



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/24/5413

Re: Property at 20 Bogton Road, Forres, Moray, IV36 1BH (“the Property”)

Parties:

Ian Stephen, 1 Blackstob Way, Kinloss, Moray, IV36 3UB (“the Applicant”)

Tom Hockenhull, 20 Bogton Road, Forres, Moray, IV36 1BH (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

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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 9 October 2023.
2. The application was dated 17 November 2024 and lodged with the Tribunal on 22 November 2024. The application relied upon a Notice to Leave dated 11 October 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 of £1,800 overdue in respect of irregular payments between May and October 2024. The Notice stated that rent was £600 per month. The Notice intimated that an application to the Tribunal would not be made before 1 July 2024.

3. The Tenancy Agreement lodged with the application showed that rent was £600 per month and due on the 9th of each month. The rent arrears in the Notice to Leave thus amounted to three months of arrears.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Moray Council on 28 December 2024 was provided with the application. There was no evidence in the application papers of compliance with provision of the pre-action protocol information in standard form, other than the information within the Notice to Leave.
5. Prior to the case management discussion ("CMD") the Applicant provided an updated rent statement showing arrears of rent of £4,300 outstanding for the period to 8 August 2025.

The Hearing

6. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 15 August 2025 at 10:00. We were addressed by the Applicant. There was no appearance from the Respondent.
7. We were informed by the clerk that no contact had been received from the Respondent (or on his behalf) with the Tribunal. The Applicant said that no communication had been received from the Respondent since around early May 2025 when a text message was received promising to bring the arrears up to date, followed by a payment of £600 on 9 May 2025. This was the last date of any payment (a fact was relied upon both in regard to this application and a conjoined case on rent arrears: CV/24/5414). Further details provided by the Applicant in regard to his contact with the Respondent is reviewed below.
8. We noted that the Respondent had received clear intimation of the CMD by the Sheriff Officer instructed by the Tribunal. Having not commenced the CMD until around 10:05, we were satisfied to consider the application in the Respondent's absence. In any case, no attempt was made by the Respondent (nor anyone on his behalf) to dial in late to the CMD.
9. We sought oral submissions on specific matters and noted the following points from the application papers and submissions:
 - a. As at the date of application the Respondent was in rent arrears of £1,800, equivalent to three months of rent, but that he had been in arrears of some amount since 9 May 2024 (so for a period of seven months).
 - b. The payments between 9 May 2024 to 9 May 2025 were sporadic and there had been no payment since.

- c. The monthly rent for the property is £600 to be paid on the 9th of every month. From 9 May 2024, the Respondent had frequently paid late, made partial payments, or not paid at all.
 - d. Arrears now stood at £4,900 covering the period to 8 September 2025.
10. The Applicant provided details of communication with the Respondent on the issue of arrears since May 2024 until around early Summer 2025. Around that time, the Applicant ceased making attempts at contact as the Respondent was no longer responding. The Applicant provided the following information as to contact that had been made or attempted:
- a. Around August 2024, the Applicant attended at the Property to carry out a standard inspection. As the arrears were mounting at that time, he spoke with the Respondent about them. The Respondent said he was financially struggling and worried about being able to pay the rent. He said he was needing to juggle between which creditors were to be paid (and he was intending to pay his Council Tax instead). The Respondent explained that he could not afford to pay his rent for the Property along with all his other costs, but also did not have enough money to move somewhere else. He said that he had looked into social housing but the local authority had advised him that he needed to be evicted in order to be rehoused. The Applicant noted his financial problems and suggested he look at sources of advice from the Scottish Government and Moray Council on the internet. He also mentioned to the Respondent that he had seen a number of permanent jobs available in the local area, and suggested those would give him greater financial stability (compared to shift working through agencies which the Applicant believed the Respondent was then reliant on).
 - b. Around early May 2025, the Respondent texted to say that he had a job, but had not told the Applicant about it earlier in case it did not last. The Respondent said in the text that he planned to make up payment of the arrears. (A payment of £600 was paid on 9 May 2025 but nothing since.)
 - c. Following the text and payment, and in light of no other payments, the Applicant called the Respondent a few times in early Summer, but the calls went unanswered. The Applicant stopped trying to call the Respondent.
 - d. Around June 2025, a neighbour reported a dislodged external drain pipe which meant water was seen pouring out the exterior of the Property. (The Respondent had not reported this.) The Applicant attended with a plumber to fix it. While there, he knocked on the door but received no answer.
 - e. Over the last few months, the Applicant took to driving past the Property if he was in the area. The Property appeared occupied and there was sign of the Respondent's car being there.
 - f. The Applicant had received a letter from Moray Council asking for a tenancy reference for the Respondent, which led the Applicant to believe that the Respondent had sought to be rehoused, and was simply waiting to be evicted so the local authority would then rehouse him.
11. The Applicant's agent provided further oral submissions on the background in regard to the reasonableness of the application:
- a. The Property was a two-bedroom ground floor flat in a block of four.

- b. The Property was not believed to be specially adapted for the use of the Respondent, nor especially suitable for his needs.
- c. The Applicant believed the Respondent to have been of working age, around 30.
- d. The Applicant believed the Respondent had been in and out of employment. Latterly, the Applicant believed the Respondent to have various shift work jobs, employed through agencies.
- e. The Respondent was believed to reside alone at the Property.
- f. There had been some limited issues with the condition of the Property:
 - i. Around March 2024, a chimney fire occurred (probably due to a bird's nest in the chimney). The Respondent did not report it nor clean up the soot properly from it. It was only discovered some months later by the chimney sweep which the Applicant had sent to carry out routine sweeping.
 - ii. Around July 2024, the Respondent was leaving the grass to become overgrown. When pressed about it, he said he lacked a lawnmower or the money to buy one. The Applicant provided him with a strimmer.
 - iii. The recent issue with the external pipe, which the Respondent did not report.
- g. The Property was the Applicant's only property which he rented out.
- h. The Property was mortgaged and the monthly costs exceeded the income received, due to the rising arrears.

12. No motion was made for expenses.

Findings in Fact

- 13. On 6 October 2023, the Applicant let the Property as a Private Residential Tenancy to the Respondent with commencement on 9 October 2023 ("the Tenancy").
- 14. In terms of clause 7 of the Tenancy Agreement, the Respondent required to pay rent of £600 a month in advance on the 9th day of each month.
- 15. As of 11 October 2024, the Respondent was in arrears of rent of £1,800 having failed to make regular and full payment of rent from 9 May 2024 until that date.
- 16. On 11 October 2024, the Applicant 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 £1,800.
- 17. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 11 November 2024.
- 18. The Applicant served a copy of the Notice to Leave on the Respondent by email on 11 October 2024.

19. The Applicant raised proceedings on 17 November 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.
20. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Moray Council by the Applicant.
21. The Respondent undertook in May 2025 to make payment of the arrears but failed to do so.
22. The Respondent has failed to make any payment towards rent since 9 May 2025.
23. The rent has been in arrears to some extent since 9 May 2024.
24. As of 15 August 2025, the Respondent remains in arrears of rent in the amount of £4,900 which is equivalent of over eight months of rent.
25. The Respondent does not claim to have paid any amount of the arrears of £4,900 remaining as at 15 August 2025.
26. The sum of arrears remaining as of 15 August 2025 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, other than any referable to an act or omission of the Respondent.
27. The Respondent has no known dependents living with him at the Property.
28. The Property is a two-bedroom ground floor flat.
29. The Respondent has, in the past, failed promptly to address issues with the condition of the Property under his control (such as grass-cutting, and cleaning up soot within the room with a fireplace) or to report maintenance issues that fall within the responsibility of the Applicant (such as a leaking external pipe, and an apparent blockage in the chimney).
30. The Property is not specially adapted for the use of the Respondent nor is its location specifically suitable for the Respondent's needs.
31. Intimation of the date and time of the CMD was given to the Respondent by Sheriff Officer on 2 July 2025.

Reasons for Decision

32. 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.

33. 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 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.*

...

34. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. There is nothing to suggest that the Respondent's failure to pay is related to an issue with benefits. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness.

35. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard of persistent arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. There was an absence of any proper engagement by the Respondent on payment of the arrears. His communication with the Applicant, from August 2024, suggested he was aware of his poor financial position and that he wished to address it but did not believe he would be able to if remaining at the Property. In May 2025, we were told of a text where the Respondent claimed that he was going to address the arrears but he then failed to do so. In addition, we had concerns as to the condition of the Property and the Respondent's apparent lack of engagement with maintaining the condition, such as failing to report obvious maintenance issues.

36. To be balanced against this is the question of the lack of compliance with the pre-action protocol. The Applicant accepted there was no compliance in normal terms, but we note that the standard Notice to Leave (which was used in this case) contained advice on sources of advice and provided a notification of the then-rent balance. Further, the Applicant provided his submissions on a conversation of August 2024 prompting the Respondent to seek help from public sources of support, and to encourage him to seek more stable and reliable employment. There was clearly a willingness by the Applicant to seek

rehabilitation of the arrears position, as well as an engagement by the Respondent with seeking assistance (as he had clearly sought social housing from Moray Council). The Respondent did not appear or provide submissions in regard to any issue regarding reasonableness. In all the circumstances, including the lack of compliance with the pre-action protocols, we were satisfied that it was reasonable to evict on the basis of the information before us.

37. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

38. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 12 of Schedule 3 of that Act.

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.

J Conn

15 August 2025

Legal Member/Chair

Date