



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/25/1644

Re: Property at 223 Moss Avenue, Caldercruix, ML6 7PX (“the Property”)

Parties:

Mr Craig Hall, 202 Mansfield Road, Balerno, Edinburgh, EH14 7JX (“the Applicant”)

Ms Anne Walker, 223 Moss Avenue, Caldercruix, ML6 7PX (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction should be refused.

Background

1. On 15 April 2025 the Applicant’s representative 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 using Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016, (“the 2016 Act”).
2. Lodged with the application were: -
 - Copy Private Residential Tenancy Agreement (‘PRT’) showing a commencement date of 9 March 2018 and an initial rent of £475 per month;
 - Copy Notice to Leave and E-mail to the Respondent dated 24 January 2025 attaching Notice to Leave;
 - Section 11 Notice;
 - Proof of service of section 11 Notice to Local Authority;
 - Rent Statement.

- Tenancy timeline
 - Landlord impact statement dated 14 April 2025
 - E-mail sent to the Respondent re Pre-Action Requirements in terms of The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
3. The application was served on the Respondent by Sheriff Officer on 17 September 2025.
 4. The application for Eviction was conjoined with an application for Payment under Chamber reference FTS/HPC/CV/25/1646.

The Case Management Discussion

5. The Application called for a Case Management Discussion (“CMD”) by conference call on 28 October 2025. The Applicant was represented by Ms Vikki McGuire, of Jewel Homes. The Respondent was present.
6. The Tribunal outlined the paperwork which had been received and the procedure to be adopted.
7. The Applicant had lodged further written submissions on 21 October 2025, namely; an updated timeline, updated rent statement, and an updated impact statement from the applicant dated 9 October 2025. These had been received by the Respondent.
8. The Respondent had lodged no written submissions.
9. The Tribunal noted that a Direction had been issued by the Tribunal on 12 May 2025 requiring the Applicant to lodge details of all of the rent increase notices and proof of service on the Respondent. Ms McGuire said that these had been submitted to the Tribunal on 8 October 2025. These were re-sent in to the Tribunal and crossed over to the Respondent. Ms McGuire said that there had been the following rent increases;
 - 20/1/2022 to take effect from 28/04/2022, increasing the rent from the original rent of £475 to £485 per month.
 - 01/04/2023 to take effect from 04/07/2023, increasing the rent from £485 to £499.50 per month.
 - 05/04/2024 to take effect from 28/07/2024 increasing the rent from £499.50 per month to £555 per month.
10. The Respondent agreed that all of these rent increases had been properly intimated and put in place.

The Position of the Applicant

11. Ms McGuire said that she was withdrawing the conjoined application for payment as the rent arrears had been paid off in full, and there was no balance currently outstanding.
12. Her instruction from the landlord was that the eviction order was still sought, regardless of the fact that the rent account had been cleared. She said that in the event an Eviction Order was granted, the Applicant would be happy for this to be extended for a period, to allow the Respondent further time to leave the Property. She had spoken to the Respondent about this. She referred the Tribunal to the Applicant's written impact statement. The Applicant has 12 properties which are managed by Jewel Homes. He has mortgages over all of them. He has a mortgage over this Property for £51,000. The Property was purchased in 2017. Her organisation has been involved with the tenancy for a period of seven and a half years. The Applicant has worked out that for 85-90% of the time that the Respondent has been a tenant at the Property, that there have been arrears on the account. This has caused financial implications for the Applicant, as he has had to continue to pay the mortgage. He has a number of other properties and these have had to subsidise the Property mortgage. The Respondent has agreed to various different payment plans, which she has not adhered to. Therefore the Applicant wishes to seek the Order for Eviction.
13. She did not accept the Respondent's assurance that this would not happen again. This is the fourth Notice to Leave which has been served. The rent payment problem is a constant factor. She impressed upon the Tribunal the position regarding the landlord's health, and the toll that it would take on him in having to go through the whole process again. It may be that he would decide to sell the Property in the event that arrears of rent accrued again.
14. The Tribunal pointed out that any future application would still require to take account of the question of reasonableness, in granting an eviction order.

The Position of the Respondent

15. Ms Walker said that she was opposed to the eviction. She said that she was glad about the prospect of being given additional time to leave, but in principle was opposed to the order sought. There have been issues with her rent payments due to her work circumstances. She is employed as a home support worker. She suffers from severe asthma and COPD. She had not been able to drive. She had missed a lot of work due to sickness. Her employers had not paid the workforce for any overtime. She had managed to secure back pay, and had then cleared off the rent arrears. She said that moving forward she could provide an assurance that the rent would be paid timeously.
16. She resides at the Property together with her adult son who is 25 years of age. He is in employment and in a position to contribute towards the rent. She is 50 years of age. She has lived at the Property for nine and a half years. She said that she had, "never been any bother" as a tenant. She had decorated the Property and looked after it. She did not want to move. Her difficulties at work

have been resolved and she now has a vehicle she can use. Her employers have accommodated any issues she had with them, and therefore she was “gutted” that the Applicant wanted her to leave. She did not want to lose her “lovely home”. She was scared to put up a fight in case the Applicant did not suspend the order once granted. She said that there were no other similar houses for rent in the area. She also looks after her disabled brother, who lives only a few streets away from the Property.

Findings in Fact

17. The Tribunal made the following findings in fact:

- (i) The parties entered into a PRT which commenced on 9 March 2018;
- (ii) In terms of Clause 8 of the PRT the Respondent was due to pay rent to the Applicant in the sum of £475 per calendar month payable in advance;
- (iii) The monthly rent payments were increased by rent increase notices dated 20 January 2022 to £485; dated 1 April 2023 to £499.50; and dated 5 April 2024 to £555.
- (iv) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 12 of Schedule 3 to the 2016 Act, and which was served on 24 January 2025;
- (v) On 24 January 2025 the Respondent was in rent arrears over three consecutive months;
- (vi) The Respondent was in continuous arrears of rent from 24 January 2025 until 14 October 2025;
- (vii) The Respondent is not in arrears of rent at the date of the CMD
- (viii) No rent arrears have accrued as a consequence of delay or failure of payment of a relevant benefit.
- (ix) The Applicant has complied with the Pre-Action Protocol.
- (x) The Respondent lives at the Property together with her adult son who is in employment.
- (xi) The Respondent does oppose the Application.
- (xii) The Respondent suffers from COPD and chronic asthma.
- (xiii) The Applicant suffers from throat cancer.

Reasons for Decision

18. *Section 51 of the 2016 Act states as follows:*

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

19. Ground 12 of Schedule 3 to the 2016 Act states as follows:

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) (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.

20. The Tribunal is satisfied in terms of the established Findings in Fact, that Ground 12 is satisfied.

21. The Tribunal then has to decide if it is reasonable to grant the Eviction Order. The Tribunal has to exercise its discretion in applying the facts, to decide if it is reasonable to grant the order. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
22. The Tribunal then looked to balance the rights and interests of both parties.
23. The Tribunal accept that the Respondent has been in arrears of rent until relatively recently, and she has been in arrears over a sustained period of time. The Tribunal also accept that this has had a financial impact on the Applicant. The Tribunal also accept that the Applicant has been experiencing ill health and treatment for a significant illness.
24. However, there have been a number of reasons that the rent arrears have accumulated as outlined by the Respondent in her evidence. As at the date of the CMD, there are no rent arrears outstanding at all. In addition the Tribunal have noted that the Respondent’s work circumstances are such that she is able to drive to and from her work, and she has not needed sick days as a consequence. Additionally she is now being paid for any overtime worked, and is in a better place financially to make sure that her rent is prioritised. Accordingly, the Tribunal takes the view that the tenancy is sustainable and that it would not be reasonable in all the circumstances to issue an eviction order.
25. This decision is 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.



Legal Member/Chair

28 October 2025

Date