



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/26/0104

Re: Property at 106 Westwood Square, East Kilbride, G74 4NG (“the Property”)

Parties:

Mr Alisdair Menzies, 73 Glen Lethnot, St Leonards, East Kilbride, G74 3UZ (“the Applicant”)

Mr Paul Brian Kimber, 106 Westwood Square, East Kilbride, G74 4NG (“the Respondent”)

Tribunal Members:

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

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is granted 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 9th January 2026 as amended 13th February 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 2pm 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 CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 20th July 2026.

4. On 14th August 2026, the Applicant submitted an up to date rent account for the period 4th February 2025 – 4th August 2026. The arrears are stated as £5850.

The Case Management Discussion

5. A CMD was held on 21st August 2026 at 2pm by teleconferencing. The Applicant was present and represented himself. The Respondent was not present and was not represented. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD.
6. The Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters.
7. The Applicant confirmed that he wished the order for eviction to be made.
8. The Applicant said that the current arrears are £5850. There have been no payments for 13 months. The rent is £450 per month. This has not increased since the tenancy started in 2018.
9. The Applicant said that there has been no communication from the Respondent. The letting agent has tried on numerous occasions to contact the Respondent. The letting agent last heard from him in January 2026 when he emailed to say that he was not living in the Property at that point as he had to look after his mother who was unwell. He did not terminate the tenancy at that point.
10. The Tribunal asked if he knew if the Respondent was still in the Property. The Applicant said that he believed that he was still in the Property. The Applicant was on holiday at the beginning of July. He passed the Property on several occasions. He did knock at the door once. He could hear a World Cup football match on the television. When he knocked the television was turned off and the door was not answered.
11. The letting agent has undertaken their own investigations. They were able to get into the flat. They said that it was a mess but still occupied. It has also been noted that windows have been open and closed at different times.
12. The Applicant said that the Respondent lives on his own in the Property. It is a two bedroomed property. When it was let out to the Respondent in 2018 he had a daughter of approximately 15 years old. He required a separate bedroom for her to be able to stay with him. The Applicant believes that the Respondent is employed.
13. The Applicant said that this is the only property that he owns to rent. He has found the process of the Respondent not engaging in communication and not paying is rent to be very stressful. He does not have a mortgage on the Property but does have ongoing landlord costs such as insurance and the cost of relevant certifications. Once he has vacant possession of the Property he intends to sell it as he does not want the stress of being a landlord anymore.

14. The Tribunal was satisfied with the evidence before it that there were no issues of reasonableness preventing the application being granted.

Findings of fact and reasons for decision

15. The Applicant is the registered owner of the Property.
16. A Private Rented Tenancy Agreement commenced 4th September 2018.
17. On 11th November 2025 the Applicant served upon the Respondent a Notice to Leave as required by the Act. Service was effected by email and the Notice became effective on 11th November 2025.
18. The Notice informed the Respondent 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 has persistently failed to pay his rent charge of £450 per month. The rent payments are due to be paid on the fourth 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 4th August 2025.
23. There are no known outstanding Universal Credit Housing Element issues.
24. The current arrears are £5850.
25. The Respondent does 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 August 2025 until the date of the CMD, the Respondent has failed to pay the whole rent as it fell due and significant arrears have accrued. There have been no payments since July 2025.
31. The Applicant's letting agent 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
32. The Applicant advised the Tribunal that the Respondent has not paid in 13 months and has not communicated with the letting agent with regard to this. The Applicant still has ongoing costs and has found the process of the Respondent not paying his rent to be very stressful.
33. The Tribunal were satisfied that the Respondent was well aware of the proceedings. He had received the notice to leave 11th November 2025. He had received intimation of the CMD by service upon them by sheriff officers 20th July 2026. The Tribunal noted that the Respondent did not attend the CMD nor had he provided any written representations setting out any reason why the order being sought should not be granted.
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 ongoing rent charge is not being paid. The arrears are not currently reducing. The Respondent has failed to communicate with the Applicant's letting agent to enter into a payment arrangement to deal with ongoing rent and arrears.

42. The Respondent has lodged no written representations with the Tribunal despite being offered the opportunity to do so. He did not attend the CMD to provide any information to the Tribunal to dispute the information provided by the Applicant nor to set out any reason why it would not be reasonable to grant the Order

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

44. 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.

45. There are no issues of reasonableness that prevent an order from being granted.

Decision

46. 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.

21st August 2026

Legal Member/Chair

Gabrielle Miller

Date