



**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/25/0123**

**Re: Property at 5A, Flat 10 Royston Mains Avenue, Edinburgh, EH5 1NN (“the Property”)**

**Parties:**

**Edinburgh Living MMR LLP, Waverley Court, 4 East Market Street, Edinburgh, EH88BG (“the Applicant”)**

**Miss Melissa Sutherland, 5A, Flat 10 Royston Mains Avenue, Edinburgh, EH5 1NN (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Mary Lyden (Ordinary Member)**

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

**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 under 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 1 August 2025. The Applicant was represented by Ms Smith of Umega Lettings, the Applicant’s managing agent. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the application had been intimated on the Respondent by way of Sheriff Officer on 12 June 2025 and accordingly the Respondent had sufficient intimation of the date and time of the CMD. Accordingly, the Tribunal was satisfied that the CMD could proceed in the Respondent’s absence.
3. 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”), which commenced 24 February 2020. The Respondent had been in a continuous arrear since the start of the tenancy. The rent arrears due at the time of raising the application stood at £11,450.97. By the date of the CMD the arrears had increased to £14,196.97. The monthly rent was £729. A Notice to Leave had been served on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act. The Respondent had made numerous promises to make payments and to enter into repayment arrangements, none of which had been adhered to. The Respondent has been in receipt of Universal Credit which covered part of the rent, but had failed to meet the shortfall. The most recent contact from the Respondent was in the last week where she advised that she would be handing the keys back to the agent on 29 July, but this has not happened and she was still believed to be residing within the Property. The agent had received contact from the local authority’s homelessness prevention team who advised that they had attempted to contact the Respondent to assist her. Nothing further has been heard by the agent as to whether or not alternative accommodation has been obtained by the Respondent. She is believed to live alone with no dependants, albeit she had stated in an email to the agent a few months ago that she was pregnant. No further information is known.
4. 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
  - (vi) Email correspondence between the Respondent and the Applicant’s agent.

- Findings in Fact

5. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced 24 February 2020;
- (ii) In terms of Clause 8 of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £729 per calendar month;
- (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;
- (iv) The Respondent has been in continuous arrears of rent since the commencement of the tenancy;
- (v) The Respondent is in arrears of rent amounting to £14,196.97 at the date of the CMD.

- Reasons for Decision

6. 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 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.*

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

*(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.*

8. 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 tenant'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. 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.

9. The Tribunal noted that the arrears were substantial, and there was no realistic proposal before the Tribunal as to how the Respondent intended to (a) clear those arrears and (b) maintain the ongoing rent. It appeared to the Tribunal that the Respondent could not afford the rent for this Property, and had fallen into ongoing and substantial arrears as a result. Given the substantial level of arrears and the considerable length of time over which the arrears had accrued, and with no prospect of resolution, the Tribunal was satisfied that it was reasonable to grant the order in the circumstances.

- Decision

10. 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: 1<sup>st</sup> of August 2025**