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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/1433

Re: Property at 101 Polkemmet Drive, Shotts, ML7 5RD ("the Property")

Parties:

Mrs Margaret McNee, Mr James McNee, 10 Coomaroo Crescent, Minyama Queensland, 4575, Australia ("the Applicant")

Ann-Marie Robertson, 101 Polkemmet Drive, Greenrigg, Harthill, Shotts, ML7 5RD ("the Respondent")

Tribunal Members:

James Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that that the application for the order for possession should be granted

Background

1. By application dated 4 April 2025 the applicants sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

2. On 22 April 2025 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion (CMD) took place on 23 October 2025, and appropriate intimation of that hearing was given to both parties. At the CMD, the applicants were personally present and were represented by their solicitor, Mr Lewis Bryan, Sneddon Morrison, Solicitors, Livingston. The Respondent was present and was represented by her husband Mr. Eion Robertson.

4. Having listened to parties at the CMD, there appeared to be clear areas of dispute between the parties and the tribunal indicated that it would not be possible for a final decision to be made at the case management discussion and that a hearing would require to be arranged.

5. The tribunal issued a Note to the parties which contained directions requiring parties to lodge a variety of information including (but not limited to) a statement of evidence to be put forward at the hearing, including a timeline of what each party believed to be the history of the tenancy and attempts at communication between the parties

6. A hearing was set to take place on 4 June 2026, and appropriate intimation of that hearing was given to both parties.

The hearing

7. The hearing took place on 4 June 2026 via telephone case conference. The applicants were personally present and were represented by their solicitor, Mr Lewis Bryan, Sneddon Morrison, Solicitors, Livingston. The Respondent did not take part nor was she represented.

8. The clerk to the tribunal received a telephone call shortly before 9:30 a.m. on the morning of the hearing from Mr. Eion Robertson who had been the respondent's representative at the CMD. Mr. Robertson is the applicant's husband. Mr Robertson advised the clerk that the applicant was taking him to hospital that morning and that neither of them would be available to take part in the hearing. Mr Robertson provided no details of the reason for the hospital attendance nor any proof of same.

9. The hearing proceeded in the absence of the respondent.

10. The applicant's solicitor had complied with the directions given by the tribunal in the CMD note and had lodged written representations prior to the hearing. Those representations had been sent to the respondent

11. The tribunal asked various questions of the applicant's solicitor with regard to the application.

12. He confirmed that he wished the order for eviction to be made.

Findings in Fact

13. The Applicants are the registered owner of the property.

14. A company called Barnowl Limited and the Respondent, as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 June 2018.

15. The tenancy was a private residential tenancy in terms of the Act.

16. The agreed monthly rental was £500.00.

17. On or around 15 October l 2019 the applicants became the owners of the property and therefore became the landlords in terms of the tenancy agreement between Barnowl Limited and the respondent

18. The applicants notified the respondent of the change of ownership by attending personally at the property in 2019

19. On 13 February 2020 solicitors acting for the applicants wrote to the respondent formally confirming the change of ownership, intimating that the applicants were now the landlord, providing an email address for the applicants and indicating that rent payments should now be made to the applicants. The letter provided banking details for the applicants to enable payments to be made

20. On 25 February 2025 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by sheriff officers and the Notice became effective on 25 March 2025

21. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.

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

23. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the tenant had been in arrears of rent for three or more consecutive months)

24. Arrears had started to accrue in February 2020 and at the date of the lodging of the application arrears amounted to £31,500.00.

25. The amount of arrears at the date of the CMD was £34,500.00.

26. The amount of arrears at the date of the hearing was £38,000.00

27. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.

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

Reasons for Decision

29. The order for possession sought by the landlord was based on a ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.

30. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears.

31. Since February 2020, the respondent failed to pay the rent as it has fallen due and significant arrears accrued.

32. No rent payments have been made at all since February 2020. No formal agreement had been reached with regard to repayment of the arrears, and it was indicated that the respondent has generally refused to cooperate with the landlord's agent in respect of dealing with the rent arrears.

33. The applicant's solicitor has written to the respondent on 5 November 2024 in compliance with the provisions of the pre action protocols set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020

34. The tribunal were satisfied that the respondent was well aware of the proceedings. She had received the notice to leave in February 2025. She had attended the case management discussion. The respondent had not attended the hearing nor had she responded to the directions set out in the Note issued after the CMD. She has not provided any written representations setting out any reason why the order being sought should not be granted. The tribunal is satisfied that the respondent was well aware of the date and time of the hearing. The telephone call to the clerk by the respondent's husband confirmed that they were aware of the date and time

35. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were at a level which is beyond significant. The ground for eviction based on rent arrears was accordingly established.

36. 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.

37. 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.

38. 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".***

39. 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.

40. Iin 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.

41. In this case the tribunal finds that it is reasonable to grant the order.

42. The level of arrears at £38,000 is extraordinarily high. The respondent has paid nothing toward rent for a period in excess of six years. 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.

43. The respondent has lodged no written representations with the tribunal despite being offered the opportunity to do so. She did not attend the hearing 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.

44. The suggestion made by the respondent at the CMD that she was unaware of the identity of her landlord and that she did not know that the applicants were her landlord is not believable. The tribunal reject the suggestion that the respondent was not aware that the applicants had become her landlord. She has received personal visits from the applicants. She has received correspondence from a firm of solicitors intimating the change of ownership. She has had notices served upon her by sheriff officers. She has been notified of these proceedings. She appears to have taken no steps to try to identify who might be her landlord if it is not the applicants. The applicant's ownership of the property is a matter of public record, and is shown in the Land Register of Scotland.

45. In the present case the respondent has failed to pay any rent for a period in excess of six years, has ignored all correspondence and contact from the applicants and their solicitors and has made no proposal whatsoever to deal with the arrears. She has not even restored ongoing monthly payments since receiving a notice to leave over a year ago nor after attending a case management discussion at this tribunal more than six months ago

46. It is clear to the tribunal that the respondent simply does not wish to pay rent and has no intention of dealing with the arrears.

47. In all the circumstances and taking into account the clear views expressed by the Upper Tribunal which are binding on this tribunal, the tribunal decided that it was reasonable to grant the order sought.

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.

J Bauld	**04 June 2026**
Legal Member/Chair	**Date**