



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/0300

Re: Property at 311 Grathellen Court, Merry Street, Motherwell, ML1 4BQ (“the Property”)

Parties:

Mrs Audrey Neill, Mr John Neill, 98 Wishaw Road, Waterloo, Wishaw, ML2 8EA; 13 Silverwells Crescent, Bothwell, G71 8DR (“the Applicant”)

Mr Gary McGill, 311 Grathellen Court, Merry Street, Motherwell, ML1 4BQ (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Ann Moore (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 in favour of the Applicants against the Respondent.

1. An application was received on 24 January 2025 from the Applicants’ solicitor under Rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
 - (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 21 September 2021.
 - (ii) Copy Notice to Leave dated 14 November 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 18 December 2024.

- (iii) Partial undated rent statement showing the Respondent's outstanding rent arrears to be £5300.
 - (iv) Copy notice to North Lanarkshire Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email dated 14 November 2024.
 - (v) Copy pre-action requirements letters sent by the first Applicant, Mrs Audrey Neill, to the Respondent dated 14,21 and 28 November 2024.
3. In response to a request from the Tribunal administration, further information was received from the Applicant's solicitor on 24 February 2025.
 4. The application was accepted on 28 March 2025.
 5. The Tribunal issued a direction to the Applicants on 23 July 2025 requiring them to provide an updated rent statement. A response was received from the Applicants' solicitor on 30 July 2025, enclosing a updated rent statement which showed the outstanding arrears to be £13,530 as at that date.
 6. Notice of the case management discussion (CMD) scheduled for 19 August 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 4 July 2025. The Respondent was invited to submit written representations by 24 July 2025.
 7. No written representations were received from the Respondent prior to the CMD.

The case management discussion

8. A CMD was held by teleconference call on 19 August 2025. The first Applicant, Mrs Audrey Neill, was present on the teleconference call and was represented by her solicitor, Mr Alistair Buttery of Whyte Fraser and Co.
9. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. He did not join the teleconference call, however, and no telephone calls, messages or emails had been received from him.
10. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a case management discussion had been duly complied with. It therefore proceeded with the CMD in the absence of the Respondent.

The Applicants' submissions

11. Mr Buttery asked the Tribunal to grant an eviction order in favour of the Applicants against the Respondent. He said that Mrs Neill had not heard from the Respondent in over a year. The Respondent had paid no rent since May 2024. The outstanding arrears currently totalled £13530.
12. No information had been provided to either the Applicants or the Tribunal as to why he was in such significant arrears. Mrs Neill had tried her best to assist the Respondent to address the arrears, but he had not responded.
13. Mrs Neill said that she knew little about the Respondent's circumstances, but believed that he lives alone in the property. He had previously been in employment, but she was unsure if this was still the case. He had never to her knowledge been in receipt of housing benefit during his tenancy. Any rent payments received had come directly from the Respondent himself.
14. She said that she had visited the Respondent regularly and had tried to agree a payment plan with him, but he had refused to reply to her calls and emails. The last time she had spoken to him was in May 2024, after which he had made a payment of £400, but he had paid nothing since then.
15. Mrs Neill owns around a dozen rental properties. She said that she had never been in this situation before, as she always works well with her tenants if there are any problems. There is a mortgage over the property, which the Applicants continue to pay in the absence of any rent being paid.

Findings in fact

16. The Tribunal made the following findings in fact:
 - The Applicants own the property jointly. The second Applicant, Mr John Neill, is the registered landlord.
 - The Respondent has lived in the property since 14 April 2015, originally under a short assured tenancy. There is now a private residential tenancy in place between the first Applicant and the Respondent, which commenced on 21 September 2021.
 - The rent payable under the tenancy is £400 per calendar month, payable in advance on the twenty-first day of each month.
 - The Notice to Leave was validly served on the Respondent by email on 14 November 2024.
 - The Respondent has been in rent arrears continuously since July 2020. He has paid no rent since May 2024.

- The Applicants have complied with the pre-action requirements.
- As at the date of the CMD, the Respondent owed £13530 in rent arrears.

Reasons for decision

17. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

18. The Tribunal considered whether Ground 12 (rent arrears) had been met. Ground 12 states:

Rent arrears

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.

20. The Tribunal noted that the Respondent had been continuously in arrears since at least July 2020. He had therefore been in rent arrears for three or more consecutive months.

21. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. In doing so, it took into account all of the evidence before it.

22. The Tribunal was satisfied that the Applicants had complied with the pre-action requirements. The Tribunal was also satisfied on the basis of the evidence before it that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
31. The Tribunal noted that the Applicants were currently owed £13530 in rent arrears. He had paid no rent for more than a year as at the date of the CMD. It also noted that the Applicants were making mortgage payments in respect of the property each month, despite receiving no rent.
32. The Tribunal had little evidence before it regarding the Respondent's circumstances, as he had not submitted written representations during the Tribunal process. It appeared, however that he lives in the property alone, and has been resident there for more than ten years.
32. The Tribunal found Mrs Neill to be credible and reliable in her evidence. It accepted her evidence that she had made considerable efforts to contact the Respondent regarding the arrears and a possible payment plan, but that he had failed to engage with her about this.
33. The Tribunal gave particular weight to the substantial rent arrears owed by the Respondent to the Applicants. It also noted that the Respondent had not opposed the application.
33. The Tribunal decided that in light of all the above considerations, it was reasonable in all the circumstances to grant an order for eviction in favour of the Applicants against the Respondent.

Decision

The Tribunal grants an order in favour of the Applicants against the Respondent for recovery of possession of the property.

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.

Sarah O'Neill

19 August 2025

Legal Member/Chair

Date