



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/24/0165**

**Re: Property at 12 Chesser Avenue, Slateford, Edinburgh, EH14 1ST (“the Property”)**

**Parties:**

**Mr David Ferguson, Netherton Farm, Harthill, ML7 5TT (“the Applicant”)**

**Ms Sarah Walters, 12 Chesser Avenue, Slateford, Edinburgh, EH14 1ST (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)**

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

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

**Background**

1. This is a Rule 109 application made in the period between 12<sup>th</sup> and 15<sup>th</sup> January 2024. The Applicant is seeking an eviction order under ground 12. The Applicant representative lodged a copy of the private residential tenancy agreement between the parties which commenced on 1<sup>st</sup> July 2019, a rent statement showing arrears in the sum of £3800, a notice to leave dated 30<sup>th</sup> November 2023 with evidence of service, section 11 notice with evidence of service, and pre-action requirement correspondence dated 26<sup>th</sup> July and 15<sup>th</sup> November 2023.
2. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officer on 3<sup>rd</sup> June 2024.
3. By email dated 1<sup>st</sup> July 2024, the Applicant representative lodged an updated rent statement showing arrears in the sum of £5700.

## Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 4<sup>th</sup> July 2024. The Applicant was represented by Mr Martin Urquhart and Ms Leanne Young, DJ Alexander. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Mr Urquhart moved the Tribunal to grant the order. The Applicant has tried to be accommodating and flexible with the Respondent but considerable arrears have accumulated. A previous payment plan to pay £50 per month towards the arrears, made in in October 2023, was not adhered to by the Respondent, which has put the Applicant in an awkward position. There has been extensive communication from the previous letting agency, and DJ Alexander, who took over the management of the Property in May 2024. The last contact with the Respondent was in June 2024 at which time she reiterated her previous offer to pay £50 per month towards the arrears. The Applicant is concerned that it would take almost eight years to pay the arrears at this sum. No payments of £50 have been made towards the arrears.
7. Responding to questions from the Tribunal, Ms Young confirmed that the contact with the Respondent in June 2024 was as a result of a letter sent by the letting agent. The Respondent stated that she could not afford to pay more than £1000 per month, which comprised £950 rent and £50 towards the arrears. The Respondent stated that she would be visiting family in Italy for seven weeks over the summer. On her return, she intended to sell her car and get back to work, at which time she would pay the arrears. The letting agent had responded to say that the payment offer was not acceptable, and there had been no further contact from the Respondent. The arrears are currently £4750 as the Respondent has paid her rent for June and July 2024.
8. Responding to questions from the Tribunal regarding the Applicant’s circumstances, Mr Urquhart said he lets three properties including this property. His employment situation is unknown. The Applicant has tried to work with the Respondent, reaching out to her to try to address the situation.
9. Responding to questions from the Tribunal regarding the Respondent’s circumstances, Ms Young said it is believed the Respondent was in employment when the tenancy commenced. She has a son under 16 who lives at the Property with her. It is not known whether there are any social or health issues in respect of the Respondent or her son. There has been no correspondence or contact to suggest any benefit issues leading to the delay in paying rent.

## Findings in Fact and Law

10.
  - (i) Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 1<sup>st</sup> July 2019 with a monthly rent of £950.
  - (ii) The Applicant has served a Notice to Leave upon the Respondent.
  - (iii) The Respondent has accrued rent arrears.
    - (i) The Respondent has been in rent arrears for three or more consecutive months.
    - (ii) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
    - (iii) The Applicant has complied with the pre-action protocol.
    - (iv) It is reasonable to grant an eviction order.

## Reasons for Decision

11. 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 Respondent entered into arrears in August 2023 and had been in arrears for three or more consecutive months when the notice to leave was served on 30<sup>th</sup> November 2023. The Tribunal is satisfied that Ground 12 has been established. There was no information before the Tribunal to indicate that the Respondent being in rent arrears was as a result of a delay or failure in the payment of a relevant benefit.
12. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
13. The Applicant is entitled to rent lawfully due in terms of the tenancy agreement. The Respondent has failed to make payment of rent for some time, and she has not made payment towards the arrears, despite promises to do so. The arrears are substantial. The Applicant has complied with the pre-action protocol.
14. There is limited information available about the Respondent's circumstances. The Tribunal is aware that personal service of the application and notification of the CMD was made upon the Respondent by Sheriff Officer, but she has chosen not to engage with the Tribunal, and has travelled abroad, failing to

attend the CMD to put forward any defence to the application or any information that would be helpful to the Tribunal in reaching a decision. The Tribunal took into account the fact that the Respondent has paid the rent in February, April, June and July 2024, however, she did not pay the rent in March or May 2024. The Respondent has stated that she cannot afford to pay more than £50 per month towards the arrears, and has then failed to make any such payments. The Tribunal took into account the mention of the Respondent selling her car and getting back to work, but there was no information before the Tribunal as to the value of the car or the Respondent's employment prospects, so it was unable to give any weight to these matters. The Tribunal also took into account the fact that previous promises to make payment towards the arrears had not been adhered to. The Tribunal considered the fact that an eviction order may render the Respondent and her son homeless, however, there was no evidence from the Respondent as to her prospects for securing alternative accommodation or, indeed, any representations as to her position in respect of the application.

15. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondent to attend or make representations to put material before the Tribunal to indicate why an order should not be granted, and the Respondent has failed to do so. The Tribunal considered it was reasonable to grant the order sought.

## **Decision**

16. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 7<sup>th</sup> August 2024.

## **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.**

# H Forbes

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**Legal Member/Chair**

**4<sup>th</sup> July 2024**  
**Date**

