



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/25/1149

Re: Property at 1/2 28 South Street, Greenock, PA16 8UD (“the Property”)

Parties:

Mr Derek Hosie, 58 Cortmalaw Crescent, Glasgow, G33 1TB (“the Applicant”)

Ms Caitlin Barilli, Mr Taylor McGinnes, 1/2 28 South Street, Greenock, PA16 8UD (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)

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 14 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 the rent arrears was submitted shortly thereafter and was conjoined with this application. The payment application was raised against the Respondent tenants but also against their Guarantor in respect of the tenancy. Both applications thereafter proceeded together through the Tribunal process.

2. Following initial procedure, on 7 April 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 17 September 2025. The application and details of the CMD scheduled were served on the Respondent by Sheriff Officer on 11 August 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 11 August 2025 and 2 September 2025, applications to increase the sum sought in the payment application initially to £5,250 and then to £5,775 were submitted on behalf of the Applicant. Updated supporting Rent Statements were also submitted on these dates and again on 16 September 2025, showing that the balance outstanding remained at £5,775. All were copied directly to the Respondent by the Applicant on submission to the Tribunal.

Case Management Discussion

5. The CMD took place by telephone conference call on 17 September 2025 at 10am. In attendance was Mr Kenneth Caldwell, Solicitor, of Patten & Prentice LLP on behalf of the Applicant. The Tribunal delayed commencement of the CMD for 5 minutes to give the Respondent an opportunity to join late but they 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 tenants, nor the Respondent Guarantor (in respect of the payment application), the Respondent tenants had initially engaged with the Applicant's letting agents, to advise of their updated circumstances. The payment difficulties appeared to have arisen when the First Respondent, who had initially worked as a carer, became pregnant and subsequently had a baby. The Second Respondent had also started a new job, around the turn of the year, in manufacturing. They did not, however make any payment proposals or advise of their intentions as regards the tenancy. There had been no contact or proposals from the Guarantor who was understood to be a relative of the Second Respondent. The Respondent tenants were understood to be a young couple, in their early twenties. There had been no indication that they were reliant on state benefits or had applied for social housing with the local authority. However, Mr Caldwell stated that, if they had, this was likely to be a situation where any such housing application would not be progressed until an eviction order had been granted and they were therefore at risk of being homeless. Mr Caldwell stated that his firm had written to the Respondent tenants in respect of the pre-action protocol, both at the time of serving the Notice to Leave and, again, once the notice period had expired. He had also written to the Guarantor before initiating the proceedings in respect of the payment application but not had any response. Mr Caldwell confirmed that the letting agents had previously issued other communications in respect of the pre-action protocol. It was noted that these

had not been lodged but Mr Caldwell offered to submit them to the Tribunal during the CMD. These were duly received and it was noted that communications had been issued to the Respondent tenants regarding the rent arrears owing as at 28 October 2024 and again as at 5 December 2024. The letting agents have reported that they understand the Respondent tenants still to be in occupation, as they manage another property in the vicinity.

7. Mr Caldwell stated that the tenancy had begun on 5 June 2024. The rent was £525 per calendar month which had not been increased. Most of the arrears accrued as a consequence of no further payments having been received from the rent due at 1 December 2024 onwards. The last payment had been £525 on 4 November 2024. The arrears amounted to over £2,000 when the Notice to Leave was served and now amount to £5,775 as no payments have been received. There was discussion regarding the two requests Mr Caldwell had submitted to the Tribunal to increase the sum claimed, firstly to £5,250 and then to £5,775.
8. Mr Caldwell advised the Tribunal that the Applicant is only understood to own and let out this one property through his letting agents, CS Properties. Mr Caldwell does not know whether there is still a mortgage in payment in respect of this property but advised that the Applicant is reliant on the rental income. In view of the significant rent arrears owing, the fact that there have been no payments made by the Respondent since November 2024 and no engagement or proposals from the Respondent, it was reasonable, in his submission, for the eviction order sought to be granted.
9. The Tribunal Members adjourned to discuss the applications in private. On reconvening, 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 submitting the further documentation required by the Tribunal, and the CMD was concluded.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 5 June 2024.
3. The rent due in respect of the tenancy was £525 per calendar month.
4. There was a background of rent arrears from early in the tenancy and no rent has been paid since November 2024.
5. The last payment made towards rent amounted to £525 on 4 November 2024.

6. No payments have since been made and arrears have been accruing continuously since then.
7. Arrears amounted to £2,100 when the Notice to Leave was served in February 2025, £2,625 when this application was lodged in March 2025 and now amount to £5,775.
8. The Applicant's letting agents and legal representative have sought to engage with the Respondent concerning the rent arrears and issued several communications to them in respect of the 'pre-action protocol'.
9. The Applicant's legal representative had also sought to engage with the Respondents' Guarantor in respect of the tenancy regarding the rent arrears.
10. Although the Respondent initially engaged with the letting agent to advise of a change in their circumstances, there has been no further engagement or payment proposals made by the Respondent or their Guarantor.
11. 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 5 February 2025.
12. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 8 March 2025.
13. This Tribunal Application was submitted on 14 March 2025.
14. The Respondent has remained in occupation of the Property.
15. The Respondent (and their Guarantor) have been called upon to make payment of the rental arrears or enter into a satisfactory payment arrangement but have failed to do so.
16. The Respondent was in rent arrears for three or more consecutive months when Notice to Leave was served and this remains the position.
17. 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.
18. 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 now substantial rent arrears amounting to £5,775 and that the rent had been continuously in arrears for a lengthy period of time, 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 them, to no avail. The Respondent had failed to engage meaningfully nor taken any other steps to resolve the arrears situation. They had not made any payments to account since November 2024. 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 they 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

17 September 2025

Legal Member/Chair

Date