

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/24/5569

Re: Property at Flat 8, 6 Dauline Road, South Queensferry, EH30 9BP (“the Property”)

Parties:

Capita Trust Company Ltd as Trustee For Housing Fund for Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Keeran MacDonald-Currie, Ms Samantha Jenkins, Flat 8, 6 Dauline Road, South Queensferry, EH30 9BP (“the Respondents”)

Tribunal Members:

Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 3 December 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 16 September 2020;
3. Notice to Leave dated 13 September 2024 served by email of the same date along with statement of rent arrears;
4. Section 11 Notice to Local Authority served by email dated 27 November 2024;

5. Rent Arrears Statement as at 4 June 2025;
6. Pre Action Correspondence;
7. Certificate of Service of Tribunal CMD Notification on the Respondents by Sheriff Officers dated 25 March 2025.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 9 June 2025. The Applicant did not participate but was represented by its solicitor, Mr Caldwell. The Respondents did not participate and were not represented.

The Tribunal delayed the start of the CMD to see if the Respondents would participate but they did not.

The Tribunal were satisfied that the Respondents had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondents that they should attend and the Tribunal could determine the matter in absence if they did not.

The Second Respondent (Ms Jenkins) emailed the Tribunal Administration before the CMD commenced advising that she was now the sole tenant due to her relationship breaking down, had a young baby and was taking steps to address the arrears. She sought further time to do so.

Mr Caldwell had produced an updated Schedule of Rent Arrears as at 4 June 2025. It disclosed that the amount of arrears had increased to £12,374.57. He informed the Tribunal that he had discussed Ms Jenkin's email with his clients and whilst they would discuss the position with her and be open to any sensible proposals at this moment in time his instructions were to seek the order. Ms Jenkins had made proposals to pay the rent and contribute towards arrears last May and these had not been adhered to. His clients had no knowledge of her becoming the sole tenant or of having a young child.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987 \(S.I. 1987/1971\)](#),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 16 September 2020;
2. The monthly rent following rent increase was £729.60;
3. Notice to Leave had been served on the Respondents on 13 September 2024;
4. As at the date of service of the Notice to Leave the Respondents were in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondents were in arrears of rent in the amount of £12,374.57;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

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.

Alan Strain

9 June 2025

Legal Member/Chair

Date