

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/24/4272

Re: Property at 35 Thorndean Avenue, Bellshill, ML4 2LH (“the Property”)

Parties:

Gary Charnley, 13 Derwent Drive, Coatbridge, ML5 2PD (“the Applicant”)

Stephen Gilmour, 35 Thorndean Avenue, Bellshill, ML4 2LH (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order on account of the facts in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1 This is an application for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 51 of the 2016 Act. The Applicant relied upon ground 12 of schedule 3 of the 2016 Act, stating that the Respondent had accrued rent arrears.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 28 May 2025 at 2pm. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 20 March 2025. Both

parties were invited to make written representations. No written representations were received from either party.

- 3 The first CMD took place on 28 May 2025. Prior to the teleconference the Applicant's representative, Mr Lobban of Homelink Letting Agents, contacted the Tribunal as he had not received details of how to join the call. It was noted that due to an administrative error neither party had been provided with the joining details. The Tribunal therefore determined to adjourn to a further CMD.
- 4 The second CMD was scheduled for 4 July 2025 at 2pm to take place by teleconference. The Tribunal gave notice of the CMD to the parties under Rule 17(2) of the Rules. Said notice was sent to the Respondent by recorded mail.

The CMD

- 5 The CMD took place by teleconference on 4 July 2025 at 2pm. The Applicant was represented by Mr Lobban of Homelink Letting Agents. The Respondent also joined the call.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet LAN205309;
 - (iii) Excerpt from the online landlord register;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Notice to leave and proof of delivery to the Respondent by email;
 - (vi) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council and proof of delivery by email;
 - (vii) Rent statement; and
 - (viii) Rent arrears pre-action protocol checklist.
- 7 The Tribunal heard submissions from the parties on the application. The following is a summary of the key elements of the submissions and does not represent a verbatim account.
- 8 Mr Lobban explained that the Applicant sought an eviction order due to rent arrears, which had began to accrue back in February 2022. Mr Lobban and his colleagues had tried to work with the Respondent to get his account back on track. The Applicant had been very accommodating but had now lost patience. A notice to leave had been sent to the Respondent in June 2024, at which point the arrears were just over £3000. The arrears now stood at over £11,000. Mr Lobban and his colleagues had made frequent attempts at contact with the Respondent since the notice to leave was sent, but there had been scarce response. Mr Lobban confirmed that he had visited the property on several occasions but had been unable to speak with the Respondent. Mr Lobban confirmed that the Applicant had one other rental property.
- 9 The Respondent explained that he had been injured at work and had been off for nine months, which led to the arrears accruing. He had since tried to pay off

the balance. He was only a couple of hundred pounds away from clearing the debt when the Applicant had sent him a rent increase notice. Whilst the Respondent questioned the attempts at contact as outlined by Mr Lobban, he fully accepted that he was in arrears. He accepted that he had not paid rent since June 2024. He explained that he had spoken to the council. The council had advised him that they would not help him until the Tribunal made an eviction order. The Respondent confirmed that he resided in the property with his 14 year old daughter. He was in employment. The Respondent confirmed that he had received universal credit whilst off work which he had used to pay his rent and household bills.

- 10 The Tribunal adjourned the CMD to deliberate, at which point the parties left the call, before resuming the proceedings and confirming the outcome.

Findings in fact

- 11 The property is owned by Graies Property Management Ltd. The Applicant is the sole director of that company and authorised to act on the company's behalf.
- 12 The Applicant is the landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement which commenced on 2 November 2021.
- 13 In terms of Clause 7 of the said tenancy agreement the Respondent undertook to pay rent of £525 per calendar month.
- 14 The Applicant delivered a notice to leave to the Respondent by email on 3 June 2024. The notice to leave included ground 12 and stated that an application would not be made to the Tribunal before 4 July 2024.
- 15 The Respondent consented to the use of email for the delivery of notices under the terms of the tenancy agreement between the parties.
- 16 When the notice to leave was sent to the Respondent rent arrears in the sum of £3,099.72 were outstanding.
- 17 The Applicant has sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council by email.
- 18 The Respondent last paid rent on 3 June 2024. The Respondent's payments prior to that had been sporadic and inconsistent.
- 19 As at the date of this decision, rent arrears in the sum of £11,249.22 have accrued.
- 20 The arrears are not known to be due to any failure or delay in the payment of a relevant benefit.

- 21 The Applicant has provided information to the Respondent regarding the rent arrears and his rental obligations. The Applicant has made efforts to agree a payment plan with the Respondent and has directed him to agencies for advice and support.
- 22 The Respondent is employed. The Respondent resides in the property with his daughter aged 14.
- 23 The Respondent has spoken with the local authority. The local authority have advised the Respondent that they will provide him with assistance once the Tribunal makes an eviction order.

Reasons for decision

- 24 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties.
- 25 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties is a private residential tenancy, and that the Respondent has been given a notice to leave that complies with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant has given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003 at the time of making this application. The Tribunal therefore considered whether ground 12 of schedule 3 of the 2016 Act is met in this case.
- 26 The Tribunal considered the wording of ground 12:-
“12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
(2).
(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—
(a) 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, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

27 The Tribunal accepted based on the rent statement produced by the Applicant that the Respondent has been in arrears for three or more consecutive months. The statement showed the history of the rent account and there was no contradictory evidence before the Tribunal. The Respondent accepted that he had paid no rent since June 2024.

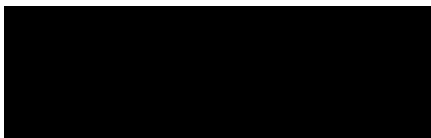
28 The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the rent arrears in this case.

29 The Tribunal gave most weight to the level of arrears which were now significant, and the prolonged period over which they had accrued as a result of the Respondent's default. Payment of rent is a fundamental obligation of any tenancy. The Respondent had repeatedly failed to pay rent consistently in accordance with the terms of the tenancy over a prolonged period, and had stopped paying completely in June 2024. The arrears now stood at over £11,000. There was no evidence to suggest that the arrears were due to any failure or delay in payment of relevant benefits, to which the Respondent may be entitled.

- 30 The Tribunal carefully considered the Respondent's circumstances. He did not appear to have any reasonable explanation as to why the arrears had increased to their current level. He had referred to having been off work, but had confirmed during the CMD that he was back in employment and had been for some time now. There appeared therefore to be no justification as to why he had failed to pay the rent. The Tribunal took into account the fact that both he and his daughter would be at risk of homelessness if the Tribunal made an eviction order. However, the Respondent had spoken with the local authority who had assured him that he would be offered assistance once the order was granted. Furthermore, the Respondent had not highlighted any health issues that would place himself and his daughter at particular risk.
- 31 Accordingly, having considered the above factors as relevant to the issue of reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 32 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.



Legal Member/Chair

Date 4th July 2025