

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/24/5409

Re: Property at 53 Findowrie Place, Fintry, Dundee, DD4 9NR (“the Property”)

Parties:

Mrs Kerry Donald, 556 Perth Road, Dundee, DD2 1PY (“the Applicant”)

Ms Pamela Hendry Mills, 53 Findowrie Place, Fintry, Dundee, DD4 9NR (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr T Cain (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 21st November 2024. The Applicant is seeking an eviction order under Ground 12. The Applicant lodged a partial copy of a private residential tenancy agreement between the parties in respect of the Property, which indicated it had been signed by a guarantor on 5th September 2019. The Applicant lodged a rent statement showing arrears in the sum of £5920, 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 1st April 2025 by Sheriff Officers.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 11th June 2025. The Applicant was not in attendance and was represented

by Ms Blasniak, Solicitor, Myles & Co. The Respondent was not in attendance.

4. 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.
5. Ms Blasniak confirmed there has been no recent communication or contact from the Respondent to the Applicant or their representative. The Applicant does not have a full copy of the tenancy agreement, but it is believed the tenancy commenced in September 2019 and the statutory terms for a private residential tenancy apply. The monthly rent was initially £800, and this was increased to £880 in August 2024. The Respondent stopped paying rent in May 2024. A notice to leave was served upon the Respondent in August 2024. No track and trace report was available, so a further notice was served by Sheriff Officers on 24th September 2024. The arrears were £5920 at that time. Correspondence in respect of the rent arrears has been issued to the Respondent, with no response. In January 2025, the Applicant was informed by the local authority that the Respondent was receiving benefit payments towards her rent. The Applicant applied to Universal Credit for direct payments, and these commenced in February 2025 at a rate of £615 per month, which leaves an outstanding amount of £265 each month. Payments towards arrears of £39.35 and £40.01 were made by Universal Credit in April and May 2025, respectively. The arrears are now £8660.62, which is almost ten months' rent outstanding. Ms Blasniak said the Respondent has previously indicated that she was seeking social housing.
6. In respect of reasonableness, Ms Blasniak said the Applicant had attempted to engage with the Respondent on several occasions. The relationship between the parties has now broken down. The Applicant is concerned about damage to and neglect of the Property. The Applicant has paid to reinstate a window broken by the Respondent's partner, at a cost of £1000. A new boiler has been installed at a cost of £2500. The front door lock has been broken. Recently, a gas engineer attended and refused to enter the Property due to its state. The Applicant hopes to renovate and sell the Property.
7. Ms Blasniak said the Respondent has disengaged and clearly has no interest in these proceedings. It is understood the Respondent lives with three older children, the youngest of whom is believed to be around 16. It is understood the Respondent is in part time employment.

Findings in Fact and Law

8.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced in or around September 2019, at a monthly rent of £800, which was increased to £880 in August 2024.

- (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

9. 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.
10. 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.
11. 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.
12. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
13. The Respondent has not paid rent since May 2024. The arrears are now significant and rising. The Respondent did not see fit to attend the CMD or make any representations to assist the Tribunal in considering reasonableness. The Tribunal took into account the limited information provided by the Applicant representative, but was unable to consider the likely effect of an eviction order upon the Respondent and her family in the absence of any representations. The Tribunal took into account that a large portion of the rent is now covered by Universal Credit, and that small payments are being made towards the arrears. However, there is a shortfall between the sum paid the monthly rent, and the arrears continue to rise. The Respondent

has disengaged and is making no effort to pay the shortfall. She has failed to address the arrears over a lengthy period. The arrears are substantial. The Tribunal considered it likely that, if no order was granted, the arrears would continue to rise.

14. The Applicant has complied with the pre-action protocol. The Applicant has attempted to discuss the rent arrears with the Respondent. The Applicant is suffering financially as a result of the Respondent's failure to pay the rent and address the arrears.

15. In reaching its decision, the Tribunal did not take account of the representations regarding the Respondent's behaviour or the condition of the Property, as no evidence was lodged to substantiate these claims.

16. The Tribunal observed it would have been helpful to have had an updated rent statement in advance of the CMD.

17. 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

18. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 14th July 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.

Helen Forbes

Legal Member

13th June 2025

