

Housing and Property Chamber
First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 and on recall under Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/25/3164

Re: Property at 3/1 9 Malcolm Street, Dundee, DD4 6SF (“the Property”)

Parties:

Fixrole Limited, Pavillion, India Buildings, 86 Bell Street, Dundee, DD1 1HN (“the Applicant”)

Ryan Marshall, 3/1 9 Malcolm Street, Dundee, DD4 6SF (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the motion for recall of the decision of 6 March 2026 for the following reasons:

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”), based on ground 12: rent arrears. The PRT in question was by the Applicant to the Respondent commencing on 3 March 2021.
2. Reference is made to our Decision of 6 March 2026 which was made at a case management discussion (“CMD”) on that date in the absence of the Respondent (who had lodged no response to the application). On 2 April 2026, the Respondent, through a newly appointed solicitor at Dundee Law Centre, sought recall of the Decision (and a decision in a conjoined application on rent arrears which had also been decided on the same date: CV/25/3163.)

3. The relevant terms of the application for recall provided the following information:
 - a. The Respondent had not attended the CMD “due to his mental health. He suffers from depression which has been deteriorating in the last 12-18 months. He currently takes medication”. A Statement of Fitness to Work issued by the Respondent’s GP on 23 March 2026 was lodged with the application, referring to the Respondent has not being fit for work on the basis of “low mood”.
 - b. The Respondent’s mental health was also prayed in aid of his failure to seek recall timeously. The Respondent was said to have “approached Dundee City Council Housing Options service on 2nd April 2026 at a drop-in clinic” and was “referred... straight to Dundee Law Centre” where “he was seen by a solicitor when he presented at the door without an appointment... on 2nd April 2026”.
 - c. The Respondent admitted “he has not paid rent since early 2023 due to ongoing issues with repairs. The property suffered severe water ingress in early 2022 shortly before the Applicant took over the management of the property. The Respondent placed a temporary fix on the external roof of the property, however, did not carry out any internal works. The Respondent attended the office of the Applicant on a regular basis for over a year to enquire about the outstanding repairs and still nothing was done. He then ceased paying rent and entered into a downward spiral in his mental health.”
 - d. The Respondent “has worked on and off during that time [since 2022] as a self-employed taxi driver but rarely making enough money to cover the rent charge so therefore has not withheld the rent”.
 - e. The Respondent was “seeking legal advice on raising a separate action regarding a Repairing Standards Enforcement Order”.
 - f. The Respondent was “seeking an abatement of rent for the period since the arrears began accruing” as he “has been unable to use one of his bedrooms due to the damp and mould as this was the main site of the water ingress. He also has regular water ingress around the living room windows; his shower does not work and only has one working electrical socket in his kitchen.”
 - g. The Respondent has “applied for Universal Credit and will be entitled to a proportion of his rent paid for him... limited in line with the Local Housing Allowance”.
 - h. The Respondent “is willing to enter into a repayment arrangement for the rent arrears once the repairs have been carried out satisfactorily and a decision has been made on an abatement of rent for the period from the cessation of payments by the Respondent and the repairs being completed”.
4. The Applicant objected to the application being accepted due to being late, and further opposed recall on its merits. The lack of engagement prior to the late application for recall was a material part of the opposition. Further, the Applicant submitted that the “Respondent told the Applicant he wanted out but was told by the Council that he needed to get an eviction order first” and that the “Respondent said that the rent was not withheld but never paid any rent since early 2023. Now they are seeking an abatement of the rent”.

5. In the circumstances, we declined to consider the application on written submissions alone and assigned a further CMD to consider the recall. We issued a Notice of Direction seeking further information from both parties on the issues raised, and in particular: the Respondent's medical position; any history of intimation by the Respondent to the Applicant of wants of repair; and detailed submissions on any abatement sought.
6. The parties both lodged responses to the Notice of Direction but the Respondent's response appeared sparse (the reason for which became an issue for discussion at the further CMD as discussed below). In summary:
 - a. The Respondent lodged photographs that did appear to show a very poor internal condition for the Property, some or all of which may be consistent with water ingress and/or mould.
 - b. The Applicant provided evidence of contractors being regularly instructed until around 2023, including roofing repairs, but submitted that "no property inspections [had been] carried out since 2023 [as when]... "scheduled... the tenant never agreed to them and would deny access", and that the Respondent "did not allow the landlord access to fix the ceiling over the bathroom following the fix on the roof". The Applicant reported that it did "not have any record of any report of dampness".

The Hearing

7. The matter called for a further CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 14 July at 10:00 to consider recall. We were addressed by the Applicant's agent, Ritchie McNeill, solicitor, MML Law, by the Respondent, and by the Respondent's agent, Rebecca Falconer, solicitor, Dundee Law Centre. (The recall application in CV/25/3163 on rent arrears also called alongside.)
8. We sought an update on the rent position. The parties agreed that no payments had been made since 8 May 2024 and arrears for the period to 31 July 2026 were now £10,800.
9. After some initial discussions, it became clear that there had been issues with the Respondent's agent communicating her submissions to the Tribunal and the Applicant. A two-page document with submissions on each point of the Notice of Direction had been prepared by the Respondent's agent but:
 - a. The paragraph with submissions and authorities on the level of abatement sought was absent from the draft version of the submissions that the Respondent's agent had before her. She had, thus far unsuccessfully, sought IT assistance to retrieve the complete version; but
 - b. More significantly, no version of the submissions had been received by the Tribunal members or the Applicant. Only the appendices to the submissions were received via the Tribunal's clerk.On this, subject to considering whether to allow any late submissions, we sought the Respondent's agent's oral submissions on abatement. She stated that she could not recall the precise terms of the authorities she had identified but she believed they supported abatement in the circumstances of 50-60%. (She stressed that the Respondent's position was he sought 100% abatement

however.) In regard to the missing “draft” submissions, we adjourned for the clerk to see what had been received from the Respondent’s agent, and for the Respondent’s agent to check what she had sent and to send in the incomplete draft submissions that she was working from. After the brief adjournment, the Respondent’s agent conceded that she had not sent in any version of her submissions, and had indeed only sent in the appendices.

10. We had an opportunity to review the “draft” submissions so as to consider their late lodging. The Applicant’s agent confirmed he opposed us considering any part of the late submissions, whether the written draft or the oral submissions on the proposed level of abatement. We reserved our decision on this matter so as to consider matters ‘in the round’.
11. We sought the Respondent’s confirmation on some of the basic factual points provided by the Applicant’s agent at the original CMD, and noted that the following were agreed (or newly confirmed where not known by the Applicant previously):
 - a. The Property was a two-bedroom third floor flat.
 - b. The Property was not specially adapted for the use of the Respondent, nor especially suitable for his needs.
 - c. The Respondent was 49. He was of working age, and currently not fit for work, but hoped to return to employment soon.
 - d. The Respondent resided alone at the Property.
 - e. The Respondent was in receipt of Universal Credit but had not sought any housing element.
 - f. The Respondent was applying for Adult Disability Payment.
 - g. Along with his mental health issues, the Respondent was on medication for high blood pressure and was currently suffering a mobility issue with his left leg.
12. It was clear to us that there were material disagreements between the parties, in particular on when and what the Respondent may have said to the Applicant’s letting agent about wants of repair, and about what access had been afforded (and what access refused). Through the discussion at this CMD, we came to see that the parties’ positions were not as inconsistent with each other as first appeared. We noted:
 - a. The Applicant said that its agent had genuinely believed that the Respondent had abandoned the Property, due to the lack of payment and engagement. After months of non-payment, a notice was placed on the door of the Property in or around June 2024 to commence steps on abandonment. The Applicant said that the Respondent attended at the letting agent’s office following the notice and that this was his last material contact with the Applicant. In response to this, the Respondent confirmed that his last attendance at the letting agent was around June 2024.
 - b. The Respondent said he would come to the letting agent’s office every two weeks to pay his rent, at which time he would speak to them about continuing water ingress and the internal damage. He said he stressed the need for the ingress fixed as a priority (as, without the ingress stopping, the Respondent regarded internal repairs would be less effective). He said that finally he “had enough” and felt “mentally drained”, and stopped paying rent

in May 2024. (A rent statement lodged showed that payments between July 2023 and May 2024 were irregular.) He said that he told the letting agent something like: "I don't want anything to do with you anymore" (which he thought may have been said by him when he attended around June 2024). The Respondent insisted, however, that he also told the agents that they could continue to do external work to fix the ingress, as that would not require internal access. Notwithstanding, he denied that he had refused further internal access, as he had subsequently given access for a Legionella inspection. (Such an inspection in November 2025 was vouched in the Applicant's submissions.) In response to this, the Applicant held that the Respondent's position supported its submissions that: there had been no material contact since around June 2024; there had not been recent cooperation on access for internal repairs (despite the internal condition now being the main support for any claim for abatement); and there had been no communication in regard to alleged issues with the kitchen sockets or shower.

- c. The Respondent insisted that there was still water ingress from one of the windows, and through the ceiling into "the spare bedroom". The Applicant provided evidence of roof repairs being instructed, with the final one vouched on 26 September 2024. The Applicant relied on the lack of material contact from the Respondent reporting repairs issues (though we noted that the September 2024 works were said to be following a report from the Respondent of leaks, presumably contemporaneous with the works being instructed).
 - d. In regard to rehousing, the Respondent's agent confirmed that the Respondent had mentioned a desire to obtain social housing, but the written submissions suggested this was due to a frustration with the condition of the Property. The Respondent was now on the housing list, but did not wish to be homeless, or to be regarded as making himself intentionally homeless. He thus opposed eviction. He had not, however, yet engaged with the local authority's Private Sector Housing Team in regard to the condition of the Property, as he was awaiting the outcome of the recall application.
13. In regard to any proposal for payment of the arrears, the Respondent's agent was pressed to confirm what would occur if she was successful in obtaining recall, and successful in obtaining an abatement of, say, 60% of the rent. That would mean over £4,000 of arrears would remain due and payable. The Respondent's agent said that a payment plan would require to be entered into at that point, but she could not confirm the likely amount as it would depend on the Respondent's benefits and employment positions at that time. She floated the idea of at least £41/m being paid as this was the likely minimum level of deduction from benefits for arrears, though a higher monthly payment would perhaps be possible.
14. No motion was made for expenses. We adjourned to consider the application for recall.

Reasons for Decision

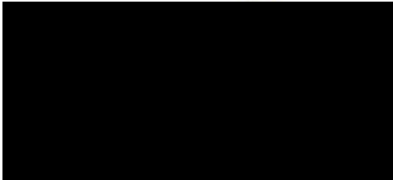
15. No defence was advanced disputing that the Notice to Leave had been correctly drafted and competently been served upon the Respondent. The proposed defences were restricted to the question of abatement of rent and reasonableness.
16. We note that the Respondent's mental health conditions are cited in support of his late application for recall, and in the circumstances, we do accept the application for recall though late. In regard to the Respondent's health conditions, we accepted that he was now receiving treatment for poor mental health but there were no medical report or records provided. Though it is entirely plausible that the Respondent's condition was similar for the months prior to his initial treatment on 23 March 2026, we do not regard his mental health condition nor any of his other medical conditions (which were not vouched at all) give rise to a material reasonableness defence in the circumstances. We decline to recall so as to advance a defence on reasonableness.
17. In regard to the defence on abatement, we accept that there is a potential argument for abatement but the question comes as to whether it is enough in general and at this time. On the latter question, we acknowledge there is a factual dispute as to what the Respondent reported and when, but there is agreement that there was little to no engagement in requesting repairs from around June 2024. We accept that – especially when struggling with poor mental health – someone may have “just buried my head” and not engaged with their letting agent, as the Respondent claims. Nonetheless, there is a lack of a clearly vouched connection between the cessation of payment of rent and any continuing wants of repair for which the Respondent was pressing to be addressed. The Respondent says he stopped paying rent due to the lack of repairs. He does not claim to have sought abatement per se. The introduction of a claim for abatement now, by way of a late application for recall, raises the question as to whether it is in the interests of justice for us to recall.
18. We do not require to make a decision on that point as we hold that it is not in the interest of justice to recall so as to advance the abatement defence in general. Even if successful, the Respondent admits to having no funds retained to make payment of any balance. If successful, at best he would be in a position of being around a year in arrears. His inability to make a proposal in payment at this time does not assist him. We think it is inevitable that he would be evicted under ground 12 even if he were permitted a chance to pursue his abatement defence (which defence is not guaranteed).

Decision

19. In all the circumstances, we refuse the application for recall, and leave in place the order of 6 March 2026 against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 12 of Schedule 3 of that Act.

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.



Date 14 July 2026

Legal Member/Chair