

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

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**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/18/2470**

**Re: Property at 110 Gala Park, Galashiels, TD1 1EZ ("the Property")**

**Parties:**

**Mrs Melinda Chapman and Mr Simon Chapman, Ivybank, The Row, Makerston,  
Kelso, TD5 7PA ("the Applicants")**

**Miss Cassie McDermott, 110 Gala Park, Galashiels, TD1 1EZ ("the  
Respondent")**

**Tribunal Members:**

**Graham Harding (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the Applicants were entitled to an order for the  
eviction of the Respondent from the property on the basis that it was  
established that Ground 12 of Schedule 3 of the Private Housing  
(Tenancies)(Scotland) Act 2016 applied.**

**Background**

1. By application dated 21 September 2018 the Applicants applied to the Tribunal for an order for the eviction of the Respondent from the property on the ground that the Respondent was in breach of her obligations under a Private Residential Tenancy Agreement in that she had rent arrears over three consecutive months all in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
2. The Applicants provided a copy of the Notice to Leave, a copy of the Notice to the local authority and a rent statement showing how the arrears had accumulated.

3. By Notice of Acceptance dated 3 October 2018 a legal member of the Tribunal with delegated powers accepted the application and the case was continued to a Case Management Discussion to take place on 23 November 2018 at Langlee Community Centre, Marigold Drive, Galashiels.
4. Intimation of the Case Management Discussion was given to the Applicant's representatives Ian Smith & Partners WS, Galashiels by post on 1 November 2018 and to the Respondent by Sheriff Officers on 2 November 2018.
5. Neither party produced any further written representations in advance of the Case Management Discussion.

#### Case Management Discussion

6. The Case Management Discussion was attended by the First Applicant, Mrs Melinda Chapman and the Applicants' representative Ms Zoe Duff of Ian Smith & Partners WS. There was no appearance or other representation on behalf of the Respondent.
7. The Case Management Discussion proceeded in the absence of the Respondent in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
8. Ms Duff provided the Tribunal with a copy of the Private Residential Tenancy Agreement that had been signed by the parties and that showed that the Tenancy commenced on 11 December 2018 with a rent of £480.00 per calendar month.
9. The Tenancy agreement stated that all communications between the Landlord and Tenant would be by hard copy by personal delivery or recorded delivery.
10. Ms Duff confirmed that the Notice to Leave had been sent to the Respondent by recorded delivery. Mrs Chapman confirmed that the Respondent had received the Notice to Leave as her husband had attended at the property to speak to the Respondent after service of the Notice to Leave and the Respondent had confirmed that she had received it but had advised Mr Chapman that she had no intention of leaving the property. The Respondent had been given more than the minimum statutory period of 28 days prior to the proceedings being raised.
11. Ms Duff confirmed that the appropriate notice of the proceedings had been sent to the local authority.
12. Ms Duff advised the Tribunal that the Applicants continued to receive rental payment direct from the local authority in respect of the respondent's housing Benefit in the sum of £72.00 per week paid four-weekly in arrears. This left a weekly shortfall in the rent due of 38.77. The arrears currently stood at £1450.29. The Respondent had not paid any rent herself since April 2018.

The total amount of rent due equated to over three month's rent and therefore the terms of Ground 12 of Schedule 3 of the 2016 Act were satisfied.

13. Ms Duff confirmed to the Tribunal that as far as she was aware there were no outstanding claims by the Respondent for housing Benefit and produced a schedule from the local authority showing how the housing benefit had been calculated. Mrs Chapman explained that she had contacted the Housing Benefit office to ask why there was a shortfall in the benefit paid as she believed the Respondent had children and had been advised that it was because the Respondent did not qualify for further housing benefit as she did not have an entitlement to child benefit.
14. Ms Duff moved the Tribunal to grant the order for eviction on the ground that the Respondent was in arrears of rent by an amount greater than an amount which would be payable as one month's rent and had been in arrears of rent for a continuous period of three or more months that being a mandatory ground for eviction.

#### Findings in Fact

15. The parties entered into a Private Residential Tenancy Agreement that commenced on 11 December 2017 at a monthly rent of £480.00.
16. As at the date of the Case Management Discussion the Respondent had arrears of rent amounting to £1450.29. This was the equivalent of more than three months rent.
17. The Respondent was in receipt of Housing Benefit of £72.00 per week that was paid direct to the Applicants. The Respondent was due to pay the equivalent of £38.77 from her own funds to the Applicants by way of rent. She had not made any such payment since April 2018.
18. The Applicants' representatives served a Notice to Leave on the Respondent by recorded delivery post on 31 July 2018.
19. The Applicants' representatives gave intimation of the proceedings to the local authority.
20. The terms of Ground 12 of Schedule 3 of the 2016 Act have been satisfied.

#### Reasons for Decision

21. The Tribunal was satisfied that there was a Private Residential tenancy Agreement in place between the parties and that as at the date of the Case Management discussion more than one month's rent was due and rent had been due for a continuous period of three months or more. The terms of Ground 12 of Schedule 3 of the 2016 Act had therefore been met.

22. The Tribunal was satisfied that the Respondent had been given proper Notice to Leave and had not done so and that intimation of the proceedings had been given to the local authority.

23. The Respondent had been given an opportunity to attend the Case Management Discussion and oppose the granting of the order but had not done so. The Tribunal was therefore satisfied that it was entitled to grant the order sought by the Applicants.

#### Decision

24. The Tribunal having carefully considered the evidence and documents before it finds that the Respondent is in breach of Ground 12 of Schedule 3 of the 2016 Act in that on the day of the Case Management Discussion she was in arrears of rent by an amount greater than the amount that would be payable as one month's rent under the tenancy on that day and had been in arrears of rent for a continuous period of three or more consecutive months and the Tribunal is satisfied that the arrears are not due wholly or partly as a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal therefore grants an order in favour of the Applicants against the Respondent for the eviction of the Respondent from 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.

Graham Harding

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Legal Member/Chair

23 November 2018  
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Date