

**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/24/4983**

**Re: Property at 2f1 1 Victor Park Terrace, Edinburgh, EH12 8BA (“the Property”)**

**Parties:**

**Mr Michael Morten, 81 Gosport Road, London, E17 7LX (“the Applicant”)**

**Kaitlyn Smith and Graham Dolan (also known as Graham Dolan-Loughran), 2f1 1 Victor Park Terrace, Edinburgh, EH12 8BA (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 2f1 1 Victor Park Terrace, Edinburgh, EH12 8BA under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.**

**Background**

1. By application dated 29 October 2024, the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland

Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 26 April 2024, numerous emails between the Applicant’s letting agent Extra Mile Property Solutions Ltd and the Respondents, a Notice to Leave dated 18 September 2024 with email to the Respondents, a rent statement and an email dated 29 October 2024 addressed to Edinburgh City Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 6 December 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 22 March 2025 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 12 April 2025. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 30 May 2025. This paperwork was served on the Respondents by Christopher Andrew, Sheriff Officer, Edinburgh on 25 March 2025 and the Execution of Service was received by the Tribunal administration.
5. On 2 May 2025 in response to a Notice of Direction issued by the Tribunal the Applicant lodged a rent statement to 1 May 2025 showing arrears of £6175.00.
6. On 22 May 2025 the Respondent Ms Smith emailed the Tribunal seeking to postpone the CMD assigned for the 30 May 2025. Her reason for the request was that she had exams and was going back to her family in Orkney. Ms Smith was advised the CMD would proceed on 30 May 2025.
7. The Respondent Mr Dolan did not lodge any submissions.

### **Case Management Discussion**

8. The Tribunal proceeded with a CMD on 30 May 2025 by way of teleconference. The Applicant appeared and represented himself. He was accompanied by Mr Gladden from Extra Mile Property Solutions Ltd. There was no appearance by or on behalf of the Respondents despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence.
9. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 26 April 2024, the numerous emails between the Applicant’s letting agent Extra Mile Property Solutions Ltd and the Respondents, the Notice to Leave dated 18 September 2024 with email to

the Respondents dated 19 September 2024, the rent statement to 1 May 2025, the email dated 29 October 2024 addressed to Edinburgh City Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 and the email of 22 May 2025. The Tribunal considered these documents.

10. The Tribunal explained that it had considered Ms Smith's request to postpone the CMD. The Tribunal explained that the request had been made extremely late considering the application papers had been served on Ms Smith on 25 March 2025. The Tribunal considered the level of arrears which were increasing and determined it was not in the interest of justice to postpone the CMD.
11. The Applicant moved the Tribunal to grant an order for eviction. He submitted that the Respondents could not afford to pay the rent. He understood the Respondents needed an order of eviction before they could be considered homeless by the Council and before they could be considered for affordable accommodation. The Respondents had made it clear they would not leave without an order from the Tribunal.
12. Mr Gladden confirmed the current arrears were £6175. The Tribunal noted the arrears were £2380 when the Notice to Leave was served on 18 September 2024. Mr Gladden submitted there had been no payment of rent for months. They had written to the Respondents on numerous occasions about the arrears and had attempted to get them to enter into repayment plans. By email of 3 February 2025 the Respondents advised they were saving for a new home. Mr Gladden explained Mr Dolan worked in hospitality and Ms Smith was a student. When she had received her student loan, she bought a new laptop and had not paid the monthly rent of £895. He explained the Applicant was now looking to sell the Property. The Property is a one bedroomed flat. There are no children residing at the Property.
13. Mr Gladden was asked when the last contact was with the Respondents. He explained they had been trying to gain access to the Property and had made six attempts to carry out an inspection. However, he explained the Respondents always had an excuse not to give access despite Mr Gladden offering inspections out of normal working hours.

### **Reasons for Decision**

14. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
  - Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

15. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12(rent arrears).
16. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
17. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.
18. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 20 October 2024. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was served on the Respondents by email of 18 September 2024. In the circumstances the Tribunal is satisfied the Respondents have been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
19. The Tribunal considered the Respondents' arrears had increased dramatically since the Notice to Leave had been served. Arrears had been accruing since May 2024 not long after the tenancy started. The Tribunal found that the Applicant had established a case under Ground 12. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
20. The Tribunal noted the pre-action requirement correspondence lodged with the application. Extra Mile Property Solutions Ltd had made every effort to get the Respondents to pay the rent and the arrears. The Respondents had received these letters. Payments were sporadic and generally did not cover the rent. The arrears were increasing. The Tribunal gave weight to the submissions that the Respondents had advised they were saving for a new property and were not prioritising their rent. The arrears were substantial and had started to accrue soon after the tenancy started. The Tribunal gave weight to the fact that the Applicant was now looking to sell and had been financially disadvantaged by the Respondents' failure to pay rent. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together

with submissions made by the Applicant and Mr Gladden, that the balance of reasonableness in this case weighted towards the Applicant.

21. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondents are in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

22. The Tribunal granted an Order of eviction. The decision of the Tribunal was unanimous.

### **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.

# Shirley Evans

31 May 2025

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Legal Member

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Date