



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/26/0356

Re: Property at 0/2 40 Nithsdale Drive, Glasgow, G41 2PW (“the Property”)

Parties:

Mr John Lyons, Greenways, Pacemuir Road, Kilmacolm, PA13 4JJ (“the Applicant”)

Ms Kitra Tailor, 0/2 40 Nithsdale Drive, Glasgow, G41 2PW (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Elaine Munroe (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 23rd January 2026. 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 1st July 2026, all parties were written to with the date for the Case Management Discussion (“CMD”) of 6th August 2026 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 22nd July 2026.
3. On 10th July 2026, the Respondent emailed the Housing and Property Chamber lodging a submission which totalled 203 pages. This submission detailed her defence and a history of the tenancy.

4. On 2nd July 2026, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 2nd July 2026.

The Case Management Discussion

5. A CMD was held on 6th August 2026 at 2pm by teleconferencing. The Applicant was present and was represented by Mr Thomson, Hayes Estates. The Respondent was present and represented herself.
6. The Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters.
7. The Applicant and his representative said that the Applicant would be in the best position to answer the majority of the questions. The Applicant's representative did not undertake the day to day management of the Property, that was done by the Applicant.
8. The Applicant confirmed that he wished the order for eviction to be made. The Applicant said that the last rent payment was made on 30th June 2022. The current arrears are £45,345. The Applicant has tried to contact the Respondent in terms of the arrears though not in recent months since this process has started. The Respondent has refused to engage with him or his agent.
9. The Applicant said that the last attempt to contact the Respondent was on 6th December 2025. She did not respond to this correspondence. He understands that she is applying for asylum in the UK from the USA. He does not know the reasons that she has grounds from asylum as it he considers it unusual for an American citizen to be claiming asylum in the UK. The Respondent has refused to provide details to him with regard to this point. He understands that she is unable to work due to not having a visa. He believes that there may have been a carers job but she was unable to take it up due to not having a visa. The Applicant said that he believes that she has no recourse to public funds in the UK.
10. The Tribunal asked if there were any other tenancy issues. The Applicant said that the Respondent has refused to let an inspection take place. The condition of the Property is not known. Mr Thomas said that he had attended the Property to undertake an inspection in February 2026. His firm uses an app to take photos of the rooms for the inspection report. The Respondent did not let him in past the hallway. He was only able to see the hallway and the kitchen. The Respondent made it clear that she did not want the inspection to be undertaken. Mr Thomas felt uncomfortable in the situation and left as soon as he was able to do so.
11. The Applicant said that he has not been able to undertake an up to date gas safely certificate or any other legally required certificates as the Respondent has not granted access. The Applicant is very concerned about this as he takes his legal responsibilities seriously.

12. The Applicant said that on 22nd July 2022 he had received a text from the Respondent saying “ Oh my God the ceiling has just caved in!!!”. Subsequent investigations confirmed that it was a small hole the size of a football in the kitchen ceiling adjacent to the external wall. The Respondent said that she was withholding rent until the repair was completed. She did not put this money into a separate bank account. She did not pay the money over once the work was complete. The Tribunal noted that this is what is legally expected when rent is withheld. She does not have this money for the Applicant and cannot hand it over.
13. As it involved the external wall the damage was reported to the building factors. They undertook investigations for any water ingress. Water was found to be running down from a down pipe. This will have caused the hole and caused some dampness. The property factors fixed the issues.
14. The remaining issue was a cosmetic one to repair the hole and make good the decoration. Numerous attempts were made by various trades people to gain entry to undertake the work. Some refused to go back to the Property as there was no response each time. This made it more difficult to instruct trades people to undertake the work. The Respondent refused to let trades people in to undertake the repair as she did not know them. The Applicant agreed to attend with the Painter and Decorator in August 2024. The work was completed at the end of November 2024. The total cost of the work was £600. It was deemed by the decorator to be minor cosmetic work. The work included fitting a replacement ceiling panel.
15. The Applicant said that the rent was initially £695. A rent increase notice was issued on 21st April 22 increasing the rent to £750. In March 2025 the rent was increased to £950. The Respondent said that she had discussed her missed payments with the Applicant about the rent and was of the understanding that the rent increase was held to £725 per month. She disputed the full amount of the arrears. The Applicant said that he did not agree with that. He said that he said to her at the time that if she brought her rent up to date that she could maybe have a reduction then. The Tribunal noted that even if the rent was considered to be £725 instead of £750 this would only reduce the arrears by £850. The arrears would still be a significant amount. This is not an application for payment where the exact amount would be in a payment order. The Tribunal is seeking to determine if the arrears are over three months at the date of the notice to leave and one month at the CMD. In this case the arrears significantly exceed that.
16. The Respondent confirmed that she is still living in the Property. She does not want to continue to live in the Property but is unable to go anywhere else. She is seeking asylum support accommodation but has special needs so this has to be taken into consideration. She does not need to be granted asylum to get asylum supported accommodation. She has been offered accommodation but it was not on the ground floor so she refused it. It is unrealistic that she will be offered another property before the end of the 30 day appeal period and subsequent 14 day notice period if an order for eviction was granted today. She would be homeless if an order for eviction was granted today.

17. The Respondent said that she applied for asylum in January 2024. She has instructed a solicitor to assist her with this. This application was considered for two years but the final decision was to refuse it. She has in recent months re applied. She is waiting on medical evidence to support her application. She does not know how long it will take for a decision to be made. She was not able to advise the Tribunal on whether her solicitor had discussed the prospects of success with this application in particular given that it is unusual for an American citizen to be granted asylum in the UK from the USA.
18. The Respondent said that she moved out in November 2022 to move to Aberdeen. She left the Property as she was not able to afford the rent. At that time she worked remotely so could live anywhere. She chose Aberdeen as it was cheaper than Glasgow to live. She did not want to terminate the tenancy at that stage because she thought that once the repairs were done she may move back into it. She was not able to pay the rent for this property and her new property in Aberdeen. She did not pay the rent for this property as a consequence but did pay her rent in Aberdeen.
19. The Respondent said that she also left as she did not consider that the Property met the repairing standard. She did contact Shelter Scotland and Living Rent. She was told that three sewage pipes had burst and filled the space above her flat only part of her ceiling the size of a football had fallen into the Property. She told the Tribunal that there had been an inspection of the Property by her local authority. She did not know who had undertaken the inspection, why it was undertaken or the findings of the inspection. The Tribunal asked if it had been the private rented sector team of her local authority as they will raise a third party application with the Housing and Property Chamber with regard to repairing standards issues. The Respondent did not know. She has not heard anything about an application and has heard nothing further from her local authority. She has not raised a repairing standards application herself. She was not able to advise the Tribunal why she had not done this even though she felt the Property was not able to be lived in and she had taken advice from at least two specialist agencies.
20. The Tribunal asked again why she had not terminated the tenancy when she moved to Aberdeen especially given that she claimed that there were repairing standards issues. She said that she hoped that the Applicant would remedy the repairs. She did not hear from the Applicant in terms of the repairs. She said that she did contact the Applicant but to no avail. She said that she gave up after a few months. The Tribunal asked if at that point she considered that she would terminate the tenancy given that she did not consider that the repairs were being undertaken, she was living in another city, she was not paying the rent and she could choose to live anywhere due to remote working? She said that she still hoped to return to the Property. After some discussion the Respondent said that she should have terminated the tenancy when she lived in Aberdeen.
21. The Respondent said that she was a lecturer in adult education. She is not able to do that job due to her visa expiring. She can do some carers jobs but most require a driver's licence and some qualifications that she does not have. She has also looked at care homes but has not been able to find employment. The

Tribunal asked how she was funding her living in the UK. She has been selling items that she has and living from foodbanks.

22. In terms of paying her ongoing rent charge, the Respondent said that she was not able to do that until such time as she is given asylum status from the UK. The Tribunal noted that the Respondent said the previous application took two years. The Tribunal asked if this was the expected time before another decision was determined. The Respondent did not know how long it will take but knows that it can take a while. She was not able to give any guidance on the time it will take for this application to be determined. She could work if an employer sponsored her. She has been trying to get a sponsor but to no avail. The Respondent confirmed for the present and near future, at least, she was not in a position to pay the on going rent charge or the arrears.
23. The Respondent said that she has medical conditions that relate to connective tissue disorder and immune conditions. These give her issues with mobility. This was a reason for her refusing the asylum support accommodation.
24. The Tribunal asked why she should not be evicted. The Respondent said that she there were long standing disrepairs, the calculation of the arrears was incorrect as explained above and that she would be homeless. The Tribunal discussed the issues with the arrears as detailed above. The Respondent accepted that there would be sufficient arrears to meet the legal test. The Tribunal discussed that the issue of the disrepair appeared to be resolved. In addition to that the Respondent had left the Property for two years. She had stated that she had moved back because she could live in the Property rent free. The Respondent said that in consideration of these points she was opposed to an order for eviction being granted as she would be homeless.
25. The Respondent said that in terms of the asylum support accommodation she is anticipating being offered a new accommodation but it may take several months. The last application took about a year. This time further medical evidence has been lodged. The application was put in 2-3 months ago. She anticipates it being 4-5 months from now before she is offered accommodation. She wants to remain in this property until then though accepts that she will not be able to pay her rent or the arrears in the meantime. The process would not be speeded up by an order for eviction which is the case with many local authority homeless allocations. The asylum support accommodation assessment has been undertaken on the basis of the notice to leave.
26. The Applicant said that the Respondent did not indicate to him that she had moved to Aberdeen. She did not return the keys or terminate the tenancy as he would have expected. He noted that she returned to the Property in March 2024. When it was in the same condition that she had left it in as no repairs had been able to be undertaken due to lack of access. Various agencies had looked at the issues with the downpipe and it is not a sewage problem as said by the Respondent.
27. The Tribunal asked her if she should have terminated the tenancy when she moved to Aberdeen. The Respondent accepted in hindsight she should have terminated the tenancy. She said that she paid her rent in Aberdeen. She did

this because that property was in a good condition. She terminated that tenancy before returning to Glasgow to this property.

Findings of fact

28. The Applicant is the registered owner of the Property.
29. A Private Rented Tenancy Agreement commenced 29th October 2020.
30. On 14th November 2025, the Applicant served upon the Respondent a notice to leave as required by the Act. Service was effected by email and the Notice became effective on 14th November 2025.
31. The notice informed the Respondent that the Applicant wished to seek recovery of possession using the provisions of the Act.
32. The notice was correctly drafted and gave appropriate periods of notice as required by law.
33. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the Respondent had been in arrears of rent for three or more consecutive months).
34. The Respondent persistently failed to pay her rent charge of initially £695 per month and latterly £950 per month. The rent payments are due to be paid on the twenty ninth day of each month. The last rent payment was made on 30th June 2022.
35. The Respondent had been in rent arrears for three or more consecutive months when the notice was served. The rent account has been in arrears since 29th November 2020. The rent account has been at least three months rent arrears since 29th January 2021.
36. The Respondent has no income currently. She is an American citizen. She had a visa to work in the UK but this has now expired. She has no right to work in the UK except for a limited number of situations which includes working as a carer. She is currently not working.
37. There are no outstanding Universal Credit Housing Element issues. The Respondent has no entitlement to claim benefits due to her current immigration status.
38. Due to having no income from either employment or state benefits, the Respondent is not able to make any payments to her rent. She cannot confirm if and when she will be able to make any payments to her rent account.
39. The Respondent is not able to be rehoused by her local authority housing department as she has no right to benefits due to her current immigration status.

40. The arrears are currently £45,345. The last payment was made on 30th June 2022 for £695 which was the full amount of the rent at that time.
41. There was a hole in the kitchen ceiling of the Property which was approximately the size of a football. This was from an external pipe issue. This was fixed by the building's property factors. The kitchen ceiling was made good by a decorator. This cost the Applicant £600.
42. The Respondent left the Property in November 2022 and moved to Aberdeen where she rented another property. She paid the rent on that property but did not pay the rent on this property. She was aware that she had not terminated the tenancy.
43. The Respondent returned to this Property in March 2024 as she could no longer work and could not afford that property. She returned to the Property as she was of the view that she could continue to live there as she had not paid rent for over two years so could continue to not pay her rent.
44. Appropriate accounting had been provided in respect of the outstanding rent with the application to the Tribunal.
45. The basis for the order for possession on ground 12 was thus established.

Reasons for the decision

46. 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 Applicant was entitled to seek recovery of possession based upon that ground.
47. The Tribunal accepted the evidence presented on behalf of the Applicant with regard to the rent arrears. A rent statement was produced which set out the history of the arrears.
48. From June 2022 until the date of the CMD, the Respondent failed to pay the whole rent as it fell due and significant arrears have accrued.
49. The Applicant has sent letters to the Respondent on various dates in compliance with the provisions of the pre action protocols set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
50. The Tribunal was satisfied that the Respondent had been in arrears for a period far in excess of three consecutive months and the arrears owed were significant. The ground for eviction based on rent arrears was accordingly established.
51. 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.

52. 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.

53. 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”.

54. 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.

55. 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”.

56. This case is at the heart of the Tribunal's decision. The arrears as at the CMD are £45,345. This is a significantly high amount not only for this case but in comparison to other cases which the Tribunal has sat on previously. The Respondent disputes that the arrears are this high citing that the rent increase should be to £725 not £750. This is a point of dispute between parties. However, there have been no payments since 30th June 2022 even if the rent had remained the same the arrears would be very significant. In the last year alone the arrears have accrued by £11,400. That figure alone would have any reasonable Tribunal grant an order for eviction. The Respondent has no means to pay either the rent charge or the arrears. By her own evidence she said that she returned to live in the Property because she did not need to pay the rent and she could not afford to pay the rent on her other property in Aberdeen. The Respondent was not able to tell the Tribunal when she might be able to make payments to the ongoing rent charge or the arrears. The Applicant and his representative have tried to correspond with the Respondent but to no avail. She continues not to pay the rent charge. It is clear that the test in this case has been met. No reasonable Tribunal would not grant an order for eviction in these circumstances.
57. In this case the Tribunal finds that it is reasonable to grant the order.
58. 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. The Respondent has given evidence that she is not in the position to make any payments as she has no right to work and no right to claim benefits as her work visa has expired. She requires this visa as she is an American citizen. Although she has applied for asylum from the UK this has been refused and she is reapplying. The previous application took on or around two years. She does not know how long this one will take. She was not able to advise what the prospect of success is in terms of this application even though she has a solicitor instructed to act on her behalf. Taking all this into account she has no prospects of paying the arrears or the on-going rent charge currently. The current rent charge is £950 per month. The arrears are increasing significantly each month that there is no payment made.
59. The Respondent is concerned about being homeless. The Tribunal accepts in her circumstances this may be a realistic concern. However, she has wilfully chosen to continue to accrue the rent arrears. She left the Property to live in another Property in Aberdeen for two years. She did not terminate the tenancy then as she said that she wanted to return to the Property. She stated that she wanted the repairs to be undertaken but did not continue to pursue it when she had not heard from the Applicant. However, she did not at that point terminate the tenancy. By her own evidence she was, at that time, able to work remotely so was not tied to a specific location. There was no requirement for her to be in Glasgow or specifically in that property. She only elected to return to that property once her visa expired and she could no longer work. She could not afford to pay for her property in Aberdeen. Her evidence to the Tribunal was that she could live in this property as she has not been paying for it anyway so could continue to not pay the rent. It was clearly her intention not to pay the rent going forward. She is contractually obliged under the PRT to pay the rent.

60. The Respondent said that she is looking to be rehouse by asylum support team. This does not depend on her having been granted asylum. This may resolve the issue of homelessness for the Respondent but not in the time scales during which this order can be enforced. The Respondent may be homeless and restricted in her accommodation choices due to her mobility issues but any reasonable Tribunal would still grant an order for eviction given the very significant amount of arrears and applying the test in *MacKellar v. Carlin* as stated above.
61. The Respondent disputes that the arrears should not be as high as they are as there has been a miscalculation of the rent charge. The Respondent said that for the period of 29th April 2022 to 28th February 2025 the rent should have been £725 and not £750. This is almost immaterial as the amount that she is disputing is 34 months at £25. This is £850. It is not significant in terms of the overall arrears. Even disregarding this amount the arrears are still in excess of £44, 000. There is not a conjoined payment application. The Tribunal is focused on the test within ground 12.
62. The Respondent said that she did not pay her rent due to a disrepair issue. The Respondent said that she had withheld her rent. She did not withhold her rent as she has not kept the rent in a separate bank account to return when the repairs were completed. The Tribunal accepted the evidence of the Applicant that the repairs were not greatly significant given the painter was able to remedy the situation for £600 and that the factor had taken appropriate investigations. The Respondent said that she had someone from her local authority inspect the Property. She was not able to advise by who or why this inspection was undertaken. She was not able to advise of any outcome. She did not make a Repairing Standards application to the Housing and Property Chamber. While she said that she moved out due to this reason she did return to live in the Property. The Tribunal was not satisfied that, on the evidence before it, that it was appropriate for the Respondent to simply not pay her rent because of a repair issue. She chose to continue being a tenant of the Applicant rather than give her notice when she moved to Aberdeen. It is reasonable to presume that she was satisfied enough with the Property that she did not want to end her tenancy.
63. In all the circumstances the Tribunal decided that it was reasonable to grant the order sought.
64. 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

65. 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.

6th August 2026

Legal Member/Chair

Date