

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/5204**

**Re: Property at Flat 2, 11 Seacole Square, Edinburgh, EH16 4ZF (“the Property”)**

**Parties:**

**PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Zach Gordon, Jessica Smales, Flat 2, 11 Seacole Square, Edinburgh, EH16 4ZF (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 12 November 2024, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears over 3 consecutive months of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement showing the balance of rent arrears owing of £6,737.89, evidence of rent increases applied to the account and evidence regarding the ‘pre-action protocol’. An application for payment of rent arrears was submitted together with the eviction application and both applications proceeded together through the Tribunal process.

2. Following initial procedure, on 9 December 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion (“CMD”) was fixed for 19 May 2025. The application and details of the CMD fixed were served on the Respondent by Sheriff Officer on 11 March 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations. No representations were lodged prior to the CMD by or on behalf of the Respondent.
4. The Applicant’s agent emailed the Tribunal on 1 April 2025, applying to amend the sum claimed to £10,548.89 and attaching an updated rent statement in support. A further update was emailed on 15 May 2025, seeking to increase the balance sought to £11,310.49 and, again, attaching an updated rent account. Both emails had been copied directly to the Respondent by the Applicant’s agent.

### **Case Management Discussion**

5. The CMD took place by telephone conference call on 19 May 2025 at 10am. It was attended by the Applicant’s solicitor, Mr Kenneth Caldwell, of Patten & Prentice LLP and also by Miss Kenard of Touchstone, the Applicant’s management agents. Neither Respondent attended. The Tribunal delayed the commencement of the CMD for 5 minutes to allow an opportunity for the Respondent to join late but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr Caldwell addressed the applications. He explained that there has been no recent contact from either Respondent and no rent payments made since February 2024. Prior to that, the tenancy had operated smoothly and rent was paid. There had been contact on and off from the Respondent but the last contact was from the first-named Respondent, Mr Zach Gordon, who had at that time advised that the other Respondent, Ms Jessica Smales, had moved out of the Property, although the Applicant is unaware exactly when this occurred as they have not received any direct contact from her. As things stand, Ms Smales is jointly liable in respect of the rent arrears as she is still a joint tenant. Mr Gordon had also advised that they now identified as Zara Gordon and had supplied their new email address in that regard. It was noted that Mr Caldwell’s recent communication of 15 May 2025 updating the amount of the outstanding rent had been directly emailed to Z Gordon at both their original and new email addresses. Mr Caldwell also advised that both Respondents had been fairly young (around 19 years old) when they took on this tenancy in 2021. He does not know if the arrears have arisen through a relationship breakdown or changing circumstances. There was mention of a Universal Credit application being made but the Applicant has never since been notified of any such application or further details.

7. Mr Caldwell advised that this was a 'mid-market rent' Property. The original rent had been £675 per calendar month in 2021 and has since been increased three times to the current rental of £762.10. He made reference to the rent increase notices and correspondence lodged in support of the application, together with the 'pre-action protocol' letters issued by Touchstone to the Respondent on 23 April 2024 and 13 May 2024, after arrears started to accrue. Mr Caldwell's firm was subsequently instructed and they wrote to the Respondent on 9 July 2024 and, again, on 7 August 2024 when Notice to Leave was served. The rent arrears amounted to £4,451.59 at that time and notice was served under Ground 12 as rent had by then been in arrears for more than three consecutive months. As no payments have been made since February 2024, the arrears have continued to accrue and now amount to £11,310.49.
8. Mr Caldwell confirmed that the Applicant is seeking an eviction order on the basis of Ground 12 and submitted that it was reasonable, in the circumstances, for the order to be granted. There is no information from the Respondent and the Applicant's knowledge of the Respondent's circumstances is limited to that narrated above. Mr Caldwell stated that, from the Applicant's point of view, the arrears are significant and they require to recover the Property to prevent further arrears accruing and so that it can be let out again, as a mid-market tenancy.
9. The Tribunal Members conferred and confirmed that they were satisfied that the ground for eviction was met and also that it was reasonable to grant the order in all the circumstances. There was some brief discussion regarding the issuing of the decision documentation to parties and the applicable appeal period. Mr Caldwell and Ms Kenard were thanked for her attendance at the CMD.

## **Findings in Fact**

1. The Applicant is the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 15 December 2021.
3. The rent due in respect of the tenancy was originally £675 per calendar month and has been increased during the tenancy to the current rental of £762.10.
4. Rent was paid on time until March 2024 when rent arrears started to accrue, as no further rental payments were made.
5. The last payment to account in respect of rent was made on 2 February 2024 in the sum of £732.79.
6. Arrears amounted to £4,451.59 by the time the Notice to Leave was served on 7 August 2024, amounted to £6,737.89 when this application was lodged in November 2024, and now amount to £11, 310.49.

7. The Applicant's managing agents and thereafter, their solicitors, have sought to engage with the Respondent throughout concerning the rent arrears and issued several communications to them in terms of the 'pre-action protocol'.
8. The Respondent has not offered explanation for the rent arrears, nor sought to resolve the situation.
9. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email on 7 August 2024, in terms of the tenancy agreement.
10. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 7 September 2024.
11. The Tribunal Application was submitted on 11 November 2024.
12. It is understood that the first-named Respondent has remained in occupation and that the second-named Respondent may already have vacated.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent has been in arrears of rent for three or more consecutive months.
15. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
16. The Respondent did not submit any written representations nor attend the CMD.

## **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and to the oral representations at the CMD by Mr Caldwell, the Applicant's solicitor.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12 and was satisfied that all requisite elements of that ground had been met. The Tribunal was satisfied that the first-named Respondent was

likely still occupying the let Property, that there were substantial rent arrears amounting to in excess of £11,000 and that the rent had been continuously in arrears for a lengthy period of time, with no payments having been received towards rent since February 2024.

4. As to reasonableness, all the factors mentioned above satisfied the Tribunal that it was also reasonable to grant an order in the circumstances, and to do so at this stage. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

### **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.**

# Nicola Weir

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**Legal Member/Chair**

**19 May 2025**  
**Date**