

Housing and Property Chamber
First-tier Tribunal for Scotland



**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**

Chamber Ref: FTS/HPC/EV/25/5345

**Re: Property at Cottage No. 2, South Lambieletham, Fife, St Andrews, KY16 8NP
("the Property")**

Parties:

**Mr John MacNiven, South Lambieletham, St. Andrews, Fife, KY16 8NP ("the
Applicant")**

**Mrs Alison Baxter, Cottage No. 2, South Lambieletham, St Andrews, Fife, KY16
8NP ("the Respondent")**

Tribunal Members:

Gabrielle Miller (Legal Member) and Nicholas Allan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the order for recovery and possession should be
granted in favour of the Applicant.**

Background

1. An application was received by the Housing and Property Chamber dated 10th December 2025. The application was submitted under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). The application was based on ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 26th May 2026, all parties were written to with the date for the Case Management Discussion ("CMD") of 26th June 2026 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 12th June 2026.
3. On 27th May 2026, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 27th May 2026.

The Case Management Discussion

4. A CMD was held on 26th June 2026 at 2pm by teleconferencing. The Applicant was present and was represented by Mr Stephen Nicholson, Associate, Harper McLeod LLP. The Respondent was present and represented herself.
5. Mr Nicholson said that the Applicant is seeking an order for eviction. The rent arrears are currently £10,000. There has been one payment of £400 in February 2026. Prior to that the last payment was in June 2025.
6. The Respondent said that she was not opposed to an order for eviction. She is concerned about where and when she will be rehoused. She has spoken to her local authority and Frontline Scotland.
7. The Respondent admits the arrears. She is a self employed baker. She has been in financial difficulty and cannot afford to pay the rent. She has prioritised her other outgoings.
8. Mr Nicholson said that if the Respondent is allocated a new property prior to the point of eviction, she will not need to give notice to the Applicant as long as she remains in contact and informs either the Applicant or him about the end of the tenancy.
9. Mr Nicholson said that in terms of Pre Action Requirement letters ("PARs") the Applicant did not send the formal Government style letter. However, letters were sent to Respondent to advice of the outstanding arrears and that help could be obtained from Housing Benefit. In addition the Respondent had attended a CMD on 14th October 2025 when an order for payment was granted for £6000. This is for some of the outstanding arrears that resulted in this application. There has been no payment towards that order. The Respondent is fully aware of the arrears, her obligations and that she can be assisted in terms of help addressing it. The Respondent did not have any opposition to this point. The Tribunal accepted that the PARs had been met.
10. The Tribunal was satisfied that it was reasonable to grant an order for eviction.

Findings and reason for decision

11. The Applicant is the registered owner of the Property.
12. A Private Rented Tenancy Agreement commenced 1st February 2024.
13. The Respondent persistently failed to pay her rent charge of £500 per month. The rent payments are due to be paid on the first day of each month.
14. The arrears outstanding total £10,000. The Respondent does not dispute the arrears.
15. The Respondent has been in rent arrears for three or more consecutive months when the notice was served. The rent account has been in arrears since June 2025.

16. 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.
17. There are no known outstanding Universal Credit Housing Element issues.
18. The Respondent is not opposed to the granting of an order. The Respondent has spoken to her local authority housing department regarding being rehoused.
19. The Respondent has no known vulnerabilities or disabilities.
20. The Order for possession sought by the Applicant was based on a ground specified in the Act and properly narrated in the notice served upon the Respondent. The Tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.
21. While formal Pre Action Requirement letters were not sent, the Applicant had informed the Respondent of the arrears and where to get advice. This effectively met the PARs. The Respondent did not have issue with the PARs undertaken by the Applicant.
22. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
23. 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.
24. 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”.

25. The Tribunal further notes that in an Upper Tribunal case, **Scott Mackellar v. Nicola Carlin** (2025UT19 UTS/AP/24/0008), Sheriff Reid issued a decision dated 25 March 2025. In that decision the Upper Tribunal quashed a decision of the First-Tier Tribunal refusing an eviction application and granted an eviction order.

26. In that decision at paragraph 31, Sheriff Reid indicated that:-

“the FTS has fallen into error in its overall assessment of reasonableness, in respect that no reasonable tribunal could properly have concluded, on the evidence available, that it was not reasonable to grant an order for eviction in circumstances where the tenant (i) has not paid full rent in more than a year (a fortiori to the objectively-significant extent proven by the Appellant); (ii) has not responded to correspondence seeking payment of the arrears or cessation of the persistent ongoing monthly shortfalls in rent; and (iii) has made no proposals whatsoever to clear the arrears or to resume full contractual payments, still less within a reasonable period”.

27. The level of arrears is significant. The arrears are not currently reducing. The Respondent has failed to communicate with the Applicant to enter into a payment arrangement to deal with ongoing rent and arrears.

28. The issue of reasonableness, while fully considered, was viewed in the context of the action not being opposed. Accordingly, this weighed in the favour of granting the Order.

29. 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.

Decision

30. The Tribunal found that ground 12 has been established and granted an order in favour of the Applicant.

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.

Gabrielle Miller

Legal Member/Chair

Date: 26th June 2026