Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with statement of reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the Act)

Chamber Ref: FTS/HPC/EV/25/4930

Re: Property at 2 Birch View, Bearsden, G61 2BT (the Property)

Parties:

Mr Norman MacLeod, Mrs Josephine MacLeod, 4 Wilstrode Avenue, Binfield, Bracknell, Berkshire, RG42 4UW, per Coda Estates Ltd (the Applicant)

Ms Eilidh Farrell, 2 Birch View, Bearsden, G61 2BT (the Respondent)

Tribunal Members:

Maurice O'Carroll (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the Tribunal) determined that an Eviction Order be granted as sought by the Applicant.

Background

1. This was a final hearing on the merits in relation to an application for Eviction brought by the Applicant under rule 109 on the basis of Ground 11 of Schedule 3 to the Act. The application had originally founded upon Ground 12 (non-payment of rent), however, by the time of the hearing, all rent arrears had been cleared. The sole ground for seeking eviction was therefore in relation to breach of obligations under the Tenancy Agreement.

2. A Case Management Discussion (CMD) had previously been held on 29 June 2026, following which the Tribunal issued a Note of CMD and issued certain directions in relation to the final hearing. These primarily related to documentation to be produced by the parties and the deadlines for doing so.

3. One week prior to the final hearing on 2 November 2026, the Applicant produced a 200-page bundle of documents which included a skeleton argument, full sized photographs and a synopsis of witness statements for witnesses to be led in oral evidence as well as those witnesses whose evidence

was to be in writing only. This was in accordance with the Direction issued by the Tribunal.

4. On 4 November 2026, the Respondent lodged a 9-page document, late which sought to have video evidence introduced and the allowance of four witnesses to give evidence at the final hearing. It also included 3 external photographs of the Property which bore to show new curtains having been fitted. The document sought to permit the Respondent to be represented by her former partner Andrew Wright and to be supported by her social worker, Claire Andrew during the hearing. Both of those applications were granted.

5. The Tribunal refused the application for video evidence since it was late and in any event irrelevant to the issues to be determined. It also required that any further documentary evidence be provided by 4pm on Friday 6 November 2026. A further three page document was submitted by the Respondent at 9.38pm on Friday 6 November 2026 which sought a review of the decision not to allow video evidence. This was refused at the outset of the final hearing.

The Hearing Discussion

6. The final hearing took place on 9 November 2026 via CVP. The Applicant was again represented by Miss Sharon Cooke of Coda Estates. The Respondent was present on the call with Mr Andrew Wright. The Tribunal also heard evidence from the following witnesses:

   - Sharon Cooke as letting agent for the Applicant
   - Mr John Fairlie, a resident at Birch View
   - Mrs Margaret Watt, also a resident at Birch View
   - Mr Alan Wright, the father of the Respondent's former partner and
   - Claire Andrew, Social Worker.

7. As narrated in the Note of CMD, the Respondent entered into a Private Rented Tenancy (PRT) with the Applicant which commenced on 1 September 2022. The formalities for eviction have been complied with to the satisfaction of the Tribunal. The Tribunal therefore required to consider on the basis of evidence led whether Ground 11 (failure to comply with a term of the tenancy agreement) had been made out and thereafter whether it was reasonable to issue an eviction Order based upon that fact: Schedule 3(11) to the Act.

8. At the outset of the Hearing, it the exact extent of the Applicant's case was clarified. The term of the PRT relied upon is Clause 17 which sets out the following requirements in material part (excluding those which do not apply) as follows:

   'REASONABLE CARE
   The Tenant agrees to take reasonable care of the Let Property and any common parts, and in particular agrees to take all reasonable steps to:

   - keep the Let Property adequately ventilated and heated;

- not bring any hazardous or combustible goods or material into the Let Property…
- ensure the Let Property and its fixtures and fittings are kept clean during the tenancy;
- not interfere with door closer mechanisms.'

9. As set out in the Note of CMD, an email sent from Ms Cooke to the Respondent on 5 December 2025 stated the following which were stated to summarise the issues regarding the Respondent's compliance with Clause 17 of the PRA:

"Routine inspections, most recently on 14 November 2025, have confirmed that the property is not being adequately maintained. The following issues remain outstanding:

• Persistent lack of ventilation and cleaning, resulting in mould and damage
• Damage to windows, walls, and flooring
• Excess rubbish being kept inside the property
• Excessive clutter and refuse obstructing windows, doors, and fittings
• General neglect of essential cleaning and upkeep, contributing to deterioration of the property.

The Evidence heard
Applicant's evidence

10. Miss Cooke for the Applicant gave credible and reliable evidence, all of which the Tribunal accepted and which it took into account in reaching its decision. Her accepted evidence is summarised in the following paragraphs (11 - 25).

11. Coda Estates took over the let of the Property which had previously been managed by Victoria Letting. Although a Director of Coda Estates, Miss Cooke personally managed the Property. She undertook routine checks of the Property despite routine resistance from the Respondent. The routine resistance comprised refusal of entry by the Respondent or cancelling appointments for inspections at short notice.

12. Nonetheless, the Tribunal was provided with four illustrative Inspection reports as follows: (1) the inspection report dated 14 May 2021 produced by Victoria Letting which vouched the state of the property prior to the Respondent taking occupation; (2) an inspection report dated 28 April 2025 (3) an inspection report dated 14 November 2025 and (4) the inspection report dated 11 August 2026 carried out after the CMD.

13. In relation to the 14 May 2021 report, the photographs included within the report demonstrate a clean and tidy property in an excellent state of repair and decoration. The walls and carpets are clean and there is no evidence of any disrepair to any windows or furniture. The blinds and curtains are clean. The bedroom wardrobe is in good order and its doors operational. The kitchen and other appliances shown are modern and in a good state of repair/new condition.

14. The report of 28 April 2025 shows various defects which Miss Cooke observed which were beyond what might be termed fair wear and tear. At that stage, a fly infestation was evident and that affected all of the rooms in the Property. There was a build up of rubbish and food waste within the Property. There was a complaint from the Property Factor dated 25 April 2025 relating to the fly infestation experienced by other occupants on the top floor of the block where the Property is located.

15. Subsequent to that April visit, Miss Cooke formulated guidance specifically for the benefit of the Respondent in an effort to assist her in maintaining the Property so that it was in a reasonable state of repair and to prevent further deterioration in the Property. The guidance was in the following terms.

'We have prepared a step-by-step programme of works, focusing on the most important areas first:
Immediate Priorities (within the next 2 weeks)
Remove any remaining food waste and refuse to reduce the risk of pest infestation. Keep the property free from any excess refuse bags at all times.
Wipe down kitchen and bathroom surfaces with disinfectant.
Keep windows open when possible to air the property.
Clear walkways in the bedroom and main living areas so windows, doors, and electrical fittings are accessible.
Let us know if any urgent repairs are needed.
Please focus on these essential health and safety tasks first. We understand that tackling everything at once may feel overwhelming, so we want to work in small, manageable steps.
Next Steps (4-6 weeks)
Once immediate priorities are addressed, we suggest:
Tackling one room at a time to clean surfaces, windowsills, skirtings door facings and doors.
Cleaning or stain-treating carpets.
Cleaning or replacing lounge blinds.
Remove items from your bedroom to ensure the passage way to the windows is clear
Fix lounge curtains where hanging down
Attempting to remove markings from walls (where possible)
Ensure all rooms are clutter free'

16. The third report dated 14 November 2025 shows a marked further deterioration in the Property despite the above guidance. Excessive condensation is visible, floor covering are marked and dirty, there is damage to walls, in particular from child's crayon, the windows had mould and dirt and there was clutter everywhere.

17. The overall summary narrative within the report of 14 November 2025 is accurate in the view of the Tribunal. It states as follows: "Poorly maintained and presented in poor condition. Tenant's son's social worker was present at the meeting. We discussed the programme of works issued since the last routine check in April. Tenant admitted she has not been coping and has not

been able to carry out these tasks. The property is continuing to deteriorate, there are no signs of improvement."

18. The most significant inspection report is the one dated 11 August 2025. The CMD had been held on 29 June 2026. The Tribunal had sight of the email from Miss Cooke to the Respondent on 5 December 2025 noted above. At paragraph 19 of the Note of CMD, the Tribunal discussed arrangements for a further inspection to be carried out prior to the final hearing.

19. The Tribunal stipulated that at least two weeks be provided to the Respondent in order to provide her with an opportunity to rectify the matters which had been highlighted in earlier inspection reports, in particular the November report following inspection at which the Respondent's Social Worker, Claire Andrew had been present. The earliest the inspection could have taken place was 13 July 2026. As narrated in the Note, if the updated inspection report (following the CMD) demonstrates no improvement in the issues outlined above, that is a matter that can be taken into account by the Tribunal following the hearing.

20. In the event, the inspection was carried out on 11 August 2026, fully six weeks after the CMD, or a month after the earliest date the Tribunal had stipulated. Accordingly, the Respondent not only had knowledge that a further inspection was imminent, the results of which would be taken into account by the Tribunal at the full hearing, but she had also had been provided with a substantial period of time in order to address the issues regarding maintenance as clearly set out by the Applicant's letting agent.

21. The report of the August inspection very fairly acknowledges improvements made by the Respondent. These were (1) the front windows had been cleaned inside and out and were open at the time of the inspection (2) the kitchen floor and surfaces had been cleaned (3) items had been removed from the floors in the hallway and bedroom 1, allowing improved access compared to the November inspection.

22. With that said, there remained significant issues with the remainder of the Property in relation to maintenance. These were summarised in the report as including (1) windows throughout decaying due to poor ventilation; (2) oven dirty, washing machine dirty, inside of fridge infested with fleas/significant health risk (3 staining on carpets (3) flea infestation throughout with live fleas and dead fleas in all rooms (4) surfaces with hundreds of dead fleas inside kitchen cupboards (5) walls badly marked with dirt outwith normal wear and tear, progressively getting worse (6) lounge blinds damaged and discoloured due to significant dirt, not fit for purpose and (7) skirtings throughout dirty and thick with dust.

23. Miss Cooke then took the Tribunal to a series of full size photographs which vouched all of the above observations. The photographs also showed a significant build up of condensation. This was confirmed by a specialist report to have been caused by lifestyle issues on the part of the Respondent. There was clear deterioration in the condition of the Property which were directly

caused by lack of ventilation and care. Photographs also showed rotting timbers in the bedroom windows, a broken wardrobe which had come off its runner and black mould in the corner of a window caused by a lack of ventilation and neglect. Curtains were filthy and blackened through neglect and permitting the family dog to access the window ledge. There was also evidence of excessive storage indicative of hoarding, including a large number of plastic boxes permanently stacked against a wall, excessive staining on the lounge carpet and rot and decay throughout.

24. All of the above evidence was accepted by the Tribunal. In the Tribunal's view, the photographs demonstrated a significant and marked degree of abuse, neglect and lack of maintenance which went well beyond fair wear and tear. More importantly, especially in relation to the windows, the neglect was such that the fabric of windows had deteriorated through lack of care and maintenance causing rotting and black mould. The presence of thick dirt and mould and infestation of fleas represented a potential health risk. The Tribunal was mindful that the normal occupants of the Property included the Respondent and her seven year old child.

25. The photographs also showed the presence of an electric bike within the Property which is a potential fire risk as bike batteries are potentially combustible and hazardous contrary to the second bullet point of Clause 17.

26. The Tribunal also heard from Mr John Fairlie and Mrs Margaret Watt who are residents within the block. They provided evidence, which the Tribunal accepted, that they had seen occupants from the Property hold the common close door open by use of stones found outside the main property. This represented a clear security and insurance risk and is contrary to the terms of Clause 17, last bullet point. Further, Mr Fairlie gave evidence, which the Tribunal accepted, that the Respondent only opened the windows to the Property on days when an inspection by the letting agents was being carried out.

27. Accordingly, the Tribunal determined that each of the four obligations contained within Clause 17 which were in issue had been breached by the Respondent.

Respondent's evidence

28. Mr Alan Wright gave evidence regarding conditions in the Property. He disputed that the property was in a poor condition. He considered that it was in an appropriate condition for a family with a dog. About two years ago he had scrubbed down the walls of the Property with sugar water on advice to resolve the damp and condensation issue. He thought that the carpets were fine; that the problem with clothing being dropped on the floor had been solved by the use of plastic boxes and that the Property was generally in a reasonable condition but needed a tidy up and a new coat of paint. He also considered that dealing with the damp and mould issues were the Factor's responsibility, although he might have been referring to the letting agency.

29. The Tribunal was unable to accept any of that evidence in light of the clear photographic evidence which had been placed before it and the clear evidence of Miss Cooke which it accepted. He also appeared to misunderstand the nature of the ground for eviction sought being that action is required of the tenant and not a third party such as the property factor or the letting agent.

30. Miss Claire Andrew also gave evidence on behalf of the Respondent. She is the Social Worker assigned to the Respondent and her son as noted during the November inspection report. She accepted that the Property was "not in a good way" although she did not consider it to be an issue in relation to the Respondent's young son and did not consider it to be unsuitable accommodation. She thought that it was cluttered and unclean but not excessively so having been in the Property on a total of six occasions in the time she has been supporting the Respondent. The last time she had been in the Property was six weeks prior to the hearing.

31. She gave the following evidence in relation to the other issues encountered by the Respondent and her young son. The Respondent has been diagnosed with Anxiety and Depression. She struggles and feels overwhelmed by domestic issues and demands such as those raised by the present proceedings and also those currently before SCRA (the Scottish Children's Reporter Agency). No medical evidence was provided to the Tribunal in respect of the Respondent's illness and how it manifested.

32. There is to be a review before the Children's Reporter in February 2027. The Respondent's son is suspected to be neurodiverse and to have ADHD although this has not yet been formally diagnosed. He is currently on a waiting list for diagnosis.

33. Miss Andrew stated that the Respondent would be eligible for help from Barnardos. Such help would be both practical in terms of showing the Respondent how to maintain her home but also financial. At present, the Respondent is on benefits and also receives financial assistance from her father (he paid the rent arrears leading to the withdrawal of Ground 12 for eviction).

34. She stated that new blinds could be installed, that the issue of hoarding was indicative of self-neglect and that a plan could be put in place to assist the Respondent in dealing with the issues raised by the present application. Aside from Barnardos there is also an agency referred to as Supporting Families which could provide assistance to the Respondent in the form of financial advice.

35. If the Tribunal were minded to grant an Order for eviction, Miss Andrew gave evidence that the Respondent and her son would then be homeless. As such, they would then require to be re-housed by East Dunbartonshire Council. It would be in the region of two years before a suitable permanent tenancy could be obtained. In the meantime, the Respondent and her son would be in temporary accommodation which would probably be in a hotel.

36. There would be no possibility of being housed in Bearsden where the Property is. In all likelihood, the new accommodation would be in Lennoxtown, Milton of Campsie or Torrance. As such, the Respondent would be removed from her close family and any form of support she has in that respect. She has no friends and does not drive with the consequence that she would be isolated.

37. Her son would be taken out of the only school which he has known since Primary 1 and 2 and which has been the only source of stability for him in his life. His present school provides him with a specialist curriculum suitable for his needs. Since he has likely ADHD, he requires familiarity and consistency in his surroundings and that is an important consideration.

38. The Tribunal was unable to accept Miss Andrew's evidence in relation to the condition of the Property and her view of it given the deterioration to it caused by neglect and abuse by the Respondent as demonstrated by the photographs and evidence Miss Cooke.

39. It did, however, accept her evidence regarding her Social Work involvement with the Respondent and her son in the course of her employment. It accepted the challenges faced by both the Respondent and her son in light of their respective conditions. It also accepted the likely consequence that if the Order were to be granted then the Respondent and her son would become homeless and require to be housed by the local authority. It also accepted that it would be unlikely that replacement accommodation, if provided by the local authority, would be found in Bearsden with the result that the Respondent's son would require to move schools with all the disruption which that would entail.

The Tribunal's reasoning

40. As noted above, the Tribunal has a delicate balancing exercise to perform bearing in mind the competing interests of the two parties. On the one hand, there has been a lengthy and sustained period of neglect of and damage to the Property in clear breach of Clause 17 of the PRT. On the other hand, there are the potential consequences and effects which would be experienced by the Respondent and her young son if the Order were to be granted.

41. The Tribunal is required to consider all relevant circumstances that must be taken into account as they existed at the time of the hearing: *Cumming v Danson* [1942] 2 All ER 653. In exercising its discretion in a balancing exercise such as this, the views of different Tribunals may vary without each necessarily being unreasonable: *Lanagh Ltd v Riaz and Ahmed* UTS/AP/26/0048.

42. Paragraph 11 of Schedule 3 to the Act provides:

> (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
(a) the tenant has failed to comply with a term of the tenancy, and
(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

43. It can be seen that the Tribunal has discretion ("may find") to order eviction if there has been a breach of a term of the tenancy and it considers it reasonable to issue an eviction order "on account of that fact". The point to note is that the test is whether the *Tribunal* considers eviction to be reasonable in those circumstances, not whether the Landlord is reasonable in seeking it.

44. The Tribunal has already determined that the relevant parts of Clause 17 were breached by the Respondent (see paragraph 27). In relation to that, the question arises as to the seriousness of the breach and its importance in relation to the operation of the PRT as a whole.

45. On one view, Clause 17 which is headed "Reasonable care" and which essentially deals with maintenance issues might be viewed as an exhortation to keep the let premises clean and tidy. However, the egregious and prolonged extent of the breach renders the consequences far more serious in operation. The damage to the Property goes far beyond fair wear and tear. The level of abuse and neglect which has occurred since the outset of the tenancy four years ago has significantly damaged the property and has resulted in ongoing deterioration, not merely untidiness or a lack of cleanliness.

46. There is mould, damage to window frames, woodwork and interior furnishings and fittings and insect infestation, all of which the Tribunal accepts on the evidence to have been caused by the Respondent. This has been caused since the outset of the tenancy, despite clear advice and instruction being given by the letting agents through Miss Cooke and despite the terms of the periodic inspection reports when they were able to be carried out. The level of deterioration and progressive damage to the Property has only increased with the passage of time. It is reasonable to infer that if the Order is not granted, that further deterioration to the Property will result.

47. Accordingly, the breach of Clause 17 is considered by the Tribunal to be serious. Its consequences are considered to be far reaching in terms of the leased property given the continuing extent of actual damage being caused by the neglect and abuse of the Property.

48. The proposed measures to remedy the state of the Property suggested by Miss Andrew in her evidence were considered to be inadequate by the Tribunal. Firstly and fundamentally because she understated the extent of damage caused and consequently the extent of work required. She considered that a deep clean and a lick of paint would be sufficient to put matters substantially right. The Tribunal does not agree with that assessment as already noted.

49. Further, her evidence regarding assistance from Barnardos and from other government agencies are by their nature prospective. The legislation requires the Tribunal to consider whether the tenant "*has* failed" to comply with a term of the lease, not whether any breach has a reasonable prospect of being remedied in future. Accordingly, that evidence is not accepted by the Tribunal as being relevant to the issue it requires to determine.

50. In relation to the consequences for the Respondent and her son in the event of an Order being granted, the Tribunal has a great deal of sympathy with that issue. The Respondent clearly has difficulties and requires a great deal of ongoing support, as does her child. However, that is a matter for social services with the intervention of professionals such as Miss Andrew. It is no part of that support for the Applicants to provide a property to the Respondent in order for it to be progressively damaged over time in breach of the terms of the PRT.

51. Having balanced the rights and interests of the Applicant with the Respondent, the Tribunal has come to the view that it is the interests of the Applicant that are stronger and that is reasonable that an Order for Eviction be issued.

Outcome

52. Accordingly, the decision of the Tribunal is to issue the Order for Eviction sought. The necessary Order is attached to the present decision.

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.

Maurice O'Carroll

Maurice O'Carroll — **Legal Member**

11 November 2026 — **Date**