

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (Act)

Chamber Ref: FTS/HPC/EV/25/0054

Re: Property at 1 Bracken Brae, Lesmahagow, ML11 0AZ (“the Property”)

Parties:

Mis Christine Whitefield, 51 Coalburn Road, Coalburn, ML11 0LH (“the Applicant”)

Mr Darroch Struthers, 1 Bracken Brae, Lesmahagow, ML11 0AZ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.

Background

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 8 January 2025;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 10 May 2021;
3. Notices of Rent Increase dated 1 June 2022, 18 July 2023 and 10 July 2024.
4. Notice to Leave dated 6 December 2024 served by Sheriff Officer on the same date;
5. Section 11 Notice to Local Authority served by email dated 8 January 2025;
6. Rent Arrears Statement;

7. Sheriff Officers Certificate of Service of CMD Notification on the Respondent dated 10 June 2025.

Case management Discussion (CMD)

The case called for a CMD by telephone on 31 July 2025. The Applicant did not participate but was represented by her Letting Agent. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but he did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that he should attend and the Tribunal could determine the matter in absence if he did not.

The Tribunal decided that it was fair and reasonable to proceed in the Respondent's absence.

Ms Young confirmed that the Respondent was in rental arrears as at the date of the CMD in the sum of £7,400. No rent has been paid since 4 June 2024.

To the Applicant's knowledge, the Respondent lives in the Property with his Partner and is in employment. He is not in receipt of Universal Credit or other rental assistance.

The Applicant is unaware of any disability or vulnerability.

The Applicant is a commercial landlord with a number of properties.

The Respondent has not engaged or offered any payment plan.

The Respondent continues to occupy the property rent-free.

The Applicant requires the Property for her daughter to live in for the reasons set out in their respective affidavits and in the application. This is also the subject of the conjoined case EV/24/5284 under Ground 5.

There is no information available regarding the Respondent's current circumstances or intentions.

Decision and Reasons

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(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 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.

(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.

The Tribunal then considered the documentary evidence it had received and Mr Sloan's submissions. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 10 May 2021;
2. The current monthly rent was £595;
3. Notice to Leave had been served on the Respondent on 6 December 2024;
4. As at the date of service of the Notice to Leave the Respondent was in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. The Applicant's daughter intends to occupy the Property as her home;
6. The Applicant has other rental Properties;
7. The Respondent has not paid rent since 4 June 2024 and is currently in arrears of £7,400. He lives in the Property with his Partner, is in employment and not in receipt of benefits to the Applicant's knowledge;
7. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;

8. Section 11 notification had been served on the local authority;
9. The Respondent has not engaged or offered any payment plan.

The Tribunal was satisfied that Ground 12 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

The Respondent had not provided any information to suggest why it would not have been reasonable to grant the order. The Tribunal considered that the considerable and mounting amount of arrears, the failure to engage with the Applicant and the Applicant's daughter's intention to live in the Property meant that it was reasonable in the circumstances to grant the order sought.

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.

A Strain

31 July 2025

Legal Member/Chair

Date