



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/0529

Re: Property at 36 Ardgour Road, Kilmarnock, KA3 2AJ (“the Property”)

Parties:

Mr Jack Johnston, 12 Ross Court, Addiewell, West Lothian, EH55 8HE (“the Applicant”), per his representatives, BE Property Mentors, 11 Overtoun Road, Springside, KA11 3BG (“the Applicant’s Representatives”)

Jazz Paterson, Maurice O’Connell, 36 Ardgour Road, Kilmarnock, KA3 2AJ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondents)

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

of possession having been established, it is reasonable to grant the Order sought.

Background

1. By application received on 7 February 2025 (“the Application”), the Applicant’s Representatives on his behalf applied to the Tribunal for an Order for eviction and possession of the Property based on Grounds 11 and 12 of Schedule 3 to the 2016 Act.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement in respect of the Property and between the Respondents and the previous owners of the Property at a monthly rent of £550.00 and with an entry date of 1 July 2021;
 - ii) copy Notice to Leave in terms of Grounds 11 and 12, the tenant has failed to comply with an obligation under the tenancy, and ,the tenant has been in rent arrears for three or more consecutive months, together with proof of sending to both Respondents;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Ayrshire Council being the relevant local authority;
 - iv) rent statement showing rent arrears throughout the duration of the tenancy and rent amounting to £4,759.07as at 2 July 2025 and
 - v) correspondence to the Respondents in respect of the pre-action protocol.

First CMD

3. The first CMD took place on 28 January 2026 at 10.00 by telephone conference. The Applicant, Mr. Jackson, was not present and was represented by Mrs. McLemon of the Applicant’s Representatives. Neither Respondent was present and neither submitted written representations. The tribunal on that date proceeded in the Respondents’ absence and adjourned the CMD to a later date to allow the Respondents an opportunity to enter the proceedings or to state if they opposed the Application. Mrs. McLemon withdrew reference to Ground 11 and so the Application proceeded on Ground 12, alone.

4. A Direction was issued directing the Respondents to submit detailed information in respect of their personal circumstances. Neither Respondent responded to the Direction and neither stated if they opposed the Application.

Second CMD

5. The second CMD took place on 25 March 2026 at 14.00 by telephone conference. The Applicant, Mr. Jackson, was not present and was represented by Mrs. McLemon of the Applicant's Representatives. Neither Respondent was present and neither submitted written representations. The Tribunal was satisfied that both Respondents were aware of the proceedings and so proceeded in their absence.
6. Mrs. McLemon confirmed that an Order for eviction is sought. She explained that the Applicant, Mr. Jackson has four rental properties which he is in the process of selling as he no longer wishes to act as a landlord. With regard to the Property. Mrs. McLemon stated that there has been a lack of communication with the Respondents and that, although rent is now being paid direct by the DWP, Mr. Jackson wished to proceed with the Application as he eventually wished to sell the Property.
7. With regard to the Respondents, Mrs. McLemon stated that, as explained by her at the first CMD, they are aged mid-twenties and have no children. Occasionally, a cousin resides with them but is not part of the household. Mrs. McLemon confirmed that rent has been paid by benefits in the last six months, with a further £80.00 being paid towards the arrears. She stated that the Respondents do not engage with the Applicant or Applicant's Representatives.

Findings in Fact

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties;

- ii) The correct statutory procedures have been carried out;
- iii) The Respondent has been in rent arrears throughout the tenancy, being more than three consecutive months;
- iv) The Respondents have not opposed the Application.
- v) The Respondent are in receipt of benefits and have no dependents residing with them at the Property;

Rule 17 (4) of the Rules

9. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussionincluding making a decision”* . The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.

Issue for the Tribunal

10. The issue for the Tribunal was to determine whether or not to grant the Order sought.
11. The Ground on which the Application proceeds is Ground 12 which states: *“It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.(2)..(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.”*
12. Tribunal was satisfied that the Ground has been met, that the Respondents had been made aware of the consequences of their failure to pay rent, that they had been given advice in respect of state assistance. The Tribunal had

no evidence that the rent arrears had accrued wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit.

13. Therefore, the statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

14. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

15. The Tribunal had regard to the facts that the Respondents have been in arrears since the beginning of the tenancy in 2021. The Tribunal noted that the Respondents do not oppose the Application and have not given any reasons for their failure to pay rent. Whilst the Tribunal noted that the current rent and a contribution towards the arrears is now being paid direct by the DWP, the Tribunal’s view is that the level of arrears being £5,340.90, combined with the length of time which it will take to clear the arrears, is untenable for them to continue as tenants in the Property. The Tribunal found that the Applicant is entitled to receive payment of rent and that this entitlement outweighs the Respondents’ rights to remain in the Property. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.

16. This decision is 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.

Karen Moore

Legal Member/Chair

Date: 25/03/2026