



**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/26/0801

Re: Property at 7 Brankholm Lea, Hamilton, ML3 9FG (“the Property”)

Parties:

**Lowther Homes Limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL
 (“the Applicant”)**

**Mr Kevin Law, Mrs Catherine Law, 7 Brankholm Lea, Hamilton, ML3 9FG; 7
Brankholm Lea, Hamilton, ML3 9FG (“the Respondents”)**

Tribunal Members:

James Bauld (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application for the order for possession should
be granted**

Background

1. By application dated 17 February 2026, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 10 March 2026 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion was set to take place on 25 August 2026, and appropriate intimation of that hearing was given to both the landlord and the tenants.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place via telephone case conference on 25 August 2026. The applicant was represented by Ms. Katie Graham, solicitor, Wheatley Group, Glasgow. She was accompanied by Mr Ross Walker the letting agent for the property from the applicant. The Respondents did not take part.
5. The tribunal asked various questions of the applicant's solicitor with regard to the application and the ground for eviction contained within it.
6. The applicant's solicitor confirmed that she wished the order sought to be granted.

Findings in Fact

7. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which originally commenced on or around 20 March 2020.
8. The tenancy was a private residential tenancy in terms of the Act.
9. The agreed monthly rent was £510 and has been increased annually and is currently £681.41 per month.
10. On 22 September 2025 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice became effective on 24 October 2025.
11. The notice informed the tenants that the landlord wished to seek recovery of possession using the provisions of the Act.
12. The notice was correctly drafted and gave appropriate periods of notice as required by law.
13. The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant had been in arrears of rent for three or more consecutive months.
14. Arrears had started to accrue from September 2024 and at the date of service of the Notice to Leave amounted to £4,320.30.
15. At the date of the lodging of the application arrears amounted to £7,367.06

16. At the date of the CMD the arrears amounted to £11,262.67

17. The tenants had been continuously in arrears from September 2024 until the date of the CMD.

18. The basis for the order for possession was accordingly established.

Reasons for decision

19. The order for possession was sought by the landlord on a ground specified in the Act and properly narrated in the notice served upon the tenant.

20. 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. The tribunal accepted the unchallenged 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.

22. The landlord has complied with the matters set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. Appropriate information was provided to the tenant.

23. The ground for eviction under which this application was made is the ground contained in paragraph 12 of schedule 3 of the Act. The ground is that the tenant has been in arrears of rent for three or more consecutive months. When the 2016 Act was originally passed, that ground of eviction was mandatory, if the tenant was in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on the day of the hearing. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.

24. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

25. 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”.

26. 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.

27. 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.

28. In this case the tribunal finds that it is reasonable to grant the order.

29. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. The landlord indicated that Mrs Law has now left the property and it is currently occupied only by Mr Law. He is 61 years of age and lives alone. He is not believed to be working and has no known health issues. Mr Law has indicated to the landlords that he cannot afford the rent and requires the eviction order to be granted to enable him to obtain assistance from the local council in securing alternative accommodation.

30. No explanation has been provided by the respondents regarding the arrears. The respondents have lodged no written representations with the tribunal despite being offered the opportunity to do so. The respondents failed to attend the CMD or lodge any written representations indicating her opposition to the application. It is possible that they will be assisted in obtaining alternative accommodation when an eviction order is granted and they face actual homelessness.
31. The granting of the order may therefore ultimately (and almost counter intuitively) benefit the respondents in their attempts to obtain alternative suitable accommodation
32. The tribunal was satisfied that the tenants had been in arrears for a period far in excess of three consecutive months. The ground for eviction was accordingly established and the tribunal found that it was reasonable in terms of the provisions of the 2016 Act to grant the order sought.
33. The tribunal also exercised 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.

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.

J. Bauld

25th August 2026

Legal Member/Chair

Date