

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/25/0106**

**Re: Property at 23 Dunlin Avenue, Glenrothes, Fife, KY7 6TB (“the Property”)**

**Parties:**

**Mr John Wykes, PO Box 10, 69 Crossgate, Cupar, KY15 5AS (“the Applicant”)**

**Mr David Lamb, 23 Dunlin Avenue, Glenrothes, Fife, KY7 6TB (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.**

**Background**

1. This is a Rule 109 application received on 13<sup>th</sup> January 2025. The Applicant is seeking an eviction order under Ground 12. The Applicant’s solicitor lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which commenced on 1<sup>st</sup> August 2018, a rent statement showing arrears in the sum of £6780.28, copy Notice to Leave with evidence of service, and copy section 11 notice with evidence of service.

**The Case Management Discussion**

2. A Case Management Discussion (“CMD”) took place by telephone conference on 24<sup>th</sup> July 2025. The Respondent was in attendance. Initially, there was no attendance by or on behalf of the Applicant. Following extensive enquiries by the Tribunal Clerk, Ms Helen Couser, Fife Letting Service, joined the conference to represent the Applicant.
3. Ms Couser confirmed she had been instructed on the morning of the hearing by the Applicant, due to the unavailability of the Applicant’s solicitor. Her organisation provides a tenant finding only service to the Applicant, which

means they do not manage the Property. She confirmed the Applicant was seeking an eviction order. No rent had been paid, but payments of around £40 per month towards arrears were being made by Universal Credit to the Applicant. The Applicant had not provided Ms Couser with an updated rent statement and she was unable to address the Tribunal on the current level of arrears. Responding to questions from the Tribunal regarding the absence of any evidence of compliance with pre-action requirements, Ms Couser said the Applicant would have been advised by her to comply with the pre-action requirements.

4. The Respondent said he was not opposing the order. He is on the council housing list and he expected to be viewing a council house the day after the CMD. The Respondent said he wished to leave the Property as soon as possible. He has shared care of his four children, who live with him on a shared basis. The Respondent said there had been issues with required repairs and the Applicant had said he would not be carrying out any repairs at this time. The Respondent said he had initially withheld rent due to issues with dampness, but he is on a low income and he had spent the money. The Respondent accepted there are rent arrears, which he thought would be in the region of £9000. He said he was trying to figure out the best way to pay the arrears. The Respondent said he had not received any pre-action correspondence from the Applicant.

### **Findings in Fact and Law**

5.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 1<sup>st</sup> August 2018, at a monthly rent of £550.
- (ii) In or around March 2021, the monthly rent was increased to £575.
- (iii) The Applicant has served a Notice to Leave upon the Respondent.
- (iv) The Respondent has accrued rent arrears.
- (v) The Respondent has been in rent arrears for three or more consecutive months.
- (vi) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vii) The Applicant has not complied with the pre-action protocol.
- (viii) It is reasonable to grant an eviction order.

## **Reasons for Decision**

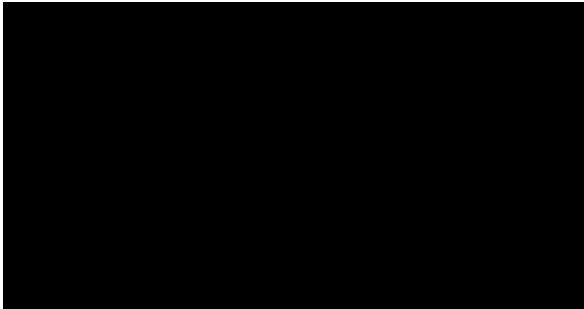
6. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
7. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
8. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has not complied with the pre-action protocol.
9. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
10. The Tribunal was concerned at the lack of information from the Applicant concerning the current level of rent arrears, however, the Respondent was able to provide assistance in that regard. The Tribunal considered it was unsatisfactory that the Applicant had not complied with the pre-action requirements. The Tribunal considered the arrears to be substantial. The Tribunal considered the tenancy is not sustainable, as the Respondent appears unable to pay the rent and arrears. The amount being paid each month by Universal Credit towards the arrears is relatively small and unlikely to clear the arrears promptly.
11. The Tribunal took into account the Respondent's position in that he was not opposing the order and wished to be out of the Property as soon as possible. The Respondent appears to be in the fortunate position of being allocated social housing imminently.
12. In all the circumstances, the Tribunal considered it was reasonable to grant the order sought.

## **Decision**

13. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 26<sup>th</sup> August 2025.

## **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.**



**24<sup>th</sup> July 2025**