



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/0992

Re: Property at 132 MUSHET ROAD, LIVINGSTON, EH54 7GE (“the Property”)

Parties:

Castle Rock Edinvar Housing Association Ltd in association with Places for People Scotland, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Mr Shaun Michael George Wright, 132 MUSHET ROAD, LIVINGSTON, EH54 7GE (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 5 March 2025, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Grounds 12 (rent arrears for three consecutive months) of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same, a Rent Statement and evidence regarding the ‘pre-action protocol’. An application for payment of rent arrears was submitted at the same time and was conjoined with this application. Both applications thereafter proceeded together through the Tribunal process.

2. Following initial procedure, on 31 March 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. A Case Management Discussion ("CMD") was fixed for 27 August 2025. The application and details of the CMD scheduled were served on the Respondent by Sheriff Officer on 14 July 2025. In terms of said notification, the Respondent was given an opportunity to lodge written representations but none were lodged prior to the CMD.
4. On 15 July 2025 and 4 August 2025, applications to increase the sum sought in the payment application to £8,939.67 and then to £9,603.55 were submitted on behalf of the Applicant. Updated supporting Rent Statements were also submitted on 15 July 2025 and 22 August 2025 and all were copied to the Respondent by the Applicant on submission to the Tribunal.

Case Management Discussion

5. The CMD took place by telephone conference call on 27 August 2025 at 10am. In attendance was Mr Kenneth Caldwell, Solicitor, of Patten & Prentice LLP on behalf of the Applicant, who was accompanied by a trainee solicitor from that firm, attending as an observer only. The Tribunal delayed commencement of the CMD for 5 minutes to give the Respondent an opportunity to join late but he did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mr Caldwell explained the background to the applications. He confirmed that, although he had not had any direct contact from the Respondent, the Respondent had contacted the Applicant's letting agents, Touchstone, around mid-August to offer a payment plan of £1,000 per month, commencing on 29 August 2025. However, payment was offered on the basis that the eviction application was withdrawn which, in the circumstances, the Applicant was not willing to do. Mr Caldwell explained that the tenancy had begun in October 2023 and rent was paid, with one monthly payment missed, until June 2024. The last payment made was in June 2024 and since then, there have been no payments made, no payments offers (until very recently) and no explanation for the arrears. The arrears now amount to £9,603.55.
7. Mr Caldwell confirmed that there have been regular communications sent to the Respondent to try and engage with him regarding the arrears, in terms of the 'pre-action protocol'. The Applicant's letting agents did three-stage letters to the Respondent, before instructing Mr Caldwell who then issued a detailed communication to the Respondent and, on hearing nothing, proceeded to issue the Notice to Leave on behalf of the Applicant. The arrears at that time were just over £5,000. However, the Respondent did not respond or engage and hence, the application was submitted to the Tribunal after the notice period had expired.

8. As to the Respondent's circumstances, he is understood to be a 34 year old building site manager who lives alone. In his application for the tenancy, he stated that he was recently separated and had two children, aged 12 and 10, although they were understood not to live with him, although he may have had contact with them. The Respondent had alluded to the Applicant that he had some physical and mental health issues but had not stated that this had impacted on his earnings or was the reason for the rent arrears. Although it was noted from the Rent Statement that the first payment to the account appeared to have been made by West Lothian Council on behalf of the Respondent to cover the first months' rent and the deposit, Mr Caldwell did not know the background to that but did state that there had been no indication to the Applicant that the Respondent was in receipt of any state benefits.
9. Mr Caldwell submitted that, in view of the significant rent arrears owing to the Applicant and the fact that there have been no payments made by the Respondent since June 2024 and no explanation nor engagement, it was reasonable for the eviction order sought to be granted. In response to a question from the Tribunal, Mr Caldwell stated that, if the Respondent were to start making the payments he offered to make recently, it may be that the Applicant would not enforce the eviction order, if granted, although he could not give any formal undertaking in that regard.
10. The Tribunal Members adjourned to discuss the applications in private. On re-convening, it was confirmed that the Tribunal was satisfied that the ground for eviction was met and also that it was reasonable to grant the order in all the circumstances of the case. There was some brief discussion regarding the procedures to follow. Mr Caldwell was thanked for his attendance and the CMD was concluded.

Findings in Fact

1. The Applicant is the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 27 October 2023.
3. The rent due in respect of the tenancy was originally £595 per calendar month, but has since been increased to £640.81 as from August 2024 and then to £663.88 as from August 2025.
4. Rent was initially paid regularly, with one monthly payment missed, until June 2024.
5. The last payment made towards rent amounted to £595 on 5 June 2024.
6. No payments have since been made and arrears have been accruing continuously since then.

7. Arrears amounted to £5,074.71 when the Notice to Leave was served in January 2025, £5,715.52 when this application was lodged in March 2025 and now amount to £9,603.55.
8. The Applicant's agents and legal representative have sought to engage with the Respondent concerning the rent arrears and issued several communications to him in respect of the 'pre-action protocol'.
9. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by email in terms of the tenancy agreement, on 15 January 2025.
10. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 15 February 2025.
11. The Tribunal Application was submitted on 5 March 2025.
12. The Respondent has remained in occupation of the Property.
13. The Respondent has been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but has failed to do so.
14. The Respondent has been in rent arrears for three or more consecutive months.
15. There is no indication that the arrears have arisen wholly or partly as a result of a failure or delay in the payment of relevant benefits.
16. The Respondent contacted the Applicant's letting agent around mid-August 2025, confirming his intention to start making payments but settlement terms were not agreed and no payments have been made to date.
17. The Respondent did not lodge any written representations with the Tribunal, not seek time to pay, nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the procedural background to the application and to the oral representations at the CMD by the Applicant's solicitor.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered the ground of eviction relied upon in this application, namely Ground 12, and was satisfied in that all requisite elements of that ground had been met. The Tribunal was satisfied that the Respondent has not vacated the Property, that there were substantial rent arrears amounting to £9,603.55 and that the rent had been continuously in arrears for a lengthy period of time, in excess of a year, with no payments having been made. The rent had been in arrears for a period exceeding three consecutive months when notice was served and remains so.
4. As to reasonableness, all the factors narrated above satisfied the Tribunal that it was also reasonable to grant an order in these circumstances and to do so at this stage. There was no indication that the Respondent's failure to pay rent was due to any failure/delay in payment of state benefits and it was clear that the Applicant had sought to engage with the Respondent throughout regarding the arrears and had taken steps to try and resolve the situation with him, to no avail. The Respondent had failed to engage nor taken any other steps to resolve the arrears situation. He had not made any payments to account to demonstrate his goodwill in the matter and, although he had recently contacted the Applicant's letting agent offering to commence payments at the rate of £1,000 per month, he had failed to explain the arrears situation or offer to make any payment prior to the date of the CMD. He had also made his payment offer conditional on the Applicant withdrawing the eviction application, which, understandably, the Applicant did not agree to. The Respondent had not entered into the Tribunal process by lodging any representations, seeking time to pay in respect of the payment application and nor did he attend the CMD. The Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as, in the circumstances, there was no need for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

27 August 2025
Date