**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/25/3930**

**Re: Property at 3 Pettycur Bay, Kinghorn, KY3 9SB ("the Property")**

**Parties:**

**Sally Waters, Peter Waters, 101 Rue Des Terrieres, Ruffieux, 73310, France ("the Applicants")**

**Fiona Devine, 3 Pettycur Bay, Kinghorn, KY3 9SB ("the Respondent")**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted with enforcement of the order delayed to 13th November 2026.**

**Background**

1. This is a Rule 109 application whereby the Applicants are seeking an eviction order under ground 12. The Applicants' representative lodged a copy of a tenancy agreement between the parties which commenced on 28th November 2023 at a monthly rent of £750, a notice to leave with evidence of service, a section 11 notice with evidence of service, pre-action requirement correspondence and a rent statement showing arrears in the sum of £2950.

2. By email dated 4th March 2026, the Applicants' representative lodged an updated rent statement showing arrears in the sum of £6650.

3. By email dated 9th March 2026, the Respondent requested postponement of the Case Management Discussion, providing a medical letter confirming a medical diagnosis and treatment plans. By email dated 10th March 2026, the Respondent was advised to lodge evidence to show unavailability to attend the Case Management Discussion. No further evidence was lodged. By email dated 13th March 2026, the Applicant representative opposed the application for a postponement.

4. A Case Management Discussion ("CMD") took place by telephone conference on 18th March 2026. The Applicants were not in attendance and were represented by Ms Capaldi, Trainee Solicitor. The Respondent was in attendance. The Respondent indicated she was calling from hospital. The Respondent said she wished to proceed with the CMD. The Respondent confirmed she was opposing the order, providing information regarding her medical and financial situation. The application was continued to an evidential hearing on reasonableness.

5. By email dated 29th June 2026, the Applicants' representative lodged productions, including a rent statement showing the arrears of rent at £9830.

6. By email dated 6th July 2026, the Respondent lodged productions.

7. By email dated 8th July 2026, the Applicants' representative lodged *Mackellar v Carlin 2025UT19*. This was copied to the Respondent, but it was not passed to the Tribunal until after the hearing.

**The Hearing**

8. A hearing took place by video conference on 13th July 2026. The Applicant, Mrs Waters, was in attendance. The Applicants were represented by Ms Wooley, Solicitor. The Respondent was in attendance.

**Evidence of Mrs Waters**

9. The witness is retired and lives in France. The Applicants own the property in which they live, as well as the Property which is the subject of the application. The Applicants bought the Property because they do not have great pensions and they wished to put the money into something safe. The Property is fully managed by the Letting Agent. There have been rent arrears for two years. The witness said she was aware of the Respondent's health issues.

10. The Applicants both receive state pensions in France and the UK. Mr Waters has three different occupational pensions. Currently, there is no impact upon the Applicants from the arrears as they have rent insurance in place. This provides cover for 15 months. The witness said the rent is only covered by insurance for a further two months. The witness said the Applicants have savings, but they cannot go on without the rent forever, and its absence will cause difficulty in the long term. The witness said they would not be able to keep both properties if the rent is not paid. Letting agency and insurance fees are paid each month in the sum of £162. There are also factoring and repair costs, which vary. The witness said the Applicants are uncomfortable with having to come to a Tribunal given the Respondent's ill-health, but they cannot carry on sustaining losses.

11. During the witness's evidence, the Respondent confirmed she accepted that the sum of £9380 was outstanding.

12. There was no cross-examination by the Respondent, who apologised to the witness for the situation.

13. Responding to questions for the Tribunal, the witness said the Applicants have not yet decided what to do with the Property if an order is granted. They may sell the Property, or they may continue renting it out.

**Evidence of Ms Nikki Neilson, Operations Director for the Letting Agent.**

14. The witness said she oversees the accounts and became involved in this matter when the Respondent defaulted on making rental payments. The witness confirmed she communicated with the Respondent mostly by email about the level of arrears, the possibility of setting up a payment plan, and assistance that could be offered. The witness confirmed that the productions at page 055 onwards showed a log of emails to the Respondent since 2024.

15. Responding to questions from the Tribunal, the witness said the Respondent entered into a payment plan to pay £50 per month but only made two or three payments. The witness confirmed the details of the rental insurance scheme. The witness said the Letting Agent had been advised that the Respondent had applied for Universal Credit. The Letting Agent is not aware of how the Respondent’s benefit claim is made up, so no application has been made for direct payments.

16. There was no cross-examination by the Respondent.

**Evidence of the Respondent**

17. The Respondent said she had been informed on the day of the hearing of an award of discretionary housing payment from the local authority of £225 per month. She does not expect this to be backdated beyond the date of application. Otherwise, the Respondent is waiting to be assessed by Universal Credit for additional payment towards rent. The Respondent said she is awaiting a hearing on her Adult Disability Payment (“ADP”) appeal, and the divorce proceedings in Ireland are moving along.

18. The Respondent said she receives £100 per week in Universal Credit and £70 per week ADP. The Respondent said she has been told she is likely to get an enhanced award of ADP following her appeal hearing. The Respondent contacted the Social Security Chamber recently and was told her hearing should be soon.

19. The Respondent used her savings to pay rent for a while, and had hoped her financial circumstances would be sorted out before her savings ran out, but that has not happened. The Respondent has received some assistance from Link Life Fife, but that has mostly been with health-related matters. The Respondent is awaiting an appointment with Citizens Advice and Rights Fife (“CARF”). She understands she will have an appointment in August. The

Respondent has been advised to apply for the housing element of Universal Credit. She has filled out an assessment of her capability to work. Her job coach has advised that there is a long waiting list. The Respondent has been given different advice from different people. She has not been told if the housing element would be backdated if granted.

20. The Respondent said there is no indication of when a financial settlement might be made in the divorce proceedings. The Respondent has made allegations in relation to past matrimonial matters. Significant funds have been frozen in a bank account, but this has not had the desired effect of hurrying matters along.

21. Responding to questions from the Tribunal, the Respondent said she would do the same as the Applicants if she were in their shoes, saying the whole situation is very frustrating. The Respondent is in significant financial difficulty and cannot make ends meet.

22. The Respondent said she expects to be evicted, and she is very worried about what she will do with her furniture and belongings, and how she would be able to move them. The Respondent has been in touch with Fife Council, looking for assistance in this regard.

23. Responding to questions from the Tribunal, the Respondent said she has been in touch with the housing department of the local authority, and they have said they cannot assist with housing until she is deemed homeless. They have said it would probably take some time to get social housing, and that the Respondent may have to be housed temporarily in Kirkcaldy in the meantime, in a hostel or a flat, in the hope of securing longer-term social housing in Kinghorn eventually. The Respondent said she had hoped to be in a position to offer to buy the Property if her divorce settlement had come through, but she understood that could take another year.

24. The Respondent said the Property has two bedrooms. The bedrooms and bathroom are upstairs. The Respondent said she can manage the stairs if she goes slowly. She has been given a bath chair by occupational therapy. Responding to questions from the Tribunal as to how an eviction order might affect her psychological stress, the Respondent said she does not know if she could be any worse than she currently is. The Respondent's health problems are ongoing.

25. Responding to questions from the Tribunal, the Respondent outlined her hospital and medical appointments, which are regular and may increase in number, although she hopes they will be fewer in time as her treatment progresses and changes. The Respondent has a car. She has considered getting rid of it so she could pay the insurance costs towards the rent, but said this would be a drop in the ocean, and she needs the car for appointments. The Respondent said she lives close to family, from whom she receives support. The Respondent said she would love to be able to stay in the Property.

26. Responding to questions from the Tribunal regarding whether an extension to the date of enforcement of any eviction order might be helpful, the Respondent said it would be helpful and would enable her to get assistance from the local authority with moving and storing items.

27. Responding to questions from the Tribunal, the Respondent said her medical treatment will be ongoing. There is no cure for her condition and it will have to be managed.

28. There was no cross-examination on behalf of the Applicants.

**Summing up for the Applicants**

29. Ms Wooley submitted that both witnesses for the Applicants had been credible and reliable. The Respondent was to be applauded for her candour. The rent arrears are not disputed. Evidence was heard of the impact of the arrears upon the Applicants. Evidence was heard of the Letting Agent's communication with the Respondent. Rent arrears began to accrue in July 2024. The sum outstanding is over a year's worth of rent. It is not sustainable for the tenancy to continue. The rent indemnity payments will stop soon. The future for the Property is unclear if that were to happen. The Applicants have a modest income. There has been an extended period since the notice to leave was served, and no payment plan has been put in place. The arrears are climbing, and there is no indication of when they might be reduced. Granting an order would assist both parties. The local authority would be under an obligation to assist the Respondent with social housing, and an eviction order may assist in establishing priority for housing.

30. Ms Wooley referred to *Mackellar v Carlin 2025UT19*, where Sheriff Reid found at page 31 that no reasonable tribunal could properly conclude that it was not reasonable in the circumstances to grant an eviction order where (i) no rent had been paid for a year, (ii) the Respondent had not responded to correspondence, and (iii) the Respondent had made no proposals whatsoever to clear the arrears or resume monthly payments.

31. Ms Wooley submitted that where full rent had not been paid in over a year, the Tribunal must find it was reasonable to grant an order. Ms Wooley referred to the Respondent's limited contact with the Letting Agent, the lack of proposals to clear the arrears, and submitted that this case was similar to *MacKellar,* in that there was an extensive period without payment and limited proposals for payment. Ms Wooley submitted that it had been stated today that further funds may be available, but there was no definite and clear timeline for payment.

32. Responding to questions from the Tribunal as to whether any evidence had been heard that the Applicants have a modest income, Ms Wooley agreed the word 'modest' had not been used. Responding to questions from the Tribunal, the Applicant, Mrs Waters, said the Applicants do not receive full state

pensions from France or the UK. Mrs Waters was unaware of the amount of occupational pension received by Mr Waters. They have family in New Zealand, and it is expensive to travel to see them each year. The property in which they live is not likely to fetch much at sale.

33. Responding to questions from the Tribunal as to whether the Letting Agent had given evidence that there had been limited contact from the Respondent, Ms Wooley said the log lodged showed the correspondence from the Letting Agent outweighed the responses from the Respondent.

34. Responding to questions from the Tribunal, Ms Wooley agreed that there had been information provided at the CMD of the various sources of income which the Respondent hoped might become available.

35. Ms Wooley submitted that any extension to the date of enforcement of the order should be as short as possible, as the arrears will continue to climb.

**Summing up by the Respondent**

36. The Respondent said she did not have anything further to add. Responding to questions from the Tribunal, the Respondent said she believed she had kept the Letting Agent informed.

## Findings in Fact and Law

37.

(i) Parties entered into a private residential tenancy agreement in respect of the Property, which commenced on 28th November 2023 at a monthly rent of £750. The rent increased to £795 in March 2026.

(ii) The Applicant has served a Notice to Leave upon the Respondent.

(iii) The Respondent has accrued rent arrears.

(iv) The Respondent has been in rent arrears for three or more consecutive months.

(v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.

(vi) The Applicant has complied with the pre-action protocol.

(vii) The Respondent has significant health issues that have affected her ability to work.

(viii) The Respondent receives ADP at the standard rate for the daily living component.

(ix) The Respondent receives Universal Credit.

(x) The Respondent is not in receipt of any housing benefit element of Universal Credit.

(xi) The Respondent is awaiting an appeal hearing for her ADP award.

(xii) The Respondent is currently a party to divorce proceedings that may result in an award of financial provision, but there is no timescale for any award.

(xiii) The Respondent has been granted discretionary housing payments from the local authority.

(xiv) The tenancy is unsustainable.

(xv) It is reasonable to grant an eviction order.

**Reasons for Decision**

38. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.

39. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.

40. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Tribunal was satisfied that the Applicants had complied with the pre-action protocol.

41. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.

42. The Respondent has not paid rent since September 2025. The arrears are now substantial and rising. The Respondent's evidence was that she has not been able to afford to make any payment towards the rent or arrears on her current income. The Respondent has now been awarded discretionary housing payments, but the payments are £225 per month, and the rent is £795 per month. There was no guarantee that the considerable gap between the

discretionary payments and the rent would be met. The Respondent was not aware of whether or when she might receive the housing element of Universal Credit. It was not clear to the Tribunal how the Respondent could meet the monthly payments of rent in full. There seemed to be no guarantee that the ADP award would be increased, and the financial provision from the divorce, if it transpires, could be a year or more away.

43. The Tribunal distinguished this case from that of *Mackellar v Carlin*. This was not a case where the Respondent did not attend hearings or lodge productions. Although there has been no payment for a significant time, the Tribunal did not accept that the Respondent had not responded to correspondence or had made no propositions. In this case, the Respondent has considerable health difficulties, as set out at the CMD and in the productions lodged by the Respondent, that have impacted upon her ability to communicate, as stated at the CMD. This is also reflected in the Respondent's email responses to the Letting Agent. The Tribunal considered that the Respondent had communicated insofar as she was able to do so. The Respondent has put forward as much information as she can about how she hopes to pay the rent and address the arrears. The Tribunal found the Respondent to be entirely credible in her evidence. The Respondent has found herself in an unfortunate situation through ill-health and as a result of past experiences.

44. The Tribunal did not consider that the Applicants have suffered financially to date as a result of the Respondent's failure to pay rent and arrears. The Applicants' position has been protected by the rent insurance policy. However, that will end in a couple of months, and there is no reasonable prospect that the Respondent will be able to cover the rent in full and make payment towards the arrears at that time.

45. The Tribunal considered that if no order was made, it is likely that the arrears will continue to increase, as the Respondent cannot meet the monthly rent, even with the discretionary housing payments. At the time of the CMD, the Respondent said she was due to have an appointment with Universal Credit that day, and she hoped to be in a position to clear half the arrears with backdated benefits within six months. Four months on, there is no guarantee of any further payment from Universal Credit. The tenancy does not appear to be sustainable, and, if no order is granted, it is likely that a further application may have to be made by the Applicants in the future, incurring further cost and delay.

46. The Tribunal considered that, if an order is granted, it is likely to have a considerable effect upon the well-being of the Respondent and may affect her health; however, there was no professional medical evidence before the Tribunal of the likely effect of an order upon the Respondent's health. The Tribunal considered that there is often a negative impact when an eviction order is granted, but it cannot be in the interests of either party for the situation to continue, given the level of uncertainty over the Respondent's future income.

47. The Tribunal considered that, if an order is granted, the Respondent is likely to be assisted by the local authority, which will have a duty to provide suitable housing. There was only anecdotal evidence before the Tribunal from the local authority regarding the possibility of temporary housing being required before permanent housing can be made available. The Tribunal is aware that temporary accommodation is often necessary; however, the Tribunal is also aware that the Respondent's medical needs, together with the eviction order, may assist in establishing priority for suitable housing.

48. In all the circumstances, the Tribunal considered that it was reasonable to grant the order sought.

49. The Tribunal considered it was also reasonable to delay execution of the eviction order to assist the Respondent in securing practical assistance for her move and to assist the local authority in identifying suitable accommodation for the Respondent. The Respondent is under considerable stress, given her medical conditions and her appointments, and an extended period will also assist her in preparing physically and mentally for a move to alternative housing.

**Decision**

50. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 13th November 2026.

**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.**

**Helen Forbes**

____________________________ **13th July 2026**

**Legal Member/Chair** **Date**