



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/26/0204

Re: Property at 97 Dalriada Crescent, Motherwell, ML1 3XT (“the Property”)

Parties:

Mr Mahmoud Elkasaby, Flat 14C, 1265 Pollockshaws Road, Glasgow, G41 3RR (“the Applicant”)

Ms Aleksandra Olesinska, 97 Dalriada Crescent, Motherwell, ML1 3XT (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an 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 15th 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 17th July 2026, all parties were written to with the date for the Case Management Discussion (“CMD”) of 21st August 2026 at 10am by teleconferencing. The letter also requested all written representations be submitted by 7th August 2026.
3. On 20th July 2026, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by personal service. This was evidenced by Certificate of Intimation dated 20th July 2026.

4. On 20th August 2026, the Applicant's representative emailed the Housing and Property Chamber noting that the Applicant was not able to attend the CMD and attached a rent account for the period 16th July 2024 – 13th August 2026 detailing arrears of £9146.53. This was notified to the Respondent by the Housing and Property Chamber by first class post.

The Case Management Discussion

5. A CMD was held on 21st August 2026 at 10am by teleconferencing. The Applicant was not present but was represented by Mr F Bukhsh, Moore Macdonald Solicitors & Notaries Public. The Respondent was present and represented herself. Mr Christophe Milewski, Polish interpreter was also present to interpret for the Respondent.
6. The Tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
7. The Applicant's representative confirmed that the Applicant still wished the order for eviction to be made.
8. The Tribunal noted that there was a late submission lodged the day before the CMD. The Tribunal said that it was predominantly regarding the Applicant not being able to attend and the lodging of an up to date rent account. The Tribunal read through the rent account in terms of payments and the outstanding arrears. It noted that there was a rent account sent to the Respondent with the Notice to Leave which was for the period 17th July 2024 to 13th November 2025. The Tribunal noted the points that arose from that last date to the last day in the most recent submission. This is namely that the arrears are now £9146.53, there continues to be a shortfall in the rent payment which is currently £96.55 per month and that there have been no payments to address that shortfall or the arrears.
9. The Respondent said that she is not opposed to an order being granted. She cannot be rehoused by her local authority until such time as she has an order for eviction granted against her.
10. The Respondent said that she has lived in the Property for 11 years. Prior to the current tenancy she had another landlord in this property. She has a shortfall in her Universal Credit Housing Element Payments as her local authority will not pay more than £610 per month. She lives in the Property with her three children. They are aged 6, 11 and 22 years old. Her eldest child is working part time and studying part time. Neither her nor her family have disabilities or health conditions.
11. The Respondent said that she was not aware that she was initially in rent arrears as she was not aware that her landlord had changed. However, she is not disputing the arrears.
12. Mr Bakhsh said that the Respondent did not need to provide the standard notice if she was allocated a property by her local authority. However, she must tell

her landlord that she is moving out and ending the tenancy. She must complete all end of tenancy matters including returning the keys.

13. The Respondent confirmed that she does not need this decision or other paperwork translated into Polish.

14. The Tribunal was content to grant the Order.

Findings and reason for decision

15. The Applicant is the registered owner of the property.

16. A Private Rented Tenancy Agreement commenced 16th July 2024. The Respondent has lived in the Property for 11 years. Prior to this tenancy another landlord owned the Property.

17. On 21st November 2025 the Applicant served upon the Respondent a Notice to Leave as required by the Act. Service was effected by Royal Mail recorded delivery mail and the Notice became effective on 22nd November 2025

18. The Notice informed the Respondents that the Applicant wished to seek recovery of possession using the provisions of the Act.

19. The Notice was correctly drafted and gave appropriate periods of notice as required by law.

20. 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)

21. The Respondent persistently failed to pay her rent charge of £700 per month. The rent payments are due to be paid on fifteenth day of each month.

22. The Respondent has been in rent arrears for three or more consecutive months when the notice was served. The rent account has been in arrears since 16th August 2024. The current arrears, as at the date of the CMD, are £9146.53.

23. There are no known outstanding Universal Credit Housing Element issues.

24. The Respondent is not opposed to the granting of an order. The Respondent has spoken to her local authority housing department who will not rehouse her until an order for eviction has been granted.

25. The Respondent and her family do not have any known vulnerabilities or disabilities.

26. Appropriate accounting had been provided in respect of the outstanding rent with the application to the Tribunal.

27. The basis for the order for possession on ground 12 was thus established.

Reasons for the decision

28. 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.

29. 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.

30. From the start of the tenancy until the date of the CMD, the Respondent has failed to pay the whole rent as it fell due and significant arrears have accrued.

31. No formal agreement has been reached with regard to repayment of the arrears.

32. The Applicant has sent letters to the Respondents 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

33. The Respondent lives in the Property with her three children who are aged 6, 11 and 22 years old. Her eldest child is working part time and studying part time.

34. The Tribunal was satisfied that the Respondent has 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.

35. 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.

36. 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.

37. 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”.

38. 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.

39. 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”.

40. In this case the Tribunal finds that it is reasonable to grant the order.

41. The level of arrears is significant. The arrears are not currently reducing. There is a shortfall in the Universal Credit payment of £96.55 per month. The Respondent has failed to communicate with the Applicant to enter into a payment arrangement to deal with ongoing rent and arrears.

42. In all the circumstances the Tribunal decided that it was reasonable to grant the order sought.

43. 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.

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

Decision

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

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Gabrielle Miller

21st August 2026

Legal Member/Chair

Date