SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2026] SC EDIN 69

PIC-PN1980/25

JUDGMENT OF SHERIFF K J CAMPBELL KC

in the cause

JANET McTAGGART

Pursuer

against

WHEATLEY HOMES SOUTH LIMITED

Defender

Pursuer: Deans, advocate; Lindsays LLP, solicitors, Glasgow
Defender: Hennessey; Keoghs Scotland LLP, Glasgow

EDINBURGH, 25 May 2026

Findings in fact

1. That the pursuer entered into a tenancy agreement with the defender for a Scottish Secure Tenancy in respect of the property at XX, Dumfries on 22 November 2019.

2. That the date of entry in terms of the tenancy agreement was 22 November 2019.

3. That the subjects let under the tenancy comprise a three-bedroom maisonette, with garden ground at the rear.

4. That access the back garden is taken through a door at the rear of the property.

5. That the door to the garden is not the original door. The door is a uPVC unit, and was installed prior to the pursuer's occupancy of the property. It was installed as part of upgrading work to that property and a number of other properties in the same street let by the defender to tenants under Scottish Secure Tenancies.

6. That the door opens inwards into the property. There is a raised threshold to the door within the property, rising approximately 50-60mm from floor level. Beyond that threshold, and connecting to the exterior, there is a uPVC door-frame incorporating a weather-bar, which protrudes above the threshold between 50-60mm.

7. That outside the door there are two steps down to the garden ground. The first is partly covered in uPVC and partly in metal, probably lead. The second is made of concrete. Beyond the steps are concrete slabs surrounded by grass.

8. That between 22 November 2019 and 20 July 2021, the pursuer had regularly used the back door to take access to the back garden. She did so without incident prior to the accident on 20 July 2021.

9. That in the early evening on 20 July 2021, the pursuer was going into her back garden, through the back door. As she did so, she tripped and fell forwards. She landed on the concrete slabs. She sustained a fracture to her right arm, for which she required surgical re-union.

Findings in fact and law

1. That the pursuer's accident on 20 July 2021 was not caused by defender's fault or negligence, nor breach of statutory duty.

2. That the defender is entitled to decree of absolvitor.

Introductory

[1] In this action, the pursuer claims damages as a result of an accident which befell her on 20 July 2021, at her home in Dumfries. The defender in the action is the pursuer's landlord in terms of a Scottish Secure Tenancy entered into on 22 November 2019. The

action proceeds on the basis of averments of fault on the part of the defender under the Occupiers' Liability (Scotland) Act 1960, and the Housing (Scotland) Act 2001. I heard proof in this matter on 24 and 25 March 2026. The pursuer gave evidence, and led evidence from Innes Aitken, a chartered surveyor. The defender did not lead any witnesses. At the outset of proof, parties produced a Joint Minute, agreeing the terms of the tenancy and a number of associated documents. Parties also helpfully agreed quantum of damages in the event that liability was established in the sum of £25,000. Documents are referred to by the page in the Joint Bundle (JB**).

Witness evidence

The pursuer

[2] The pursuer confirmed that she had occupied the property, which is a three-bedroom maisonette in Dumfries under a tenancy agreement dated 22 November 2019. The defender, under the name Dumfries and Galloway Housing Partnership is the landlord. The property has a garden to the rear, and one takes access to that through a back door from the living room directly into the garden (photograph 1 JB866). The accident occurred on 20 July 2021. The pursuer had been in a nearby park with a friend's children. She returned to the house and was coming out of the back door into the garden when she tripped. It was daylight at the time. The pursuer tripped on the threshold. She missed the steps and fell onto the slabs and pavement below. She believed she had tripped on the lip at the back door, which sticks up by a couple of inches. As a result, the pursuer suffered a fracture to her right arm. She had a metal plate and screws inserted; and one of the screws had to be subsequently removed. The pursuer denied that she had fallen on the area of

ground which has concrete slabs; she was clear that she had tripped on the threshold of the door.

[3] In cross-examination, the pursuer agreed that there were tables and chairs in the living room near the door to the garden, however these did not prevent the door from opening fully and she did not agree that the photograph at JB866 suggested that they did. The pursuer regularly used the back door up to the time of the incident. She did not know when the door had originally been installed. She agreed she was familiar with the area where the accident occurred. She was asked about an entry in the medical records where she told the examining doctor that she had lost her footing on the concrete area and said that she had been in a lot of pain at the time. She denied that is what in fact happened. The pursuer could not remember whether she had seen a report from Mr Aitken, nor did she know who had placed the arrows in the locus photograph at JB869. The pursuer's recollection of events as a whole was incomplete; she could remember bits and pieces but said that the event happened a while ago.

Innes Aitken

[4] Innes Aitken is a chartered surveyor and has been a member of the Royal Institute of Chartered Surveyors since 1991. He adopted his report, as revised on 15 February 2024 (5/13 JB850). In the course of his work as a surveyor, Mr Aitken had acted amongst other things in building projects, health and safety work under the Construction, Design and Management Regulations on projects under both the 1994 and 2015 Regulations. He had in addition carried out inspections of buildings for defects, pre-lease, post-lease, for maintenance purposes and for defects analysis. While he is not a health and safety expert as such, he has been responsible for health and safety in the course of working as a surveyor.

[5] Mr Aitken's understanding of the statutory duty on a landlord was for the landlord to make sure that the property was safe for human occupation at the start and during the currency of the lease. In terms of characterising a tripping hazard, without being glib, one would be looking for something that would make a person trip. That might be something which was too high, something uneven, or something one was unable to see. The higher the height of the obstacle, the more likely it would be to cause a trip; and the more uneven a step or space, the more likely to cause a trip. Mr Aitken understood that the arrows on the photograph JB869 were put there by the pursuer. The pursuer's evidence that the location of the trip was at a point higher on the door threshold than Mr Aitken had indicated on JB859 did not materially alter the conclusions in his report and opinion. He emphasised when assessing the existence of a hazard, the importance of looking at the landscape as a whole. Looking at the step out to the garden, the sill was PVC and that was evident at JB868. Next there was what appeared to be a lead covered piece of concrete which was evident at JB866. Then there was a concrete step also evident on JB866, leading to paving slabs in the rear garden. This was a tripping hazard because it was a confusing landscape to navigate from the interior carpet to the slabs. In Mr Aitken's view this layout would not be allowed in a new building. In essence, the problem was a number of different levels in a short space of time plus the upright of the door sill. At paragraph 8.02 of his report (JB854), Mr Aitken noted that "there were very little design standards at the time of construction that would have required the developer to build the flat with a good standard threshold". He understood the building to have been constructed in the 1960s. The landlord was not obliged to update the building to conform with current building standards, but the requirement of the Housing (Scotland) Act 2001 was to maintain the property to a standard safe for human occupation. Mr Aitken's view is the height of the upstand part of the door

was much less important than the overall geography, ie layout, of the door and steps, that was shown at JB859, the section through the door and steps. Going through the door, a person was going much further down than simply the threshold because the foot coming out the door would have to arch out in what Mr Aitken considered a naturally wide direction. Mr Aitken also gave evidence about how he would reconfigure the layout of the steps to produce a smoother transition layout.

[6] In cross-examination, Mr Aitken did not accept that in the absence of recorded tripping accidents of this kind it was reasonable to leave the threshold as it was, because, in his view, one had to ascertain the risk in order to ensure that tenants are safe. He did not accept that the absence of trips within a 12 year period made leaving the threshold alone reasonable. Mr Aitken accepted there were a number of matters on which information was not available about the date of installation of the current door, whether it replaced a similar door and what other work had been carried out at the time. Mr Aitken accepted that he did not have information about the precise mechanism of the accident to the pursuer, but that was not the only important feature, and in his view the geography of the door and steps as a whole had to be considered. He accepted he could not say that a slightly lower threshold would have avoided the accident.

Pursuer's submissions

[7] Both parties produced written submissions, which are lodged in process, respectively numbers 24 and 26, and which I therefore need not narrate at length. I have taken them fully into account alongside parties' oral submissions which I now summarise. For the pursuer, counsel adopted the written submission, and invited the court to:

a) grant decree in favour of the pursuer against the defender in the agreed sum of £25,000;

b) certify Mr Innes Aitken, chartered surveyor; Mr David Mackay, consultant orthopaedic surgeon, and Dr Jim Craig, consultant psychiatrist as skilled persons;

c) grant sanction for junior counsel; and

d) to grant expenses in favour of the pursuer.

[8] There was a preliminary point, namely the defender's submission at paragraph 7 to the effect that the Housing (Scotland) Act 2001, Schedule 4, paragraph 1, did not give rise to a private right of action for personal injury. Counsel noted that the pursuer's record gave notice that she was relying on the 2001 Act, and there was no averment by the defender that it did not give rise to civil liability; rather, the averments in answer 7 were about the scope of the Act and any duty under it. The pursuer's averments were added by Minute of Amendment to which the defender had not lodged Answers, nor was the amendment opposed on the ground of relevancy. Further, these statutory provisions are regularly relied on in mould cases, for example *Pelosi* v *Lanarkshire Housing Association* [2024] CSOH 56. Counsel also referred to *Morrison Sports* v *Scottish Power* 2011 SC (UKSC) 1, as vouching the proposition that a duty could be inferred if it could be shown that a statutory duty was imposed for the protection of a limited class of the public and Parliament intended to confer on the members of that class such a right of action.

[9] There were two grounds of fault relied on by the pursuer. Firstly, breach of the Occupiers Liability (Scotland) Act 1960; and secondly, fault under the Housing (Scotland) Act 2001. Counsel referred to *Bell* v *North Ayrshire Council* 2007 Rep LR 108, at paragraph 41, and submitted that the duties under the Housing (Scotland)Act 2001, Schedule 4, are

relevant in establishing the scope and content of the duty of care under the Occupiers Liability (Scotland) Act 1960 as well. In particular, the pursuer relied on the duty to inspect under Schedule 4, paragraph 2 of the 2001 Act. Counsel submitted applying the approach in *Morrison Sports* that there was a statutory duty giving rise to a right of action on the part of a tenant under a Scottish Secure Tenancy, such as the pursuer, and that is a freestanding ground of action for damages for personal injury. The duty was found in paragraph 1 of Schedule 4. Counsel accepted, however, that there was not a basis for an implied term in the lease, having regard to recent authority such as *McManus* v *City Link Development Co Ltd* 2015 CSOH 178 (affd 2017 CSIH 12). At commencement of the tenancy, the duty was for the property to be wind and watertight, and in all other respects reasonably fit for human habitation. The pursuer relied on the evidence of Mr Aitken that the design of the door threshold had potential to cause personal injury. Counsel submitted that paragraph 2 of Schedule 4 to the 2001 Act was a duty to inspect, and thus the cases relying on notification of defects were of no assistance where paragraph 2 was engaged. The law did not expect tenants to report defects of design. Where the landlord was specifically under a duty to inspect there was a breach of a duty of reasonable care to fail to exercise that duty to inspect. Section 3(1) of the Occupiers Liability (Scotland) Act 1960 deals with landlord's liability, which in turn refers back to the general duty in section 2.

[10] In its written submission, the defender challenged the admissibility of Mr Aitken's evidence. Under reference to *Kennedy* v *Cordia* 2016 SC (UKSC) 59, counsel submitted that Mr Aitken met the test for a skilled witness. His evidence would assist the court in assessing whether there was poor design of the door threshold. There was no criticism of his impartiality, and he made appropriate concessions in the course of the evidence that there was no obligation to update the design and construction as standards changed. Further,

it was submitted that there was a reliable body of knowledge about building construction to which Mr Aitken spoke. His evidence ought to be admitted. In relation to remedial work, it was submitted the pursuer did not require to lead evidence about precisely what the defender should have done. It was sufficient for the pursuer to show poor design, and Mr Aitken's evidence was relevant to whether reasonable care had been demonstrated in all the circumstances. The accessible threshold design at paragraph 7.01 of Mr Aitken's report was included as background as an example of "good design"; an alternative design of two separate steps including removing the concrete slab was also a good design.

Defender's submissions

[11] Mr Hennessy adopted the written submission for the defender. He did not accept the defender had failed to give notice of challenge to the pursuer's reliance on the 2001 Act as founding a self-standing right of action. Statement 7 of the Record was confusing in its terms, and answer 7 indicated that the defender challenged those averments on the basis "the pursuer's averments anent common law are irrelevant and lacking specification". The pursuer offers to prove the existence of the ground of action which is met by broad denial. The pursuer must be in a position to come to court and establish the proposition for which she contended, and the defender did not accept that further notice of the challenge was necessary. It was important to note that the 2001 Act represented a departure from the previous formulation of statutory liability; there had been a right of action but that was not the case under the current legislation. It was also relevant that the pursuer could sue on the tenancy agreement, but had chosen not to do so.

[12] Mr Hennessy submitted that if it were truly to be suggested that the 2001 Act gave rise to a freestanding duty, it would be necessary to examine the text at length. He adopted

the submission which had been recorded at paragraph 171 in *McManus*, namely that having regard to the terms of Schedule 4 in context, those provisions did not give rise to a private claim for damages for personal injury. The tenant's remedy was a right to insist on repairs. The court in *McManus* expressly did not reach a concluded view on this matter (see paragraph 191). It was important to note that the 2001 Act was different from the 1987 Act, in that it codified the repairing obligation, which is now an express term in the statutory tenancy. It was submitted that the only relevant duty was that in section 3 of the 1960 Act because section 3 provided that the landlord's obligation is to maintain, and if the landlord failed so to do, then section 2 of the 1960 Act was engaged. If premises were not reasonably fit for human habitation that might amount to a breach of the landlord's duty to maintain and repair, which in turn engaged section 3.

[13] The defender did not accept that the door threshold was defective. The pursuer had led evidence from Mr Aitken who could not say that the property was non-compliant with the building standards at any stage. So far as reliance had been placed on paragraph 4 of Schedule 4, that was not foreshadowed in the pleadings and in any event referred to discrepancy, disrepair and sanitary defects, which it was submitted was intended to deal with a different issue, for example, dampness. In this case, the court was dealing with the permanent and fixed feature which was not partly defective. The pursuer enjoyed the ordinary use of the door, and indeed had used it for a substantial period without issue. With a raised kerb it was foreseeable that a statistical number of occasions there would be a trip, however, that did not make it per say a danger. So far as Mr Aitken's reliance on the geography of the doorway was concerned, the pursuer has given no evidence of feeling any concern or of a perception of the door being difficult to use and it was not possible to fill the gap with assertions by Mr Aitken based on a photograph. In relation to remedial works,

Mr Aitken had been asked to think on his feet and the proposal to have two steps down to the garden was not foreshadowed in the pleadings, and it was submitted would involve more than minimal work. The defender did not accept that the nature and extent of works which might be required was irrelevant to the question of reasonable repair. The court was not in a position reliably to conclude that simply lowering the threshold would have resulted in avoiding the accident.

Analysis and decision

[14] As will be apparent, the witness evidence was in short compass, and I consider that the pursuer was doing her best to assist the court. Her account was credible, however the reliability of some aspects of her evidence was less strong than others no doubt due to the passage of time. I consider that Mr Aitken was appropriately qualified to give evidence as a skilled witness, and I therefore repel the challenge to the admissibility of his evidence. Nonetheless, for reasons to which I will come, I do not accept every element of Mr Aitken's evidence.

[15] However, I deal first with the point raised in submissions about whether the defender gave sufficient notice of its challenge to the pursuer's reliance on a right of action for damages under the Housing (Scotland) Act 2001, Schedule 4, paragraph 1. As parties observed in the course of submissions, there are no pleas in law in pleadings under OCR 36. However parties are required to set out succinct averments about the legal basis on which the action is brought or defended. I consider that the defender's averment in answer 7 that "the pursuer's averments anent common law are irrelevant and lacking in specification" give notice of a challenge to the relevancy of the pursuer's case. For context, the averment to which that responds is in the following terms:

> "The pursuer's claim proceeds on the basis of the fault of the defenders under the Housing (Scotland) Act 2001 (the 2001 Act) et separatim the Occupiers' Liability (Scotland) Act 1960. For the purposes of the Housing (Scotland) Act 2001 (the 2001 Act) (sic) the defender was the landlord of the property."

There then follow averments about Schedule 4, paragraph 1, and conclude with the following

> "these breaches of the 2001 Act are distinct but relevant to the assessment of reasonable care of (sic) the duties incumbent on the defender by virtue of the Occupiers' Liability (Scotland) Act 1960."

I am satisfied the defender has given sufficient notice that it challenges the relevancy of that part of the pursuer's case.

[16] Turning to the challenge to the case under the 2001 Act. Schedule 4 is given effect by section 27 of the Act; the operative provision of which is in the following terms:

> **"27 Repairs**
>
> (1) Schedule 4, which makes provision about the landlord's obligations to repair a house let under a Scottish secure tenancy, has effect."

[17] Schedule 4 is in the following terms:

> "1. The landlord in a Scottish secure tenancy must—
> (a) ensure that the house is, at the commencement of the tenancy, wind and watertight and in all other respects reasonably fit for human habitation, and
> (b) keep the house in such condition throughout the tenancy.
>
> 2. The landlord must, before the commencement of the tenancy—
> (a) inspect the house and identify any work necessary to comply with the duty in paragraph 1(a), and
> (b) notify the tenant of any such work.
>
> 3. The landlord must—
> (a) ensure that any work necessary to comply with the duty in paragraph 1(b) is carried out within a reasonable time of the tenant notifying the landlord, or the landlord otherwise becoming aware, that it is required, and
> (b) make good any damage caused by the carrying out of the work.

4. The landlord, or any person authorised by it in writing, may at any reasonable time, on giving 24 hours' notice in writing to the tenant or occupier, enter the house for the purpose of—
   (a) viewing its state and condition,
   (b) carrying out any work necessary to comply with the duty in paragraph 1(b) or 3.

5 (1) In determining for the purposes of paragraph 1 whether a house is fit for human habitation, regard is to be had to the extent, if any, to which by reason of disrepair or sanitary defects the house falls short of the provisions of any building regulations in force in the area.
(2) For the purposes of sub-paragraph (1), 'building regulations' has the same meaning as in section 338(1) of the 1987 Act.

6. In paragraph 5, 'sanitary defects' includes lack of air space or of ventilation, lack of lighting, dampness, absence of adequate and readily accessible water supply or of sanitary arrangements or of other conveniences, and inadequate paving or drainage of courts, yards or passages."

[18] I was referred to *Todd* v *Clapperton*, which was decided under the predecessor legislation, Schedule 10 to the Housing (Scotland) Act 1987. *Todd* concerned a latent defect, namely glass which was averred to be insufficiently thick; it is therefore not directly analogous, because as I understand the pursuer's case, she contends the door threshold and step was a patent defect. One of the questions before the court in *Todd* was whether the obligation was a warranty; it was held there was an implied warranty that the landlord would put the property in a condition of being wind and watertight and in all other respects reasonably fit for human habitation. In my view, Schedule 4 paragraph 1 supersedes that notion by making express provision for a duty rather than an implied condition about the state of the premises at the outset, and a further undertaking to maintain the property.

[19] I was also referred to *McManus* v *City Link Development Co Ltd & ors*. In that case, the pursuers relied inter alia on Schedule 4, paragraph 1 of the 2001 Act. The court did not find it necessary to determine whether this provision conferred a private right of action.

[20] I too do not find it necessary to determine whether Schedule 4, paragraph 1 confers a private right of action for reasons I will come to shortly. However, I do not consider well-founded the pursuer's averment that

> "the breaches of the 2001 Act are distinct but relevant to the assessment of reasonable care of (sic) the duties incumbent on the defender by virtue of the Occupiers' Liability (Scotland) Act 1960."

I reach that view having regard to the terms of section 3 of the 1960 Act:

> "**3 Landlord's liability by virtue of responsibility for repairs.**
>
> (1) Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it shall be the duty of the landlord to show towards any persons who or whose property may from time to time be on the premises the same care in respect of dangers arising from any failure on his part in carrying out his responsibility aforesaid as is required by virtue of the foregoing provisions of this Act to be shown by an occupier of premises towards persons entering on them.
>
> (2) Where premises are occupied or used by virtue of a sub-tenancy, the foregoing subsection shall apply to any landlord who is responsible for the maintenance or repair of the premises comprised in the sub-tenancy.
>
> (3) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.
>
> (4) For the purposes of this section, any obligation imposed on a landlord by any enactment by reason of the premises being subject to a tenancy shall be treated as if it were an obligation imposed on him by the tenancy, 'tenancy' includes a statutory tenancy which does not in law amount to a tenancy and includes also any contract conferring a right of occupation, and 'landlord' shall be construed accordingly.
>
> (5) This section shall apply to tenancies created before the commencement of this Act as well as to tenancies created after its commencement."

[21] By virtue of the duty to repair in paragraph 1 of Schedule 4 to the 2001 Act, subsection 3(1) of the 1961 Act applies, as the pursuer's Scottish Secure Tenancy is a tenancy under which the landlord has a responsibility of maintenance or repair. Subsection (3) is

clear that the obligations in Schedule 4 continue to apply. However, the obligation on the landlord under section 3(1) is

> "to show towards any persons who or whose property may from time to time be on the premises the same care in respect of dangers arising from any failure on his part in carrying out his responsibility aforesaid as is required by virtue of the foregoing provisions of this Act to be shown by an occupier of premises towards persons entering on them."

In other words, the standard of care is that in section 2 of the 1960 Act:

> **"2 Extent of occupier's duty to show care.**
>
> (1) The care which an occupier of premises is required, by reason of his occupation or control of the premises, to show towards a person entering thereon in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which the occupier is in law responsible shall, except in so far as he is entitled to and does extend, restrict, modify or exclude by agreement his obligations towards that person, be such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger."

It is not evident that the terms of Schedule 4, paragraph 1 necessarily (ie in every case) illuminate the content to be given to "such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger".

[22] It will be evident from section 2(1) of the 1960 Act that the duty on a landlord is one of reasonable care. I am satisfied on the evidence I heard that the pursuer's accident was not a result of a lack of such care on the part of the defender. There are two reasons for that. First, it is not entirely clear on the evidence how the accident occurred. The pursuer's recollection of events was incomplete, which is not wholly surprising given the time which has passed since the accident. Beyond the fact that the pursuer tripped at some point while going through the door into the garden, I do not have a clear description of how the accident occurred. The pursuer thought she tripped on the upper part of the door threshold or sill,

though precisely how was unclear. I accept that was the area where she tripped, rather than on the slabbed area, as the defender suggested based on a description in some of the medical records. It is likely that is recorded because the slabbed area is where the pursuer ended up.

[23] Secondly and in any event, the layout of the door and step to the back garden is clear, and was well known to the pursuer. She had used it many times from 2019 till 2022. Mr Aitken's position was that such a layout would not be acceptable for current building standards. It seemed to me at times his evidence conflated design of exterior steps, and the doorframe design. Appendix 3 of Mr Aitken's report included what was described as a lowered profile for the threshold. However that is clearly a design feature to assist wheelchair access and egress, and is something which features in the current building standard for a wheelchair accessible threshold. That is of no relevance to an existing building, erected to a prior standard, for which wheelchair access is not required. In fairness to Mr Aitken, he did not assert this was what the design ought to have been, but it is indicative of a focus on matters other than the actual design. Again, the evidence about an alternative layout of the steps on the garden side of the door seemed to me premised on an obligation beyond one of reasonable care in the maintenance of the property.

[24] In any event, that matters not because Mr Aitken accepted that the actual design of the back door was not inconsistent with building standards at the time of construction. He also accepted that there was no obligation on a landlord constantly to update and modify the design and construction of property as building standards evolved. That is consistent with those provisions of the Housing (Scotland) Act 2001 the court was referred to. It is, I think, also consistent with a duty of reasonable care, because nothing the defender did in relation to the door replacement was inconsistent with statutory building standards at the time they did those things. Accordingly, the pursuer has failed to establish the accident was

caused by an act or omission by the defender, which would amount to a breach of a duty of reasonable care. The defender is entitled to decree of absolvitor.

Damages

[25] As noted, parties had agreed damages in the sum of £25,000. Had I found liability to be established, I would have granted decree in that amount.

Conclusion

[26] For the foregoing reasons, I will grant decree of absolvitor in favour of the defender. I will fix a hearing on expenses, and if parties are able to reach agreement, that can be discharged.