



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/2798

Re: Property at 31a, Academy Street, Coatbridge, ML5 3AW (“the Property”)

Parties

Mr James McKelvie, 19, Hillfoot Avenue, Wishaw, ML2 8TN (“the Applicant”) per his agents, Ness Gallagher, Solicitors, 95, Stewarton Street, Wishaw, ML2 8AG (“the Applicant’s Agents”)

Ms Valerie Nisbet, 31a, Academy Street, Coatbridge, ML5 3AW (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Robert Buchan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory procedure having been carried out and the Ground being evidenced, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application dated 27 June 2025 (“the Application”), the Applicant’s Agents on his behalf applied to the Tribunal for an Order for eviction and possession of the Property based on based on Ground 12 of Schedule 3 to the 2016 Act, the tenant is in rent arrears for more than three consecutive months.

2. The Application comprised the following:

- i) copy tenancy agreement between the Parties, which although in the form of an assured tenancy agreement, commenced on 11 July 2018 and so is a private residential tenancy;
- ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act with proof of issue to the Respondent;
- iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to North Lanarkshire Council being the relevant local authority;
- iv) copy rent statement a showing monthly rent of £700.00, arrears of £39,700.00 at the date of the Application and the last rental payment made on 14 August 2022 and
- v) copy of two pre-action requirement letters sent to the Respondent.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (“CMD”) was fixed for 16 April 2026 at 14.00 by telephone conference and intimated to the Parties, and, in particular, to the Respondent by Sheriff Officer on 26 February 2026.

4. Prior to the CMD, the Applicant’s Agents lodged an updated rent statement showing that the rent due and owing had increased to £55,120.00.

CMD

5. The CMD took place on 16 April 2026 at 14.00 by telephone. The Applicant was not present and was represented by Mr. Gallagher of the Applicant’s Agents. The Respondent was not present and was not represented. She did not submit written representations. The Tribunal was satisfied that the Respondent had been made aware of the CMD and was aware that she ought to attend and so proceeded in her absence.

6. Mr. Gallagher confirmed that an Order for eviction is sought. The Tribunal explained that it required to be satisfied that the correct statutory process had been carried out, that the Ground has been evidenced and that it is reasonable to grant the Order. From the Application, the Tribunal was satisfied that the correct statutory process and the Ground have been evidenced.

7. Mr. Gallagher, on behalf of Mr. McKelvie, the Applicant, accepted that Mr. McKelvie had allowed the arrears to increase and that he had not actively pursued the matter with the Respondent, Ms. Nesbit. Mr. Gallagher explained that, for this reason, Mr. McKelvie did not seek a payment order and simply wished to recover possession of the Property. Mr. Gallagher stated that the Property is a one-bedroom flat on the first floor of a commercial building from which Mr. McKelvie runs his business. Mr. Gallagher's position was that, based on the level of arrears and the fact that the Respondent has not entered the proceedings to oppose the Application, it is reasonable to grant the Order.

8. With regard to the Respondent, Ms. Nesbit, Mr. Gallagher stated that, as far as he was aware, she lives alone and has no dependents.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties commencing on 11 July 2018;
- ii) The monthly rent is £700.00;
- iii) The Respondent has failed to pay rent throughout the duration of the tenancy;
- iv) The Respondent has paid no rent since 14 August 2022 and £55,120.00 is due and owing:

Rule 17 (4) of the Rules

10. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*” . The Tribunal took the view that it had sufficient information to make a decision.

Issue for the Tribunal

11. The statutory procedure being established and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness.

Decision and Reasons for Decision

12. The Tribunal had regard to all the information before it and to its Findings in Fact.

13. The Tribunal then had regard to the circumstances of the Parties.

14. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

15. The Tribunal then looked to balance the rights and interests of both parties.

16. The Tribunal had regard to the fact that the Respondent had a poor record of payment and has failed to pay any rent in over three and a half years. The Tribunal took into account the level of arrears being £55,120.00 and the extent of the negative financial impact which the Respondent’s actions will have had on the Applicant. The Tribunal took the view the level of rent arrears and pattern of non-payment is not tenable for either Party. The Tribunal had further regard to the fact that the Application is not opposed.

17. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.

18. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

19. This decision is 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 was sent to them.



Karen Moore

Legal Member/Chair

16 April 2026

Date