

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 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/5161

Re: Property at 2 Thurso Crescent, Dundee, DD2 4AY (“the Property”)

Parties:

Mr Stephen Dalzell, Mr Janet Dalzell, 6 Piperdam Drive, Dundee, DD2 5LY (“the Applicants”)

Ms Rebekah Locherty, Mr Craig Alexander Small, 2 Thurso Crescent, Dundee, DD2 4AY; 22 Carolina Court, Broughty Ferry Road, Dundee, DD4 7JE (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Frances Wood (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 against the Respondents in favour of the Applicants.

Background

1. The Applicants lodged an application for an eviction order in terms of Section 51 and Ground 12 of schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, rent statement, section 11 notice and evidence of compliance with the rent arrears pre action protocol were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer. The application was served on the second Respondent at his new address as the Respondents have separated. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 16 July 2025 at 2pm and that they were required to participate. Prior to the CMD the Applicant lodged an updated rent statement and information from the Local Authority.

3. The CMD took place on 16 July 2025. The Applicants participated. The Respondents did not participate.

Summary of Discussion at CMD

4. The Applicants told the Tribunal that they were aware that the parties had separated. They confirmed that the sum specified in the updated rent statement of £15,081 is still outstanding. They believe that the first Respondent is still living at the property as she has not notified Council Tax that she has moved out and they have noticed lights on, and windows open at the property, when they have driven past. However, they have had no recent contact with her.
5. In response to questions from the Tribunal, the Applicants advised that they own other rental properties. Both are also still working although Mrs Dalzell is semi-retired. The rent arrears are causing financial problems for them as there is a mortgage over the property. They have met with the first Respondent on a few occasions since the arrears started when she has made repayment offers but not adhered to any arrangements made. In July 2024 they agreed to accept the sum of £4000 in full settlement of the arrears, although £7000 was owed, on condition that Ms Locherty arranged for universal credit housing costs to be paid directly to them. However, no payments to the arrears or monthly rent charge were made. Enquiries made on their behalf established that Ms Locherty was previously in receipt of Universal Credit but failed to pass on the housing costs to the rent account. More recently they have been told that that she is not currently in receipt of benefit. The Applicants advised the Tribunal that Ms Locherty first lived at the property with a former partner and three children. One of the children is disabled and needed a ground floor bedroom. When Ms Locherty and the partner separated, Mr Small moved in and became the joint tenant. It is understood that the children of the previous relationship live with the previous partner. When the Applicants visited the property there was no evidence of any children living there. Furthermore, when they provided Ms Locherty and Mr Small with alternative accommodation while a leak was being repaired, they were not accompanied by any children

Findings in Fact

6. The Applicants are the owners and landlords of the property.
7. The Respondents are the tenants of the property in terms of a private residential tenancy agreement.
8. The Respondents are due to pay rent at the rate of £1050 per month.
9. The Respondents have been in arrears of rent since December 2023, and no payments have been made by the Respondents since February 2024. The Local Authority paid discretionary housing payments to the rent account between June and September 2024. The total sum received was £2700.
10. The Respondents currently owe £15,081 in unpaid rent.

11. The Applicant served a Notice to leave on the Respondents on 15 July 2024.
12. The first Respondent is believed to reside at the property alone. The second Respondent moved out of the property when the Respondents separated.
13. The Applicants have issued letters issued in compliance with the rent arrears pre action protocol.
14. The first Respondent is not in receipt of Universal Credit or Housing Benefit.
15. The first Respondent has three children who reside with a former partner.
16. The Applicants have experienced financial difficulty as a result of the rent arrears.

Reasons for Decision

17. The application was submitted with a Notice to Leave dated 15 July 2024, together with a copy email which establishes that the Notice was sent to the Respondents on that date. The Notice states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.
18. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
19. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
20. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
21. Sub-Paragraph (4) states, "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 Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.

22. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondents currently owes £15,081 and that they has been in arrears of rent for three or more consecutive months, both at the date of service of the Notice to leave and the CMD. Part 1 of Ground 12 is therefore established.

23. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

- (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant provided copies of letters issued to the Respondents in compliance with the protocol.
- (b) The Tribunal is also satisfied that there is no evidence that the arrears are attributable to a delay or failure in the payment of a relevant benefit. The Applicants have made enquiries and have been advised that the first named Respondent has not made a claim for benefit and is not in receipt of Universal Credit.
- (c) The second named Respondent no longer resides at the property
- (d) The arrears are substantial and increasing.
- (e) Although the First Respondent has three children, they do not reside at the property and would not be affected by an eviction order
- (f) The Respondents did not participate in the CMD or notify the Tribunal if the application is opposed.
- (g) The Applicants have a mortgage over the property and are experiencing financial hardship due to the arrears.

24. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 23, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

25. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

17 July 2025