

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/24/5180

Re: Property at Flat 1/1 17 Roslea Drive, Glasgow, G31 2LQ (“the Property”)

Parties:

Mr Michael Dunlop, Flat 2/6 1 Hanson Park, Glasgow, G31 2HA (“the Applicant”)

Mr Declan Cox, Flat 1/1 17 Roslea Drive, Glasgow, G31 2LQ (“the Respondent”)

Tribunal Members:

Alison Kelly (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 the order for eviction should be granted.

Background

1. On 11th November 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.
2. Lodged with the application were:
 - i. Copy Private Residential Tenancy Agreement showing a commencement date of 7th June 2024 and a rent of £875 per month;
 - ii. Copy Notice to Leave dated 4th October 2024;
 - iii. Copy email dated 4th October 2024 to the Respondent serving the Notice to Leave;
 - iv. Section 11 Notice and proof of service;
 - v. Copy Rent Statement showing arrears of £3500 as at 30th September 2024;

vi. Pre Action Requirements emails

3. The Application was served on the Respondent by Sheriff Officers on 18th March 2025.

Case Management Discussion

4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Callaghan of TC Young, Solicitors. The Applicant was also on the call. The Respondent joined the call and represented himself.
5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Respondent explained that he had not received a copy of the papers and had only found out that the case was calling today when his friend googled his name yesterday and found the listing on the Tribunal's website. He did not know why his friend had been googling his name. The Respondent explained that he had autism and would need support to understand the proceedings and to present his case. He sought an adjournment. The Tribunal decided to hear each party's respective positions before deciding further procedure.
6. Miss Callaghan sought an order for eviction in terms of ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She explained that the tenancy began on 7th June 2024 and that the rent was £875 per month. She said that the Respondent had not paid rent since the initial payment of £690 and that the arrears of rent are now £9625.
7. The Tribunal asked the Respondent for his position and asked him specific questions. He said that he signed the tenancy agreement at the outset and had spoken to a support worker beforehand. This would have been someone from the Citizens Advice Bureau. He said that he understood that his obligation was to pay rent. He said that he had paid rent in cash to the landlord direct. The landlord had come to the property to collect the cash. The landlord then phoned and told him that he would send a representative to collect the rent and the Respondents said that he had then paid the rent to that representative. He could not remember the name of the representative. He said that this happened up until March 2025, and after that no one came to collect the money. He said that he has the money.
8. The Respondent said that he had not received the initial papers and he could not recall receiving the letter sent by TC Young on 4th April 2025. He said that he often gets his neighbour's post and vice versa. He said that he did not recall getting any emails or the Notice to Leave.
9. Miss Callaghan was asked for her client's position about the rent payments. She said that she received a call from the respondent on 4th November 2024 when he told her he had been making payments in cash. The Applicant told her this was not true.

10. The Applicant confirmed that he had received a deposit of £875 and it was placed in a tenancy deposit scheme. He also confirmed that he had taken a reference from the Respondent's previous landlord who had confirmed there was no issue with the Respondent as a tenant.
11. The Respondent confirmed that he was not in employment. He had received benefits for a while but did not now receive them as he was supported by a family member. He had, for a while, received the housing element of benefits and this was what he had used to pay the landlord in cash.
12. As there was a matter of fact in dispute i.e. Whether the rent had been paid by the Respondent to the Applicant in cash, the matter would require to go to a Hearing, at which evidence could be led from witnesses and the Tribunal would be able to decide in relation to the credibility and reliability of each witness.
13. It was agreed by all parties that this should be an in person hearing.

Subsequent to CMD

14. The Tribunal issued a Direction to the Respondent as follows:

The Respondent is required to provide:

1. *A written note detailing what rent he alleges was paid in cash to the landlord including dates and amounts.*
2. *Proof that he has paid the rent he says he holds and which is still outstanding to the Applicant using the bank details for the Applicant given on the tenancy agreement.*
3. *A written note of his previous address and details of his previous landlord.*
4. *Any other documents he considers to be relevant to proving that he paid the rent in cash including receipts for any cash payments made directly to the landlord or the landlord's representative.*
5. *A written list of the witnesses he intends to call at the hearing, including their addresses.*

The said documentation should be lodged with the Chamber no later than close of business on 16th July 2025.

15. The Direction was sent to the Respondent by email on 16th May 2025. The Respondent has not lodged anything in terms of the Direction and has therefore not complied with it.

16. On 28th August 2025 the Applicant's solicitor lodged an Inventory of Productions containing a number of documents and including an up to date rent statement showing that the arrears stood at £13,125 on 31st August 2025.
17. On 12th September 2025 the Respondent sent an email to the Tribunal at 5pm precisely to say that he would not be able to attend the Hearing as he was medically unfit. He said that he had refused to go to A& E and had been advised to stay in bed. He said that he was waiting for a call from the hospital to tell him if he had a bed and if he had not he would need to go to the Medical Assessment Unit. He said that he was having investigations for issues with his kidneys. He said that he could provide a redacted medical letter and he would have a nurse call the Tribunal office on the day of the Hearing.
18. The Respondent called the Tribunal office on the morning of the hearing and said he was having an operation on Wednesday. He did not provide the redacted letter, nor did a nurse call the Tribunal office.

Hearing

19. The Hearing took place in person at the Glasgow Tribunal Centre. The Applicant was represented by Miss Donnelly of TC Young, Solicitors. The Applicant was also present. The Respondent did not attend.
20. The Tribunal had to decide whether to proceed in the absence of the Respondent. The Tribunal noted that nowhere in his email of 12th September 2025 did the Respondent seek an adjournment or postponement of the Hearing. In term of Rule 29 the Tribunal can proceed with the Hearing in the absence of a party if the Tribunal is satisfied that the notice requirements have been complied with. Given that the Respondent had referred to the Hearing in his email the Tribunal was so satisfied.
21. In terms of Rule 28 the First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time, adjourn or postpone a hearing. The Tribunal considered whether it should adjourn or postpone in the circumstances, having regard to the Tribunal's overriding objective to act justly, in terms of Rule 2.
22. The Tribunal decided that it must have regard paragraph (e) of Rule 2, which states that the Tribunal should avoid delay, so far as compatible with the proper consideration of the issues. The issue in the case was whether Ground 12 had been satisfied.
23. The Tribunal noted that at the CMD the Respondent had alleged that he paid rent in cash to the Applicant. As this was effectively an allegation of fraud made against the Applicant. The Tribunal issued a detailed Direction to the Respondent seeking a detailed statement with full specification of the allegation made, and documentation to back that up. The Respondent was to

lodge the information by 16th July 2025. He failed to do so. He has therefore not co-operated with the Tribunal procedure and has not laid out his position as to why rent, which he accepted at the CMD that he had an obligation to pay, has not been paid. In those circumstances it would not be just to adjourn or postpone the Hearing.

24. Miss Donnelly moved for the order for eviction to be granted. She said that he current arrears are £13,125. She made reference to the WhatsApp messages which were lodged with her Submission. She made reference to several messages from the Respondent to the Applicant in July 2024 where the Respondent said that he did not deal in cash, and in one message said that cash payments were not allowed in terms of the tenancy agreement. The Applicant confirmed to the Tribunal that he had never received any payments in cash from the Respondent, and the only payments he ever received from the Respondent were £875 for the deposit and £690 being the balance of the first month's rent as the respondent had moved in in the middle of a month. He also confirmed that the transcript of the WhatsApp messaged which had been lodged was accurate. The Applicant also referred to the more recent emails between the parties, which had been lodged, which showed that the Respondent was still responding to emails, but there was no mention of rent.

25. The Applicant went on to tell the Tribunal that he was suffering loss as a result of non payment of rent. The factoring fees are high as there are only three properties in the block, and he is having to meet the mortgage payments from savings.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property commencing 7th June 2024 and a rent of £875 per month;
- b. A Notice To Leave, dated 4th October 2024, was served timeously and correctly;
- c. A section 11 notice was served on the local authority;
- d. The Applicant complied with the Pre Action Requirements;
- e. The arrears at the times the Notice to Leave was served were £3500;
- f. The arrears when the application was lodged with the Tribunal were £4375;
- g. The current arrears are £13125;
- h. The Respondent lives alone in the property, which is a one bedroomed flat;
- i. At the time of the CMD the Respondent was not in receipt of benefits;

Reasons for Decision

26. Ground 12 states as follows:

12(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.

27. The Tribunal is satisfied that Ground 12 has been met. The arrears criteria have been met and the Tribunal are satisfied that the Respondent is not in arrears due to the non payment or delay in payment of a relevant benefit.

28. The Tribunal has to consider if it is reasonable to grant the Order for eviction. The Tribunal considers that the level of arrears, £13,125, equating to 15 months, makes it reasonable in and of itself to grant the order. In this case there are additional factors which also make it reasonable. The Respondent has made an accusation against the Applicant. He has not complied with the Direction and therefore has not engaged with the Tribunal procedure. WhatsApp messages show that the Respondent said on several occasions that he does not deal in cash, making his allegation that he had paid cash to the Applicant not credible. The Tribunal notes that in the Whatsapp message of 15th July 2024 sent by the Respondent in response to the Applicant suggesting that he will evict the Respondent if he does not pay the rent, the Applicant gives a fairly comprehensive summary of the law in relation to obtaining an eviction order and the law in relation to wrongful eviction. He also asked if the Applicant has placed his deposit in to a Tenancy Deposit Scheme. He cannot therefore plead ignorance of the law.

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.

Alison Kelly

15/09/2025

Legal Member/Chair

Date