



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/26/1444

Re: Property at 5 Malcolm Road, Glenrothes, Fife, KY7 4JU (“the Property”)

Parties:

Mrs Katarzyna Maria Wawrzonek, 216 Caskieberran Road, Glenrothes, Fife, KY6 2NX (“the Applicant”)

Mr Radoslaw Galewski, 5 Malcolm Road, Glenrothes, Fife, KY7 4JU (“the Respondent”)

Tribunal Members:

Julie McKinlay (Legal Member) and Greig Adams (Ordinary Member)

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

Background

1. By application dated 31 March 2026 the Applicant 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 (“the procedure rules”). On 29 April 2026 the application was accepted by the Tribunal and referred for determination by the Tribunal.
2. The application was heard along with application under reference FTS/HPC/CV/1447.
3. A Case Management Discussion (CMD) was set to take place on 10 August 2026. Intimation of the application with accompanying papers and intimation of the CMD was made to the Respondent by sheriff officers on 10 July 2026. The Tribunal noted that service had been made at Flat 2, 354 West Granton Road, Edinburgh EH5 1FE which was described by sheriff officers as the new address

of the Respondent. The Applicant was represented by Ms McGowan at the CMD. The Applicant advised that no intimation had been given that the respondent had vacated the property, no keys have been returned, and no intimation has been made to the council in respect of liability for council tax. The Tribunal considered that reasonable notice of the hearing had been given in terms of Rule 24 and decided to proceed in the absence of the Respondent.

Case Management Discussion

1. The CMD took place on 10 August 2026 via telephone case conference.
2. The Tribunal heard from the Applicant's representative.
3. The Applicant's representative confirmed that the Applicant sought an order for possession based on Ground 11 and Ground 12 of schedule 3 of the 2016 Act.
4. In terms of Ground 11 the Applicant's representative advised that the Applicant relied on Clause 16 (being absent from the tenancy for a period of more than 14 days without informing the landlord), Clause 17 (taking reasonable care of the Property in that the respondent failed to keep it adequately ventilated or heated and tampered with the electrics) and Clause 20 (refusing access to the property for inspections). The Applicant's representative accepted that in terms of Clause 16 there is no evidence in the bundle to support such a contention and simply an assertion by the landlord.
5. In terms of Ground 12 the Applicant's representative referred to the rent statement which showed rent in the sum of £600 due and not paid on 1 November 2025, 1 December 2025 and 1 January 2026. No further rental payments have been made. The current arrears are £6350.00. An updated schedule of arrears was sent to the Tribunal in July 2026. The Applicant has had no contact with the Respondent since January 2026.
6. The Applicant's representative confirmed that the first increase in the rent from £520 to £600 took effect from 1 December 2023. The proper notice in respect of that increase in terms of the 2016 Act was not served on the Respondent. Rather an email was sent to him. The Respondent did make payment of the rent in the increased sum. A notice to increase the rent from £600 to £650 was served on the Respondent on 29 October 2025. The Applicant had sought to increase the rent from May 2025 but accepted that no proper form had been served at that time. A proper notice was later served and the rent increase was effective from 1 February 2026.
7. The Applicant's representative confirmed that the notice to leave is dated 9 January 2026 and was served by email on the respondent on that date.

Findings in Fact

8. The Applicant is the heritable proprietor of the Property.
9. The Applicant is the landlord and the Respondent the tenant in terms of the Private Residential Tenancy entered into on 1 January 2023.
10. The rent in terms of the lease is £520 payable on the first of every month.
11. On 9 January 2026 the Applicant served upon the Respondent by email a notice to leave as required by the 2016 Act. The notice informed the Respondent that the Applicant wished to recover possession using the provisions of the Act.
12. The Applicant purported to increase the rent from £520 to £600 in 2023 but failed to serve a valid rent increase notice as required in terms of the 2016 Act.
13. A notice was served on Fife Council by the Applicant under section 11 of the Homelessness etc (Scotland) Act 2003.
14. The Respondent is in breach of the tenancy agreement in having failed to allow the Applicant access to the property to carry out a Gas Safety Inspection.

Reasons for Decision

15. The order for eviction is sought in the application in terms of section 51 and paragraph 11 and paragraph 12 of schedule 3 to the 2016 Act.
16. In order for a notice to be valid in terms of ground 12, the tenant must have been in arrears for three consecutive months at the date it is served. It is the length of time that arrears have existed which is crucial not the amount of arrears involved. The notice to leave based on ground 12 is dated 9 January 2026. In order for that notice to be valid on that ground the Respondent must have been in arrears for three consecutive months at that date i.e. since, on or before 9 October 2025.
17. The rent statement indicates that the rent arrears were entered into on 1 November 2025. On that basis the Respondent would not be in arrears for three consecutive months until on or after 1 February 2026. Any notice to leave served prior to that date is accordingly invalid. That position is confirmed by the Upper Tribunal cases of Rafique v Morgan 92022) UT 07 and Majid v Gaffney (2019) UT 59. These decisions confirmed that a notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months.
18. The Tribunal is not satisfied that for three or more consecutive months the respondent has been in arrears of rent at the time when the notice to leave was served on the Respondent. As such in respect of Ground 12 the notice to leave is invalid.

19. The notice to leave also relies upon Ground 11. That ground is in the following terms:

“11 Breach of tenancy agreement

- (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 the 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

20. The Applicant relies on three provisions of the Lease namely Clause 16, Clause 17 and Clause 20. The Applicant’s representative accepted that no evidence has been presented as to any breach of clause 16. As such the Tribunal made no finding that the Respondent was in breach of Clause 16.

21. Clause 17 of the lease provides *inter alia* that the Respondent must take all reasonable steps to keep the property adequately ventilated and heated. Having regard to the bundle submitted by the Applicant the Tribunal was not satisfied that there was sufficient evidence presented to support a finding that the Respondent was in breach of Clause 17.

22. Clause 20 provides that the Respondent must allow reasonable access to the Property for an authorised purpose where the Respondent has been given at least 48 hours’ notice. In terms of the lease “Authorised purposes” are carrying out work which the Applicant is required or allowed to do by law or under the lease agreement. In terms of clause 18 the Applicant must ensure that there is an annual Gas safety check on all pipework and appliances carried out by a Gas Safety registered engineer.

23. The Respondent did not attend the CMD. However, the Tribunal had before them communications between the Applicant and the Respondent which the Applicant produced. These communications showed the various attempts by the Applicant to arrange with the Respondent access to the property for the purposes of carrying out the necessary gas inspection. These communications made it clear to the Respondent that the inspection was required by law. On each occasion the Respondent refused to allow access. The Respondent claimed not to be using the gas supply and to have disconnected it. In the view of the Tribunal that it not a basis upon which to refuse access for the safety check.

24. The Tribunal is satisfied that the Respondent has acted in breach of the lease agreement in refusing to allow reasonable access. The Tribunal accepts the evidence presented by the Applicant.

25. The Tribunal must also be satisfied that it is reasonable to grant the order. 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.

26. The Tribunal find that it is reasonable to grant the order.

27. The Applicant had made repeated efforts to arrange a suitable time for the required gas safety inspection. The Respondent repeatedly refused to make any arrangement. He does not consider the inspection necessary. It is an essential requirement for the safety not just of the Respondent but for others living in the vicinity. In the circumstances this is a serious breach of the tenancy agreement. Indeed, on that basis that the Respondent maintain the gas supply is not in use and has been disconnected it would seem more important to ensure that the supply is safe. The position of the Respondent is entirely unreasonable and has the potential to put not just him but others at risk.

28. In all the circumstances it is reasonable to grant the order.

29. The Tribunal exercised the power within rule 17 of the procedural rules and determined that a final order should be made at the CMD.

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.

Julie McKinlay

10th August 2026

Legal Member/Chair

Date