



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 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2986

Re: Property at 68 Great Northern Road, First Floor Left, Aberdeen, AB24 3PT (“the Property”)

Parties:

MRJ Property Aberdeen Ltd, 5 Walker Place, Aberdeen, AB11 8BQ (“the Applicant”)

Mr Garry McQueen, 68 Great Northern Road, First Floor Left, Aberdeen, AB24 3PT (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

1. Background

- 1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant sought an eviction order on the basis of accrued rent arrears. The application was accompanied by copies of the written tenancy agreement, the notice to leave served on the Respondent, correspondence sent to him by the Applicant’s representative and a rent statement.
- 1.2 The Respondent had not lodged written representations. A Case Management Discussion had taken place on 9 December 2024 and had been adjourned given the proposals for making payment of the debt had been made. In advance of the further Case Management Discussion, the Applicant lodged an up to date rent statement with the Tribunal.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 12 May 2025 by teleconference. The Applicant was represented by Mr Winchester of Winchester Lettings Ltd. The Respondent appeared personally.

2.2 The Applicant's representative confirmed that the application was insisted upon. Although the arrears had been reduced by around £200.00 since the previous Case Management Discussion, the full proposed payments had not been received. The Respondent advised that, following the last Case Management Discussion, there had been a leak and ceiling collapse in the kitchen of the property. This had not yet been fixed. The Respondent had been reliant on his mother to make the proposed payments of £65.00 per month to the arrears. She did not think payment ought to be made whilst the repairs to the kitchen were outstanding. The Respondent had since commenced full time permanent employment. He had begun paying the arrears in March 2025 and would continue to do so. He was intending to make payment of £85.00 per month to the arrears but could potentially increase this further.

2.3 The Applicant's representative advised he had little knowledge of the repairing issues but that ought to be considered a separate matter. He advised that it was good to see payments being made but the eviction order was still sought given the historic position of the rent account being in arrears and payments only being made for the last two months. Following a short adjournment, the Tribunal confirmed that it was refusing the application.

3. Reasons For Decision

3.1 The Applicant sought an eviction order on the basis of paragraph 12 of schedule 3 of the 2016 Act. As at the Case Management Discussion, the arrears were equivalent to around 3 months' rent.

3.2 In terms of section 51 of the 2016 Act, the Tribunal can only issue an eviction order if one of the grounds in schedule 3 applies. Paragraph 12 of schedule 3 is in the following terms:-

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(3) The First-tier Tribunal may find that the ground named by 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.

(4) 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 Ministers in regulations.

3.3 The Respondent had been in arrears of rent for more than 3 months. The live issue before the Tribunal was therefore whether it was reasonable to grant an eviction order. There was little in the way of factual dispute between the parties and the Tribunal considered that there was no need to fix a hearing and that the application could be determined at the Case Management Discussion.

3.4 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal also had reference to the factors specified in paragraph 12A(3) of schedule 3 of the 2016 Act. There was no evidence that the failure to pay rent was in any way connected to the Respondents' benefit entitlement. Furthermore, the correspondence to the Respondents to discuss the arrears broadly constituted compliance with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

3.5 The Tribunal weighed these factors against the Respondent's position. Although a proposal had been made at the previous Case Management Discussion which had not been fully complied with, the Respondent had made efforts to reduce the arrears. He was back in full time employment and had the means to make payment of the arrears without relying on assistance from his mother. He had reduced the arrears by around £200.00 since the last Case Management Discussion. He was making payment at a reasonable rate which would see the arrears cleared within 21 months at the proposed rate but was willing to discuss a higher rate of repayment. The Applicant had made little in the way of submissions as to the prejudice they faced by allowing the Respondent time to make payment of the arrears, which, relatively speaking, were not the highest. The Applicant's representative had previously indicated that, if a repayment arrangement was entered into then the application would not be insisted upon with their priority being the repayment of the debt. If the Respondent did not make payment, the Applicant could simply apply again for an eviction order.

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.

A. Houston

Legal Member/Chair

12 May 2025
Date