

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/24/5226

Re: Property at 1 Newlands Place, Kilmarnock, KA3 2DN (“the Property”)

Parties:

Jams Property Services, 17 Mure Avenue, Kilmarnock, KA3 1UH (“the Applicant”)

Mr Andrew McPartland, 1 Newlands Place, Kilmarnock, KA3 2DN (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms E Williams (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 in the period between 13th and 18th November 2024. The Applicant is seeking an eviction order under Ground 12. The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which commenced on 22nd February 2023. The Applicant lodged a rent statement showing arrears in the sum of £2670, 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 by Sheriff Officer was initially unsuccessful as a neighbour stated that the Respondent had not lived at the Property for around a year. Subsequent enquiries by the letting agent indicated that the Respondent is still living in the Property, and service was carried out upon the Respondent on 17th April 2025 by Sheriff Officers.
3. By email dated 4th June 2025, the Respondent lodged an updated rent statement showing rent arrears in the sum of £7715.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 17th June 2025. The Applicant was represented by Mr Stewart. The Respondent was not in attendance.
5. 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.
6. Mr Stewart said there had been no correspondence or contact with the Respondent since last year. The Respondent has been in arrears for a year. There were no issues initially with the rent, but the Respondent began to miss payments. The Respondent undertook to pay an additional £200 monthly to arrears, but did not comply with the arrangement. Mr Stewart said the Property is managed by a letting agent. The letting agent was going to serve an abandonment notice following the Sheriff Officer report that no one was in the Property, however, on the next visit, the Respondent was present at the Property. The letting agent stated that the Respondent was in bad shape, having fallen down a manhole. The Respondent was asked to contact the letting agent regarding rent arrears, but no contact was made. Mr Stewart said the Respondent had stated previously that he was due a payment of £5000 which he would pay towards the arrears, but no payment was made.
7. Mr Stewart said the Respondent was not allowing entry for gas safety checks, despite contact from the letting agent.
8. In respect of reasonableness, Mr Stewart said the Applicant has 20 properties. They use a letting agent for 18 properties. This has been a stressful experience for the Applicant. Failure to pay rent and arrears impacts upon the Applicant’s ability to maintain their properties and carry out repairs. There are loans over the properties. Mr Stewart said the Applicants are having to make payment from their own pockets due to this situation. Mr Stewart said the Applicant is keen to assist tenants who are in difficulty with their rent.
9. Mr Stewart said the Respondent was self-employed at the start of the tenancy. The letting agent made enquiries as to whether any benefits were in payment, but the results were negative. The Respondent lives alone. He is believed to have a son of around 14 who may have stayed in the Property for the odd weekend. Mr Stewart said he was unaware if the Respondent had been injured, as stated to the letting agent, but this should not prevent him paying his rent, especially as he may have been entitled to benefits in such a situation. It was Mr Stewart’s position that the Respondent is ignoring all communication.

Findings in Fact and Law

10.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 22nd February 2023, at a monthly rent of £695.
- (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

11. 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.
12. 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.
13. 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.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.

15. The Respondent has not paid rent since August 2024. The arrears are now substantial 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, but was unable to consider the likely effect of an eviction order upon the Respondent in the absence of any representations. The Respondent has disengaged and is making no effort to pay the rent or address the arrears. He has failed to address the arrears over a lengthy period despite the efforts of the letting agent. The Tribunal considered it likely that, if no order was granted, the arrears would continue to rise. The Tribunal considered the tenancy is not sustainable
16. The Applicant has complied with the pre-action protocol. The Applicant's letting agent has attempted to discuss the rent arrears with the Respondent. The Applicant and their portfolio and business are suffering as a result of the Respondent's failure to pay the rent and address the arrears.
17. The Tribunal observed and informed Mr Stewart that there is no provision for an abandonment notice in the 2016 Act.
18. 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

19. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 21st 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.

H. Forbes

____ 17th June 2025

Legal Member