

**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/24/3396**

**Re: Property at Flat 4, 4 Seacole Square, Edinburgh, EH16 4ZH (“the Property”)**

**Parties:**

**PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mrs Lisa Winters, Mark Winters, Flat 4, 4 Seacole Square, Edinburgh, EH16 4ZH (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Nick Allan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought to evict the Respondent from the property.**

**Background**

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondents from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 7 November 2024 informing both parties that a CMD had been assigned for 17 December 2024 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair.

4. On 11 November 2024, the Tribunal received an email from the Applicant's representative, attaching an updated rent statement. A copy had been sent to the Respondents by email.
5. On 27 November 2024, the Tribunal received an email from the Second Respondent acknowledging the forthcoming CMD and indicating an intention to pay between £1,100 and £1,250 per month towards rent and arrears.
6. On 12 December 2024, the Tribunal received a further updated rent statement from the Applicant's representative and a copy had been sent to the Respondents by email.

#### **The case management discussion – 17 December 2024**

7. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/24/3401. The CMD took place by conference call. The Applicant was represented by Mr K. Caldwell, solicitor. The Respondents did not join the call, and the discussion proceeded in their absence.
8. The Applicant's representative explained that the Second Respondent made contact with his office following service of the application. The Second Respondent indicated an intention to make payments to reduce the arrears. It was observed that the Respondents have been in rent arrears since November 2022 and since that time, the level of rent arrears has steadily increased. At the time the notice to leave was served, rent arrears amounted to £5,314.75. At the time the present application was submitted, the arrears had increased to £7,368.60. The current balance of arrears is £9,144.45. The Tribunal noted from the Second Respondent's email that there was reference to a struggle with work over the last year. There was however no explanation for the long standing rent arrears. Both of the Respondents are in full time employment and they have two sons aged 12 and 10. There was no information available to suggest that the Respondents have been in touch with the local authority in relation to alternative accommodation. Notwithstanding the intention expressed by the Respondents to pay arrears by instalments, the Applicant insisted on the application on the basis of ground 12.

#### **Findings in Fact**

9. The parties entered into a private residential tenancy which commenced 28 February 2022.
10. The Applicant served Notice to Leave on the Respondents by email on 15 April 2024 by email.
11. The Respondents have been in arrears of rent arrears for more than 3 consecutive months.

## **Reason for Decision**

12. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicant relied upon ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. From the response to the application, there was no indication from the Respondents that the accuracy of the rent statement was disputed. The Respondents did not participate in the CMD and the Tribunal therefore had no information to explain the longstanding rent arrears and no information about the Respondents' ability to sustain the tenancy. The Respondents have been consistently in arrears of rent for more than 2 years, during which time the arrears have steadily increased. The Tribunal was satisfied that ground 12 was established. Having found the ground established, the Tribunal considered the issue of reasonableness. It noted that the Applicant complied with the pre-action protocol in an attempt to assist the Respondents. The Respondents appears to be in employment and there was no indication of an entitlement to benefits. It appears that the tenancy is unaffordable to the Respondents. In light of the history of arrears, the Tribunal concluded that the tenancy is not sustainable. Accordingly, it was satisfied that it was reasonable to grant the order for eviction.

## **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.**

# N. Irvine

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Legal Member/Chair

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17 December 2024  
Date