

**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 (1) of the Private Housing Tenancies (Scotland) Act 2016 ("The Act")**

**Chamber Ref: FTS/HPC/EV/24/3686**

**Re: Property at 29 Ivanhoe Place, Dundee, DD4 6LQ ("the Property")**

**Parties:**

**Mr Greig Kerr, 8 Nesbitt Street, Dundee, DD4 7HN ("the Applicant")**

**Ms Senga Gray, 29 Ivanhoe Place, Dundee, DD4 6LQ ("the Respondent")**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the Application and did not make an Eviction Order.**

**Background**

[2] The Applicant seeks an Eviction Order under ground 12 of Schedule 3 of the Act. The Application was accompanied by a copy of the relevant tenancy agreement, the notice to leave with proof of service, the relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 and a rent statement.

[3] The Application had called previously for a Case Management Discussion ("CMD") where case management orders in the form of Directions regulating the production of evidence had been made. The Application was continued to a Hearing in person for evidence to be heard and a final decision to be made.

**The Hearing**

[4] The Application then called for a Hearing at Dundee Carers Centre, 134 Seagate, Dundee which started at 10.10 am on 2 September 2025 after the Respondent had arrived late. The Applicant was represented by his father, Mr Kenneth Kerr. Mr Kerr explained that the Applicant himself would not be giving evidence and that he would represent his son and give evidence on his behalf. The Respondent was present with her solicitor, Mr Gibson of Dundee Law Centre. There would be no other witnesses on her behalf.

[5] The Tribunal began by ensuring that everyone was familiar with the documentation submitted before the Tribunal. Since the CMD, parties had each submitted some emails and other items of correspondence. Neither party had observed the timescales for the production of this documentation. These included communications with a technical officer at Dundee City Council regarding repairing issues in the Property. The Applicant had also supplied some medical letters and a letter regarding her housing points situation from Dundee City Council. The Tribunal ensured everyone had submitted the documentation they wanted to be considered and were familiar with what documentation the Tribunal had before it.

[6] As a further preliminary matter, the Tribunal wanted to know what the current rent arrears figure founded upon was. The answer was £412.61. The Tribunal noted that the Respondent's position was that this sum was not lawfully due on account of repairing issues in the Property and in any event that it would not be reasonable to make an Eviction Order. Mr Kerr wished to proceed with the Application for an Eviction Order on the basis of the rent arrears of £412.61. Both parties were content for the Hearing to start.

[7] The Tribunal began hearing evidence. After each witness gave evidence, the other party had the right to cross-examine the witness. At the conclusion of evidence each party also had the right to make closing submissions. The Tribunal also asked questions throughout to ensure that it understood the evidence.

*Mr Kenneth Kerr*

[8] Mr Kerr is the Applicant's father and representative. He described how the Respondent has been in arrears for a cumulatively large number of months. He mentioned historic periods of 9, 15 and 23 months of rent arrears. Mr Kerr denied that there were any legitimate repairing issues outstanding at the Property that might justify the non-payment of rent. Mr Kerr was somewhat ill at ease in giving his evidence and was clearly frustrated. He was not expansive in his verbal exchanges with the Tribunal. He appeared surprised when the Tribunal wanted to refer to the actual letters exchanged between him and Mr Stuart Cuthill, technical officer at Dundee City Council about the issues in the Property. He was rather curt when asked about the details of

such matters. After probing his position further, it was clear that what Mr Kerr wanted to say was that he believed that he had a letter dated 9 April 2025 from Mr Cuthill which gave the Property a clean bill of health as it were.

[9] The Tribunal asked Mr Kerr about his son's personal circumstances. Again, Mr Kerr was not particularly expansive in his answers. He did say that his son worked in Tesco and this was his only investment property. The Tribunal asked about what impact the rent arrears were having on the Applicant. Mr Kerr explained that it causes him issues with paying the mortgage. The Tribunal asked for further details about these mortgage payments and the difficulties caused but Mr Kerr said he didn't know.

[10] In cross examination it was suggested to Mr Kerr that the report he had mentioned in fact stated: *"kitchen window-not repaired or replaced"*. This then naturally drew the Tribunal's attention again to the previous letter in the papers from Mr Cuthill which stated that: *"The kitchen window is not considered to be wind tight as there is a gap where daylight can be observed. Undertake the necessary repairs or replace the window."*

[11] In reply, Mr Kerr suggested that the most important part of the letter dated 9 April 2025 was the final section headed *"recommendations"*. Here was stated the following:

### ***Recommendations***

*Kitchen hob – can you confirm that the electrician used to check the hob was qualified in white good appliances? If not, it is recommended that a suitable qualified contractor is employed to check the hob. This will confirm once and for all if there is an issue with the hob.*

*Bedroom radiator – due to the fact that a possible burning smell is being emitted when in use it is recommended that a suitable electrical engineer is employed to check the radiator.*

*The above recommendations are requested as there may be a safety issue involved.*

*Please call if you wish to discuss.*

[12] Whilst Mr Kerr's answers were again somewhat brief, the Tribunal surmised that what he was meaning was that the fact that the letter concluded with *"recommendations"* rather than something along the lines of *"requirements"* meant that there was nothing to suggest that the issues raised were particularly serious. Again, trying to interpret what the Applicant's position was rather than rely on the limited words spoken by Mr Kerr, the Tribunal considered that what the Tribunal was to understand was that the terms of the letter were such that it would be inappropriate to conclude that there was any question of the Property not being habitable that might support any argument regarding the lawful withholding of rent.

[13] The Tribunal found Mr Kerr's evidence to be largely credible and reliable to the extent that the Tribunal did not think that Mr Kerr was deliberately being dishonest or

deceitful. However, the Tribunal had difficulties accepting Mr Kerr's conclusions for the reasons more thoroughly set out below. His reluctance to talk through the issues in a business-like manner was not helpful.

[14] Thereafter the Tribunal heard from the Respondent, Ms Senga Gray.

*Ms Senga Gray*

[15] Mr Gibson led evidence from Ms Gray. Ms Gray was due to turn 69 years of age the day after the Hearing and she does not work. She has resided in the Property for 4 years. She lives alone and suffers from a variety of health conditions which include fibromyalgia, chronic obstructive pulmonary disease, osteoporosis, emphysema and spondylitis. She also suffered from post-traumatic stress disorder and a personality disorder. She described being badly affected by the recent death of a son. She sees a psychiatrist monthly and is supported by a community psychiatric nurse. She is also supported by a social worker and a housing support worker. She has mobility issues and previously injured her back.

[16] The Property has two bedrooms and a private garden and is situated in a four in a block style building. She initially explained that she was withholding rent in the sum of £412.61. Ms Gray explained that she was doing so because of certain issues with the Property. She said that the heating was inefficient in the living room and the front bedroom and there was a draft from the kitchen window. She explained that panels had been replaced in the front room. She described issues she had with the cooker. Her evidence was that at a certain point she had been supplied with an induction hob and didn't know how to use it although she also appeared to say that she did know how to use an induction hob but didn't have the right pans. The Respondent's evidence was somewhat confusing and flitted between topics. Her description of the issues in the Property was more or less corroborated by the terms of the letters from Mr Cuthill which the Tribunal were referred to. These letters set out certain observations regarding aspects of the Property at an initial visit and then at a follow up visit once certain action had been taken by the Applicant.

[17] However as the evidence progressed, the merits of the argument regarding withholding rent came undone. Ms Gray accepted that she had been paying her rent without any issue and that she only started accruing arrears once her rent was increased. Her evidence made clear that the arrears were not accrued intentionally but rather as a consequence of not increasing her rent payment after the rent was increased. A rent increase was served by the Applicant on 8 July 2024. It purported to increase the rent from £650.00 to £675.00 per month. The Respondent's evidence was that the first she found out about the increase was in October 2024. The arrears that are currently founded upon represent the sums accrued during the period when the rent increased but the Respondent kept paying the old amount. The sum of £412.61 is currently outstanding as rent arrears which were accrued during the period from July 2023 until April 2025 when the payments made increased to £675.00 per month.

[18] The Tribunal put to the Respondent that the rent arrears had therefore been accrued unintentionally and that she was now retrospectively manufacturing a justification for the non-payment. The Respondent candidly agreed with this. Whilst this did represent an obvious blow to the argument seemingly presented by Mr Gibson, the Tribunal was grateful for her candour. This was no slip of the tongue by the Respondent. Later on, she restated this.

[19] There had been previous issues raised between the parties about the condition of the Respondent's garden and how she had let it fall into disrepair. The Applicant had indeed referred to this in the Application as representing a breach of the conditions of the tenancy upon which an Eviction Order might be granted. However, no such ground was identified in the relevant notice to leave and so it had been previously determined that the Tribunal would not entertain the Application proceeding on such a basis. Nevertheless, the Respondent appeared to acknowledge the issues and made reference to now seeking help from a gardener as she explained she was physically unable to maintain the garden herself.

[20] The Respondent described having good relations with a son who lived nearby with whom she would regularly socialise. She explained that she would be deeply upset and badly affected if the Tribunal were to grant the order sought evicting her from her home. The Respondent also made reference to a recent death of another son and was often emotional and would refer back to this at various passages of her evidence. The Respondent said "*I love my home*" on more than one occasion.

### **Analysis of Evidence**

[21] The Tribunal found the evidence presented by both parties to be challenging for different reasons. The Respondent came across as someone who any reasonable person would consider to be vulnerable. She will be 69 years of age at the time this decision will be issued. She suffers from a variety of health conditions both physical and mental. She appears to have an array of carers and social workers who support her at home. She has suffered the death of a son. Her presentation and demeanour were consistent with someone who requires support. She clearly has mobility issues. She also described having issues with her neighbours and described an incident when her neighbour threatened to kill her in the night. She stated that the neighbour in question was a serving police officer. The Respondent came across as somewhat chaotic in her evidence. The Tribunal considered that the Applicant may well consider the Respondent to be a challenging partner with whom to conduct his business as a landlord.

[22] While it is true that Ms Gray did mention some issues with the Property which might have been a source of annoyance to her and that the existence of these issues was arguably corroborated by objective evidence, it was clear that Ms Gray herself knew there was no good reason that she hadn't settled the arrears. She said as much herself. Mr Gibson's submission on the issue of rent abatement was skeletal. He pointed to no case law that might support his position and proposed no analysis as to how the precise

sum underpaid might be credibly considered to be a fair measure of rent abatement. No legal analysis at all regarding the rent abatement issue was presented.

[23] In contrast Mr Kerr came across as someone who saw this matter in black and white. He seemed to be unaware that “*reasonableness*” was a factor to be taken into account. This permeated his evidence. After the CMD, Mr Kerr had taken issue with the wording of the CMD note and written to the Tribunal looking to have ‘*the minutes updated.*’ The notes had narrated the eviction ground relied on in the Application and the nature of the defence- namely that the rent was not lawfully due and that it would not be reasonable to grant an eviction order.

[24] Mr Kerr’s correspondence challenged the content of the note and made reference to the “*Scottish Government Guidance*”. He then effectively repeated the wording of Ground 12. The Tribunal considered that Mr Kerr appeared not to understand the test the Tribunal had to apply which included a consideration of the reasonableness. He bullishly stated at the Hearing that he was “*still waiting on someone to get back to him*”.

[25] This is particularly relevant as it was clear that Mr Kerr didn’t appear to understand that “*reasonableness*” was a necessary component of the Tribunal’s decision which was separate from whether the ground relied on was established. In his closing submissions when the Tribunal directly asked Mr Kerr to address the reasonableness of making an Eviction Order, Mr Kerr spoke again about the ground and the “*Scottish government guidance*”.

[26] It was very clear to the Tribunal that Mr Kerr thought that because the ground was met then an eviction order had to be granted. Mr Kerr’s evidence displayed little understanding of “*reasonableness*” as a specific separate statutory test to be addressed before an Eviction Order could be granted.

[27] Having heard from parties, the Tribunal makes the following findings in fact.

1. *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy which commenced on 1 July 2021.*
2. *The Respondent is currently 69 years of age and lives alone. She does not work and is financially dependent on state benefits.*
3. *The Respondent lives alone and suffers from a variety of health conditions which include fibromyalgia, chronic obstructive pulmonary disease, osteoporosis, emphysema and spondylitis. She also suffered from post-traumatic stress disorder and a personality disorder. She sees a psychiatrist monthly and is supported by a community psychiatric nurse. She is also supported by a social worker and a housing support worker. She has mobility issues and previously injured her back. She struggles to maintain her garden.*
4. *The Respondent’s contractual monthly rent was £650.00 per month until a rent increase notice was served by the Applicant on 8 July 2024. It purported to increase the rent from £650.00 to £675.00.*

5. *It was not until April 2025 that the Respondent's housing benefit element of her state benefits increased in line with the relevant increase to her rent.*
6. *The Applicant served a notice to leave under ground 12 of Schedule 3 of the Act dated 3 June 2024 which specified that an Application for an Eviction Order would not be submitted before 5 July 2024. The Applicant also served the requisite notice to the relevant local authority under Section 11 of the Homelessness (etc) (Scotland Act 2003.*
7. *The arrears that are currently founded upon represent the sums accrued during the period when the rent increased but the Respondent's monthly payment of rent was at the previous rate of £650.00 per month. The Respondent then increased her monthly payments once the necessary arrangements had been made regarding her benefits.*
8. *There are some minor repair issues in the Property which objectively cause a modest amount of irritation and annoyance to the Respondent. These issues include a kitchen window which has a slight gap when fully closed.*
9. *The Respondent is also unhappy with the heater in her front bedroom which she says poses a risk of a child tipping it over. It may cause a smell when operational.*
10. *The Respondent considers that the Property has an inefficient heating system.*
11. *There have been certain works carried out on the Property by the Respondent to address certain other concerns which included issues with the electrics and decorative issues.*
12. *The sum of £412.61 is currently outstanding as rent arrears which were accrued during the period from July 2023 until April 2025 when the payments made increased to £675.00 per month.*
13. *There have been previous instances of arrears which were cleared by the Respondent by lump sum payments.*
14. *The Applicant owns no other investment properties and his principal income is from employment at Tesco.*
15. *The Applicant's position is that the arrears are causing him difficulties with his mortgage payments. The nature and extent of those difficulties and indeed any details about the mortgage are unknown.*
16. *There is tension between the parties. The Respondent struggles to maintain the garden which appears to be a source of irritation to the Applicant. The Respondent has challenged the Applicant about various repairs in the Property.*
17. *The Property is habitable and has always been habitable. The issues raised do not disturb the Respondent's full occupation and use of the Property.*
18. *The sum of £412.61 is lawfully due as arrears of rent by the Respondent to the Applicant but remains unpaid.*
19. *The Respondent is well settled in her Property despite expressing issues with certain neighbours which do not appear rational.*

[28] Having made the above findings in fact, the Tribunal decides as follows.

## **Decision**

[29] The Tribunal finds that there is no statable case for the abatement of rent. The Respondent's submissions on the matter lacked any detail and the Respondent herself literally said that she knew she was not entitled to withhold payment of £412.61. It was

obvious that those arrears had accrued with no intention to abate rent. The arrears had arisen because the Respondent didn't increase her monthly rent payments in line with the increased monthly rent. The Respondent survives entirely on state benefits and it seems that it took time for the Respondent's housing benefit payment to be increased.

[30] The decision to attribute this to rent abatement seems entirely retrospective. There was no evidence of contemporaneous correspondence that suggested otherwise. The details of the issues with the Property appear to raise no suggestion that the Property is not habitable or partly uninhabitable. There is no report from any surveyor that might support such a position or any logic put forward as to how the sums supposedly abated have been calculated. The argument about rent abatement has no merit. The sums outstanding are lawfully due.

[31] That being said, the Tribunal then finds that the ground relied upon in the notice to leave (ground 12) is established. The Tribunal therefore has to consider whether it is reasonable to grant an Eviction Order.

[32] The Respondent's position regarding it not being reasonable is based on the Respondent's circumstances and the relatively modest amount of the arrears. The Tribunal agrees that the sum claimed is relatively modest. But that does not mean that it follows that it is automatically unreasonable to grant an eviction order. The Tribunal takes the view that the supposed reason for not settling the arrears is flawed and wondered why the Respondent wouldn't have simply settled the arrears which would have made the decision of this Tribunal inevitable.

[33] She however has not done so and the Tribunal now has to consider whether it is reasonable to make an Eviction Order. The Tribunal has already noted the Respondent's circumstances and her vulnerabilities. She is a lady of advanced years with a variety of medical issues which affect many parts of her life including her mobility. Naturally the Tribunal is cautious about the effect making an Eviction Order may have on her.

[34] The case for the reasonableness of granting the Application was not well expressed. All that was really said was to inform the Tribunal that this is the Applicant's only investment property and that the Applicant works in Tesco. It was said that the rent arrears cause the Applicant issues with his mortgage but Mr Kerr could not provide any details about that. Reference was made to there being prolonged and separate periods of rent arrears. The Tribunal notes and accepts that it would be frustrating for there to be sustained periods of arrears and this would not be consequence free for the Applicant. However, the negative consequences were presented as almost theoretical as no evidence was actually presented about the specifics.

[35] The Tribunal comes back to its observation that the Applicant appeared not to be familiar with the concept of it having to be reasonable to grant an Eviction Order. The Tribunal does not solely have to consider the relevant statutory ground set out in the notice to leave. The Tribunal therefore weighs the competing factors in the balance and



concludes that it is not reasonable to grant the Application and evict the Respondent given her circumstances and the fact that the rent arrears are £412.61.

[36] The Respondent should pay those sums. However, it is clearly out with the jurisdiction of this decision to make any such order given the Application is for an Eviction Order only. But it is plainly not reasonable that the Respondent should be evicted on the evidence presented. The Respondent's personal circumstances, the fact that further arrears are not accruing, the fact that the arrears are less than one month's worth of arrears, tip the scales decisively in favour of not granting the order. The reasons for granting the order are not sufficient to justify evicting a lady like the Respondent for static arrears of £412.61.

[37] 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.**

**Andrew McLaughlin**

19 September 2025

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**Legal Member/Chair**

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**Date**