

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”) and Rules 109 and 24 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/2836

Re: Property at 194 Strathmore Street, Broughty Ferry, Dundee, DD5 2PB (“the Property”)

Parties:

**Mr Paul Smith, 7 Nesbitt Street, Dundee, DD4 7HN (“the Applicant”)
per his agents MML Law, Meadowplace Buildings, Bell Street, Dundee DD1 1EJ
 (“the Applicant’s Agents”)**

Miss Rachael Robertson, 194 Strathmore Street, Broughty Ferry, Dundee, DD5 2PB (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application and made no Order.

Background

1. By application dated 2 July 2025 (“the Application”), the Applicant’s Agents applied to the Tribunal on his behalf for an Order for eviction based on Ground 12 of Schedule 3 to the 2016 Act, that the tenant has been in rent arrears for three or more consecutive months.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties with an entry date of 23 April 2018 and at an initial rent of £600.00 per month;
 - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the 2016 Act dated 7 February 2025 with proof of issue;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council being the relevant local authority;
 - iv) copy statement of rent due and owing amounting to £6,000.00 as at December 2024;
 - v) copy rent increase notice;
 - vi) copy pre-action protocol letters.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 20 February 2026 at 10.00 by telephone conference and intimated to the Parties. Prior to the CMD, the Applicant’s Agents submitted an updated rent statement showing that rent of £11,762.43 is due and owing.

CMD

4. The CMD took place on 20 February 2026 at 10.00 by telephone. The Applicant was not present and was represented by Mr. McNeill of the Applicant’s Agents. The Respondent was present and was unrepresented. The Application was heard alongside application FTS/HPC/CV/25/2869 between the same Parties seeking an Order for payment of the rent due and owing.
5. At the CMD, Mr. McNeil confirmed that an eviction Order was sought. The Respondent, Ms. Robertson, advised the Tribunal that she accepted that rent

is due and owing and stated that she did not oppose the Application. She went on to explain that she has been withholding rent as the Property or appliances and/or the heating system in the Property has been “condemned” by the Applicant’s contractors. She explained that she has notified the Applicant’s Letting Agent, Lara Letting, of both the repairs and that she has been withholding rent. She stated that the Letting Agent had been abusive and that police had been involved. With regard to the withheld rent, Miss Robertson stated that this is not lodged in a bank but is cash in an envelope held by a third party.

6. For the Applicant, Mr. McNeil advised that he had been aware of repair issues with appliances but was not aware of issues as described by Miss. Robertson.
7. The Tribunal advised that, in order to grant an Order, it had to be satisfied not only that the correct procedure had been carried out and that there are grounds for the Order, but also that it is reasonable on the facts of the grounds to grant the Order. As the Tribunal could not be so satisfied, the Tribunal advised that a Hearing of evidence would be held.
8. The Tribunal adjourned the CMD to a Hearing by video conference and issued a Direction in respect of the evidence required.
9. The Respondent was directed to : *1. Submit a timeline in tabular format of repairing issues as follows: each repairing issue relied upon; the date and method of notification to the Applicant/ Letting Agent; the response received and the date of any repair or refusal to repair; 2. Submit a note of the amount of rent abatement (reduction) sought which should explain how the abatement has been calculated with reference to any legal authority and set out the date or dates on which she notified the landlord that rent was being withheld and the amount withheld. 3. Submit proof that the rent is withheld. 4. Submit copies of all correspondence between the Respondent and Applicant and/or his agents and contractors concerning repairing issues at the Property. 5. Submit copies of all correspondence between the Respondent and the local authority concerning repairing issues at the Property. 6. Submit evidence of*

the extent to which the Property was or is uninhabitable. 7. Submit evidence of any unpaid or delayed relevant benefits payments to which the Respondent is or may be entitled in respect of the rent due and owing. 8. Submit evidence in support of her personal circumstances and those of her family who reside with her at the Property. 9. Submit evidence of the impact which granting the Order will have on her and those of the family members who reside with her at the Property. 10. Submit a note with supporting evidence of any other matters to which the Respondent considers the Tribunal should have regard in reaching a decision on whether or not it is reasonable to grant the Eviction Order in respect of the facts of Ground 12.”

10. The Applicant was directed to “1. Provide a response to the Respondent’s repairs issues submissions being numbers 1 – 6 above. 2. Submit details of his rent portfolio being the number of properties, the number currently tenanted, the number subject to secured finance. 3. Submit evidence of any mortgages secured on the Property. 4. Submit evidence of the Applicant’s personal circumstances and the impact which not obtaining an Order might have on him and 5. Submit a note with supporting evidence of any other matters to which the Applicant considers the Tribunal should have regard in reaching a decision on whether or not it is reasonable to grant the Order in respect of the facts of Ground 12.”

11. The Respondent did not comply fully with the Direction and wrote by email: “I have been unable to get someone to make a table with the information required, due to me not having access to desktops etc and not knowing how to do that. I have only had 2 days off work one of those being today and i leave at 6am and do not return home until 6pm and obviously in bed for 8pm so have very limited time at the moment due to complex care needs of my service. I have attached as many pieces of evidence that I can locate with regard to repairs and rent queries from emails but unfortunately I do not have evidence of calls or abusive visits as they were not recorded. My neighbours have been trying to locate footage they have but at this time, I do not believe they have located this. I have attached what I have and have been asking other to view properties for myself and my children while at work and have

applied for 5 since tribunal but have been rejected by each one.” A series of text messages dated from September 2022 to January 2025 accompanied her email. The text messages listed complaints of repairs issues being no hot water, no working washing machine, no working oven and the bathroom floor “caving in”. The text messages made it clear that “rent isn’t being paid until all repairs are completed and the property is provided with the facilities listed in the lease.”

12. The Applicant’s Agents, on his behalf, complied with the Direction and replied as follows: *“In response to the Respondents repair issues, it is the applicant’s position that the Respondent has failed to accurately set out the exact nature of the repair, the first date of notification to the Letting Agent, and any response from the Letting Agent, and whether that repair issue has been resolved or refused to be resolved by the Letting Agent. It is the Respondent’s position that the property has been checked and maintained by qualified contractors throughout the duration of the tenancy. We attach with these submissions, copies of the Legionella and Electrical Certificates. There have been a number of issues from the tenant in relation to damage being carried out at the property. Specifically, the Letting Agent received notification from the tenant on 12th April 2021 that an intruder had forced entry into the kitchen window, damaged the electric hob, assaulted the tenant and caused other damage to the kitchen. The Letting Agent asked the Respondent for further details such as a police incident number so that the applicant can make a claim on their insurance. The Respondent did not provide this. The Applicant arranged for the kitchen window to be repaired and subsequently replaced the cooker. It is not accepted that the Applicant does not want to maintain the property. The Applicant owns five other properties which are let through the same Letting Agent and there are no issues with any other property. The Letting Agent had instructed electricians to attend the property, and they have consistently reported that the tenant has been drying wet clothes on the radiators which has caused them to fuse and stop working. The electricians have also noted that the fuse for the smoke and heat detector systems have been switched off. The tenant is yet to provide the Tribunal with any substantive evidence that there are indeed repairs outstanding. She has*

lodged part email chains from the past few years however, these are lacking in specification and fail to show any response from the Letting Agent.” The documentation required by the Direction were submitted.

13. Prior to the Hearing, the Applicant's Agents amended the sum sought to £14,887.43.

Hearing

14. The Hearing took place on 30 June 2026 at 10.00 by video conferencing. The Applicant, Mr. Smith, was present and was represented by Mr. McNeil of the Applicant's Agents. The Respondent, Ms. Robertson, was present and was unrepresented. Again, the Application was heard alongside application FTS/HPC/CV/25/2869 between the same Parties seeking an Order for payment of the rent due and owing.

Applicant's Evidence

15. Mr. Smith gave evidence on his own behalf. With reference to the productions lodged on his behalf, Mr. Smith stated that he has seven rental properties each yielding a gross rent of £750 per month from which he has an income of £100 per flat. He stated that there are no mortgages secured on the rental properties.
16. Mr Smith's evidence was that his letting agent, Paul Allan, deals with all of the repairs. He was aware of repairs to the Property and was aware from Mr. Allan that contractors were not allowed access until after 6:00 pm. With regard to the heating in the Property, he was aware that the heating is radio controlled and that the tenant had not been in touch with the energy supplier to have a new control system installed. He was aware that there had been a problem with the taps in the Property and understood that these had been pulled out by the tenant. He also understood that the tenant had said that she would fix things for herself following a break-in at the Property.
17. With regard to rent arrears, Mr. Smith confirmed that arrears have accrued for over a year. He stated that he was aware that the tenant had been offered an

arrangement to pay but had not adhered to it. Mr. Smith stated that the impact of the rent arrears is that he has to be more careful in spending money as the rent is his income. Mr. Smith stated that the running costs of the properties are 10% of the rent to the letting agent as his fee, buildings insurance and other fees.

18. Ms. Robertson had no questions for Mr. Smith as she said she dealt with the letting agent.

19. In response to questions from the Tribunal, Mr. Smith confirmed that he has seven flats altogether of which Mr. Allan manages five and friends rent the other two. He confirmed that none of the properties are mortgaged and estimated that the rental income is £100 to £120 per week or £600 per month.

20. Mr. Smith stated that he is a good landlord who likes to do things properly and “by the book”.

21. Mr. Paul Allan of Lara Letting gave evidence in support of Mr. Smith. He stated that he manages about six properties for Mr. Smith including the Property at 194, Strathmore Street. Mr. Allan confirmed that he had prepared the rent statements lodged and confirmed that the amount of rent due is £14,887.43. He confirmed that he had issued pre-action letters to Ms. Robertson but had had no response. Mr. Allan stated that he had not heard from the tenant in respect of withholding rent for repairs. He stated that she had not contacted him to make any arrangements for payment plans or with regard to repairs.

22. Mr. Allan stated that he became aware of the repairs after the last hearing and instructed a joiner and an electrician to look at the Property, but they were refused access. He stated that he was aware that repairs were required to the heating and understood that the electric meter needed upgraded. He stated that the tenant had said that she was “not bothered” about this as she was intending to leave the Property.

23. Mr. Allan stated that the Property was compliant as far as he was aware and referred to the EICR and Legionella certificate lodged as productions.
24. Mr. Allan explained that he reported all repairs to Mr. Smith and that either he paid repairs from the rent account, or Mr. Smith paid them direct.
25. With reference to text messages in 2021, Mr. Allan explained that these related to a break-in at the Property and explained that the tenant said that she would arrange the repairs herself. He stated that he and Mr. Smith had had difficulty obtaining a police report to make an insurance claim.
26. Mr. Allan denied that he had ever been abusive to the tenant. He stated that eviction proceedings were a last resort and that he had tried to arrange a payment plan, even up to the final hour, but got no response from Ms. Robertson.
27. Ms. Robertson was reluctant to cross examine Mr. Allan but with assistance from the Tribunal accepted that she only allowed access after 6:00 pm, under explanation that she works as a specialist care assistant and it is difficult to return home before then.
28. In response to questions from the Tribunal, Mr. Allan stated he instructed a joiner and plumber after the CMD. He stated that he had had reports that the heating had not been working during the tenancy and that, during one of the tenancy inspections, he noted the tenant was drying clothes in the Property and that the fuse board cupboard was full of belongings. He agreed that the electrician had said that the heating was not working. Mr. Allan stated that his response to this was that it was a priority to get the heating fixed and to have a payment plan in place but had no response from the tenant for access.
29. With regard to the washing machine, cooker and the hob, Mr. Allan stated that Mr. Smith had bought two new washing machines and then offered the tenant £260.00 to buy a further new washing machine.

Respondent's Evidence

30. Ms. Robertson gave evidence on her own behalf. With regard to the various repairs, she stated that in 2022, during a winter storm, the kitchen window blew open. Mr. Allan came out that night and made a temporary fix which has not been properly fixed since, leaving a gap at the window frame.
31. With regard to the heating, Ms. Robertson stated that it is an old system which contractors have been unable to fix. She agreed that a smart meter would be required and stated that, around seven weeks ago, she was approached to have this done. She agreed that this is still to be done.
32. With regard to the bathroom, Ms. Robertson stated that the toilet bowl is wobbly and, when reported over two years ago, the tradesmen who attended boarded behind the toilet, however, it still leaks into the foundations. She stated that a temporary repair to a hole in the floor was made using wood and lino and that, as water leaks from the bath, the bath is unusable.
33. Ms. Robertson stated that a surveyor from Dundee City Council had called out recently and had made a report which she thought had been lodged with the Tribunal by Dundee City Council. Ms. Robertson stated that she was aware that the report listed repair issues with the Property and understood that this had been sent to Mr. Smith and Mr. Allan. Ms. Robertson stated that she did not have a copy of this herself.
34. Ms. Robertson explained that she could not cook due to the wiring in the kitchen and that she had advised Mr. Allan that there is a gap between the hob and the oven, with oven not being fully secured. She stated that the oven has not been usable for the last two years. She had reported this to Mr. Allan and someone had put a caution tape over it, which has worn off in time.
35. As Ms. Robertson was giving evidence from home by video, she was able to show to the Hearing the oven which appeared not to be secured, the kitchen

window which was not fully secured with a gap between the frame and the window and the condition of the bathroom at the toilet bowl area which showed patch repairs to the wall and flooring.

36. Ms. Robertson disputed that she had been offered a payment plan by Mr. Allan and maintained that she is withholding rent. She accepted that she has not retained the full rent and explained that she visits her friend every six weeks and places an amount of rent into an envelope. She estimated that around £8,000.00 was held in this way.
37. With regard to her family, Ms. Robertson stated that she resides in the property with her seven-year old daughter who has mild ADHD and her sixteen-year old son who has autism. Ms. Robertson stated that she works full time as a specialist care worker. She stated that she is looking to remove from the Property as it is a two-bedroom floor flat and she sleeps on the couch. She confirmed that she is looking to obtain local authority housing.
38. In answer to Mr. McNeil's questions in cross-examination, Ms. Robertson confirmed that she has missed payments of rent. She confirmed that she has given the withheld rent to a friend to retain on her behalf but was reluctant to provide the name and address of that friend as she had been told by her lawyer not to do so. Ms. Robertson stated that she did not bank this money as, if she had put it in the bank, it would "go against" the Universal Credit she receives for her children. Ms. Robertson denied that Mr. Allan had offered a payment plan. She stated that she did not respond to some of the recent letters as she received these after the Notice to Leave and thought that everything had to be done via the Tribunal.
39. Ms. Robertson confirmed that she was withholding rent because of the condition of the Property. She again referred to the kitchen window, the oven and the hob and the bathroom. She agreed that she had not made contact with the energy provider in respect of the new heating meter.

40. With regard to not complying with the Tribunal's Direction, she stated that she was unable to do so as she did not know how to make up a table as required by the Direction. She agreed that she could have submitted photos of the condition of the Property.

41. In response to further questions from the Tribunal, Ms. Robertson confirmed that she had not received a copy of the report from Dundee City Council.

42. She estimated that she had reported the condition of the bathroom to Mr. Allan around two and a half years ago by emails, text and phone, however, as she had lost her phone, she did not have evidence of this.

43. At the request of the Tribunal, Mr. Smith produced the Dundee City Council report which had been sent to him on 7 June 2026. The report assessed that the Property did not meet the Repairing Standard and listed repairing issues as outlined by Ms. Robertson in her evidence.

Summing up

44. In summing up, Mr McNeil stated that the eviction order should be granted as this was not in dispute. He stated that the tenant has not engaged with the landlord and had not reported the full extent of the repairs. In respect of abatement of rent, Mr. McNeil stated that it was Ms. Respondent's obligation to show how much rent was being withheld and why. His position was that Ms. Robertson has had an opportunity to quantify the amount and has not provided any evidence on detriment. Mr McNeil stated that Ms. Robertson's statement that rent is being held by another party was not credible and should be disregarded. Mr. McNeil stated that Mr. Smith accepted that there had been repairs issues and offered a goodwill settlement of £12,000 in full and final settlement, under reservation of concerns that he may not even be able to recover that amount.

45. In summing up, Ms. Robertson stated that she was worried about being homeless and just wanted a resolution.

Additional Evidence

46. The Tribunal had the benefit of the productions and statements lodged by both Parties and referred to in evidence. In addition, the Tribunal had the benefit of the Dundee City Council report being a letter from an Enforcement Officer in the Private Sector Services Unit dated 7 June 2026 advising that, in his opinion, the Property does not meet the statutory Repairing Standard in terms of the Housing (Scotland) Act 2006 and detailing the repairs issues with the Property.

Findings in Fact

47. The Tribunal made the following findings in fact on the balance of probability -

- i) There is a private residential tenancy of the Property between the Parties;
- ii) The Property is in a poor state of repair and does not appear to meet the Repairing Standard;
- iii) Ms. Robertson notified Mr. Smith via his letting agent of repairs which include no working washing machine, no heating, no hot water, no oven, a leaking toilet and a collapsing bathroom floor from September 2022 to January 2025;
- iv) Ms. Robertson notified Mr. Smith via his letting agent that she is withholding rent pending completion of these repairs;
- v) Mr. Smith has failed to carry out the repairs as reported by Ms. Robertson;
- vi) Ms. Robertson is entitled to withhold rent
- vii) Ms. Robertson has lodged the withheld rent with a third party;

Issues for the Tribunal

48. The issues for the Tribunal are that, in order to grant an Order, it must be satisfied that the correct procedure has been carried out, that there are Grounds for the Order and also that it is reasonable on the facts of the grounds to grant the Order.

Statutory Procedure.

49. With regard to the correct statutory procedure, on the evidence before it, the Tribunal was so satisfied.

Grounds for the Order

50. The Application proceeds on Ground 12 of Schedule 3 to the Act, that the tenant has been in rent arrears for three or more consecutive months. The Applicant's position is, as stated in evidence and as shown by the rent statements lodged, that the Respondent has been in three or more consecutive months arrears of rent both at the date on which the Notice to Leave was issued on 7 February 2025 and at the date of the Hearing. Although not opposing the Application, the Respondent's position is that she is not in arrears of rent but is withholding rent because of the condition of the Property. Therefore, the issue for the Tribunal is whether or not Ground 12 applies.

Decision and Reasons for Decision

Landlord's repairing obligations

51. Chapter 4 of the Housing (Scotland) Act 2006 ("the 2006 Act") sets out the duties which apply to landlords of tenancies of houses let for human habitation. Section 12 of the 2006 Act defines the tenancies to which the Chapter applies by listing exemptions. The tenancy agreement between the Parties is a private residential tenancy and is not exempt from Chapter 4.

52. Section 13 of the 2006 Act sets out the standard of repair required, commonly known as the Repairing Standard, and states: "*A house meets the repairing standard if (a) the house is wind and water tight and in all other respects reasonably fit for human habitation, (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, (c) the installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating*

system and heating water are in a reasonable state of repair and in proper working order, (d)any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, (e)any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (h)the house meets the tolerable standard. (i)any common parts pertaining to the house can be safely accessed and used, (j)the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space, and (k)where the house is in a tenement, common doors are secure and fitted with satisfactory emergency exit locks.”

53. Section 14 (1) of the 2006 Act states: “(1)*The landlord in a tenancy must ensure that the house meets the repairing standard (a)at the start of the tenancy, and (b)at all times during the tenancy.*”

54. The tenancy agreement between the Parties and lodged with the Application at Clause 18 incorporates wording from Sections 13 and 14 of the 2006 Act and sets out how Mr. Smith will comply with the statutory duty. Therefore, Mr. Smith, as landlord, is under both a statutory duty and a contractual duty to ensure that the Property is in a reasonable state of repair and fit for human habitation.

Tenant’s entitlement to withhold rent

55. It is a long-established legal authority that retention or withholding of rent is an equitable remedy for a tenant who has notified a landlord of repairs for so long as the landlord fails to carry out those repairs. This remedy is open to a tenant where the tenant has notified the landlord of repairs which are needed, has given the landlord a reasonable opportunity to carry out the repairs but the landlord has failed to do so and the tenant has notified the landlord that the rent is being withheld.

Factors to be considered by the Tribunal

56. Therefore, the factors in this case are: i) are repairs required to the Property in terms of the 2006 Act or the tenancy agreement or both (ii) did Ms. Robertson

notify Mr. Smith of the repairs (iii) did Ms. Robertson give Mr. Smith an opportunity to carry out the repairs (iv) did Mr. Smith fail to carry out the repairs and (v) did Ms. Robertson notify Mr. Smith that she is withholding rent?

57. The facts of the case rely on the evidence given at the Hearing and the written replies to the Direction issued by the Tribunal. The evidence of Mr. Smith and Ms. Robertson are at odds in respect of the extent of factors i) -v) listed above. The Tribunal, therefore, took a view on the credibility and reliability of that evidence.

Tribunal's assessment of the evidence.

58. The Tribunal did not find Mr. Smith or his witness, Mr. Allan, to be credible or reliable. Mr. Smith's evidence was that he was a good landlord who did everything "by the book." However, he failed to tell the Tribunal that he had been notified by Dundee City Council of their inspection and their findings of the disrepair at the Property. This content of this report only became apparent when the Tribunal asked for sight of it. It appeared to the Tribunal that concealment of the report and its contents were duplicitous on Mr. Smith's part.

59. Mr. Smith's evidence in respect of rental income was not credible. He stated that his profit was £100.00 per flat per month. However, he also stated that the rents on each of the seven properties were £750.00 per month, mortgage free. Even with running costs, it appeared to the Tribunal that Mr. Smith grossly deflated his profits.

60. The Tribunal found Mr. Allan to be unreliable and untruthful. In the face of the text messages lodged by Ms. Robertson to the contrary, Mr. Allan denied that Ms. Robertson had notified him of necessary repairs and denied that she told him she was withholding rent. Mr. Allan portrayed himself as a reputable letting and managing, however, he accepted that it was not until after the CMD, that he arranged for contractors to attend the Property.

61. Both Mr. Allan and Mr. Smith gave the Tribunal the impression that Ms. Roberston repeatedly failed to allow access for repairs, whereas this occurred on one occasion when Ms. Roberston's work commitments prevented access during the working day.
62. The Tribunal found Ms. Roberston to be both credible and reliable. She gave her evidence in a straight-forward manner and did not deviate from her position at any point. Rather than exaggerate the repairs issues with the Property, the Tribunal found Ms. Roberston to understate the conditions under which she and her family have been living, even when showing the Tribunal the repair issues by video.
63. The Tribunal had no difficulty in coming to the view that the repairs notified by Ms. Robertson are repairs which fall within the statutory definition of the Repairing Standard and Clause 18 of the tenancy agreement. The Tribunal also had no difficulty in determining that Mr. Smith had failed to carry out these repairs within a reasonable timeframe and so was in breach of both his statutory and contractual duties.
64. The Tribunal found Ms. Roberston's evidence in respect of the way in which she withheld the rent as wholly credible. The Tribunal had no doubt that she took the sensible approach of lodging rent money with a friend for safekeeping on her periodic visits to that friend and accepted that her reluctance to lodge the funds in a bank was due to potential difficulties with benefits.
65. Having preferred Ms. Roberston's evidence the Tribunal found the answer to each of the evidential factors i) -v) to be in the affirmative.

Alternative remedy open to the Respondent

66. The Tribunal gave consideration to the alternative remedy open to Ms. Robertson under the Section 22 of the 2006 Act and referred to in Clause 18 of the tenancy agreement, namely an application to the tribunal chamber for a determination of failure to comply with the Repairing Standard, and,

considered if this remedy ought to have been exercised by Ms. Robertson rather than withholding rent. The Tribunal noted that the wording in the tenancy agreement is guidance that a tenant has “the right” to apply to the tribunal chamber and is not a mandatory step which must be taken by Ms. Robertson as the tenant. The Tribunal’s view is that the wording of Clause 18 does not prevent Ms. Robertson exercising her common law right to withhold rent.

67. The Tribunal, therefore, determined that Ms. Robertson is entitled to withhold rent and so is not in arrears of rent.

Application not opposed and Tribunal’s powers in terms of Section 51 of the 2016 Act.

68. The Tribunal had regard to Ms. Robertson’s position that she does not oppose the Application and considered if it was bound to grant the Application on this basis.

69. Section 51 of the 2016 Act sets out the Tribunal’s power to grant an eviction order and states : *“(1) 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. (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.”*

70. The Application proceeds on Ground 12, that the tenant has been in rent arrears for three or more consecutive months. Having found that Ms. Robertson is not in arrears of rent but is withholding rent, it follows on that basis that Ground 12 does not apply and so the Tribunal has no power to issue the eviction order.

71. The Tribunal then considered if it should take a view that, although rent is being withheld, a portion of that rent might be lawfully due and so Ground 12 might apply on that basis. The Tribunal had regard to *Majid v Gaffney* [2019]

UT 59 and Sheriff Fleming's dicta at Paragraph 9 that *"The tenant must have been in arrears for the specified period of time, not simply owing rent."* The Tribunal had no evidence of the extent of rent which might be lawfully due at the date of issue of the Notice to Leave or at the date of the Hearing and so had no evidence that Ground 12 applies. Therefore, again, the Tribunal has no power to issue the eviction order.

72. 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.

Legal Member/Chair

24 July 2026

Date