



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (the 2017 Rules) and section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act)**

**Chamber Ref: FTS/HPC/EV/24/3460**

**Re: Property at 6 Watt Gardens, Edinburgh, EH16 4XY (“the Property”)**

**Parties:**

**Edinburgh Living MMR LLP, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG (“the Applicant”)**

**Thorntons Law, LLP, Citypoint, 3<sup>rd</sup> floor, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant’s Representative”)**

**Mr Greg Johnstone, 6 Watt Gardens, Edinburgh, EH16 4XY (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne Tanner KC (Legal Member)**

**Mr. Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) was satisfied that**

- (i) Ground 12 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; and that it was reasonable to make an order for eviction; and made an order for eviction in terms of Section 51 of the 2016 Act.**

**The decision of the tribunal was unanimous.**

## **Statement of Reasons**

### **Procedural background**

1. On 29 July 2024, the Applicant's Representative made an Application to the tribunal in terms of Rule 109 of the 2017 Rules and section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act), seeking the Respondent's eviction from the Property on Grounds 12 of Schedule 3.
2. A paper apart, inventory of productions and productions were lodged with the Application.
3. The Application was accepted for determination and a Case Management Discussion (CMD) was fixed for 7 February 2025 at 1400h by teleconference.
4. The Application and notification of the CMD was served on the Respondent by Sheriff Officers on 24 December 2024. Both parties were told that they were required to attend the CMD. The Respondent was asked to submit any written representations in response to the Application by 10 January 2025. Both parties were told that the tribunal can do anything at a CMD which it can do at a hearing including making an order for eviction.
5. The Respondent did not submit any written representations.
6. On 6 January 2025, the Respondent contacted the tribunal's administration acknowledging service of the Application documents on 24 December 2024 and requesting an extension of the period within which to submit written representations so that he could obtain advice and assistance with his response. The tribunal's administration sent a copy of this request to the tribunal members on 20 January 2025 (which was after the original date on which the Respondent was required to submit written submissions).

7. On 16 January 2025, the Applicant's Representative submitted an updated rent statement.
8. On 20 January 2025, after considering the Respondent's request for an extension to the deadline for written submissions, the tribunal issued a Direction to the Respondent ordering 'Mr Johnstone, the Respondent (after taking any legal or other advice he requires) to send to the tribunal's administration (by email, or by mail), no later than 28 January 2025 at 5pm.
  - (i) A written response to the application for eviction, stating any defence and any facts which are disputed.
  - (ii) Any supporting documents he wishes to produce.
9. The Respondent failed to comply with the Tribunal's Direction dated 20 January 2025. The Respondent did not make any further contact with the tribunal's administration.

**Case Management Discussion: 7 February at 1400h by teleconference (in absence of the Respondent)**

10. Mr Mellis, from the Applicant's Representative attended.
11. The Respondent did not attend. The tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing had been duly complied with, and proceeded with the Application upon the representations of the party present and all the material before it.
12. Mr Mellis made submissions in support of the application for an eviction order. He stated that the Private Residential Tenancy between the parties commenced on 15 February 2021 and that monthly rent is £785.00pcm. There was correspondence between the Applicant and the Respondent until early 2024, as the Respondent had fallen significantly into arrears. That did not come to any positive result. Notice to leave was served on the Respondent on 24 May 2024, on the basis of Ground 12. Thereafter a section 11 notice was served on the local authority on 29 July 2024. The application was made to the tribunal on 29 July 2024. Thereafter the application was accepted and this hearing was set on 20 December 2024. The Respondent was requested to provide written submissions before 10 January 2025. On 6 January 2025, the Respondent requested an extension to this timescale. An additional Direction from the tribunal requesting a written response by 28 January 2025 was unanswered by the Respondent. The Applicant lodged additional evidence on 16 January 2025. That showed that the rent arrears had reached a sum of £18,427.88. The rent

arrears as at the date on which the Notice to Leave was served were £12,205.88.

13. Mr Mellis stated that the Respondent has not made any payments since the date the Notice to Leave was served. The last payment was £200 in April 2024 which was an ad hoc payment. Despite correspondence between the parties, no payment arrangement was ever put in place. The Applicant has provided all the information that they can up to this point given that no position has been stated formally in these proceedings. Mr Mellis does not know if the Respondent is in employment. The Respondent has mentioned mental health issues in correspondence with the Applicant's letting agent but has produced no vouching and has not stated it in the proceedings. As far as Mr Mellis is aware, the Property is a two bedroomed flat.
14. In respect of reasonableness, the Applicant's position is that the Respondent has substantial arrears and has not taken any real steps to enter into any payment arrangements. Mr Mellis stated that the pre-action protocol was fully complied with. The ongoing rent has not been met for a significant period of time. There is a housing shortage in City of Edinburgh. There are tenants who would be prepared to rent this house. This is a two bedroomed house and the Respondent is the only occupant. Mr Mellis said that there is no suggestion or evidence that a failure or delay in payment of benefits is the reason for non payment.
15. The Applicant asked the tribunal to make an eviction order in terms of Grounds 12 of Schedule 3 to the 2016 Act.

## **Findings in Fact**

16. The Applicant is the registered proprietor of the Property.
17. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property which began on 15 February 2021.
18. The rent due under the tenancy agreement is £785.00 per calendar month from the start of the tenancy to date.
19. The Respondent has accrued rent arrears under the tenancy in respect of one or more periods.

20. Until early 2024, there was correspondence between the Applicant and the Respondent about significant rent arrears. The correspondence did not lead to any payment plan or payment of arrears by the Respondent.
21. The last payment of rent made by the Respondent was £200 on 4 April 2024.
22. The rent arrears as at 24 May 2024 were £12,205.88.
23. On 24 May 2024, notice to leave was served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act.
24. No payments of rent have been made by the Respondent since service of the Notice to Leave.
25. On 29 July 2024, a section 11 notice was served on the local authority.
26. On 29 July 2024, the application was made to the tribunal.
27. As at 29 July 2024, the rent arrears had reached the sum of £18,427.88
28. The Respondent has not provided any proposals for payment of the arrears and he is not meeting rent payments as they fall due.
29. The rent arrears as at 7 February 2025 are £18,427.88.
30. The rent arrears are not wholly or partly a consequence of a delay or failure in payment of a relevant benefit.
31. The Respondent has not opposed the Application for eviction or stated any defence.
32. The Respondent has a sole tenancy of the Property.
33. The Property has two bedrooms.
34. The Respondent lives in the Property alone.

## **Findings in Fact and Law**

35. As at 7 February 2025, 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.

## **Discussion**

36. The tribunal was satisfied after considering submissions from the Applicant that the requirements of Ground 12 are met.

37. The tribunal is satisfied that it was reasonable to make an eviction order in the circumstances of the case. The Respondent is in substantial rent arrears, with the last payment having been made on 4 April 2024, before service of the Notice to Leave on 24 May 2024. The Respondent was ordered to provide any defence to the Application by 10 January and then by 28 January 2025 and has not done so, despite being given the additional time to seek advice and assistance as requested. Since his correspondence of 6 January 2025, the Respondent has failed to engage in proceedings and failed to attend the CMD on 7 February 2025. The Respondent is living alone in a two bedroomed 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.**

Susanne Tanner

**Ms Susanne Tanner KC**  
**Legal Member/Chair**

**7 February 2025**