



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/3537

Property at 7 Strathmore Avenue, Forfar, DD8 1NB (“the Property”)

Parties:

The Bervies Limited, 29 Idvies View, Letham, Forfar, DD8 2DU (“the Applicant”)

Mr Christopher Menmuir, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 12 of schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave, rent statement, section 11 notice and text messages between the parties were lodged with the application.
2. The Tribunal endeavoured to serve a copy of the application on the Respondent by Sheriff Officer. However, the Sheriff Officers were unable to serve the papers at the property as it appeared to be unoccupied, and a neighbour confirmed that the Respondent had moved out. The Sheriff Officers spoke to the Respondent by telephone. He confirmed that he had moved out but refused to provide his new address. Service was thereafter carried out by advertisement on the Chamber website. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 15

September 2025 at 10am and that they were required to participate.

3. The CMD took place on 15 September 2025. The Applicant was represented by Mr Fairbridge. The Respondent did not participate. A related application for a payment order under Chamber reference CV/25/3539 was also discussed.

Summary of Discussion at CMD

4. Mr Fairbridge told the Tribunal that the eviction order is still sought, although the Applicant is aware that the Respondent appears to have moved out. He has not returned the keys or notified the Applicant that he has moved out and refused to confirm in writing that the tenancy is terminated. No rent has been paid since the start of the tenancy. The arrears are now in excess of £12000. The Tribunal noted that the Applicant has not submitted an updated rent statement or request to amend the CV case and was advised that the Applicant has elected to restrict the claim for a payment order to the sum specified in the application under Chamber reference CV/25/3539 - £4200. In response to questions about compliance with the rent arrears pre action protocol, Mr Fairbridge referred to the copy text messages and the efforts by the Applicant to work with the Respondent in relation to the arrears. He said that the Respondent is in his 40's and lived at the property alone. There is no evidence that he was in receipt of (or entitled to) state benefits. He made various excuses for non-payment and different claims about his employment status. Enquiries have revealed that the Respondent may have criminal convictions, including one for fraud. The Applicant did not ask for proper references before offering the property. Mr Fairbridge advised the Tribunal that the Applicant has other properties, mostly commercial. They may re-let the property but are considering selling it because of the experience with this tenant.

Findings in Fact

5. The Applicant is the owner and landlord of the property.
6. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
7. The Respondent is due to pay rent at the rate of £700 per month.
8. The Respondent has been in arrears of rent since February 2024, and no payments have been made by the Respondents since that date.
9. The Respondent currently owes £12,600 in unpaid rent.
10. The Applicant served a Notice to leave on the First Respondent on 7 June 2024
11. The Respondent moved out of the property in February or March 2025 but has not terminated the tenancy or returned the keys.

Reasons for Decision

12. The application was submitted with a Notice to Leave dated 7 June 2024, together with a copy of an email which indicates that the Notice was hand delivered to the property on that date. The Notices states that an application to the Tribunal is to be made on ground 12, rent arrears over three consecutive months.
13. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
14. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
15. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states "(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in 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."
16. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
17. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent currently owes £12,600 and that he has been in arrears of rent for three or more consecutive months, both at the date of service of the Notices to leave and the CMD. Part 1 of Ground 12 is therefore established.
18. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

- (a) The Tribunal is not satisfied that the Applicant has fully complied with the Rent Arrears Pre-Action Protocol. The Applicant provided some text correspondence. Although this demonstrates that the Applicant was willing to make a repayment arrangement and work with the Respondent in relation to the arrears, the messages do not appear to contain all the information required by the protocol. The Tribunal is therefore of the view that there has been partial compliance with the protocol.
 - (b) There is no information or evidence to suggest that the arrears are attributable to a delay or failure in the payment of a relevant benefit.
 - (c) The Respondent did not participate in the CMD or notify the Tribunal whether the application is opposed.
 - (d) The Respondent vacated the property in February 2025.
 - (e) The arrears are substantial and are increasing. No payments have been made for 20 months.
19. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act that ground 12 has been established. For the reasons outlined in paragraph 18, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

20. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

