



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 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/2630

Re: Property at 29 Inerwood Road, Kilwinning, KA13 7DX (“the Property”)

Parties:

Mr Robert James Andrews, 124 Townhill Road, Portglenone, Antrim, BT44 8AW (“the Applicant”)

Miss Michelle Campbell, 29 Inerwood Road, Kilwinning, KA13 7DX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act with execution of the order suspended for a period of six weeks.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 11 June 2026.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 as the ground for eviction, stating that the Respondent was in arrears of rent.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take

place on 30 April 2026 at 2pm. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 17 March 2026 and required the Respondent to make written representations in response to the application no later than 4 April 2026.

3 No written representations were received from the Respondent.

The CMD

4 The CMD took place by teleconference on 30 April 2026 at 2pm. Ms Christine Daly and Ms Jane Parks of Mackenzie Way Estate and Letting Agents represented the Applicant. The Respondent joined the call.

5 The tribunal had the following documents before it:-

- (i) Form E application form;
- (ii) Land certificate confirming the Applicant's ownership of the property and proof of the Applicant's landlord registration;
- (iii) Private residential tenancy agreement;
- (iv) Notice to leave and proof of delivery to the Respondent;
- (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("section 11 notice") and proof of delivery to the local authority;
- (vi) Rent statement;
- (vii) Copy letters and emails from the Applicant to the Respondent with information regarding the rent arrears;
- (viii) Copy letter from the joint owner authorising the application to proceed in the sole name of the Applicant; and
- (ix) Written mandate from the Applicant authorising Mackenzie Way Estate and Letting Agents to act as his representative.

6 The tribunal explained the purpose of the CMD to the parties and the legal test. As a preliminary matter, the Respondent advised that she had come out of a meeting regarding her daughter's health to join the call and could get called back into that meeting at any time. The tribunal asked if she wished a short adjournment of the CMD to allow her to rejoin her daughter's meeting, explaining that the proceedings could be delayed until 2.30pm. The Respondent agreed with this, advising that she would try and rejoin the call at that point, but that her daughter's health was a priority. She advised that she would be picking her other child up from school at around 3pm. The tribunal explained that if the Respondent did not rejoin the call, it may proceed with the CMD in her absence. The Respondent acknowledged this. She confirmed that she did not oppose the application for the eviction order.

7 The CMD resumed at 2.30pm. The Respondent did not rejoin the call. The tribunal proceeded to hear submissions from Ms Daly on the application. The following is a summary of the key elements of the submissions.

- 8 Ms Daly spoke to the history of the tenancy, explaining the rent arrears have been an ongoing issue since the letting agent took on the management of the property in 2021. The Respondent previously adhered to payment plans but stopped paying rent in October 2024. Ms Daly was advised by the Respondent's sister that she was in hospital around that time. Ms Daly asked if the Respondent could contact the letting agent once out of hospital but did not hear further from her. The arrears now stand at £8529. The Applicant has a mortgage over the property and is using his own funds to meet the ongoing payments. The Applicant has been very patient with the Respondent. He has given her numerous opportunities to address the rent and arrears. Ms Daly had a good relationship with the Respondent up until she stopped paying rent without explanation. Ms Daly pointed out that the Applicant delayed making the application to the Tribunal once the notice to leave expired, to give the Respondent a final opportunity to get in touch. Ms Daly has directed the Respondent to agencies for support, including the local authority and a housing advice service in the area. It is understood that the Respondent has applied for council housing and has been given the maximum points. Ms Daly believes the Respondent is a vulnerable person. The Respondent resides in the property with her two children, the eldest of whom is 14.
- 9 The tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the proceedings and confirming the outcome.

Findings in fact and law

- 10 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement, which commenced on 22 October 2018.
- 11 The Applicant has given the Respondent a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 12. The notice to leave was served upon the Respondent by sheriff officers on 22 April 2025.
- 12 The Applicant has given the local authority a section 11 notice at the time of making this application.
- 13 The rent due under the terms of the tenancy agreement is £425 per calendar month.
- 14 The Respondent has been in arrears of rent for three or more consecutive months. The rent account has been persistently in arrears since shortly after the tenancy commenced. The Respondent has not paid any rent since October 2024. The balance of rent arrears outstanding as at the date of this decision is £8529.
- 15 The Applicant has a mortgage over the property. The Applicant is having to use his own funds to pay the mortgage in the absence of rent payments.

- 16 The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 17 The Applicant's letting agent has provided the Respondent with information regarding the rent arrears, has directed her to agencies for advice and support, and has offered to enter into repayment plans.
- 18 The Respondent resides in the property with two children, the eldest of whom is 14.
- 19 The Respondent has applied to the local authority for rehousing and has been given the maximum points on her application.
- 20 The Respondent does not oppose this application.
- 21 It is reasonable to make an eviction order.

Reasons for decision

- 22 The tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application based on the documentary evidence and submissions from Ms Daly at the CMD, and that to do so would not be contrary to the interests of the parties in this case. The Respondent had not sought to oppose the application and there was no contradictory evidence before the tribunal.
- 23 Section 51 of the 2016 Act provides that "*The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*"
- 24 Section 52 of the 2016 Act goes on to state that "*an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*" The tribunal had before it a copy of a notice to leave in the prescribed form that had been given to the Respondent which cites ground 12 of schedule 3 of the 2016 Act. The tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 25 The tribunal considered the wording of paragraph 12 of schedule 3 of the 2016 Act:-

"Rent arrears

12 (1) 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.

(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.”

- 26 The tribunal accepted the documentary evidence from the Applicant and submissions from Ms Daly which were clear and consistent. There was no contradictory evidence before the tribunal.
- 27 The tribunal therefore determined that the rent account had been in arrears for three or more consecutive months when the notice to leave was delivered to the Respondent, and at the date of this decision, based on the rent statement produced.
- 28 The tribunal went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which requires the tribunal to identify those factors relevant to reasonableness and determine what weight should be applied to them.
- 29 The tribunal gave most weight to both the level of arrears and the length of time they have been outstanding. When the notice to leave was given to the tenant the arrears stood at £3854. They have since more than doubled to £8529. It is a significant balance and the tribunal accepted that it would have caused the

Applicant financial difficulties, particularly as the Applicant has a mortgage over the property and relies on the rental income to meet the mortgage payments.

- 30 There was no evidence before the tribunal to suggest that the arrears were due in any part to a failure or delay in the payment of a relevant benefit. The tribunal was further satisfied based on the correspondence produced and submissions from Ms Daly that the Applicant has sufficiently complied with the rent-arrears pre-action protocol by engaging with the Respondent regarding the rent arrears prior to serving the notice to leave, offering payment plans, and directing her to agencies for advice and support. It was clear that the Applicant considered this application to be a last resort based on the length of time the rent account has been in arrears.
- 31 The tribunal carefully considered the Respondent's circumstances. The information before the tribunal was limited to the submissions from Ms Daly as the Respondent had regrettably not rejoined the CMD. The tribunal did however note that the Respondent had herself confirmed that she did not oppose the application and it was clear from Ms Daly's submissions that she has a longstanding history with the Respondent. Whilst the risk of homelessness to the Respondent as a vulnerable individual and her children was a cause for concern the Respondent had not sought to advance a defence of reasonableness before the tribunal. The tribunal considered it could reasonably assume that she may have taken the view that the making of the order would assist in her pursuit of council accommodation. The tribunal was also aware from its own knowledge that the local authority would have obligations to provide the Respondent with further advice and assistance if an eviction order was granted. The tribunal did however consider that, given the presence of the young children in the household, it would be reasonable to allow the Respondent some additional time for the local authority to source a property for her.
- 32 Accordingly, having considered those factors relevant to reasonableness, the tribunal concluded that the balance weighed in favour of making an eviction order, provided the execution of the order is suspended for a period of six weeks.
- 33 The tribunal therefore concluded that the provisions of paragraph 12 of schedule 3 of the 2016 Act have been met in this case and determined to make an eviction order.
- 34 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.

Ruth O'Hare

30 April 2026

Legal Member/Chair

Date