

**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/24/5177

Re: Property at 36 Earn Crescent, Dundee, DD2 4BQ (“the Property”)

Parties:

Mr Eric McIntosh, 86 Panmure Street, Monifeith, Dundee, DD5 4JB (“the Applicant”)

Mr Rafael Rocha Brito, Miss Francisca Ogochukwu Nwachukwu, 36 Earn Crescent, Dundee, DD2 4BQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order on account of the facts in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1** This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 of schedule 3 of the 2016 Act as the ground for possession, citing rent arrears.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 1 May 2025. The Tribunal gave the parties notification of the CMD in terms of Rule 17(2) of the Rules. The Respondents received notification by sheriff officers on 3 March 2025.

- 3 Both parties were given the opportunity to make written representations in advance of the CMD. No written representations were received from either party.

The CMD

- 4 The CMD took place by teleconference on 1 May 2025. Miss Julita Blazniak, Solicitor of J Myles & Co (“the Applicant’s representative”) represented the Applicant. The Applicant also joined the call. The Respondents did not join the call. The Tribunal delayed the start time of the CMD to allow them the opportunity to attend before determining to proceed in their absence.
- 5 The Tribunal had the following documents before it:-
- (i) Form E application form dated 6 November 2024 and paper apart;
 - (ii) Excerpt from the online landlord register confirming the Applicant’s landlord registration;
 - (iii) Title sheet ANG6524 confirming the Applicant as the registered owner of the property;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Notice to leave dated 20 August 2024 and proof of delivery by both recorded delivery mail and email to the Respondents;
 - (vi) Rent statement;
 - (vii) Copy correspondence dated 14 February 2024, 28 February 2024 and 5 June 2024 from the Applicant’s representative to the Respondents; and
 - (viii) Section 11 notice to Dundee City Council and proof of delivery.
- 6 The Tribunal explained the purpose of the CMD and asked Miss Blazniak for her submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion relevant to the Tribunal’s determination of the application, and does not constitute a verbatim account.
- 7 Miss Blazniak explained that the Applicant sought an eviction order in terms of ground 12. The tenancy commenced on 1 October 2023. The Respondents defaulted on their rent in January and February 2024. The Applicant had instructed Miss Blazniak to correspond with the Respondents regarding the rent arrears. Miss Blazniak had written to the Respondents to remind them of their rental obligations and had offered to enter into a payment plan. She referred to the correspondence that had been submitted with the application in support of this. The Respondents did not engage with Miss Blazniak. The Applicant then applied to universal credit for direct payments and his application was accepted. In April 2024 the Respondents contacted the Applicant directly and subsequently agreed a payment plan in May 2024. Miss Blazniak sent confirmation of this to the Respondents. The Respondents made some payments. However they had paid nothing to the rent account since June 2024. A notice to leave was sent to them in August 2024. The Respondents had since been in touch with the Applicant promising to pay rent and vacate the property but had failed to honour those promises. The arrears now stood at £10,724.74. The relationship between the parties had been amicable but had recently

broken down due to aggressive behaviour on the part of Mr Brito. The Applicant was no longer comfortable sending contractors to the property.

- 8 Miss Blazniak addressed the Respondents' circumstances. They were both believed to be in their thirties. They had no children and were both in employment. It had recently been discovered that a third party was residing in the property without the consent of the Applicant. The Applicant had been advised by the local authority that the Respondents had ceased paying council tax. They had advised the local authority that they were vacating the property at the end of April, but had not done so. The Applicant had been advised by their previous letting agent that they had been pursued for rent arrears in their former tenancy. Miss Blazniak advised that the Respondent was aged 68 and had invested some of his pension funds in the property as an income for his retirement. He had spent money on refurbishing the property prior to the Respondents moving in. The Respondents had since caused damage to the property, as witnessed by the Applicant during an inspection in February 2025. The Applicant had a mortgage over the property. He continued to incur the costs of maintaining the property. He was suffering financially as a result.
- 9 The Tribunal adjourned the CMD to deliberate, at which point the parties left the call, before resuming the discussion and confirming its decision.

Relevant legislation

- 10 The Tribunal considered the following provisions of the Private Housing (Tenancies) (Scotland) Act 2016:-

Private Housing (Tenancies) (Scotland) Act 2016

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the

circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 12

12 Rent arrears

“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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

Findings in Fact

- 13.** The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 14.** The Applicant and Respondents entered into a tenancy agreement in respect of the property, which commenced on 1 October 2023.
- 15.** The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.

16. In terms of Clause 7 of the said tenancy agreement the Respondents undertook to make payment of rent at the rate of £810 per calendar month.
17. The Respondents last paid rent to the Applicant on 25 June 2024. The Respondents have made no further payments to the rent account since that date.
18. On 20 August 2024 the Applicant's representative gave the Respondents a notice to leave citing ground 12 of schedule 3 of the 2016 Act. The notice to leave stated that proceedings for possession would not commence any earlier than 25 September 2024. The notice to leave was delivered to the Respondents by email and recorded delivery mail.
19. At the time the notice to leave was sent rent arrears in the sum of £4244.74 were outstanding.
20. On 6 November 2024 the Applicant's representative sent a notice to Dundee City Council under section 11 of the Homelessness etc (Scotland) Act 2003 intimating that proceedings would be raised against the Respondent for recovery of the property. The notice was sent by recorded delivery mail.
21. As at the date of this decision arrears in the sum of £10,727.74 are outstanding.
22. The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
23. The Applicant's representative has corresponded with the Respondents to remind them of their rental obligations and offering to enter into a payment plan. The Applicant's representative has given the Respondents information regarding the arrears and has directed them to agencies for advice and support. The Respondents have not engaged with the Applicant's representative.
24. The Respondents agreed a payment plan directly with the Applicant in May 2024. The Respondents did not adhere to said payment plan.
25. The relationship between the parties has broken down as a result of the first Respondent's conduct.
26. The Respondents have no known dependents residing with them at the property. The Respondents are both in employment.
27. The Applicant purchased the property as an investment for his retirement. The Applicant has a mortgage over the property. The Applicant continues to incur the costs of maintaining the property.

28. The Applicant has invested funds in the refurbishment of the property. The Respondents have caused damage to the property.
29. The Respondents have allowed a third party to occupy the property without the consent of the Applicant.
30. The Respondents have ceased paying council tax for the property.
31. The Respondents have been subject to legal proceedings in their previous tenancy because of their failure to pay rent.

Reasons for Decision

32. The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondents had been given the opportunity to make written representations and attend the CMD but had chosen not to do so. There was therefore nothing before the Tribunal to contradict the evidence submitted by the Applicant, which the Tribunal accepted as fact.
33. Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Respondents had been given a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003 of his intention to recover possession of the property. The Tribunal therefore considered whether ground 12 of schedule 3 of the 2016 Act had been met in this case.
34. The Tribunal was satisfied based on the rent statement produced by the Applicant, and the submissions from Miss Blazniak at the CMD, that the rent account had been in arrears for three or more consecutive months. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case.
35. The Tribunal gave significant weight to the level of arrears in this case. The Respondents had failed to pay any rent for a period of nearly a year. They had provided the Tribunal with no reasonable explanation as to why this was the case, and there was no suggestion that the arrears were due to a failure or delay in the payment of a relevant benefit. The Tribunal therefore concluded that it could apply significant weight to the history of the arrears in this case. The Tribunal also took into account the Applicant's compliance with the rent arrears pre-action protocol, as evidenced by the correspondence produced from the Applicant's representative and the submissions from Miss Blazniak at the CMD.

36. The Tribunal also gave great weight to the impact of the rent arrears on the Applicant, who had purchased the property as an investment for his retirement. It was clear that the situation was having an impact on him financially, with him having spent significant funds on refurbishing the property and continuing to face the ongoing maintenance costs.
37. The Tribunal carefully considered the Respondents' circumstances. The information the Tribunal had before it was based on the submissions from Miss Blazniak in the absence of the Respondents. The Tribunal accepted that the Respondents had no dependents and were both in employment. The Tribunal further accepted that they had faced proceedings for repossession in their previous tenancy due to their failure to pay rent. Their conduct of this tenancy as illustrated by Miss Blazniak was concerning. The Tribunal accepted that Mr Brito's aggressive behaviour had caused the relationship between the parties to break down, and that the Respondents had allowed a third party to occupy the property without the consent of the Applicant. Accordingly, whilst the general impact of eviction on the Respondents was a cause for concern, the Tribunal considered it could give most weight to the level of rent arrears in this case and the corresponding impact on the Applicant.
38. Taking the above into account as factors relevant to the issue of reasonableness, the Tribunal concluded that ground 12 had been met. The Tribunal therefore made an eviction order.
39. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

1 May 2025

Legal member

Date