

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

Chamber Ref: FTS/HPC/EV/25/0244

Re: Property at 8 Henry Street, Dumfries, DG1 2LL (“the Property”)

Parties:

Janet Jones and William Barrie Jones, 4 George Douglas Drive, Dumfries, DG2 7ER (“the Applicants”)

Scott Robertson, 8 Henry Street, Dumfries, DG1 2LL (“the Respondent”)

Tribunal Members:

**Joel Conn (Legal Member)
Melanie Booth (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 9 October 2022.
2. The application was dated 21 January 2025 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave dated 10 December 2024 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by email (in terms of the Tenancy Agreement) on that date. The Notice relied upon Grounds 11, 12 and 14 of Schedule 3 Part 1 of the 2016 Act. The Notice intimated that an application to the Tribunal would not be made before 10 January 2025.

3. The Notice to Leave provided the following information in support of the three grounds:
 - a. Ground 11: The Applicants relied on the Respondent keeping a “large dog” at the Property. The Tenancy agreement lodged with the application prohibited, at clause 34, pets being kept at the Property without the Applicants’ consent.
 - b. Ground 12: The Applicants relied on the rent of £395 per month being missed September to December 2024. The Tenancy agreement lodged with the application set out a rent of £395 per month due in advance on the 9th of the month.
 - c. Ground 14: The Applicants relied on three specifically dated incidents and some further undated incidents:
 - i. 27 May 2024: A complaint from a neighbour lodged via the Council.
 - ii. 31 August 2024: A visit by police.
 - iii. 17 November 2024: A further visit by police.
 - iv. The elderly lady across the landing reporting being anxious as her door handle had been tried, which she attributed to the Respondent.
 - v. Noise issues.

The application papers provided significant further information on some of these points, and information on the anti-social behaviour was provided by the Applicants in further emails prior to the case management discussion (“CMD”).
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dumfries & Galloway Council on 10 December 2024 was provided with the application. There was no evidence in the application papers of compliance with provision of the pre-action protocol information other than that information which forms part of the information notes in the Notice to Leave.

The Hearing

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 8 August 2025 at 14:00. We were addressed by the first named Applicant, who spoke on behalf of both Applicants. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicants said that no communication had been received from the Respondent since around September 2024 and he had neither paid rent nor allowed access to the Property since.
7. We noted that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal. Having not commenced the CMD until around 14:10, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.

8. We raised the issue that the application was originally drafted in the name of the first named Applicant only, though a letter of consent was subsequently provided (and included in the application papers) from the second named Applicant for her to act on his behalf. At the CMD the first named Applicant confirmed that their intention had been that both of them would be Applicants. (We noted that they were co-owners of the Property and specified as joint landlords on the Tenancy agreement.) They had, however, misunderstood how to include two applicant's names on the form so had entered only the first named Applicant's details. We allowed an amendment at the CMC to correct the designation of the Applicants to specify both of them.
9. The Applicants provided further clarification of the various issues in the Notice to Leave and the other application papers and subsequent emails. We noted the following on each of the grounds:

Ground 11

- a. The Applicants were not certain that the Respondent owned any dogs, but believed he may look after them for others. The first reported anti-social behaviour incident (reported through the Council but the first named Applicant then visited the neighbour to discuss) was an incident where a neighbour had been distressed by the Respondent with a large dog.
- b. Dogs had continued to be present at the Property and the Applicants lodged a photograph of damage to rear window blinds which they believed were caused by dogs being uncontrolled within the Property.
- c. The most recent note of an incident was 8 July 2025 where a neighbour had reported to the Applicants that "she was very scared in the back garden ... having been met with two very large dogs along with" the Respondent.

Ground 12

- d. The Respondent had been an irregular payer from at least November 2023, when arrears of £100 built up. The Applicants worked with him to allow irregular instalment payments and generally the arrears returned to no more than £100 between then and September 2024.
- e. The irregularity became worse towards September 2024 and the Applicants believed that the Respondent was in financial distress. The first named Applicant spoke with him to suggest that he sought assistance and advice (as well as offering to connect him with food banks). He told her that he was too busy working to seek advice or assistance. Shortly after, he said that he was no longer working, but provided no reason why he had ceased to work. He had made no further payments since September 2024.
- f. The monthly rent for the property is £395 to be paid on the 9th of every month. As of the date of the CMD (8 August 2025) he was in arrears of £4,445.
- g. The Applicants knew of no attempt by the Respondent to seek benefits.

Ground 14

- h. After the initial report of 27 May 2024 (referred to above) there was a single report of a disturbance during that Summer (which had resulted in a police attendance on 31 August 2024) before matters started to deteriorate from 17 November 2024 (with a further visit by police) onwards.

- i. All neighbours in the block lived alone, and all had now fitted video doorbells as they were concerned by visitors to the block, and the behaviour of the Respondent in general. The elderly neighbour across the landlord reported being most worried during darkness, due to not knowing who was around. A single female neighbour had taken to staying back at her parents for periods, due to the noise and anti-social behaviour.
 - j. The elderly lady across the landing from the Property reported being anxious as her door handle had been tried, and she also noted on her doorbell camera that people could be seen standing around in the common close. There was a belief by some of the neighbours that the Respondent may have allowed others to have a key, or that he left one hidden somewhere, as people were reported to be coming and going day and night.
 - k. There were continued noise issues, including a further visit by police on 11 July 2025 after banging and noise at 04:11.
 - l. There was damage to the front door noted around April 2025 which appeared that someone had put a foot through it. A photograph was lodged in the application papers of the damage.
 - m. Around December 2024 the Respondent was seen to be sick in the common close, and an upstairs neighbour had to clean it.
 - n. Around April 2025, it was reported that the Respondent had urinated in the hallway.
10. The Applicants provided further oral submissions on the background in regard to the reasonableness of the application:
- a. The Property was a one-bedroom flat and it was not believed to be specially adapted for the use of the Respondent, nor especially suitable for his needs.
 - b. The Respondent was around 42 years old and formerly in employment.
 - c. The Respondent had no known physical nor mental health issues.
 - d. The Respondent was believed to have a child in Australia but no dependents resident at the Property.
 - e. The Property was one of seven that the Applicants owned and rented out. The lack of rental income was causing a financial pressure on the Applicants.
 - f. The Applicants were further stressed by the issues with the Property, and were aware of the distress and inconvenience caused to the neighbours (which further caused the Applicants distress as they were keen to resolve matters).
 - g. The Applicants believed that the Respondent had received advice from the local homelessness team that he should not move out voluntarily, and that he should instead wait until the Applicants had an order for eviction.
11. No motion was made for expenses.

Findings in Fact

12. On 4 and 5 October 2022, the Applicants let the Property as a Private Residential Tenancy to the Respondent with commencement on 9 October 2022 ("the Tenancy").

13. In terms of clause 7 of the Tenancy agreement, the Respondent required to pay rent of £395 a month in advance on the 9th day of each month.
14. In terms of clause 34 of the Tenancy agreement, the Respondent was not to keep any pets at the Property without the Applicants' consent.
15. In terms of clause 20 of the Tenancy agreement, the Respondent undertook not to engage in any antisocial behaviour.
16. On 10 December 2024, the Applicants drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that he was in rent arrears for a period of at least three consecutive months, that he was held to be in breach of the Tenancy due to keeping a dog, and that he was engaging in anti-social behaviour.
17. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 10 January 2025.
18. The Applicants served a copy of the Notice to Leave on the Respondent by email on 10 December 2024.
19. The Applicant raised proceedings on 21 January 2025 for an order for eviction with the Tribunal, under Rule 109, relying on Grounds 11, 12 and 14 of Schedule 3 Part 1 of the 2016 Act.
20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dumfries & Galloway Council by the Applicants.
21. Between at least 27 May 2024 and 7 July 2025, the Respondent kept at least one large dog with him at the Property.
22. The Applicants had not consented to the Respondent keeping any dogs at the Property.
23. Between at least 27 May 2025 and 11 July 2025 the Respondent had undertaken, and allowed others visiting him to undertake, anti-social behaviour at the Property or its common parts which included:
 - a. Noise and disturbance incidents reported to the Police on 31 August 2024, 17 November 2024 and 11 July 2025 including shouting and noise late at night or early in the morning (such as on 11 July 2025).
 - b. Placing neighbours in a state of alarm, by standing in the common close or garden with others and with large dogs.
 - c. Violent incidents at the Property including damage to the front door.
 - d. Around December 2024, being sick in the common close and not cleaning same.
 - e. Around April 2025, urinating in the common close and not cleaning same.
24. As of 10 December 2024, the Respondent was in arrears of rent of £1,285.

25. As of 8 August 2025, the Respondent was in arrears of rent of £4,445 having failed to make payment of rent since September 2024 until that date.
26. The Respondent does not claim to have paid any amount of the arrears of £4,445 remaining as at 8 August 2025.
27. The sum of arrears remaining as of 8 August 2025 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
28. The Respondent has no known dependents living with him at the Property.
29. The Property is not specially adapted for the use of the Respondent nor is its location specifically suitable for the Respondent's needs.
30. Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 11 July 2025.

Reasons for Decision

31. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent in respect of the interests of the Applicants.
32. Ground 11 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *... the tenant has failed to comply with an obligation under the tenancy.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has failed to comply with a term of the tenancy, and*
 - (b) *the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*
 - (3) *The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

Ground 12 of Schedule 3 applies if:

- (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
- ...
- (2) *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.*

...

Ground 14 of Schedule 3 applies if:

- (1) *... the tenant has engaged in relevant anti-social behaviour.*
- (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has behaved in an anti-social manner in relation to another person,*
 - (b) *the anti-social behaviour is relevant anti-social behaviour,*
 - (ba) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and*
 - (c) *either—*
 - (i) *the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or*
 - (ii) *the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*
- (3) *For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—*
 - (a) *doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,*
 - (b) *pursuing in relation to the other person a course of conduct which—*
 - (i) *causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or*
 - (ii) *amounts to harassment of the other person.*
- (4) *In sub-paragraph (3)—*
 - “conduct” includes speech,*
 - “course of conduct” means conduct on two or more occasions,*
 - “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*
- (5) *Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is*

reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—

- (a) who it was in relation to, or*
- (b) where it occurred.*

33. Sufficient evidence was provided that the Respondent was allowing dogs to be kept at the Property both before the Notice to Leave and up to at least 7 July 2025. There is a breach of the Tenancy. There is no materiality provision for Ground 11 so any breach of the Tenancy agreement will satisfy the ground subject to paragraph 2(b) regarding reasonableness (where materiality of the breach will be a relevant consideration).
34. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that the Respondent's failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.
35. Material evidence was provided that the Respondent was undertaking anti-social behaviour at the Property and the common parts which was causing alarm, distress and nuisance to the neighbours. This has been occurring since around May 2014 (so within 12 months of the application) and through to at least 11 July 2025. Ground 14 is satisfied subject to paragraph 5 regarding reasonableness.
36. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard of persistent arrears, material breach of the tenancy agreement, or anti-social behaviour. We were satisfied that the Applicant's reasons for seeking eviction were reasonable under Ground 14 given the behaviour referred to. We further held it to be reasonable to evict under Ground 12, despite the lack of full compliance with the pre-action protocol provisions. There was no written notification of the relevant information to the Respondent other than the information within the Notice to Leave. We did, however, note the first named Applicant's report of a discussion with the Respondent around September 2024 directing him to sources of advice (which he said he was too busy to approach). This, and the size of the arrears, lead us to hold it is reasonable to evict under Ground 12 notwithstanding the lack of full compliance with the pre-action protocol. In regard to Ground 11, the breach of the prohibition on pets was undertaken in form that affected the condition of the Property and has also been a form of anti-social behaviour. The breach was material. We regard it is reasonable to evict in regard under Ground 11. Further, it is reasonable to evict given the obvious distress to the neighbours and the Applicants. The Applicants spoke openly about the financial pressure the non-payment of rent has caused, as well as the stress of handling the Property and their concerns for the neighbours. There was an absence of any engagement by the Respondent on payment of the arrears, his behaviour, or his continued keeping of dogs at the Property. The Respondent did not appear or provide submissions in regard to any issue regarding reasonableness and we are satisfied that it is reasonable to evict on the basis of the information before us on each of the grounds.

37. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

38. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to each of grounds 11, 12 and 14 of Schedule 3 of that Act.

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.

Joel Conn

Legal Member/Chair

20 August 2025

Date