

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/5016

Re: Property at 13 Flat 2/1 Wilson Street, Renfrew, PA4 8NP (“the Property”)

Parties:

Douglas Cardiff, 6 Tweedsmuir Crescent, Bearsden, Glasgow, G61 3LE (“the Applicant”)

Deepak Sharma, 13 Flat 2/1 Wilson Street, Renfrew, PA4 8NP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms A Moore (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.

Background

1. This is a Rule 109 application received on 30th October 2024. The Applicant is seeking an eviction order under Ground 12. The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 1st November 2020, at a monthly rent of £325. The Applicant lodged a rent statement showing arrears in the sum of £1675, copy Notice to Leave with evidence of service, copy section 11 notice with evidence of service, and pre-action requirement correspondence.
2. Service of the application and notification of a forthcoming Case Management Discussion was served upon the Respondent on 4th March 2025 by Sheriff Officers.
3. By email dated 6th May 2025, the Applicant representative lodged an updated rent statement showing arrears due in the sum of £4275.

The Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference on 8th May 2025. The Applicant was not in attendance and was represented by Mr Gray, Gilson Gray. The Respondent was not in attendance.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
6. Mr Gray said the Applicant is not a commercial landlord. The Applicant rents out four properties. This property is mortgaged and the Applicant is suffering financial loss due to the Respondent's failure to pay the rent arrears.
7. Mr Gray said there had been no recent contact or communication between the parties. The last contact was in November 2024, when the Applicant visited the Property regarding a water leak in an adjacent property. The Respondent refused access, stating that his parents were staying with him. The Respondent undertook to have discussions regarding the rent arrears but did not do so. The Respondent has often made promises and undertakings to address the arrears but has not followed through on these. Prior to April 2024, the Respondent usually paid the rent timeously and dealt with the occasional lapse. Mr Gray said the Respondent had told the Applicant that he would return to his home country if evicted.
8. Mr Gray said the Respondent's spouse previously lived at the Property but the relationship has ended and the Respondent lives alone without any children. The Respondent is understood to have been in sporadic employment. The Respondent has mentioned an intention to apply for benefits, but the Applicant has not been notified of any such application.
9. Responding to questions from the Tribunal regarding the fact that the tenancy agreement allows only for service of notices such as the notice to leave by email, yet service of the notice to leave had been made by Sheriff Officer, Mr Gray said this was a valid method of service which provided a certificate to show exactly when service was effected, as opposed to sending an email which could go into a junk folder and not be received. Mr Gray said the Applicant representative had erred on the side of caution by serving the notice to leave by Sheriff Officer. There may be an issue with a tenant engaging by email, so service by Sheriff Officer was thought to be the safest and most expedient method.

Findings in Fact and Law

10.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 1st November 2020, at a monthly rent of £325.
- (ii) The Applicant has served a Notice to Leave upon the Respondent.
- (iii) The Respondent has accrued rent arrears.
- (iv) The Respondent has been in rent arrears for three or more consecutive months.
- (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicant has complied with the pre-action protocol.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

11. The Tribunal considered the representations made by the Applicant representative in respect of service of the notice to leave. The Tribunal considered it would have been preferable and more appropriate for the Applicant representative to have served the notice to leave by the method agreed between the parties in the tenancy agreement. However, the Tribunal considered there was no detriment or prejudice to the Respondent by the notice to leave having been served by Sheriff Officer. There could be no doubt the notice to leave was served upon the Respondent at the correct address.
12. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
13. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
14. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action

protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending letters to the Respondent.

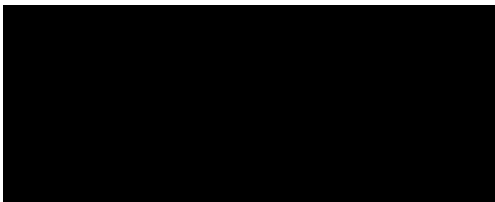
15. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
16. The Respondent has not paid any rent since April 2024. The arrears are now significant and rising. The Respondent is said to live alone with no dependents. His employment status is unknown, as is the reason for the rent arrears. The Respondent has made undertakings to address the rent arrears and has not done so. The Respondent did not see fit to attend the CMD or make any representations to assist the Tribunal in considering reasonableness.
17. The Applicant has complied with the pre-action protocol. The Applicant has attempted to discuss the rent arrears with the Respondent. The Property is mortgaged and the Applicant is suffering financially as a result of the Respondent's failure to pay the rent and address the arrears.
18. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondent to attend or make representations to the Tribunal to indicate why an order should not be granted, and the Respondent failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

19. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 11th June 2025.

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.



8th May 2025

Legal Member