



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/24/3680**

**Re: Property at 103 Dunsinane Drive, Letham, Perth, PH1 2EJ (“the Property”)**

**Parties:**

**Mr Leonard Johnstone, Mrs Aileen Johnstone, 15 Drummond Way, Bertha Park, Perth, PH1 0AQ (“the Applicants”)**

**Ms Karen Steel, 103 Dunsinane Drive, Letham, Perth, PH1 2EJ (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision )**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

**Background**

1. By application received between 12 August 2024 and 25 October 2024 (“the Application”), the Applicants applied to the Tribunal for an Order for eviction and possession of the Property based on several Grounds set out in Schedule 3 to the 2016 Act, one being that the tenant has substantial rent arrears.
2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties showing a monthly rent of £600.00;
- ii) copy Notice to Leave in terms of, *inter alia*, Ground 12A of Schedule 3 to the Act dated 20 March 2024 with proof of service;
- iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Perth and Kinross Council being the relevant local authority;
- iv) copy rent statement showing arrears of £7,451.63 due and owing at March 2024;
- v) pre-action text correspondence sent to the Respondent.

3. The Application was amended to proceed on Ground 12A only and was accepted by the Tribunal Chamber. A Case Management Discussion (the "CMD") was fixed for 3 April 2025 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to the Respondent, by Sheriff Officer service.
4. Prior to the CMD, the Applicants lodged an updated rent statement showing that the rent arrears had increased to £9,824.69.

### **CMD**

5. The CMD took place on 3 April 2025 at 10.00 by telephone. The Applicants was present and unrepresented. The Respondent was present and was unrepresented.
6. The Applicants confirmed that they sought an eviction Order. The Respondent stated that she did not oppose the Application and the Order sought. She accepted that the rent arrears as notified by the Applicants are due.
7. The Tribunal advised the Parties that there was a preliminary matter to deal with. The Tribunal explained that Ground 12A had been repealed and that the transitional measures had expired prior to the lodging of the Application. The Tribunal invited the Applicants to move to amend the Application and Notice to Leave to Ground 12 which they did. The Tribunal sought the views of the Respondent who stated that she had no objection. The Tribunal, therefore, proceeded on Ground 12, three months' consecutive arrears.
8. With regard to the circumstances of the Parties, Mrs. Johnstone of the Applicants advised the Tribunal that the level of rent arrears has had a significant impact on the Applicants. She explained that they have a mortgage on the Property and have had to use credit cards to support themselves financially. Mrs Johnstone is unable to work due to disability but Mr. Johnstone is in employment

9. The Respondent advised that she resides in the Property with her partner and two children aged 11 and 8. She advised that she finds the Property hard to finance and that it is “hard to make ends meet”. She advised that she has is on the local authority waiting list and is expecting a call from the local authority on 4 April 2025 to assess her application to them further and award points for homelessness if the Order is granted.

### **Findings in Fact**

10. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties;
  - ii) The monthly rent is 600.00;
  - iii) There are rent arrears of £9,824.69, which amounts to in excess of 16 months' rent;
  - iv) A now valid Notice to Leave was issued by the Applicants to the Respondent;
  - v) PAR correspondence was issued on behalf of the Applicants to the Respondent;
  - vi) The Applicants rely on regular payment of the full rent meet their financial commitments secured on the Property;
  - vii) The Respondent is unable to meet the cost of the Property;
  - viii) The Respondent has two primary school age children, the elder of whom will begin secondary education in the autumn;
  - ix) The Respondent is on the local authority housing list and is hopeful of rehousing if the Order is granted.

### **Issue for the Tribunal**

11. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act.

### **Decision and Reasons for Decision**

12. The Tribunal had regard to all the information before it and to its Findings in Fact.
13. Having found that the Respondent is in rent arrears for more than three consecutive months, the Tribunal found that the eviction Ground has been met.

14. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal *“may do anything at a case management discussion .....including making a decision”*. The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.
15. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
16. The Tribunal, having no evidence in respect of state benefits, was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
17. The Tribunal noted that the Applicants, to a degree, had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1<sup>st</sup> October 2022.
18. The Tribunal then had regard to the circumstances of the Parties.
19. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
20. The Tribunal then looked to balance the rights and interests of both parties.
21. The Tribunal accepted that the Applicants rely on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondent has underpaid rent since 2021 and, on numerous occasions, has not made any monthly payments. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.
22. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent and her family would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
23. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. The Tribunal had regard to the needs of the Respondent’s children in respect of continuity of their education and took the view that the Order should

be stayed until 27 June 2025 to allow the children to complete the school year at their current school.

### **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.**

# K Moore

**8 April 2025.**

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**Right of Appeal**