



**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**

Chamber Ref: FTS/HPC/EV/26/0086

**Re: Property at 17 Henderson Gardens, Leith, Edinburgh, EH6 6BX (“the
Property”)**

Parties:

**Mr John Deane Berry, 254/1 Morrison Street, Edinburgh, EH3 8DT (“the
Applicant”)**

**Ms Jane Walker, 17 Henderson Gardens, Leith, Edinburgh, EH6 6BX (“the First
Respondent”)**

**Mr Adam Tomkins, 17 Henderson Gardens, Leith, Edinburgh, EH6 6BX (“the
Second Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Ms A Moore (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an eviction order should be granted against the
First Respondent.**

Background

1. This is a Rule 109 application whereby the Applicant is seeking an eviction order under ground 12. The Applicant lodged a copy of a private residential tenancy agreement between the Applicant and the First Respondent in respect of the Property, which tenancy commenced on 9th May 2018 at a monthly rent of £820, a notice to leave with evidence of service, a section 11 notice with evidence of service, pre-action correspondence, and a rent statement showing arrears in the sum of £10,625.
2. Service of the application and notification of a Case Management Discussion was made upon the First Respondent by personal service by Sheriff Officer on 11th August 2026.

3. By letter received on 4th September 2026, the First Respondent lodged written representations stating that there was a sub-tenant in the Property (the Second Respondent).
4. The Tribunal requested confirmation from the Second Respondent as to whether they were requesting permission to be added as a party to the application.
5. By email dated 9th September 2026, the Second Respondent confirmed that they wished to be added as a party to the application.
6. By email dated 16th September 2026, the Applicant representative informed the Tribunal of their appointment. The Applicant representative confirmed that there was no objection to the Second Respondent being added as a party to the application.
7. The Second Respondent was added as a party to the application.
8. By email dated 17th September 2026, the Applicant representative lodged written representations.
9. By email dated 18th September 2026, the Applicant representative lodged an updated rent statement showing arrears in the sum of £19,540.

The Case Management Discussion

10. A Case Management Discussion ("CMD") took place by telephone conference on 24th September 2026. The Applicant was not in attendance and was represented by Mr David Gray, Gilson Gray. The Respondents were in attendance.
11. The Second Respondent confirmed that he does not wish to stay in the Property or accede to the private residential tenancy. The Second Respondent said he wished time to move out of the Property and secure further private rented accommodation. The Second Respondent was keen to explore his legal rights in terms of this occupation and had taken advice from Shelter.
12. Mr Gray set out the Applicant's position. The Applicant is seeking an eviction order. The Applicant has no objection to the inclusion of the Second Respondent, and is prepared to work with him to ensure his exit of the Property in a civilised way. The basis of the Second Respondent's occupation is not known. The Applicant is elderly and has memory issues. The Applicant does not recall the basis of the Second Respondent's occupation. The Applicant's daughter now deals with the Property and she was unaware of the Second Respondent's occupation of the Property. The Applicant is prepared to concede that the Second Respondent has lived at the Property since 2018. There was some further discussion about the difference between and lodger

and a sub-tenant, and the terms of the Private Housing (Scotland) (Tenancies) Act 2016 in relation to sub-tenants. Mr Gray said there would be no opposition to a delay in enforcement of the eviction order if that would assist.

13. The First Respondent confirmed that she was not opposing the order. The First Respondent was candid in explaining that she alone was responsible for the debt, and that the Second Respondent had always paid his share of the rent to her. The Second Respondent had been unaware that the rent had increased to £1400, and he had been unaware of the arrears issue until recently. The First Respondent explained the reasons for the arrears arising, which related to self-employment difficulties arising around the time of the Covid-19 pandemic. The First Respondent explained that she has suffered health issues which have exacerbated the situation. The First Respondent said she had explained matters to the Applicant and had hoped to be able to resolve matters, but that had not been possible. The First Respondent said she had then failed to communicate further with the Applicant.
14. The First Respondent said she has taken advice from Shelter and been told that she requires an eviction order before she can be declared homeless. The First Respondent has sought assistance through her GP and she is being referred to a housing advice agency. She hopes to access advice regarding housing and benefits, and some therapeutical assistance. The First Respondent said she had not previously sought benefit advice as she felt overwhelmed and unable to deal with matters.
15. Responding to the Tribunal, the First Respondent said she informed the Applicant upon moving in that she was seeking someone to share the Property. The Applicant was amenable and wished to know who would be moving in. The Applicant said it was unnecessary to have any further paperwork, as long as he knew who lived in the Property and had met them. The First Respondent said she was unsure why the Applicant's daughter would claim not to know about the Second Respondent, as she had met the Second Respondent, including during an inspection of the Property. The First Respondent said she and the Second Respondent considered the Second Respondent was at the Property on an official basis despite his name not being on the lease. The Second Respondent said there had been no specific discussion about a sub-tenancy. The situation was that she required someone else to live in the Property and assist with paying the rent.
16. The Legal Member explained that there was insufficient evidence before the Tribunal to determine whether the Second Respondent was a sub-tenant. It was likely the matter would have to proceed to an evidential hearing if insisted upon, although it may be the case that there was no further evidence available.
17. The Second Respondent said he had met the Applicant's daughter. The Second Respondent said he had always considered himself to be a flatmate

or a sub-tenant rather than a lodger. In hindsight, it may have been better if his name had been added to the lease. There was nothing in writing to support his status, but there are records that he has consistently paid the rent. The Second Respondent said he had originally wished to be added to the application as a party in order to take over the tenancy, but that was no longer his intention. The Second Respondent confirmed that he did not want to delay matters and that his prime aim was to get more time to get alternative accommodation and move out. The Second Respondent said a delay in enforcement of the eviction order for a period of three months would assist him.

18. Responding to the Tribunal, the First Respondent said her main concern was ensuring that the Second Respondent got as much time as possible to find alternative accommodation. The Second Respondent said any delay beyond the usual period would be beneficial.

19. Mr Gray submitted that it was reasonable to grant an order and delay enforcement for 90 days.

Findings in Fact and Law

20.

- (i) The Applicant and the First Respondent entered into a private residential tenancy agreement in respect of the Property which commenced on 9th May 2026 at a monthly rent of £820.
- (ii) The Second Respondent has resided at the Property since May 2018.
- (iii) The Second Respondent has paid a share of the rent throughout the tenancy.
- (iv) The monthly rent has been increased during the tenancy and is now £1400.
- (v) The Second Respondent was unaware that the rent increased to £1400. The Second Respondent is currently paying £425 per month.
- (vi) The Applicant has served a Notice to Leave upon the First Respondent.
- (vii) The First Respondent has accrued rent arrears.
- (viii) The First Respondent has been in rent arrears for three or more consecutive months.
- (ix) The First Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.

- (x) The Applicant has complied with the pre-action protocol.
- (xi) It is reasonable to grant an eviction order.

Reasons for Decision

21. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
22. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
23. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Tribunal was satisfied on the evidence before it that the Applicant has complied with the pre-action protocol.
24. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
25. The Respondent has accrued substantial arrears. The Respondent is unable to pay her share of the monthly rent. The arrears are rising, and there is currently no proposal for payment of the First Respondent's share of the rent or towards the arrears. If no order is granted, it is likely the arrears will continue to rise by almost £1000 each month. The Tribunal considered the tenancy is not sustainable.
26. The Respondent is suffering from health issues. The Respondent is likely to be affected by the granting of an eviction order. However, the Respondent is not opposing the order. The Respondent has sought assistance and advice, and is awaiting housing and benefit advice and therapeutic intervention. The Tribunal was satisfied that the local authority will have an obligation to assist the First Respondent if she is deemed to be homeless.
27. The Tribunal noted that the Second Respondent has consistently paid his share of the rent, and that he was unaware of the arrears until action was taken by the Applicant. The Tribunal considered there was insufficient evidence before it to make any finding that the Second Respondent was a

sub-tenant. In any event, the Second Respondent was not seeking to accede to the tenancy of the Property, and was only seeking additional time to access alternative accommodation and move out.

28. The Applicant is suffering financially as a result of the failure to pay the rent in full, and as a result of the arrears. There is a mortgage on the Property, as stated in the written representations, together with insurance and maintenance costs. The Applicant is entitled to be paid the full rental in respect of the Property.

29. In all the circumstances, the Tribunal considered it was reasonable to grant the order sought. The Tribunal considered it was reasonable to delay execution of the order for a period of 90 days to allow both Respondents to seek alternative accommodation.

Decision

30. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 23rd December 2026.

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.

Helen Forbes

Legal Member/Chair

Date 24th September 2026