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/25/2682

Property : Henknowe Cottage, East High Ardwell, Sandhead, Stranraer DG9 9PF ("Property")

Parties:

John McGarva and Colette McGarva, 23 The Loaning, Ayr KA7 4QN ("Applicant")

Brazenall & Orr, Solicitors, 104 Irish Street, Dumfries DG1 2PB ("Applicant's Representative")

Christopher Meiklejohn, Henknowe Cottage, East High Ardwell, Sandhead, Stranraer DG9 9PF ("Respondent")

Tribunal Members:
Joan Devine (Legal Member)
Ann Moore (Ordinary Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined to grant an order for possession of the Property.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement ("Tenancy Agreement"); Notice to Leave addressed to the Respondent under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 30 April 2025 ("Notice to Leave"); royal mail proof of delivery on 2 May 2025; statement of rent arrears; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering letter and evidence of compliance with the pre-action protocol.

2. The Application was served on the Respondent by sheriff officer on 17 December 2025. On 26 January 2026 the Applicant's Representative lodged a written submission and an updated statement of rent arrears which indicated arrears of £8,170.

3. A Case Management Discussion ("CMD") took place before the Tribunal on 3 February 2026 by teleconference. Reference is made to the Note of the CMD. The outcome was that an evidential hearing was fixed to take place on 17 June 2026 and the Tribunal issued a Direction dated 3 February 2026.

4. The Respondent did not lodge a response to the Direction. The Applicant's Representative lodged a response to the direction on 7 May 2026.

5. A Hearing took place at Stranraer Sheriff Court on 17 June 2026. Mr and Mrs McGarva were both in attendance and were represented by Sarah Powell of the Applicant's Representative. The Respondent was not in attendance. The outcome was that the Tribunal granted an order for possession of the Property. The Respondent sought recall of the decision which was granted by decision dated 22 July 2026.

6. The Tribunal issued a Direction dated 22 July 2026 in the following terms :

The Respondent is required to lodge with the Tribunal :

1. *A written submission setting out whether it is the Respondent's position that there continue to be repairs which require to be carried out at the Property, and if there are repairs still outstanding, the date on which each item of repair was notified to the Applicant and confirmation of the method by which the need for the repair was notified to the Applicant.*
2. *A written submission setting out the repairs carried out by the Respondent to the Property following a failure on the part of the Applicant to carry out said repairs. The submission should state when the need for such repairs was intimated to the Applicant and state the method of intimation.*
3. *Receipts for repairs carried out by the Respondent at the Property following the failure of the Applicant to carry out the repair.*
4. *A written submission setting out the items of property owned by the Respondent which have been damaged as a result of the Applicant's failure to carry out necessary repairs at the Property.*
5. *Receipts for items of property that required to be replaced because they were damaged.*
6. *Evidence of the outstanding rent having been placed in a separate bank account in order to meet the obligation to pay rent once repairs were completed.*
7. *Evidence of the amount of universal credit received by the Respondent each month specifying the amount that is contributed to the Respondent's housing costs.*
8. *Any other documentary evidence on which the Respondent intends to rely at the Hearing to be assigned.*
9. *A list of any witnesses the Respondent intends to call at the Hearing to be assigned.*

The said documentation should be lodged with the Tribunal no later than close of business on ***11 September 2026****.*

The Applicant is required to lodge with the Tribunal :

1. *An up to date statement of rent arrears which must be intimated to the Respondent and which shows the date a rental payment fell due, the amount paid that month (also showing payments of £0) and the accumulating balance of arrears each month.*
2. *A written submission setting out the Applicant's response to the Respondent's written submissions referred to above.*
3. *Any other documentary evidence on which the Applicant intends to rely at the Hearing to be assigned.*
4. *A list of any witnesses the Applicant intends to call at the Hearing to be assigned.*

The said documentation should be lodged with the Tribunal no later than close of business on ***9 October 2026****.*

7. A Hearing was fixed for 19 October 2026. The Respondent did not lodge a response to the Direction. The Applicant's Representative lodged a response on 8 October 2026 which included a stamen of rent arrears showing arrears at 13 August 2026 of £11,180.. On 17 September 2026 the Respondent sought a postponement of the Hearing. This was refused.

Hearing on 19 October 2026

8. A Hearing took place at Stranraer Sheriff Court on 19 October 2026. Mr and Mrs McGarva were both in attendance and were represented by Andrew Maxwell of the Applicant's Representative. The Respondent was not in attendance.

9. Mr and Mrs McGarva told the Tribunal that there had been no recent contact from the Respondent. They said that pest control contractors had attended the Property in February and July 2026 but the timing of the visits was arranged between the Respondent and the contractor. Mr McGarva told the Tribunal that he had only recently found out that he could apply to Univrsal Credit to have the housing element of the benefit paid direct to him which meant he received £430 for the rent due in September 2026.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 13 June 2019.

2. The Notice to Leave was served by recorded delivery post on 2 May 2025.

3. At the date of service of the Notice to Leave and the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.

4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 9 June 2025.

Findings in Fact and Law

1. It is reasonable to grant an order for possession of the Property.

Reasons for the Decision

10. The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act. In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. In the Notice to Leave the Applicant stated that they sought recovery of possession of the Property on the basis set out in ground 12 which is that the tenant has been in rent arrears for three or more consecutive months. The Tribunal considered the statement of rent arrears provided and determined that ground 12 had been established.

11. At the CMD the Respondent had indicated that rent had been withheld due to the failure of the Applicant to carry out necessary repairs. The legislation which governs a landlord's obligation to repair is the Housing (Scotland) Act 2006 ("2006 Act"). Section 12 of the 2006 Act provides that the repairing standard applies to any house let for human habitation. Section 13 sets out the detail of the repairing standard. Section 14 provides that a landlord's duty is to ensure that the house meets the repairing standard at the start of the tenancy and at all times during the tenancy. It provides that the duty to maintain the house at all times during the tenancy applies only where the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out for the purposes of complying with the repairing standard. Section 14 goes on to state that the landlord should carry out the required works within a reasonable time of the landlord being notified of the need to carry out repairs.

12. The Respondent did not lodge any evidence of the need for repairs being notified to the Applicant. After the CMD, the Applicant took steps to address the issues raised at the CMD. There was nothing before the Tribunal which indicated that the Applicant had failed to comply with the repairing obligations set out in the 2006 Act.

13. The Applicant carried out repairs at the Property in response to what the Respondent said at the CMD. Notwithstanding that, the Respondent has not made any payments towards the arrears which are now £11,180. Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.

Joan Devine

Joan Devine
Legal Member **Date : 19 October 2026**