



**Decision 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”)**

**Chamber Ref: FTS/HPC/EV/24/3227**

**Re: Property at 1E Cocklerow Bank, Edinburgh, EH22 1FP (“the Property”)**

**Parties:**

**PFPC MMR 1 LP, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Ms Natalia Carlisle, 1E Cocklerow Bank, Edinburgh, EH22 1FP (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and David Fotheringham (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.**

**Background**

1. An application was received on 16 July 2024 from the Applicant’s solicitor under Rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act. The Applicant also made a civil proceedings application (reference no: FTS/HPC/CV/24/3226) for a payment order under rule 111 of the 2017 rules in respect of the outstanding rent arrears.
2. Attached to the application form were:
  - (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 6 June 2022.
  - (ii) Copy Notice to Leave dated 10 May 2024 citing ground 12, and stating the date before which proceedings could not be raised to be 10 June

- 2024, together with proof of sending by email to the Respondent dated 10 May 2024.
- (iii) Rent statement showing the Respondent's outstanding rent arrears to be £5149.31 as at 8 July 2024.
  - (iv) Copy notice to the City of Edinburgh Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email on 15 July 2024.
  - (v) Copy rent increase notice addressed to the Respondent dated 1 April 2023.
  - (vi) Pre-action letters sent to the Respondent by the Applicant's solicitor on 8 December 2023 and 15 July 2024.
3. In response to a request from the Tribunal administration, further information was received from the Applicant's representative on 21 and 28 May and 7 June 2024.
4. The application was accepted on 6 August 2024.

#### **The first case management discussion**

5. A case management discussion (CMD) took place by teleconference call on 17 December 2024. Mr Kenneth Caldwell of Patten and Prentice Solicitors represented the Applicant. The Respondent was present on the teleconference call and represented herself.
6. The Respondent said she had had a difficult past couple of years, having separated from her partner. She was a single parent with a 6 year old son, and had previously had childcare issues, which had meant she was unable to work full time. Her son was now at a local school and she was now working full time. She was now in a more stable position and is therefore able to pay towards her arrears.
7. She had agreed a payment plan with Touchstone (the Applicant's agent) and was trying hard to pay more than the agreed minimum of £150 per month, to reduce the arrears. She said that she planned to pay £300-£400 a month towards the arrears from January 2025 onwards.
8. The Tribunal noted that the Respondent's situation had stabilised, and that she had made significant efforts to repay the arrears in recent months. The arrears were now almost £3000 less than they had been in early July 2024. The Tribunal decided in all the circumstances to adjourn the CMD to a later date.

#### **The second case management discussion**

9. A second CMD took place by teleconference call on 2 June 2025. Mr Caldwell and the Respondent were again present on the call. Mr Caldwell noted that the Respondent had paid her rent in full each month since the first CMD, but had not made regular payments of £150 towards the arrears.
10. She had, however, made two payments towards the arrears in March totalling £1050. This amounted to more than the £900 which would have been paid during the previous 6 months, had she paid £150 per month. Mr Caldwell said that the Applicant's difficulty was that the Respondent did not communicate with them to explain why the agreed instalments had not been paid, and they had not anticipated the payments in March.
11. The Respondent told the Tribunal that she had a baby on 4 February 2025. She had gone on maternity leave in mid-January and there had been an issue with the payment of her maternity pay. This was why she had not paid £150 per month in the early months of the year. The problem had now been resolved, and she was now back on track with her payments. She said that she had sent an email to an employee of Touchstone to let them know about the problem, but had since discovered that he no longer worked there.
12. The Respondent said that while her income was now reduced until she was due to return to work in October, she was in a position to keep paying her rent plus the agreed £150 per month. She would pay more than this if she was able to do so, as she was keen to reduce the arrears as quickly as possible.
13. The Tribunal decided, given the Respondent's changed circumstances and the payments which she had made towards the arrears, to again adjourn the CMD in respect of both applications.

### **The third case management discussion**

14. A third CMD took place by teleconference call on 9 September 2025. The Applicant was again represented by Mr Caldwell. The Respondent was not present or represented on the teleconference call. The Tribunal clerk attempted to call the Respondent several times, but was unable to get through to her.
15. The Tribunal noted that the Respondent had been present at the two previous CMDs. It noted that at the previous CMD, she had made clear that she was very keen to ensure that she and her children could remain in the property. The Tribunal was also aware from the most recent updated rent statement submitted by Mr Caldwell that the Respondent had been continuing to pay her rent, as well as additional payments towards the arrears, although these had been somewhat erratic.

16. The Tribunal was not satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. It therefore decided that, in the interests of fairness and bearing in mind the overriding objective, the CMD should be postponed to a later date to give the Respondent the opportunity to attend. The Tribunal noted that the CMD had now been adjourned three times, and that it intended to make a final decision on both applications at the next CMD.

#### **The fourth case management discussion**

17. The adjourned CMD was arranged for 10 November 2025. An updated rent statement was received from Mr Caldwell on 4 November 2025.

18. The CMD took place by teleconference call on 10 November 2025 to consider both the present application and the accompanying civil proceedings application. Mr Caldwell represented the Applicant. The Respondent was present on the teleconference call and represented herself. She confirmed that she had not received the notification of the previous CMD on 9 September 2025.

#### **Submissions on behalf of the Applicant**

19. Mr Caldwell asked the Tribunal to grant an eviction order against the Respondent under ground 12. As at the date of the CMD, the Respondent owed the Applicant £2606.87. This sum included the rent due for November, although the Respondent usually paid the rent later in the month. He noted that the Respondent had made it clear throughout the process that she wished to retain the tenancy. She had continued to pay her rent each month plus £150 towards the rent arrears, and the initial balance of £5149.31 as at the time of the application had reduced considerably. He noted that the rent had been increased since the last CMD to £872.89 per month and that the Respondent had increased her payments to cover this amount.

20. Mr Caldwell asked the Tribunal to grant an eviction order in favour of the Applicant, on the basis that the Applicant would not enforce the order while the Respondent continued to pay her rent and maintain the agreed payments towards the arrears. He said that the Applicant had worked hard with the Respondent to get to this point and had shown considerable patience towards her. He submitted that it was unreasonable to expect the Applicant to take a leap of faith and withdraw the eviction application at this stage. It was therefore reasonable to grant an eviction order in the Applicant's favour.

## **Submissions by the Respondent**

21. The Respondent said that she was now back at work and was able to keep up both her monthly rent and the regular repayments towards her outstanding rent arrears. She works part time (20 hours per week) and is in receipt of universal credit. She is paid on the 29th of each month and pays the rent and the agreed payment toward her arrears each month after she is paid. She still lives in the property with her 7 year old son and her 9 month old baby daughter.
22. She indicated that she thought it would be fair in the circumstances for the Tribunal to grant an eviction order, subject to the Applicant's undertaking that this would not be enforced so long as she continued to pay her rent and make payments towards her arrears.

## **Findings in fact**

23. The Tribunal made the following findings in fact:

- The Applicant owns the property and is the registered landlord for the property.
- There is a private residential tenancy in place between the parties, which commenced on 6 June 2022.
- The rent payable under the tenancy is currently £872.89 per calendar month, payable in advance on the first of each month.
- The Respondent owed £5149.31 in rent arrears at the time the application was made.
- The Respondent agreed a payment plan with the Applicant to repay the arrears at £150 per month.
- The Notice to Leave was validly served on the Respondent by email on 10 May 2024.
- The Respondent had been in rent arrears continuously for more than three months as at the date of the fourth CMD.
- The Respondent is a single parent with two children aged 7 and nine months, who live with her at the property.
- The Respondent works part-time and is in receipt of universal credit.
- The Applicant has complied with the pre-action requirements.
- The Respondent's rent arrears are not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- The Respondent is in part time employment and is also in receipt of universal credit.

- The Respondent has paid her rent in full every month for more than a year, and has also paid additional payments towards the arrears during that period.
- As at the date of the fourth CMD, the Respondent owed £2606.87 to the Appellant, including the rent for November 2025.

**Reasons for decision**

24. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

25. The Tribunal considered whether Ground 12 (rent arrears) had been met. Ground 12 states:

***Rent arrears***

*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.*

26. The Tribunal noted that the Respondent had been continuously in arrears since June 2022. She had therefore been in rent arrears for three or more consecutive months.

27. The Tribunal then considered whether it was reasonable to issue an eviction order in all the circumstances of the case. In doing so, it took into account all of the evidence before it.
28. The Tribunal was satisfied that the Applicant had complied with the pre-action requirements. While the Tribunal noted that the Respondent was in receipt of universal credit, it was also satisfied on the basis of the evidence before it that the arrears were not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
29. The Tribunal took account of the Respondent's circumstances following the end of her relationship and then her period of maternity leave. It noted that she is a single parent with two young children who live with her at the property.
33. The Tribunal took into account the fact that while the Respondent is still in arrears, she has made considerable efforts to repay these. The level of arrears has reduced significantly from £5149,31 as at the date of the application in July 2024 to the current amount of £2606.87. The Tribunal noted that the latter sum includes the rent for the month of November. The Respondent has now established a pattern of regular payments, and assuming that this continues, she will pay £872,89 to cover the rent, together with a further £150 towards the arrears, towards the end of November. That would result in an outstanding sum due of £1583.98.
34. The Tribunal gave particular weight to the fact that the Respondent has now paid her rent in full for more than a year. She has also kept to the payment plan agreed with the Applicant albeit with some variations in the amount paid due to her circumstances following the birth of her baby. She is now back at work and has made payments of £150 each month since July 2025.
35. The Tribunal appreciates that the Applicant has expended considerable time and resources on this matter. It makes a payment order in respect of the outstanding arrears in its decision on the accompanying civil proceedings application, made on the same date as this decision.
36. The Tribunal understands the Applicant's desire to obtain an eviction order in case the Respondent should default on her rent again. Given the established pattern of repayment of arrears, and the Respondent's conduct during the Tribunal process however, the Tribunal did not think that the threat of an eviction order was necessary to ensure that she continues to make the necessary payments. In these circumstances, the Tribunal considered that it would be inappropriate and potentially detrimental to the Respondent in the future to require her to carry an eviction order on her housing record.
36. The Tribunal decided that in light of all the above considerations, it would not be reasonable in all the circumstances to grant an eviction order in favour of the Applicant against the Respondent. The Tribunal therefore refused the application.

## **Decision**

The Tribunal refused the application.

## **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**Sarah O'Neill**

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**Legal Member/Chair**

**10 November 2025**

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**Date**