

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/24/1554

Re: Property at 2/1 45 Canal Street, Paisley, PA1 2HQ (“the Property”)

Parties:

Ashore International Limited, 3rd Floor Trident House, 31-33 Dale Street, Liverpool, L2 2HF (“the Applicant”)

Darren Paterson, 2/1 45 Canal Street, Paisley, PA1 2HQ (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. This is an application by the Applicant 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 Applicant to the Respondent commencing on 25 July 2022.
2. The application was lodged with the Tribunal on 5 April 2024. The application relied upon a Notice to Leave dated 5 March 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 Ground 12 of Schedule 3 Part 1 of the 2016 Act, relying on arrears at the time of the Notice of £1,497. It had been agreed between the parties at an earlier case management discussion (“CMD”) that the passing rent was now £499 per month. The rent statements lodged by the Applicant (referred to further below) said that rent was due from the 5th of each month

though the Tenancy Agreement lodged with the application showed rent due on the 1st of each month. The figure in the Notice to Leave was thus arrears of three months of rent.

3. There had been three CMDs prior to the Hearing. The CMDs had allowed for continuations for information to be provided, as well as to permit monitoring to see if a payment proposal could be agreed and the arrears cleared. Specifically, previous CMDs considered:
 - a. The Respondent's state of health and its effect on his ability to work;
 - b. The Respondent's claims for benefit and Universal Credit; and
 - c. The Respondent's potential eligibility for a payment under an insurance policy arranged by his employers.
4. We conducted the third CMD by remote telephone conference call, on 21 March 2025 at 10:00. At that CMD we noted the following:
 - a. The parties had agreed a payment proposal whereby the Respondent paid £750/m towards rent and arrears on or around the 4th of each month. The two payments of £750 received in February and March were further to this.
 - b. The Respondent said that he had received a diagnosis in January 2025 of a serious medical condition returning. If all treatment was successful, the Respondent hoped to return to work by October 2025.
 - c. The Respondent was by then in receipt of £1,100 per month of Universal Credit payments which were received on the 3rd of each month. From this he paid the £750 per month to the Applicant. The UC payment was made up of:
 - i. Employment Support Allowance (as he was no longer receiving statutory sick pay)
 - ii. Personal Independence Allowance
 - iii. £400 towards rent.There had been a backdated lump sum payment but the Respondent had utilised that money for other costs and it was not factored into the payment offered to the Applicant.
 - d. The Respondent had not been successful in his insurance claim but a new claim was being submitted and he hoped a decision would be received by the end of April 2025. The Respondent hoped it would now be granted, as the previous application had been refused due to his employers submitting out-dated medical evidence.
 - e. The Applicant was minded to seek to increase the rent in April 2026, at which time the rent arrears should be materially reduced (if the £750/m is maintained). Both parties envisaged that, at the current rate of payment and even with a rent increase around April 2026, arrears would be fully cleared by early Summer 2026.
 - f. The Respondent was at that date confident of maintaining the £750/m as he believed the UC payment was stable and reliable. The Respondent would, however, be somewhat better off if the insurance payments started. He estimated his income would rise to £1,400/m. If that occurred, he should not struggle to pay the £750/m.
 - g. If the Respondent was to return to full time work around October 2025, he would have no issue paying £750/m.

5. At the third CMD, we sought clarification as to the Respondent's defence and he confirmed it was as follows:
 - a. After a period of financial instability due to his health conditions and its effect on his employment, he was now in receipt of a secure income from UC and had reached a reasonable proposal on payment of arrears. He was keeping to that payment and would continue to keep to it.
 - b. His medical condition made it unreasonable for him to be evicted during the protracted period of treatment.
 - c. In particular, his condition and the treatment made it extremely difficult for him to move home at this time due to the physical demands that would make of him.

For its part, the Applicant's position was that it did not particularly wish to evict the Respondent but the arrears were significant, and that there had previously been promises of payment that did not work out (particularly regarding the insurance policy). The Applicant was concerned about the possibility that the £750/m proposal would not be kept, and then the lengthy process of restarting eviction proceedings.
6. After discussion on procedure, we assigned a Hearing. Though both parties preferred further monitoring, we held then (and hold now) that the Tribunal is not a monitoring service. The Applicant had not withdrawn the application, and the Respondent continued to oppose its grant. For that reason, we set a Hearing for a final determination of the application in consideration of the circumstances present at the date of that Hearing. We issued a further Notice of Direction seeking that parties lodge, within one month of the Hearing, an updated rent statement from the Applicant, and for the Respondent to provide any update on his position (if different). We anticipated evidence only from the Respondent and someone for the Applicant.
7. The date of 18 August 2025 was set for the Hearing, meaning a deadline of 18 July 2025 for the lodging of any documents under the Notice of Direction. The Respondent provided no further information further to the Notice of Direction. The Applicant lodged an updated rent statement and then, on the morning of the Hearing, a further updated rent statement. The updated rent statement showed that since the third CMD the Respondent had paid £500 on 4 April, 7 May and 27 May and £750 on 30 June 2025. Arrears had been at £3,200.62 at the third CMD, had reduced very slightly at one point, and were now at their highest level of £3,445.62.

The Hearing

8. The matter called for a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 18 August 2025 at 10:00. We were addressed by the Applicant's representative Maria Turnbull, Branch Manager, Martin & Co. The Respondent represented himself. Ms Turnbull confirmed that she had no witnesses to call and would provide all evidence on behalf of the Applicant herself.

9. Given the nature of the witnesses, and the substantial agreement between parties on the facts as already discussed in three CMD Notes, we took evidence by way of clarification and expansion from the parties of the information before us, starting with the Respondent.
10. The Respondent confirmed that, as at 18 July 2025, he had no material updates to the position as discussed at the third CMD, and so had not lodged anything further to the Notice of Direction. On further questioning of the Respondent, we noted one minor inaccuracy in the Respondent's assertion that he had no new information as of 18 July 2025: as at the time of the third CMD the Respondent was anticipating 10 weeks of further treatment (so until around end May) but the Respondent stated at the Hearing that his chemotherapy concluded around six weeks earlier (so around early July 2025).
11. Apart from that minor issue, the Respondent stated that all his changes of circumstances had occurred since 18 July 2025:
 - a. The insurance application was finally granted in late July 2025 (so around three months later than he hoped).
 - b. He had been hospitalised on 4 August 2025 and remained in hospital. (He was conducting the Hearing telephone conference call from a room on his ward that the staff had made available for him.) He explained that he had previously had a stent fitted in regard to a kidney stone. The stent was to be removed, but those treating him had wished to delay this until after the end of his chemotherapy. In early August, however, he had suffered an infection and that had led to his hospitalisation. His blood results were now being monitored daily, and he hoped to be discharged in early course. He described the issue with his kidney as an "existing issue that became more complicated" rather than a new medical issue.
 - c. He still awaited a colonoscopy in late September 2025/ October 2025 to see if his cancer was no longer present. If it was all clear, he expected to return to work at that time.
 - d. Between his (hopefully impending) discharge from hospital and the colonoscopy, there was no other treatment planned. He planned to recover strength at home, and to attend fortnightly appointments with his GP. He said that he did have other conditions and these were managed through his GP.
12. We sought the Respondent's position on the arrears and his failure to make the promised payments:
 - a. He accepted the payments made by him on the up-to-date rent statement were correct, and that arrears were currently £3,445.62 (for the period to 4 September 2025).
 - b. In regard to his failure to make the promised £750/m, he said that he had found that, after all, he did not have sufficient money left over from Universal Credit to pay the full £750 he had promised.
 - c. In regard to his current income, he explained that since the insurance payment commenced, he received around £1,600 net (after taxes) each month. Of this, £273 was a monthly Personal Independent Payment as it was the only benefit that he was still eligible for as he was now in receipt of the insurance payment.

- d. He remained comfortable being able to pay £750/month from his current level of income. He was entitled to the insurance payment until he returned to work or reached retirement.
 - e. There was no backdated payment due to come from the insurance.
 - f. Though he now was receiving the insurance payment, he could not make a payment to the Applicant until he returned home and had his laptop so as to log-on to online banking.
 - g. He had written to the Applicant's agent the previous week promising £750 as soon as he returned home, and £750/m around 27 August (and on the 27th of the month thereafter) as that was when the insurance payment was received.
 - h. He expected to receive around £2,200/month net once back working. At that point he expected that he would no longer receive PIP (and would not receive the insurance anymore).
 - i. He thus expected to be able to clear the arrears by the end of April 2026 as discussed at the third CMD.
13. The Respondent provided the following additional information relevant to the question of reasonableness:
- a. The Property was a one-bedroom second floor flat. It was let unfurnished.
 - b. The Property was not specially adapted for his use.
 - c. The Property was reasonably close to his sons (who live with their mother).
 - d. The Property is five minutes travel away from the Royal Alexandra Hospital where the Respondent receives treatment. It is also convenient for his GP.
 - e. The Property has good transport links for the Respondent to attend his place of work.
 - f. The Respondent is 53 and works as a pension adviser. His job is call-centre based.
 - g. The Respondent lives alone. His sons are both adults.
14. We sought confirmation from the Applicant as to any dispute on any factual issue. The Applicant's agent had none. The Applicant's agent had no comments on the Respondent's evidence though, in response to our questions, stated that the Respondent had failed to keep them informed of his financial position. She said that she emailed him on 7 August 2025 to ask about further payments, and it was this that prompted the Respondent to inform her that he was in hospital, and this was when he made the proposal to pay two £750 payments during August.
15. We asked the Applicant's agent for any relevant information on the Applicant, noting that the Title Sheet showed no mortgage. The Applicant's agent said that the Applicant was a UK-based company owned by persons overseas. She believed that the Applicant owned at least one other rental property but believed that any other rental properties were not in Scotland.
16. We asked the parties for any closing submissions. The Applicant's agent expressed sympathy for the Respondent's health condition but stressed that a payment proposal had been made at the third CMD and not kept to. She said

that the Applicant and her office could “not help if we do not know what is going on”. The Respondent had no closing submissions but we noted that he stood by his previously expressed defence (as set out in paragraph 5 above).

Findings in Fact

17. On 25 July 2022, the Applicant let the Property as a Private Residential Tenancy to the Respondent with commencement on 25 July 2022 (“the Tenancy”).
18. In terms of clause 8 of the Tenancy Agreement, the Respondent required to pay rent of £485 a month in advance on the 1st day of each month.
19. Rent was subsequently increased to £499 per month from 1 August 2023.
20. The parties agreed that rent was to be paid on the 5th of each month from 5 April 2024.
21. As of 5 March 2024, the Respondent was in arrears of rent of £1,497 having failed to make timeous and full payment of rent during the period from 1 November 2023 until that date.
22. On 5 March 2024, the Applicant’s agent 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 of £1,497.
23. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 5 April 2024.
24. The Applicant served a copy of the Notice to Leave on the Respondent by email on 5 March 2024, in accordance with the Tenancy Agreement.
25. The Applicant raised proceedings on 5 April 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
26. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Renfrewshire Council by the Applicant on 5 April 2024.
27. The rent has been in arrears to some extent since 1 November 2023.
28. The Respondent has made payments against rent and arrears of rent in varying amounts (of £500, £600 or £750) on a number of occasions between 22 December 2023 and 30 June 2025 but has failed to maintain any payment proposals made during that time.
29. As of 18 August 2025, the Respondent remains in arrears of rent in the amount of £3,445.62 which is equivalent of over six months of rent.

30. The sum of arrears remaining as of 18 August 2025 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
31. Since late July 2025, the Respondent is in receipt of payments from an insurance policy due to being unable to work through ill-health.
32. The Respondent had been attempting to claim on the said insurance policy since in or around November 2024 but an initial claim had been refused due to incorrect supporting documentation being submitted by the Respondent's employer to the insurance company.
33. From in or around Spring 2025 until receipt of the first insurance payment, the Respondent had been in receipt of Universal Credit and Personal Independent Payment totalling around £1,100 per month.
34. Since receipt of the first insurance payment, the Respondent has been in receipt of Personal Independent Payment only, totalling £273 per month.
35. The Respondent's current net income from the insurance payment and PIP (less taxes and before outgoings) is around £1,600 per month.
36. The Respondent has a number of health conditions, including issues with his kidneys and kidney stones.
37. The Respondent was diagnosed with intestinal cancer and received treatment through much of 2025 until early July 2025.
38. On 4 August 2025, the Respondent was hospitalised due to an infection relating to his kidney treatment. The Respondent remains in hospital as of 18 August 2025 but hopes to be discharged in the days following the Hearing.
39. The Respondent anticipates receiving a colonoscopy in late September or early October 2025 to assess whether his cancer treatment has been successful.
40. The Respondent has no scheduled treatment for his cancer treatment, other than monitoring appointments with his GP, between 18 August 2025 and the colonoscopy.
41. Should he be discharged in early course, the Respondent anticipates a period of recovery at home, so as to regain strength. This would continue through to the date of the colonoscopy.
42. Should his period of recovery proceed to plan, and should the colonoscopy show no need for further treatment for cancer at that time, the Respondent anticipates returning to work during October 2025.
43. The Respondent is 53.

44. The Respondent works as a pension adviser in a call-centre based role.
45. Should he return to work in October 2025, the Respondent's net income from employment (less taxes and before outgoings) is anticipated to be £2,200 per month.
46. Since on or about 4 August 2025, the Respondent has been in a position to afford an immediate payment of £750 to the Applicant but cannot yet make the payment due to lack of access to his laptop (and thus online banking) while in hospital.
47. Provided he has access to online banking, and whether or not he returns to work in October 2025, the Respondent expects to afford to make further payments of £750 on or around the 27th of each month from 27 August 2025 onwards until clearance of the arrears.
48. The Respondent resides alone at the Property.
49. The Property is a one-bedroom second floor flat.
50. The Property is not specially adapted for the use of the Respondent.
51. The Property's location is specifically suitable for the Respondent's needs as it is close to the hospital and GP practice that treats him, near to his sons' home, and near to transport links to his work.
52. The Property is not the Applicant's only rental property.
53. The Applicant does not have lending secured over the Property.

Reasons for Decision

54. 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 Applicant.
55. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...the tenant has been in rent arrears for three or more consecutive months. ...*
 - ...
 - (3) *The First-tier Tribunal may find that the ground named by subparagraph (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.

...

56. The arrears information provided throughout the application, and again at the Hearing, clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. At the date of the Hearing, the Respondent confirmed that his failure to pay was not related to an issue with benefits. (Though it may have contributed to the position previously, all benefits issues were resolved by the date of the Hearing.) Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.

57. In regard to reasonableness, at a previous CMD the Applicant's agent provided submissions on compliance with the pre-action protocol. Documentary evidence is however lacking. No issue was taken, however, by the Respondent who had clearly taken steps to consider his position and finances. We do not consider the compliance, or otherwise, with the protocol to be a relevant factor in considering reasonableness.

58. Turning to a consideration of reasonableness in general, we require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard of persistent arrears. There are undoubtedly persistent arrears which were not disputed. It was also not disputed that the Respondent had made proposals that he had then failed to meet. On the Respondent's side, however, it was undisputed that the Respondent was being treated for a significant medical condition and was currently unable to work. Further, it was undisputed (though also unvouched by current documentation) that he was now in receipt of an insurance payment that he had been seeking for some time.

59. We considered the rent statement and noted that, had the Respondent made the payments promised at the third CMD, arrears as at the end of August 2025 were planned to be down to £1,445.62, and arrears would have been cleared by the end of February 2026. Instead, the arrears have only climbed further. If, however, the Respondent was to make the two payments of £750 by the end of August 2025, then the arrears as of the end of August 2025 would be £1,945.62, and would be cleared by the end of April 2026. This appeared to us a reasonable timescale from now. We appreciate that the Applicant first issued a Notice to Leave in March 2024, but there have been limited payments throughout this time, and the sporadic payments should be read alongside the

Respondent's (undisputed) account of continuing health issues and continued struggles to finalise his benefit payments and the insurance cover.

60. Had this not been a Hearing following three CMDs we may have been inclined to continue to monitor to see if the £750 payments were capable of regular payment at last before making a final decision. As it was, we set this Hearing as a deadline for making a final decision. In consideration of Rule 2 ("the overriding objective"), remain of the view that a determination should be made in this long-standing application. We thus consider matters as they stand today and:
- a. The Respondent has a reasonable payment proposal and is satisfied that he has the means to make that proposal regularly until clearance of the arrears (whether or not he returns to work).
 - b. The Respondent is currently in hospital.
 - c. Once discharged, the Respondent has a planned period of convalescence through to around October 2025.
 - d. We accept that Respondent's defence that his health and recovery would be compromised by being evicted, as he is not currently in a fit condition to move home.
 - e. The arrears are significant but payments have been made throughout the period of arrears and they remain the equivalent of less than seven months of rent (which compares to the period of arrears being 22 months).
 - f. The Applicant has provided no submissions as to any specific financial strain placed upon the company by the arrears.
 - g. The Applicant has other assets and has always engaged with the Respondent's payment proposals.
 - h. The Applicant previously accepted a payment proposal which would have cleared the arrears by February 2026. The current proposal is only a slight extension of that (by April 2026) and the reason for the extended period is supported by the additional time it took for the insurance payment to commence.
61. In coming to this decision, we required to weigh up a Respondent whose position was challenged not by the Applicant but the weight of his own previous failures to live up to promises. We required to do so without the Respondent having provided any recent documentation evidence. Notwithstanding, we required to weigh these matters nonetheless and we were satisfied that it was unreasonable to evict. The Respondent has been paying, has a proposal to pay regularly (and now finally has the means to do so), and continues to recover from a significant medical condition. We did not doubt his desire to have made a payment of £750 in August. Had he done so, the arrears would be lower than at the third CMD. We accepted his explanation as to why he could not (as he had been hospitalised in connection with a different condition). The Applicant is undoubtedly inconvenienced and financially affected by the arrears, but the question of reasonableness favours the Respondent in our view.
62. We would stress that nothing in this decision stops the Applicant serving a further Notice to Leave immediately, if the arrears remain outstanding (which they likely will) and if it believes that reasonableness now favours it (if there is a

change in circumstances or the arrears are not being reduced). If that occurs, it will be for the Tribunal to consider the circumstances at that time.

Decision

63. In all the circumstances, we refuse the application for an order against the Respondent for eviction from the Property.
64. No motion was made for expenses by either party.

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

18 August 2025

Date