

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”)

Chamber Ref: FTS/HPC/EV/25/3762

Re: Property at 32 Back Street, Renton, Dumbarton, G82 4NF (“the Property”)

Parties:

Mr Colin Smith, Glenkin Cottage, 315 Main Street, Renton, Dumbarton, G82 4PZ (“the Applicant”)

Mr ZBIGNIEW WLODARSKI, Mr PATRYK WLODARSKI, 32 Back Street, Renton, Dumbarton, G82 4NF (“the Respondents”)

Tribunal Members:

Ruth O'Hare (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 provisions of paragraph 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 22 June 2026.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 as the ground for eviction, stating that the Respondents were in arrears of rent.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take place on 22 May 2026 at 10am. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served

upon the Respondents by sheriff officers on 23 April 2026 and required the Respondents to make written representations in response to the application no later than 13 May 2026.

- 3 No written representations were received from the Respondents.

The CMD

- 4 The CMD took place by teleconference on 22 May 2026 at 10am. The Applicant was in attendance. The Respondents did not join the call. The tribunal noted that they had been given notice of the CMD and had not provided any explanation for their failure to attend. The tribunal therefore delayed the start time of the CMD for a short period before determining to proceed in the Respondents' absence.
- 5 The tribunal had the following documents before it:-
- (i) Form E application form;
 - (ii) Land certificate confirming the Applicant's ownership of the property and proof of the Applicant's landlord registration;
 - (iii) Private residential tenancy agreement;
 - (iv) Notice to leave and proof of delivery to the Respondents;
 - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("section 11 notice") and proof of delivery to the local authority;
 - (vi) Rent statement;
 - (vii) Bank statements; and
 - (viii) Communications from the Applicant to the Respondents regarding the rent arrears.
- 6 The tribunal explained the purpose of the CMD and proceeded to hear submissions from the Applicant on the application. The following is a summary of the key elements of the submissions.
- 7 The Applicant spoke to the rent arrears, which now stood at £10,400. The Respondents had failed to pay any rent since May 2025. The Applicant has had no contact from the Respondents since June 2025.
- 8 The tribunal adjourned the CMD to deliberate, at which point the Applicant left the call, before resuming the proceedings and confirming the outcome.

Findings in fact and law

- 9 The Applicant is the owner and landlord, and the Respondents are the tenants, of the property in terms of a private residential tenancy agreement.
- 10 The Applicant has given the Respondents a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 12.

- 11 The Applicant has given the local authority a section 11 notice at the time of making this application.
- 12 The rent payable under the tenancy agreement was £721 per calendar month. The rent was increased to £800 per month from 15 May 2025.
- 13 The Respondents have been in arrears of rent for three or more consecutive months. The balance of rent arrears outstanding as at the date of this decision is £10,400.
- 14 The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 15 The Applicant has written to the Respondents with the information required under the rent arrears pre-action protocol.
- 16 The Applicant has a mortgage over the property. The rent arrears have caused the Applicant financial difficulties.
- 17 The Respondents have not opposed the application.
- 18 It is reasonable to make an eviction order.

Reasons for decision

- 19 The tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application based on the documentary evidence and submissions from the Applicant at the CMD, and that to do so would not be contrary to the interests of the parties in this case. The Respondents had not sought to oppose the application and there was no contradictory evidence before the tribunal.
- 20 Section 51 of the 2016 Act provides that *"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."*
- 21 Section 52 of the 2016 Act goes on to state that *"an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant."* The tribunal had before it a copy of a notice to leave in the prescribed form that had been given to the Respondents which cites ground 12 of schedule 3 of the 2016 Act. The tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 22 The tribunal considered the wording of paragraph 12 of schedule 3 of the 2016 Act:-

"Rent arrears

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).....

(3) The First-tier Tribunal may find that the ground named by 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.

(4) 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 Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

23 The tribunal accepted the documentary evidence and submissions from the Applicant. There was no contradictory evidence before the tribunal.

24 The tribunal therefore determined that the rent account had been in arrears for three or more consecutive months based on the rent statement produced.

25 The tribunal went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which requires the tribunal to identify those factors relevant to reasonableness and determine what weight should be applied to them.

26 The tribunal gave great weight to both the level of arrears and the length of time they have been outstanding. It is a significant balance and the tribunal

accepted that it would have caused the Applicant financial difficulties, particularly as the Applicant has a mortgage over the property. There was no evidence before the tribunal to suggest that the arrears were due in any part to a failure or delay in the payment of a relevant benefit. The tribunal was further satisfied based on the correspondence produced that the Applicant has complied with the rent-arrears pre-action protocol.

- 27 The tribunal had no information regarding the Respondents' circumstances as they had chosen not to participate in the proceedings and had not sought to advance any defence to the application. There were no known dependents residing with the Respondents who would be at risk of eviction. There was no evidence that the Respondents are particularly vulnerable individuals.
- 28 Accordingly, having considered those factors relevant to reasonableness, the tribunal concluded that the balance weighed in favour of making an eviction order.
- 29 The tribunal therefore concluded that the provisions of paragraph 12 of schedule 3 of the 2016 Act have been met in this case and determined to make an eviction order.
- 30 The decision of the tribunal was 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

L Ward

R OHare

22 May 2026

Legal Member/Chair

Date