



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/25/4330**

**Re: Property at 30/1 Market Street, Haddington, EH41 3JE (“the Property”)**

**Parties:**

**Ms Laura Whiteford, Mayfield, Sharplaw Road, Jedburgh, TD8 6SG (“the Applicant”)**

**Mr Peter Little, 30/1 Market Street, Haddington, EH41 3JE (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Janine Green (Ordinary Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 28 May 2026.

**Background**

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 as the ground for eviction, stating that the Respondent was in arrears of rent. The application was conjoined with an application for a payment order under Rule 111 of the Rules, under reference FTS/HPC/CV/25/4332.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take

place on 27 April 2026 at 2pm. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 9 March 2026 and required the Respondent to make written representations in response to the application no later than 28 March 2026.

3 No written representations were received from the Respondent.

### **The CMD**

4 The CMD took place by teleconference on 27 April 2026 at 10am. Mr Calum Macpherson, Solicitor, of Brodies LLP represented the Applicant. The Respondent did not join the call. The tribunal noted that he had been given notice of the CMD and had not provided any explanation for his failure to attend. The tribunal therefore delayed the start time of the CMD for a short period before determining to proceed in the Respondent's absence.

5 The tribunal had the following documents before it:-

- (i) Form E application form;
- (ii) Land certificate confirming the Applicant's ownership of the property and proof of the Applicant's landlord registration;
- (iii) Private residential tenancy agreement;
- (iv) Notice to leave and proof of delivery to the Respondent;
- (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("section 11 notice") and proof of delivery to the local authority;
- (vi) Rent statement; and
- (vii) Copy letter from the Applicant to the Respondent with information required under the rent arrears pre-action protocol and proof of delivery to the Respondent.

6 The tribunal explained the purpose of the CMD and proceeded to hear submissions from Mr MacPherson on the application. The following is a summary of the key elements of the submissions.

7 Mr MacPherson spoke to the rent account which has been in arrears for 21 consecutive months, the impact the situation is having on the Applicant who relies on the rent to cover her mortgage, and the attempts made by the Applicant to address the arrears with the Respondent. Regarding the Respondent's circumstances, Mr Macpherson explained that there does not appear to be anyone else residing at the property. The Respondent was believed to be unemployed at one point but based on the Applicant's observations she now thinks he has resumed employment. The Respondent has indicated that he intends to seek rehousing with the local authority.

8 The tribunal adjourned the CMD to deliberate, at which point Mr Macpherson left the call, before resuming the proceedings and confirming the outcome.

## Findings in fact and law

- 9 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement.
- 10 The Applicant has given the Respondent a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 12. The notice to leave was personally delivered to the Respondent on 26 June 2025.
- 11 The Applicant has given the local authority a section 11 notice at the time of making this application.
- 12 The rent payable under the tenancy agreement is £695 per calendar month.
- 13 The Respondent has been in arrears of rent for three or more consecutive months. The rent account first fell into arrears in April 2024. The Respondent has not paid rent since August 2024. The balance of rent arrears outstanding as at the date of this decision is £14,880.54.
- 14 The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 15 The Applicant has provided the Respondent with the information required under the rent arrears pre-action protocol by letter dated 23 September 2025.
- 16 The Applicant has a mortgage over the property. The Applicant relies on the rent to meet her mortgage payments. The rent arrears have caused the Applicant financial difficulties because she continues to pay the mortgage from her own funds.
- 17 The Respondent has not opposed the application.
- 18 It is reasonable to make an eviction order.

## Reasons for decision

- 19 The tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application based on the documentary evidence and submissions from Mr Macpherson at the CMD, and that to do so would not be contrary to the interests of the parties in this case. The Respondent had not sought to oppose the application and there was no contradictory evidence before the tribunal.
- 20 Section 51 of the 2016 Act provides that "*The First-tier Tribunal is to 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.*"

21 Section 52 of the 2016 Act goes on to state that “an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.” The tribunal had before it a copy of a notice to leave in the prescribed form that had been given to the Respondent which cites ground 12 of schedule 3 of the 2016 Act. The tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.

22 The tribunal considered the wording of paragraph 12 of schedule 3 of the 2016 Act:-

*“Rent arrears*

*12 (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.”*

- 23 The tribunal accepted the documentary evidence from the Applicant and submissions from Mr Macpherson which were clear and consistent. There was no contradictory evidence before the tribunal.
- 24 The tribunal therefore determined that the rent account had been in arrears for three or more consecutive months when the notice to leave was delivered to the Respondent, and at the date of this decision, based on the rent statement produced.
- 25 The tribunal went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which requires the tribunal to identify those factors relevant to reasonableness and determine what weight should be applied to them.
- 26 The tribunal gave significant weight to both the level of arrears and the length of time they have been outstanding. When the notice to leave was given to the tenant the arrears stood at £7930.54. They have since almost doubled to £14,880.54. It is a significant balance and the tribunal accepted that it would have caused the Applicant financial difficulties, particularly as the Applicant has a mortgage over the property and relies on the rental income to meet her mortgage payments. There was no evidence before the tribunal to suggest that the arrears were due in any part to a failure or delay in the payment of a relevant benefit. The tribunal was further satisfied based on the correspondence produced that the Applicant has complied with the rent-arrears pre-action protocol.
- 27 The tribunal carefully considered the Respondent's circumstances. The information before the tribunal was limited on this issue as the Respondent had chosen not to participate in the proceedings. There were no known dependents residing with the Respondent who would be at risk of eviction. There was no evidence that the Respondent is a particularly vulnerable individual. The tribunal also noted that the Respondent had not opposed the application and had not sought to argue that eviction was unreasonable. The tribunal considered it could reasonably assume that he may have taken the view that the making of the order would assist in his pursuit of council accommodation.
- 28 Accordingly, having considered those factors relevant to reasonableness, the tribunal concluded that the balance weighed in favour of making an eviction order.
- 29 The tribunal therefore concluded that the provisions of paragraph 12 of schedule 3 of the 2016 Act have been met in this case and determined to make an eviction order.
- 30 The decision of the tribunal was unanimous.

### **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.

# R O'Hare

27 April 2026

Legal Member/Chair

\_\_\_\_\_

Date