

**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/24/3650**

**Re: Property at 109/7 (1F3) Broughton Road, Edinburgh, EH7 4EQ (“the Property”)**

**Parties:**

**Ms Denise Borland, Sawmill Cottage, Friendly Park, Brechin, DD9 6RF (“the Applicant”)**

**Mr John Leary, 109/7 (1F3) Broughton Road, Edinburgh, EH7 4EQ (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Tony Cain (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refuses the application for an eviction order in respect of the Property**

**Background**

1. This is an application for recovery of the Property. The application is dated 9 August 2024. The Applicant is seeking recovery under Ground 12, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). This ground states that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. The date and time of the Hearing was intimated to parties who were given the opportunity to make written representations and/or lodge productions.
2. A case management discussion was held on 9 April 2025.
3. Written representations on behalf of the Applicant were submitted by Mr Purin on 31 May 2025.

4. Payment orders have been granted with regard to rent arrears.
5. A hearing was held on 25 July 2025. The Respondent was present and the Applicant was represented by Mr Purin of Pure Property Management.
6. Documents before the tribunal
  - 6.1 Copy of the private residential tenancy agreement for the Property dated 23 June 2020 showing the commencement of the tenancy to be 25 June 2020 and the monthly rent to be £800. The tenancy agreement showed the tenant to be the Respondent.
  - 6.2 Copy rent statement to 25 March 2025 showing the rent outstanding to be £10362.50.
  - 6.3 Copy rent statement to 25 May 2025 showing the rent outstanding to be £11728.50.
  - 6.4 Notice to leave dated 14 May 2024.
  - 6.5 Notice to local authority under section 11 of the Housing etc (Scotland) Act 2003.

## **Preliminary Matters**

7. The relevant provisions in the 2016 Act are contained in Schedule 3, Part 12:  
*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.*

8. At the case management discussion, the Respondent agreed that he had a level of rent arrears of £10362.50 and that, at 14 May 2024 when a notice to leave had been served, he had been in rent arrears over three consecutive months.
9. The tribunal accepted at the case management discussion that, in view of the level of rent arrears, the requirements of ground 12 (1) of schedule 3 of the 2016 Act had been met and that, what it required to do was to hear evidence from parties on whether it was reasonable to issue an eviction order (12(3)(1)(b).

## Submissions

10. In his written representations, Mr Purin referred to the statements made by the Respondent at the case management discussion on 9 April 2025 when he had said that he had sufficient benefits to pay the monthly rent of £958. The representations state that, at the date of the case management discussion, the rent arrears amounted to £10362.50 and that, on 31 May 2025, they were £11728.50. The representations state that a payment of £550 was made on 15 May 2025 and that no further payments had been received. Mr Purin said that the current level of rent arrears is £11001.50.
11. The written representations state that the level of rent arrears amounts to approximately 12 months of rent and that it is not considered that the

Respondent is able to pay off the arrears or to satisfy the requirement to pay his monthly rent.

12. In oral submissions, Mr Purin said that the Applicant depends on her portfolio of nine rental properties to provide her with income. He said that the Applicant has no confidence that the Respondent will repay the arrears of rent within a reasonable timescale. He said that the Respondent's payment record since the case management discussion bears this out. Mr Purin said that he understands that the death of the Respondent's father may have impacted on his ability to pay in the previous few months but that this underlined the precarious nature of his finances and the ability to pay.
13. Mr Purin accepted that the Respondent's difficulties in paying rent had been due to health issues but said that it was not reasonable for the Applicant to be expected to support the Respondent financially because of this. He said that the Applicant has no confidence that the Respondent would be able to pay the arrears of rent and that, even if he maintained the payments he was aspiring to, it was not reasonable for a period of more than three years to be taken for payment.
14. Mr Leary submitted that his mental ill health had caused him to lose capacity and that he lost his employment and could not manage his finances because of illness. He said that his benefits are now settled and that he would be able to pay the monthly rent together with payments to reduce the arrears. He said that the illness and then death of his father had meant that he could not make full payment of rent in May but that he had managed to make a payment in reduction of the arrears in June and he was hopeful of making another payment within a matter of days.
15. Mr Leary said that he was well established in his home and had been a tenant since June 2020. He said that, if he was made homeless, he would be put under pressure and his mental health would suffer.

#### 16. Findings in Fact

- 16.1 The Applicant is the owner of the Property.
- 16.2 The Applicant and the Respondent entered into a private residential tenancy for the Property on 23 June 2020.
- 16.3 The tenancy commenced on 25 June 2020.
- 16.4 The initial monthly rent for the Property was £800 and is currently £958.
- 16.5 The Applicant served a notice to leave on the Respondent on 14 May 2024.
- 16.6 On 14 May 2024, the Respondent had arrears of rent of £3887.50 which is in excess of three months' rent.
- 16.7 On 9 April 2025, the Respondent had arrears of rent of £10362.50.
- 16.8 On 25 July 2025, the Respondent had arrears of rent of £11001.50.
- 16.9 The Respondent still resides in the Property.
- 16.10 The Respondent paid the rent due for the month of June 2025.

- 16.11 The Respondent made payments in June to reduce the level of rent arrears.
- 16.12 The Respondent has stated his intention to make additional payments in July to reduce the level of rent arrears.
- 16.13 The Respondent has stated his intention to make additional future payments to reduce the level of rent arrears.
- 16.14 The Applicant has nine rental properties.
- 16.15 The Applicant relies on income from her rental properties.
- 16.16 The Respondent is receipt of a number of benefits including adult disability payment and universal credit.
- 16.17 The Respondent has mental health issues.
- 16.18 The Respondent is a vulnerable person.

## Evidence

- 17. Mr Purin said that the Applicant has around nine buy to let properties and relies on the income generated by them.
- 18. Mr Purin said that the Respondent had paid the rent for June and had started to make small payments to reduce the level of arrears. He referred to the rent statements which had been submitted. He said that rent is not paid on due dates.
- 19. Mr Purin said that the current level of rent arrears was £11001.50 and that, even if the Respondent maintained the current payments being made in addition to those for rent, it would take three or four years for the rent to be paid.
- 20. Mr Purin said that he accepted that the Respondent had experienced health issues but that it was not reasonable for the Applicant to be financially disadvantaged because of this. He said that it would be reasonable to evict the Respondent because there was no certainty, given his history of rental payments, that he would maintain payments to reduce the level of arrears. He said that, in his view, the current level of rent is understated and that the Applicant may want to increase it in the future which would lead to more difficulties for the Respondent.
- 21. Mr Purin said that the Property has two bedrooms and he thought it would be better if the Respondent attempted to find a property with one bedroom which would be cheaper.
- 22. The Respondent said that he had been in employment when his mental health deteriorated. He had been diagnosed with a significant mental disorder and been "sectioned" twice. He had spent time in a psychiatric hospital and had been subject to a community based compulsory treatment order until March 2025. He said that he had lost capacity and had been unable to manage the tenancy because of his psychosis.
- 23. The Respondent said that he had fallen into rent arrears because he lost capacity as a consequence of the mental disorder. He said that he now receives

appropriate pharmacological treatment which is administered by depot injection and also has the support of a community psychiatric nurse and a social worker.

24. The Respondent said that he works one day a week and that he values this, not only because of the income but also because of its therapeutic benefit.
25. The Respondent said that his benefits are “now sorted out” and that he receives universal credit and adult disability payment. He said that the housing element of universal credit is insufficient to pay the whole rent and that he makes up the difference from his other benefits and income. He said that he has been trying to pay money towards arrears and has managed to do so although the illness and then death of his father and the consequent expenses which had arisen had caused difficulties in doing this. He said that he had made additional payments in June and he would be making another payment within days. He said that, starting soon, he was hopeful of paying perhaps £350 per month towards the rent arrears.
26. The Respondent said that he had been settled in his home since 25 June 2000 and that he requires two bedrooms to facilitate someone staying with him in case he experiences periods of mental ill health.
27. The Respondent said that he cannot pay rent on the due date because of the payment dates of his benefit.
28. The Respondent said that the best chance the Applicant has to get the arrears paid off is for him to be allowed to remain in the Property. He said that, if made homeless, he would consider signing a Trust Deed for creditors.
29. The Respondent said that he had approached the housing department of the local authority and had been told to return for assistance if he had had a decree for eviction granted against him.

#### Discussion and Determination

30. It is accepted that the relevant ground for eviction had been met and what had to be determined is whether it is reasonable, on account of that, to issue the order for eviction.
31. Such a decision is an exercise of judicial discretion and is arrived at after a balancing exercise.
32. The Respondent accepted that he had a contractual obligation to pay rent and that he had not done so, leading to a level of arrears which he did not dispute.
33. The Respondent was candid in detailing the extent of his mental illness and the tribunal considered it inappropriate to record the full detail of that. The tribunal found the Respondent to be credible in what he said about his mental ill health, the effect this had on his ability to properly manage his tenancy and the current

position with regard to treatment and support. The Applicant acknowledged that the Respondent had fallen into arrears as a consequence of his health issues. The tribunal accepted that the Respondent had fallen into arrears of rent as a consequence of his mental illness.

34. The tribunal accepted that the Respondent has a mental illness which is being treated and that he also receives support from a community psychiatric nurse and a social worker. The tribunal concluded that, on the basis of the Respondent's evidence and its judicial knowledge, the Respondent is a vulnerable person.
35. The Respondent has been living in the Property for more than five years and it is accepted that he is well established there.
36. The Respondent has made some efforts recently to make payments towards the arrears but it was noted that consideration of the rental statements demonstrated that, since the date of the case management discussion, there had not been regular payments and that those which had been made had not been significant given the level of debt. Notwithstanding, the Respondent's evidence on his recent payment to reduce rent arrears was credible, as was his aspiration to continue to reduce the level of indebtedness. The tribunal also accepted the evidence of the Respondent that his benefits position is now such that he is able to meet future payments of rent.
37. The tribunal noted the Applicant's position with regard to the Respondent's position on repayment of the arrears. Her concerns were two -fold: her lack of confidence that payments would be made and the length of time that repayment would take.
38. The tribunal noted that the unfortunate illness and death of the Respondent's father had meant that the full rent had not been paid in May. Whilst this may be understandable, the tribunal considered that this underlined the delicate financial position of the Respondent when a life event would mean that he could not pay the rent, far less money towards the arrears.
39. The tribunal also accepted that a period of over three years for payment of the debt was significant.
40. The tribunal had no evidence from the Applicant on the effect of refusal of the application for an order of eviction other than a submission by her letting agent that she depended on the rental income for income. The tribunal had no knowledge of the financial health of the Applicant's business as a landlord. It did accept that the rent is currently being paid in full.
41. The tribunal required to carry out a balancing exercise in considering reasonableness. Its role is well described by Lord Greene MR in *Cumming v Danson* 9 [1942] 2 All ER 653 at 655) *"In considering reasonableness.... It is, in my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do*

*in what I venture to call a broad common-sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong to exclude from his consideration matters which he ought to take into account."*

42. Sheriff Collins in *Manson and Downie v Turner* 2023 UT38 set out the role of the Tribunal when assessing reasonableness. He said that it had to balance the interests of parties, not just the reasonableness of an applicant's position.
43. The tribunal weighed the position of the Respondent, particularly his health and vulnerability, and the length of time he had been in the Property against that of the Applicant who wanted to recover the Property because of the amount of the arrears and the length of time which would be required for them to be paid. The tribunal also considered that the reason for the Respondent falling into arrears of rent was a relevant consideration in carrying out the balancing exercise.
44. The tribunal had only the barest of information on the Applicant's position: that she considered it reasonable that an order of eviction be granted because of the level of arrears, concern over the time that would be taken for them to be repaid if the Respondent adhered to his proposed payments and the lack of certainty that payments would be made. It would have been helpful to have heard evidence from the Applicant rather than only submissions from her agent.
45. The Applicant has been granted payment orders in respect of the arrears and can carry out diligence to assist in recovery or enter into a payment arrangement with the Respondent.
46. On the basis of the evidence before it, the tribunal determined that it would not be reasonable to issue the order for eviction because of the likely harm it would cause to the Respondent. This was balanced with the harm likely to be caused to the Applicant based on the limited information before the tribunal.

## **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.**

## **Martin McAllister**

**Martin J. McAllister  
Legal Member  
25th July 2025**