

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/23/4543

**Re: Property at 29F Hayfield, Edinburgh, EH12 8UJ
 (“the Property”)**

Re: Property at 29F Hayfield, Edinburgh, EH12 8UJ (“the Property”)

Parties:

Mr Hugh Murray, Woodpeckers End, Burridge, SO31 1BY (“the Applicant”)

D. J. Alexander Lettings Limited, John Cotton Business Centre, 10 Sunnyside, Edinburgh, EH7 5RA (“the Applicant’s Representative”)

Mr Scott Robertson, 29F Hayfield, Edinburgh, EH12 8UJ (“the Respondent”)

Tribunal Members:

**Ms. Susanne L. M. Tanner KC (Legal Member)
Mr Gerard Darroch (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in

payment of a relevant benefit; that it was reasonable to make an order for eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act;

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant made an application to the tribunal on 13 December 2023 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”).
2. The Applicant seeks the Respondent’s eviction from the Property under Section 51 of the 2016 Act on Ground 12 of Schedule 3 to the 2016 Act.
3. The Applicant provided the following documents in support of the Application:
 - 3.1. Private Residential Tenancy Agreement;
 - 3.2. Rental statement;
 - 3.3. Notice to Leave
 - 3.4. Email service Notice to leave; and
 - 3.5. Copy of Section 11 notice sent to the local authority.
4. The tribunal’s administration obtained a copy of the title deeds for the Property which show that the Applicant is the proprietor.
5. The tribunal requested further information from the Applicant’s Representative which was provided as follows:
 - 5.1. A screenshot of the email sending notice to leave dated 8 November 2023; and
 - 5.2. Proof of service of the section 11 notice.
6. On 28 March 2024, the Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) teleconference was fixed for 24 July 2024 at 1400h.
7. The tribunal sent letters of notification to all parties dated 14 June 2024 with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application. The Respondent was invited to make written representations in response to the Application by 5 July 2024. Both parties were

advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.

8. Service of the Application paperwork and notice of the CMD on the Respondent on at the Property by Sheriff Officers was successful.
9. The Respondent did not submit any representations in the specified time period.
10. The Respondent did not make any contact with the tribunal.

CMD: 24 July 2024, 1400h, Teleconference

11. Mrs Young attended from the Applicant's representative.
12. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

Applicant's Representative's submissions

13. Mrs Young referred to the updated rent statement which was lodged on 12 July 2024. The current rent arrears are £9,968. Mrs Young said that the last payment from the Respondent was on 4 September 2023. The Respondent has not responded to any calls, emails, text or visits to the Property. Mrs Young believes that he is still in the Property as a neighbour confirmed that he was still in the Property last week.
14. Mrs Young thinks from speaking to the Respondent that he is in late 20s or early 30s. He was in employment. She believes he lost it and then in November 2023 he gained employment. She does not know his current position. No one else lives with him in the Property. She has not been made aware of any health issues. She knows that he contacted the council at the end of last year to seek assistance with the rent. She spoke to the Council and they said that the Respondent had not submitted the paperwork. They said to her that he might be suffering from some mental health issues but she cannot confirm that. The last actual conversation

between the Applicant's Representative and the Respondent was the end of December 2023. They have been trying to contact him weekly, with the last attempt last week by phoning, texting, emailing and visiting the Property. The Respondent has not responded to any of their attempts.

15. The tribunal makes the following findings-in-fact:

- 15.1. The Applicant is the proprietor of the Property.
- 15.2. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property which began on 2 December 2022.
- 15.3. Rent is payable at the rate of £800.00 per calendar month on the 2nd day of each month in advance
- 15.4. In September 2023, the Applicant's agent wrote to the Respondent about the rent arrears with pre-action options.
- 15.5. On 8 November 2023, a Notice to Leave containing ground 12 of Schedule 3 to the 2016 Act was served on the Respondent.
- 15.6. The Applicant has given the Respondent at least 30 days' notice that he requires possession.
- 15.7. The Application to the tribunal was made on 13 December 2023.
- 15.8. As at 24 July 2024, there have been rent arrears for more than three consecutive months.
- 15.9. As at 24 July 2024, the Respondent was in arrears of rent of £9,968
- 15.10. The Applicant's Representative last had contact with the Respondent in December 2023.
- 15.11. The Applicant's Representative has attempted to contact the Respondent by telephone, text, email and visits. The Respondent has not responded to any contact.
- 15.12. The Respondent continues to reside in the Property and lives alone.

15.13. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

15.14. The Respondent has not opposed the application for eviction.

16. Findings in fact and law

16.1. The tribunal is satisfied that the facts required in paragraph 12(2) of Schedule 3 to the 2016 Act have been established.

16.2. The tribunal is satisfied it is reasonable to make an order for possession.

Discussion

17. The order for eviction is sought in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

18. In relation to reasonableness, reference is made to the tribunal's findings in fact. The Respondent has not opposed the application for eviction. He has not produced any defence. He has had the opportunity to obtain legal or housing advice. He has not notified the tribunal that he has appointed any representative. There is no evidence that he is on any relevant benefits or that there is any other reason why it would not be reasonable to evict him from the Property.

19. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

S. L. M. Tanner

24 July 2024

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair