

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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**

**Chamber Ref: FTS/HPC/EV/24/3155**

**Re: Property at 7E Grange Street, Kilmarnock, KA1 2BG (“the Property”)**

**Parties:**

**Mrs Amber Nickson, Mr John Nickson, Wye Barn, Brewer Lane, Scorton,  
Preston, PR3 1DA (“the Applicants”)**

**Mr Christopher McCann, 7E Grange Street, Kilmarnock, KA1 2BG (“the  
Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Gerard Darroch (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 be granted in favour of the Applicant and against the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that for three or more consecutive months the Respondent has been in arrears of rent and it is reasonable on account of that to issue an eviction order.**

**Background**

1.This application for a possession order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 10<sup>th</sup> July 2024 and accepted by the Tribunal on 3<sup>rd</sup> September 2024.A case management discussion was fixed for 25<sup>th</sup> March 2025 at 10am.

**Case Management Discussion**

2. The Applicant did not attend the case management discussion but was represented by Miss Hughes of Lime Green Estate Agents. There was no appearance by or on behalf of the Respondent. The Tribunal noted that the application, supporting papers and the date of the case management discussion had been intimated to the Respondent by Sheriff Officers on 12<sup>th</sup> February 2025 by depositing these through the letterbox at the property. The Tribunal was satisfied that the Respondent had received fair notice of the application and that the Tribunal could proceed in his absence.

3. The Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, proof of service of the Notice to leave, two rent statements one of which was up to date to March 2025, communications between the landlord's agent and the Respondent, a pre action protocol letter, a notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 together with proof of intimation of the notice to the local authority.

4. The parties had entered into a tenancy agreement at the property with effect from 21<sup>st</sup> July 2021 with monthly rent payable of £500 payable in advance.

5. Miss Hughes advised the Tribunal that rent had been in arrears in the tenancy since January 2024. The Landlord's agents were aware that the Respondent had health problems and had been off work for a period but as of the date of the case management discussion he was believed to be back working full time. He had offered to pay off the rent arrears in March 2024 but the rent account had not improved and the arrears had increased. The landlord's agent had offered payment plans. At that time the Respondent offered financial information and the landlord's agent was given to understand by the Respondent that his health issue was short term. The agents had considered that he might have left the property but he had emailed them on 15<sup>th</sup> February 2025 offering to pay the rent and arrears at £100 per week. There was communication around that time between the agent and the Respondent but ultimately the landlords rejected the offer as they had his own financial difficulties and in any event despite the offer only £200 had been paid by the Respondent towards the rent since December 2024. Miss Hughes confirmed that at the date of the case management discussion the rent arrears totalled £4690.

6. Miss Hughes indicated that the Respondent was believed to live alone and had never mentioned any issues regarding delay or failure of any benefit payment and it was understood the rent arrears had been caused by his absence from work for health reasons. The agent had never been advised if the Respondent had approached the local authority for assistance with finding other accommodation.

7. Miss Hughes advised that the landlords were suffering their own financial difficulties due to the loss of rent.

8. A Notice to Leave in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 dated 9<sup>th</sup> May 2024 was emailed to the Respondent on the same date setting out that no application to the Tribunal would be made until 9<sup>th</sup> June 2024.

9. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in relation to this application on 10<sup>th</sup> July 2024.

10. The Tribunal also had sight of a record of communications between the landlord's agent and the Respondent. In February 2024 the landlord's agent wrote to the Respondent asking for financial information and signposting him to sources of support if he was having difficulty in paying the rent.

11. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

12. The parties entered into a tenancy agreement at the property with effect from 21<sup>st</sup> July 2021.

13. The monthly rent payable in terms of the tenancy agreement was £500 per month payable in advance.

14. Rent arrears in terms of the tenancy started to accrue around January 2024.

15. The Respondent advised the Applicants' agents early in 2024 that he would pay off the rent arrears but did not do so.

16. The Respondent was offered payment plans on behalf of the Landlords but most of the communications sent to him went unanswered.

17. The Respondent had a period of ill health in 2024 which meant he was off work but it is understood to be working full time as of March 2025.

18. In February 2024 the Applicant's agents sent a pre action protocol letter to the Respondent asking for financial information and signposting him to sources of support.

19. In mid-February 2025 the Respondent contacted the landlord's agents offering to pay the rent and the sum of £100 per week towards the rent arrears.

20. The Applicants did not accept the offer and only £200 was paid towards the rent or the arrears at that time.

21. A Notice to Leave in proper form was sent to the Respondent on 9<sup>th</sup> May 2024 indicating that an eviction order would be requested in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act due to rent arrears over 3 consecutive months but an application to the Tribunal would not be made until 9<sup>th</sup> June 2024.

22. When the Notice to leave was sent to the Respondent the rent arrears stood at £1200 and these had accrued since January 2024

23. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 in respect of this application was sent to the local authority by email on 10<sup>th</sup> July 2024.

24. Accrued rent arrears at the property have reached £4690 in March 2025 and the Respondent has been in rent arrears in terms of the tenancy agreement since January 2024.

25. The Applicants are suffering financially due to the lack of rent payments being made in terms of the tenancy.

26. The rent arrears have not accrued due to any delay or failure in the payment of a relevant benefit.

### **Reasons for Decision**

The Tribunal was satisfied that the appropriate procedures had been carried out in terms of the Notice to Leave and the section 11 Notice sent in this application. The rent arrears in this application have been ongoing since January 2024 and the Respondent's offer to pay the rent and a sum towards the arrears in February 2025 seems to have been unrealistic with only a small sum paid off and no rent payments made other than this since December 2024. The Tribunal was advised that the Applicants are financially affected by the fact that no rent payments are being received by them. The Respondent did not attend the case management discussion nor was he represented, Given the whole circumstance of the application and the age and history of the rent arrears the tribunal considered that it was reasonable to grant the order.

### **Decision**

The Tribunal determined that an eviction order be granted in favour of the Applicant and against the Respondent in terms of Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that for three or more consecutive months the Respondent has been in arrears of rent and it is reasonable on account of that to issue an eviction order.

### **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.**

Valerie Bremner

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**Legal Member/Chair**

25.3.25  
**Date**