

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/25/0069

Re: Property at 28 Curlinghall, Largs, KA30 8LA (“the Property”)

Parties:

Ms Tonia Michelle Wong Kee, House 30 Phoenix Palm Villa, No 56 Lung Mei Village, Sai Kung, NT, Hong Kong (“the Applicant”)

Mr Gordon Anderson, 28 Curlinghall, Largs, KA30 8LA (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Melanie Booth (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- **Background**
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of rent arrears accrued by the Respondent under a private residential tenancy, being Ground 12 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- **Case Management Discussion**
 2. A Case Management Discussion (“CMD”) took place on 25 July 2025. The Applicant was represented by their letting agent, Andrea Bell of Acre Lettings. The Respondent appeared personally and represented himself.

3. A separate application by the Applicant seeking a payment order against the Respondent under Rule 111 of the Rules and under case reference FTS/HPC/CV/25/0070 was heard at the same time
4. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"). The Respondent had failed to make payment of rent and at the time of submitting the application had fallen into arrears amounting to £5,532.30. Since submitting the application, the arrears had continued to increase to £8,287.30. An up to date rent statement had been lodged. The arrears had commenced in December 2023 and there had been a continuous arrear to date.
5. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, on 15 October 2024 by Sheriff Officer. The Respondent had been in continuous arrears for at least 3 months and the arrears at the date of the CMD stood at £8,287.30. No payment proposals had been entered into regarding the rent arrears. Sporadic payments had been made, the most recent payment being 14 July 2025 of £785 and prior to that, in April 2025. There had been payment of some Universal Credit but these were partial payments, and sporadic.
6. The Respondent admitted that the sum of £8,287.30 fell due to be paid. It was submitted that he had been self-employed for approximately one year, and had applied for Universal Credit of which he had received some payments, but that he was not currently entitled to it due to his self-employment. It was submitted that he had obtained contracts via his limited company under which he would earn "good money" but that he had a series of unfortunate circumstances which had led to him being unable to pay his rent. He had previously started a job as a Project Manager at a salary of £70k but the company went bankrupt after a month and he has so far been unable to claim any payment due to him via the Insolvency Service.
7. It was submitted by the Respondent that he had around £2k in his bank account currently, but would only be prepared to pay anything to the landlord if he was permitted to continue to stay in the Property. It was submitted that he had recently obtained a contract as a Mechanical Supervisor, was working 12 hour shifts 7 days a week, and at a rate of £30 per hour. He could pay off the entire arrear, whilst maintaining ongoing rent, within the next 3 months. It was submitted by the Respondent that he suffers from anxiety and depression, and that he had suffered from starvation due to his lack of funds. The Respondent confirmed that he had not contacted the local authority to discuss alternative housing options, nor had he investigated any available properties in the private sector. It was submitted that he had made an appointment with a local housing advice agency ("chaps") but had been unable to attend the appointment.
8. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave

- (iii) Proof of service of the Notice to Leave
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement

- Findings in Fact

9. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 8 September 2023;
- (ii) In terms of Clause 8 of the Agreement the Respondent was obliged to pay a monthly rent of £745, and thereafter £785, following a rent increase, to the Applicant, payable in advance;
- (iii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 15 October 2024;
- (iv) The Respondent has been in continuous arrears of rent since December 2023;
- (v) The Respondent is in arrears of rent amounting to £8,287.30 at the date of the CMD;

- Reasons for Decision

10. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

11. Ground 12 of Schedule 3 to the 2016 Act states as follows:

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.

(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.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

12. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 12 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in continuous arrears of rent for at least three months up to and including the date of the CMD. The Tribunal was satisfied that there was no information before it to suggest that the Respondent's being in arrears of rent over that period was either wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

13. The Tribunal was satisfied that it was reasonable to grant the Order sought. The Respondent had been in arrears of rent since December 2023, and which arrears rose steadily over the period of the tenancy. He had been receiving benefits sporadically but had failed to meet any shortfall between that and the rent due himself. Payments made by the Respondent himself were sporadic, and no payment proposals had been entered into. The level of arrears was admitted by the Respondent. Whilst the Tribunal noted the Respondent's submissions as regards his difficulties with employment and lack of income over the last year, his proposals for clearance of the arrears were vague and there had been no evidence put before the Tribunal as regards providing details of the Respondent's current employment status or financial position upon which his submissions could be based. No Time to Pay application had been submitted by the Respondent prior to the CMD, nor any written response or documentation lodged by the Respondent to clarify his position. The Tribunal was not satisfied that there was any certainty regarding the Respondent's current or future income. The Respondent was clear that he would not pay anything towards the arrears unless he was permitted to remain in the Property. The Tribunal considered that this demonstrated a lack of willing and good faith by the Respondent to rectify his failure to pay rent lawfully due. The Tribunal was satisfied that, taking into account the considerable level of rent arrears outstandings and the history of non-payment going back to December 2023, it was reasonable under the circumstances to grant the order for repossession as sought.

- Decision

14. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

Legal Member/Chair

Date: 25 July 2025