

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/24/4758

Re: Property at 14 Ferguson Way, Airdrie, North Lanarkshire, ML6 6EY (“the Property”)

Parties:

Mrs Cheryl McGeever, 87 Woodlands Crescent, Bothwell, South Lanarkshire, G71 8PP (“the Applicant”)

Mr Robert Graham Russel Sands, 14 Ferguson Way, Airdrie, North Lanarkshire, ML6 6EY (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 14 Ferguson Way, Airdrie, North Lanarkshire, ML6 6EY under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 15 October 2024, the Applicant’s letting agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure)
Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 21 January 2021, a rent increase notice dated 18 July 2024, letters to the Respondent dated 22 and 29 August 2024, 5 September 2024 and 14 October 2024, a Notice to Leave dated 12 September 2024 with email to the Respondent, a rent statement and an email dated 14 October 2024 addressed to North Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 9 December 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 15 March 2025 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 5 April 2025. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 30 May 2025. This paperwork was served on the Respondent by Chelsea Murray, Sheriff Officer, Glasgow on 18 March 2025 and the Execution of Service was received by the Tribunal administration.
5. On 28 March 2025 the Applicant’s letting agent forwarded an up to date rent statement to 28 March 2025 showing arrears of £3 555.50.
6. On 4 April 2025 the Respondent sent an email to the Tribunal advising he intended to clear the arrears before the CMD. On 23 May 2025 the Respondent emailed the Tribunal to advise he had paid £1500 and was intending to pay another £500 on the day of the CMD.

Case Management Discussion

7. The Tribunal proceeded with a CMD on 30 May 2025 by way of teleconference. Mr Clark from Aquila Management Services appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/24/4759.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 21 January 2021, the rent increase notice dated 18 July 2024, the letters to the Respondent dated 22 and 29 August 2024, 5 September 2024 and 14 October 2024, the Notice to Leave dated 12 September 2024 with email to the Respondent, the rent statement to 28 March 2025, the email dated 14 October 2024 addressed to North Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 and the Respondent’s emails of 4 April and 23 May 2025. The Tribunal considered these documents.

9. Mr Clark moved the Tribunal to grant an order for eviction. He submitted that they had nearly taken the Respondent to the Tribunal on two previous occasions, but on the promise of payment the Applicant had not done so. He explained the Respondent worked for a van delivery service and that he claimed he did not always get paid on time. With reference to the rent statement, he explained that they had received a lump sum of £2,125.00 on 7 April 2022 from the tenant grant discretionary fund and that the last time the rent account was clear was on 29 April 2022. Arrears had increased as per the rent statement dated 28 March 2025 to £3555.50 from £1538.75 when the Notice to Leave had been served. Since then, rent of £600 was due on 21 April 2025 bringing the arrears to £4160.50. The Respondent made a payment of £1000 on 14 May 2025 and another payment of £500 on 23 May 2025 bringing the arrears to £3265.50. The Respondent had advised he would pay another £500 today but so far this had not been received. He further submitted the current rent is under the market rent.
10. With regard to reasonableness, he further submitted that they had sent numerous letters to the Respondent including further letters in March and April 2025. He submitted the Applicant was retired and had four rental properties. She relied on these as a source of income and was financially disadvantaged by the Respondent's failure to pay rent. He was a single man. The Property was a two bedroomed house although the Respondent lived on his own.

Reasons for Decision

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
- Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12 (rent arrears).
13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
14. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

15. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 13 October 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondent by email of 12 September 2024. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
16. The Tribunal considered the Respondent's arrears had increased dramatically since the Notice to Leave had been served, despite the recent payments from the Respondent. Arrears had been accruing since April 2022. The Tribunal found that the Applicant had established a case under Ground 12. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
17. The Tribunal noted the pre-action requirement letters lodged with the application. The Respondent had received these letters and despite making some payments towards the rent and arrears, the arrears continued to increase. The Tribunal gave weight to the submissions that the Respondent's arrears were increasing and despite the pre action requirement letters and receiving a monthly wage, he had not cleared the arrears despite promises to do so. The arrears were substantial. The Tribunal gave weight to the fact that the Applicant was retired and was reliant on rental income to help fund her retirement. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to North Lanarkshire Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Mr Clark, that the balance of reasonableness in this case weighted towards the Applicant.
18. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

19. The Tribunal granted an Order of eviction. 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.

S. Evans

31 May 2025

Legal Member

Date