



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/25/4757

Re: Property at 94A Queen Street, Dunoon, PA23 8AY (“the Property”)

Parties:

Ms Elizabeth McTaggart, 167 South Street, Grenock, PA16 8TE (“the Applicant”)

Mr Duncan McNicol, 94A Queen Street, Dunoon, PA23 8AY (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for an order for eviction should be granted.

Background

1. By application dated 29 October 2025, the Applicant sought an order for eviction under section 51 of the Act and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 31 December 2025 the application was accepted by the Tribunal and referred to it for determination. The Tribunal informed the Applicant at this point that she would have to address the Tribunal at a future hearing on the validity of the Notice to Leave in so far as it related to the inclusion of Ground 1 (intention to sell).
2. A copy of the application was served personally on the Respondent by Sheriff Officer conform to execution of service dated 20 April 2026 and parties were notified that a Case Management Discussion (“CMD”) would take place on 19 May 2026 at 2pm by telephone conference call and that they were required to participate. The Respondent was required to submit any written representations in response to the application by 7 May 2026.

3. The Respondent lodged written representations by email dated 7 May 2026. He stated that he was waiting to hear from Argyll and Bute Council about rehousing within 6 weeks. He stated that he had carried out work to the property at a value in excess of the rent arrears and therefore no rent arrears were due. He claimed that the Applicant did not repair anything. He stated that his health had deteriorated. He accepted the Applicant had to sell the property on the basis that the Landlord could not afford to fix the roof on this and another 3 properties.
4. On 15 May 2026 the Respondent asked the Tribunal to postpone the CMD so he could take advice. On 18 May 2026 the Tribunal postponed the CMD as it transpired that the Respondent had not been sent a copy of an email from the Applicant which had been sent to the Tribunal on 10 December 2025.
5. On 5 June 2026, the Applicant wrote to the Tribunal and stated that she disputed what the Respondent had said.
6. A further CMD was arranged to take place on 14 July 2026 at 2pm. The Applicant provided an updated rent statement in advance of this date and also a written response to the Respondent's email of 7 May 2025.
7. The Tribunal had before it:
 - i. The Application Form E;
 - ii. A Private Residential Tenancy agreement dated 15 February 2019 between the Applicant, and, at that time, the joint tenants who were the Respondent, Mr McNicol and Ms Isobel Taylor;
 - iii. Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Applicant; and
 - iv. Case Papers.

Case Management Discussion

8. A CMD took place on 14 July 2026 at 2pm by teleconference call. The Applicant appeared on her own behalf with the support of her husband Mr Disselduff. There was no appearance by the Respondent although the Tribunal delayed the start of the CMD by a few minutes in case he appeared.
9. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions with regard to the application.
10. The Tribunal asked the Applicant to explain the basis on how the rental statements were prepared given that some were in joint names of the tenants and then in the sole name of the Respondent. The Applicant explained that originally the tenancy had been a joint one but that Ms Taylor left the property on 27 July 2025. Up until that point the rental statement was prepared in joint names. After Ms Taylor left, the statement was prepared in the Respondent's

sole name. As at the date of the Notice to Leave (which was 25 June 2025) the joint tenants were in arrears of 3 months rent i.e. £1980.00. After Ms Taylor left, payments were made and attributed to the joint debt. By 2 October 2025, the rent arrears relating to the joint debt were cleared. However, the Respondent was still in arrears. He made a payment on 16 September 2025, part of which was applied to the joint debt and part to his new sole rental account. The Respondent made a payment on 21 November 2025 but no further payments have been received since. The rent arrears shown on the updated rent statement as at 15 May 2026 are £5 812.70 and have increased further since then.

11. The Tribunal asked the Applicant to explain the inclusion of Ground 1 (intention to sell) in the Notice to Leave. The Notice to Leave also included reference to Ground 12 (rent arrears) and the Notice had given the Respondent the required 28 days' notice in terms of sections 54(2) (b)(i) and 54 (3) (b) of the Act. The Notice to Leave had not given the required 84 days' notice for Ground 1 in terms of section 54 (2) (b) (ii) and 54 (3) (b) of the Act. The Applicant was aware that the Tribunal wanted to be addressed on this today.
12. The Applicant explained that Ground 1 has been included in the Notice to Leave for the sake of transparency. She owned 4 properties in Dunoon and at the time the Notice to Leave was issued in June 2025, 3 of the 4 properties were in arrears of rent. The Applicant had thought that she might want to sell this Property and did not want to be seen as being underhand, had an eviction order been granted on the basis of rent arrears and for the Property then to be marketed for sale. Given the passage of time, circumstances have changed. One of the other properties has been sold. Accordingly, the Applicant has no intention of selling the Property and no longer insists on eviction on this ground.
13. If an eviction order is granted then the Applicant will rent out the Property again once it has been vacated and any necessary works carried out.
14. The Applicant was able to provide some information relating to the Respondent's circumstances. In November 2025, she was informed that the Respondent had to give up work due to ill-health. The Respondent is a self-employed builder. You were told that he was on universal credit and he would receive a housing allowance to help with his rent. You have been told he has continued to work as a builder. No further payments were made towards the rent after the last payment on 21 November 2025. The Applicant believes the Respondent is in his mid-60's and he lives in the Property on his own. It is a three bedroomed semi-detached house. Previously the Respondent lived there with his partner and her daughter. The Applicant wrote to the Respondent on 1 July asking for an update (given the Respondent had said in May that he was expecting to hear about his housing position within 6 weeks of that date). There was no response. The Applicant has sent monthly rental statements but the Respondent had not engaged at all.

15. The Tribunal noted that the Applicant provided a written response to the statements made by the Respondent in his email of 7 May 2026. The Applicant did not consider that relevant to the position on rent arrears. The Tribunal have noted the written response and that the Applicant disputes the version of events put forward by the Respondent. The Applicant denies that she did not attend to repairs when requested or that the rooves of the various properties are in disrepair (other than routine maintenance, which is scheduled to take place) or that the Respondent has carried out repairs to a value in excess of the rent arrears. In short, the Respondent is in rent arrears as shown by the rental statement.

Findings in Fact

16. The Property was let to the Respondent under a Private Residential Tenancy Agreement between the Applicant and the Respondent and Ms Isobel Taylor dated 15 February 2019;
17. The agreed monthly rental was £600.00 per calendar month commencing on 15 February 2019;
18. The monthly rental was increased to £660.00 per calendar month from 15 August 2024;
19. The Applicant competently served a notice to leave on the Respondent and Ms Isobel Talyor dated 25 June 2025 in terms of ground 12 of Schedule 3 of the Act. Said notice was sent by email as provided for in the tenancy agreement (clause 4). The notice became effective on 28 July 2025. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act;
20. As at the date of the Notice to Leave the Respondent and Ms Isobel Taylor had been in arrears of rent from 16 April 2025, a period of three or more consecutive months as required under ground 12 of Schedule 3 of the Act. The arrears of rent were £1980.00;
21. The joint tenant, Ms Isobel Taylor left the Property on 27 July 2025;
22. The Respondent continued to live in the Property on his own after Ms Taylor left;
23. The Respondent has been liable to continue to pay the rent due and meet the other obligations of the tenancy agreement since Ms Taylor left, in terms of the tenancy agreement (clause 27);
24. The joint debt was repaid as at 2 October 2025;
25. The Respondent has remained in rent arrears. As at the date of lodging this application, the Respondent was in arrears of rent of £1 852.70;

26. The Respondent has made no payment of rent since 21 November 2025;
27. The amount of rent arrears as at 15 May 2026 was £5 812.70 as shown in the rental statement provided by the Applicant;
28. Prior to issuing the Notice to Leave, the Applicant contacted the Respondent and Ms Taylor to discuss their rent arrears;
29. The Applicant has contacted the Respondent since this application was lodged but has received no response;
30. The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003;
31. The Property is a three-bedroomed semi-detached house;
32. The Respondent lives in the Property on his own;
33. The Applicant intends to re-let the Property should an order for repossession be granted;
34. The basis for the order for possession on Ground 12 of the Act is established.

Reasons for Decision

35. The order for possession sought by the Applicant was based on a ground specified in the Act. Ground 12 of Schedule 3 of the Act was properly narrated in the notice to leave served on the Respondent. The Tribunal was satisfied that notice had been served in accordance with the terms of the Act and the Applicant is entitled to seek recovery of possession on that ground.
36. The Tribunal accepted the evidence provided by the Applicant with regard to the rent arrears. Rent statements were produced which set out the history of the arrears. Since April 2025 the Respondent has failed to pay the full rent as it fell due. Although arrears of rent relating to a period of occupation by joint tenants were cleared on 2 October 2025, arrears of rent relating to the Respondent's sole occupation have accrued since July 2025. The last payment made by the Respondent was on 21 November 2025. Since that date, no payments have been made.
37. The Tribunal was satisfied that the Respondent has been in arrears for a period of three consecutive months. The Tribunal accepted the unchallenged evidence of the Applicant relating to the arrears. The Tribunal accepted that the Applicant made appropriate attempts to encourage the Respondent to deal with the arrears.
38. The ground for eviction based on rent arrears is established.

39. Since 7 April 2020, in terms of changes made initially by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, 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.
40. The Tribunal 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. This is confirmed by one of the leading English cases, *Cumming v Danson* [1942] 2 All ER 653 at 655 in which Lord Green MR said in an often quoted passage:
- “In 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 common sense 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.”*
41. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and weigh the various factors which apply to the parties.
42. In this case the Tribunal finds it is reasonable to grant the order. The balance of reasonableness is weighted toward the Applicant for the following reasons:
43. The level of arrears is high and it is unlikely that the arrears will be paid. The Respondent is making no attempt to meet the current rent as it falls due or the arrears of rent. The Respondent has made no attempt to engage with the Applicant despite reasonable attempts to do so.
44. The Property is a three bedroomed semi-detached house. The Respondent lives there on his own. The Applicant intends to re-let the Property if an eviction order is granted.
45. Although the Respondent engaged with the Tribunal process initially, he has not done so since May 2026 despite having an opportunity to do so.
46. The Tribunal decided to exercise the power within rule 17 of the procedure rules and determined that a final order should be made at the CMD.

Decision

The Tribunal makes an order for eviction of the Respondent, Mr Duncan McNicol from the Property at 94A Queen Street, Dunoon, PA23 8AY.

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.

**Fiona Stephen
Legal Member/Chair**

**14 July 2026
Date**