



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4955**

**Property at 174 Don Street, Forfar, DD8 3HE (“the Property”)**

**Parties:**

**Gowan Edwards Ltd, 2 Gowan Park, Cupar, Fife, KY15 4AZ (“the Applicant”)**

**Mr Jason Francis Kosiba, 174 Don Street, Forfar, DD8 3HE (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Mary Lyden (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 against the Respondent in favour of the Applicant.**

**Background**

1. The Applicant lodged an application for an eviction order in terms of Section 51 and Grounds 12 and 12A of schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, section 11 notice and rent statement were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer and the parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 9 May 2025 at 10am and that they were required to participate.
3. The CMD took place on 9 May 2025. The Applicant was represented by Ms McPherson. The Respondent did not participate.

## **Summary of Discussion at CMD**

4. Ms McPherson told the Tribunal that the Respondent is still living at the property. The letting agent's accounts department has continued to write to him about the arrears but he has not responded for several months. The last payment to the rent account was on 9 September 2024. The arrears now stand at £6924.84. In response to questions from the Tribunal Ms McPherson said that the Respondent is in his early fifties. He has twice attended at their office under the influence of alcohol and been asked to leave. Otherwise, there has been no contact from him. At the start of the tenancy, he was in employment as a yard operative, through an agency. However, it is thought that he has been in and out of work. His rent has always been paid by him and not by Universal Credit or Housing Benefit. As he has failed to engage with the letting agent, they are not aware of his current circumstances. The property is a one bedroom flat and he lives there alone. In response to questions about the emails from the Respondent which make reference to mental health issues and a stay in hospital, Ms McPherson said that she has no further information.
5. Ms McPherson said that the letting agent manages two other properties for the Applicant, but she has no further information about the Applicant and does not know if the property is to be re-let or sold.

## **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent is due to pay rent at the rate of £434.60 per month.
9. The Respondent has been in arrears of rent since November 2022. Payments since that date have been irregular and no payments of rent have been received since 9 September 2024.
10. The Respondent currently owes the sum of £6924.84 in unpaid rent.
11. The Applicant served a Notice to leave on the Respondents on 10 September 2024.
12. The Respondent resides at the property alone.
13. The Respondent has failed to respond to correspondence from the Applicant's agent.

## Reasons for Decision

14. The application form referred to grounds 12 and 12A of Schedule 3 of the 2016 Act. As ground 12A was a temporary ground which was repealed on 31 March 2024, the Tribunal considered the application in relation to ground 12 only.
15. The application was submitted with a Notice to Leave dated 10 September 2024, together with a copy email which establishes that the Notice was sent to the Respondent on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.
16. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
17. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
18. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order."
19. Sub-Paragraph (4) states, "In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
20. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent currently owes the sum of £6924.84 and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Part 1 of Ground 12 is therefore established.

21. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant submitted copies of several letters issued to the Respondent in compliance with the protocol.
- (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. All payments to the rent account were made by the Respondent and his current employment status and entitlement to benefits are unknown, as he has failed to engage with the Applicant and did not provide any information to the Tribunal.
- (c) The arrears are substantial and increasing. No payments have been made for 10 months.
- (d) The Respondent did not participate in the CMD or notify the Tribunal if the application is opposed.

22. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 21, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

## **Decision**

23. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.

