:-

- i. There are very significant arrears of rent now due by the Respondent.
- ii. He has made no payments since March 2025.
- iii. The Respondent has failed to engage at all.

There are no benefits issues. A pre action protocol letter was issued by and on behalf of the Applicant on 29 August 2026.

On that basis the Tribunal also considered it reasonable to grant an eviction order in terms of Ground 12 of Schedule 3 of the 2016 Act.

Decision

The Tribunal granted an eviction order against the Respondent in favour of the Applicant in terms of Grounds 1 and 12 of the 2016 Act.

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.

Gillian Buchanan

Date: 2 April 2026

Legal Member/Chair