

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 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/1307

Re: Property at 126 Summerpark Road, Dumfries, Dumfries and Galloway, DG1 3FU (“the Property”)

Parties:

Dumfries and Galloway Homes Limited, 7 Gifhorn House, Shakespeare Street, Dumfries, DG1 2JB (“the Applicant”)

Mrs Claire Fletcher, 126 Summerpark Road, Dumfries, Dumfries and Galloway, DG1 3FU; and Mr David Fletcher, 27 Herries Court, Heathhall, Dumfries, Dumfries and Galloway, DG1 3TL (“the Respondent”)

Tribunal Members:

Elaine Paton (Legal Member) and Peter McEachran (Ordinary Member)

Decision (in absence of the second named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of Schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, rent statement, section 11 notice and evidence of compliance with the rent arrears pre-action protocol were lodged.
2. A copy of the application was served on the Respondent by Sheriff Officer on 23 September 2025 at the Property, together with an application for a payment order under Chamber reference: CV/25/1308. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 30 October 2025 and that they were required to participate. The CMD on 30 October 2025 proceeded. The Applicant was represented by

their legal representative. The first named Respondent ("Clare Fletcher") did not attend but she was represented by her solicitor. The second named Respondent ("David Fletcher") attended and represented himself. David Fletcher stated he no longer resided in the Property but his children did and he did not wish them to be without a home. The Tribunal allowed a hearing to be assigned for a later date and produced a note of the CMD and a Notice of Direction to parties. Subsequently, the parties were notified that a hearing would take place by telephone conference call on 16 April 2026 at 10am and that they were required to participate. The Notification to David Fletcher was sent to him at the Property.

Postponement of hearing on 16 April 2026

3. The Tribunal considered a request dated 14 April 2026 on behalf of the Applicant to postpone the teleconference hearing scheduled for 16 April 2026 at 10.00am and that, in respect of the reasons set out in their relative correspondence, also that Clare Fletcher's representative stated the position was agreed by their client. However, the Tribunal noted David Fletcher had not been notified of the request. In terms of Rule 28 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Rules"), all other parties must be notified (if practicable) in relation to such a request for postponement and the tribunal may only postpone a hearing on cause shown. The postponement application to the Tribunal was notified at short notice and did not comprise a factor that might more usually be stated in order to demonstrate cause shown to satisfy the grant of the application by the Tribunal. Separately however, the Tribunal had noted David Fletcher may not have received certain other documentation in relation to the Applicant's application for eviction or the related civil payment application. Consequently, the Tribunal on its own initiative determined that the scheduled hearing be postponed to another date not earlier than three months later to allow David Fletcher time to properly consider the application paperwork and subsequent submissions lodged on behalf of the Applicant and Clare Fletcher and to obtain his own independent legal advice and/or money advice regarding his circumstances and obligations under the tenancy agreement for the Property and to ensure his correct postal address was noted on the Housing and Property Chamber ("HPC") system. The stated timeframe allowed sufficient time to account for the circumstances specified in the Applicant's postponement request, as agreed on behalf of Clare Fletcher. A Direction was issued to the parties on or around 23 April 2026. In terms of that Direction David Fletcher was invited to lodge written submission(s) on whether or not it would be reasonable for the Tribunal to grant an eviction order. David Fletcher confirmed to the HPC administration by email on 02 June 2026 that his address was correctly noted and he had received all papers sent to him (comprising the application papers, subsequent correspondences issued to parties, submissions from the other parties, and the Note of Postponement decision with relative Direction issued by the Tribunal on 23 April 2026).
4. On or around 30 June 2026, the parties were notified that a hearing would take place by telephone conference call on 23 July 2026 at 10am and that they were required to participate. In advance of the scheduled hearing, various

submissions were received from the parties and crossed over. On or around 01 July 2026, David Fletcher lodged a submission regarding the related civil application ref. CV/25/1308 which included a statement that he left the Property on 17 July 2023 together with his daughter, they had been homeless for a period before securing alternative accommodation; he produced an email he had received from the Council Tax department at Dumfries and Galloway Council which stated his occupation at the Property for Council Tax purposes was the period 21 December 2017 to 17 July 2023.

Request for postponement of the hearing 23 July 2026 (related civil application ref. CV/25/1308 only)

5. On 14 July 2026, David Fletcher requested a postponement of the hearing scheduled for 23 July 2026 regarding the civil payment application however he made no mention of the present eviction application. The HPC administration crossed over the correspondence. The Tribunal directed David Fletcher to lodge evidence in support of his request within a stated timescale, and invited the other parties to respond if so desired within that same timescale; the communication to all parties from the Tribunal stated that the hearing would proceed as scheduled in respect of the eviction application. The representatives for the Applicant and Clare Fletcher both responded timeously and reiterated that they were opposed to postponement in relation both applications scheduled to be heard. David Fletcher did not respond. The Tribunal refused the postponement request and the HPC administration issued the decision by email to all parties late afternoon on 22 July 2026, which decision stated that both applications would be heard on 23 July 2026 as scheduled.
6. On the morning of the scheduled hearing, the Tribunal was made aware of late submissions received by the HPC administration the previous day from the solicitors representing the Applicant and Clare Fletcher who had had further discussions in relation to the other's respective submissions, and had reached a settlement arrangement. The correspondences had been sent to David Fletcher.
7. The telephone conference hearing took place on 23 July 2026. The start time of the hearing was delayed for 10 minutes, thereby allowing time for David Fletcher to dial-in to join the call. Ms Irene Callendar, a manager with the company Applicant was present however the Applicant was represented by Ms Donnelly of T C Young, solicitors. Clare Fletcher was not present but she was represented by Mr Bryce of Pollock & McLean, solicitors. David Fletcher did not participate and was not represented. The application for a payment order under Chamber reference CV/25/1308 was also discussed.

Summary of Discussion at the Hearing

8. The Legal Member summarised the progress of the application to date and clarified that the Tribunal decision regarding David Fletcher's postponement request for the related civil application (with confirmation also that both applications would proceed as scheduled) had been communicated to them the

previous day, which it had. It was stated to all present that whilst a settlement had been reached between the Applicant and Clare Fletcher, David Fletcher was not party to that agreed position and the Tribunal would take that into account and note the position he had stated previously with anything else submitted by him additionally that might support his position.

9. Ms Donnelly stated that the Applicant was seeking an eviction order against both named respondents in order to bring about the end of the tenancy. Mr Bryce on behalf of Clare Fletcher stated the papers produced by the Applicant were accepted. Ms Donnelly confirmed the pre-action steps that had been taken, with the dates of service of the Notice to Leave and Section 11 notice to the local authority noted by the Tribunal. Ms Donnelly explained that the tenancy commenced 21 December 2017. In response to the Tribunal, Ms Donnelly stated she was unaware when the rent account had been at zero balance explaining that she could confirm that since 2021 there had been consecutive months arrears of rent and that position had endured to date. Ms Donnelly continued to explain that the Applicant had attempted to engage both respondents over the years regarding their arrears, and had signposted them to advice agencies and organisations to obtain assistance as well as agreeing to payment arrangements - despite that, the arrears have increased. Ms Donnelly stated that three payments had been received into the rent account since the updated rent statement dated 14 July 2026 had been lodged: those payments more particularly were £500 from universal credit, and payments of £70 and £40 from Clare Fletcher therefore the £10,023.99 balance had been reduced to the current level of unpaid rent of £9,413.99. Ms Donnelly referred to the productions lodged and stated that the Applicant had explained to both respondents that the tenancy could not be terminated by one party only and that despite having left the Property David Fletcher was still obligated by the tenancy conditions. In response to the Tribunal, Ms Donnelly stated the Applicant was content to accept that David Fletcher left the Property on 17 July 2023 as supported by the copy email produced by him that he had received from Dumfries and Galloway Council's Council Tax department. Responding to the Tribunal, Mr Bryce stated Clare Fletcher accepted that David Fletcher left the Property on 17 July 2023.
10. In response to the Tribunal, Mr Bryce stated that, regrettably, Clare Fletcher had buried her head in the sand rather than dealing with matters however she now understood that her tenancy was unsustainable. Mr Bryce explained that in his dealings with her, he felt that Clare Fletcher struggled with her mental health and he believed she had not made significant inquiry regarding alternative accommodation; she has no financial resources to secure accommodation in the private rental sector and likely would be reliant upon other social housing with the local authority. Mr Bryce stated that Clare Fletcher had now spoken with housing support at the local authority in relation to Discretionary Housing Payment funding. Responding to the Tribunal about the number of children residing in the Property with Clare Fletcher - given David Fletcher's submission states he left the Property in July 2023 with his daughter and that the Child Maintenance application suggests the couple's son resides at the Property three nights with additional overnights fortnightly - Mr Bryce stated there are three children of the couple's marriage and it is believed the

eldest child (now 16 or 17 years old) left with David Fletcher and resides with him but has sporadic periods of staying at the Property. Mr Bryce stated it is understanding the two younger children (now approximately 10 and 13 years old) reside permanently with Clare Fletcher at the Property. In response to the Tribunal, Mr Bryce conceded that he had had difficulties in obtaining information from Clare Fletcher in order to get to the bottom of matters relating to the application(s) for child maintenance payment stating that he had only had mention about the youngest child in relation to that and matters were disputed by David Fletcher. Further responding to the Tribunal, Mr Bryce stated that whilst Clare Fletcher stated David Fletcher apparently has an income of around £5,000 per month Mr Bryce had no information on whether or not this is accurate or indeed whether or not David Fletcher works part-time or full-time or even if he is self-employed.

11. Responding to the Tribunal, separately, Ms Donnelly and Mr Bryce each stated that generally the local authority will want sight of an eviction order before accelerating housing options for a family at risk of homelessness. Their agreed position on a delay of enforcement of any eviction order granted had been arrived at with a view to the family having more time to obtain alternative accommodation. In response to the Tribunal, Ms Donnelly stated that the prospect of the Applicant entering into a fresh tenancy with Clare Fletcher was not something that was anticipated. Further responding to the Tribunal, Ms Donnelly stated the Applicant was accepting of the position of a potential loss of rent in the months during the period of any extended period before which enforcement could occur – that would be a matter that she could advise the Applicant upon in that event. In response to the Tribunal regarding the information about the middle child, Mr Bryce stated candidly that the couple would likely be attempting to maximise their respective positions and the arrangements around the family would be something that Clare Fletcher would be required to provide vouching for to the local authority if emergency housing required to be provided to them however it is his understanding that the two younger children presently reside with Clare Fletcher. Mr Bryce explained that it had been difficult to navigate the twists and turns in the case with Clare Fletcher due to her mental health which was extremely poor at times but which he believed, at present, was at the best in a long time and she did now recognise that the tenancy will require to be terminated.

Findings in Fact

12. The Applicant is the registered landlord of the Property.
13. The Respondent is the tenant of the Property in terms of a private residential tenancy agreement which commenced on 21 December 2021.
14. The initial calendar monthly rental was £482 due in advance on the first of each month and thereafter increased. The resting rent was £514.54 at 01 July 2021. The rent was increased to £524.83 effective 01 July 2022, then to £540.57 effective 01 August 2023, and thereafter to £573 effective 05 August 2024 in terms of Rent Increase Notices dated 21 March 2022, 24 April 2023 and 30 April 2024 issued to the Respondent which were produced amongst the papers.

15. The Respondent has been in arrears of rent since on or before 01 July 2021. The arrears were £7,832.59 at 01 January 2025; £6,550.89 at 26 March 2025; and £10,023.99 at 14 July 2026. Payments of £500 from universal credit and £70 and £40 by Clare Fletcher were made prior to the hearing which reduced the balance of unpaid rent.
16. The Respondent currently owes £9,413.99 in unpaid rent.
17. The Applicant made efforts over a significant period to engage the Respondent and issued correspondences in compliance with the rent arrears pre-action protocol.
18. The Respondent resided in the Property when the tenancy commenced. David Fletcher no longer resides in the Property, believed to have moved out on or around 17 July 2023. Clare Fletcher is currently residing in the Property and is believed to reside there with the couple's two younger children, albeit the couple's oldest child may reside there also on occasions.
19. The Respondent is believed to have mental health issues and has had tendencies towards non-engagement or not carrying through on actions asserted to her landlord, however she is said now to be accepting that the tenancy cannot be sustained.

Reasons for Decision

20. The application was submitted with a copy signed Private Residential Tenancy agreement. The Respondent resided at the Property since 21 December 2021 with David Fletcher having moved out on or around 17 July 2023 with the couple's eldest child (aged approximately 16 or 17 years old). Clare Fletcher continues to reside in the Property with the couple's youngest two children (aged approximately 10 years and 13 years old).
21. The application was also submitted with a Notice to Leave dated 29 January 2025, together with a copy email to Clare Fletcher and Sheriff Officers' certificate of intimation of service upon David Fletcher which establishes that the Notice was served on the Respondent on 29 January 2025. The Notice states that an application to the Tribunal is to be made on ground 12 (rent arrears over three consecutive months).
22. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
23. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the

application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”

24. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.” Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.
25. The Tribunal accepted the evidence of the Applicant in the form of the documents submitted and the information provided at the hearing, expressly stated to have been accepted by Clare Fletcher, and unchallenged by David Fletcher. The Tribunal is satisfied that the Respondent currently owes £9,413.99 in unpaid rent and has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave, when the application was lodged, at the CMD on 30 October 2025 and today’s hearing. Ground 12 is therefore established.
26. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following:-
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant provided copies of email correspondences issued to the Respondent in compliance with the protocol.
 - (b) The Tribunal accepted the evidence on behalf of Clare Fletcher that she is in receipt of universal credit applied to the rent account; she has been in discussion with housing support from the local authority regarding discretionary housing payment funding; and has lodged a claim for child maintenance which is presently under dispute with David Fletcher.
 - (c) David Fletcher had participated in the CMD that took place on 30 October 2025 and admitted some arrears of rent were due and unpaid. The subsequent hearing scheduled to take place on 16 April 2026 was postponed at the discretion of the Tribunal to ensure that David Fletcher had been provided with copies of all application paperwork and subsequent papers issued and/or submissions received by the HPC administration, and to allow him sufficient time to consider the papers and obtain his own

independent legal advice and/or money advice regarding his circumstances and his obligations in terms of the tenancy agreement. In terms of a Direction issued to parties on or around 23 April 2026, David Fletcher was invited to lodge written submission on whether or not it would be reasonable for the Tribunal to grant an eviction order. No written representations were received from David Fletcher regarding the eviction application however he admitted arrears of rent were due by him and outstanding in his submission date 01 July 2026 regarding the related civil payment application ref. CV/25/1308. Parties were reminded on 21 July 2026 that the hearing on the eviction application would proceed as scheduled and that if/as necessary, the HPC administration could provide a toll-free number for a party, if requested by them, in order that they may dial into the telephone conference hearing from abroad, thereby allowing them to participate. David Fletcher did not join the call, despite commencement of the hearing having been delayed by approximately 10 minutes.

- (d) The arrears are significant; have existed for a number of years; and have been increasing.
- (e) Clare Fletcher is believed now to have accepted that the situation cannot continue and the tenancy cannot be sustained. She is said to have been in contact with housing support at the local authority, and will be required to engage in order that alternative accommodation can be sourced for the family.
- (f) The Tribunal noted from written submissions that the Applicant relies on rental payments to maintain its wider housing stock and its manager has invested considerable time in managing the tenancy and in efforts to engage the Respondent regarding the arrears of rent.

The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 12 has been established. For the reasons outlined in paragraph 26, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction but determined additional time be allowed for Clare Fletcher to progress arrangements to secure suitable alternative accommodation.

Decision

The Tribunal determines that an eviction order should be granted against the Respondent, with the earliest date of eviction in said order stated as 30 September 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.

Elaine Paton, Legal Member

23 July 2026