

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 2016 Act”)

Chamber Ref: FTS/HPC/EV/26/0573

Re: Property at 67A Main Street, Holytown, Motherwell, ML1 4TJ (“the Property”)

Parties:

Mrs Mary Cunningham, Mr Tom McKellar, Achadun Cottage, Cairndow, PA26 8BJ (“the Applicant”)

Ms Julie Anderson, 67A Main Street, Holytown, Motherwell, ML1 4TJ (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 12 of schedule 3 of the 2016 Act

1. Background

- 1.1 This is an application under rule 109 of the Chamber rules whereby the Applicant sought an eviction order on the basis of ground 12 of schedule 3, namely, as the Respondent had failed to pay rent due under the private residential tenancy agreement. The application was accompanied by copies of the tenancy agreement between the parties, the notice to leave given to the Respondent, a letter sent to her, notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a statement of the rent account. The application was conjoined with application FTS/HPC/CV/26/0576, being an application for a payment order.
- 1.2 No written representations were received from the Respondent prior to the Case Management Discussion. By way of email dated 5 August 2026, the

Applicant applied to amend the sum sought and provided and up to date rent statement.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 28 August 2026 by teleconference. The Applicant was represented by Ms Callaghan of TC Young solicitors. The Respondent was neither present nor represented.

2.2 The Applicant's representative confirmed the application was insisted upon. The Tribunal noted that intimation of the application and Case Management Discussion had been made by Sheriff Officers and considered it appropriate to proceed in the Respondent's absence as permitted by rule 29 of the Chamber rules.

2.3 The Applicant's representative confirmed that the arrears owed by the Respondent were £10926.45. She had limited information about the Respondent's circumstances. It was unclear if she resided with any children at the Property as there had been mention of children to the Applicant's letting agent but they had not been present when the agent attended. The Respondent had previously been in employment but there were payments of Universal Credit received in 2023. These subsequently stopped. There had been some contact with the Respondent in August and September 2025 which reference an application for housing benefit but no payments had been received. The Second Named Applicant was employed as a shepherd. The First Named Applicant was not in employment. The Property had been purchased for the Applicants to potentially reside in after retirement. They were aged 62 and 64. They were continuing to require to pay fees to their letting agents despite no rent being received. The arrears were significant and continuing to accrue and it was reasonable to grant an eviction order.

2.4 The Tribunal indicated that an eviction order would be granted.

3. Reasons For Decision

3.1 Valid notice to leave had been sent to the Respondent on 14 July 2026. The said notice to leave was in force as at the date of making the present application. Notice of the application had been given to the local authority as required by section 11 of the Homelessness etc (Scotland) Act 2011.

3.2 Paragraph 12 of schedule 3, being the ground upon which an eviction order is sought, is in the following terms:-

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(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2).....

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)for three or more consecutive months the tenant has been in arrears of rent, and

(b)the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4)In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a)whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

(b)the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5)For the purposes of this paragraph—

(a)references to a relevant benefit are to—

(i)a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii)a payment on account awarded under regulation 91 of those Regulations,

(iii)universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv)sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b)references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6)Regulations under sub-paragraph (4)(b) may make provision about—

(a)information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b)steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c)such other matters as the Scottish Ministers consider appropriate.

It was clear from the rent statements provided that the Respondent had been in arrears for more than three consecutive months. The only issue for the Tribunal to determine was whether it was reasonable to grant an eviction order.

3.3 Copies of correspondence sent to the Respondent containing the necessary information in regulation 4(2) of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 accompanied the application. There was no evidence of any proposals made by the Respondent in respect of payment of the arrears. The Tribunal considered that the Applicant had adequately complied with the pre-action protocol.

3.4 The Tribunal thereafter approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances

in which the application was made. The Tribunal placed particular weight on the following factors in determining it reasonable to grant the order sought:

- The level of arrears outstanding;
- The length of time the Respondent had been in arrears;
- The prejudice being caused to the Applicants by continuing non-payment of rent in light of their circumstances in that they were nearing retirement age.

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.

Alastair Houston

Legal Member/Chair

28 August 2026
Date