

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/25/1018

Re: Property at 13 Parkhead Loan Sighthill, Edinburgh, EH11 4SJ (“the Property”)

Parties:

Shane Sturton, 70 Sighthill Park, Edinburgh, EH11 4PH (“the Applicant”)

**Alan Brydon, Sarah Cook, 13 Parkhead Loan Sighthill, Edinburgh, EH11 4SJ
(“the Respondents”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. The Applicant let the property to the Respondent. The copy lease provided to the Tribunal was unsigned. The start date of the tenancy, however, was 1st November 2021.
2. Rent is payable at the rate of £900.00 per calendar month.
3. The Respondents fell into arrears of rent. A rent statement provided to the Tribunal indicated that the Respondents had been in arrears of rent consistently since January 2022.
4. The last rental payment made by the Respondents was on 1st December 2023.

5. Notices to Leave dated 29th January 2025 was served upon the Respondents intimating that vacant possession was sought on the ground the Respondents were in arrears of rent over three consecutive months. The notices stated that arrears of rent, as of 1st January 2025, amounted to £15,650.00.
6. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was served upon the local authority.
7. An application was presented to the Tribunal seeking an order for eviction on the basis of arrears of rent for three or more consecutive months. The application was presented to the Tribunal on 7 March 2025.
8. At the date of the application to the Tribunal arrears of rent amounted to £17,450.00. As at the date of the Case Management Discussion, arrears of rent amounted to £23,750.00.
9. Prior to the Case Management Discussion the First Respondent requested an “extension to get legal advice”. This application was opposed by the Applicant. It was not granted by the Tribunal.

THE CASE MANAGEMENT DISCUSSION AND REASONS FOR DECISION

10. The Applicant was represented at the Case Management Discussion by Mr D Gray of Gilson Gray LLP. The First Named Respondent, Mr Alan Brydon participated in the Case Management Discussion. The Second Named Respondent, Sarah Cook, did not participate. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Second Respondent. In addition, Mr Brydon advised the Tribunal that Miss Cook no longer resides in the Property, having vacated it a significant period of time ago. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTT Regs”) that the Second Respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management Discussion in the absence of the Second Respondent in accordance with Rule 29 of the FTT regs.
11. Mr Gray confirmed that the Applicant was seeking an order for eviction. Mr Brydon objected to such an order being granted.
12. Mr Brydon invited the Tribunal to adjourn the Case Management Discussion to enable him to obtain legal advice. He had, prior to the Case Management Discussion, forwarded an email to the Tribunal seeking “an extension to get legal advice”. The request for a postponement was opposed by the Applicant. It was not granted by the Tribunal in advance of the Case Management Discussion.

13. At the Case Management Discussion Mr Brydon renewed his request for an adjournment to enable him to obtain legal advice. Prior to considering whether to grant his motion, the Tribunal made further enquiry in relation to the rent arrears and the overall circumstances of the case.
14. Mr Brydon accepted there were rent arrears. Mr Brydon accepted that rent arrears, at present, amounted to £23,750.00. Despite that, however, he indicated he was opposed to an eviction order being granted.
15. Mr Brydon explained that the “deal” done with the landlord went back to 2018. He advised that, at that stage, the Property was in disrepair. It had been rented out to four other people. There were various issues with the Property, including the fact the central heating was not working at that time. Mr Brydon advised that the property cost £5,000.00 to “fit out” and that it was riddled with mice. He advised that, at a later stage, the property was “riddled with bed bugs”.
16. Mr Brydon advised that, as a result of work undertaken by him at the Property, he believed that he was due in the region of £8,500.00 - £9,500.00 from the Applicant. This was not paid to him. He advised the Tribunal that it “came to a stale mate so I dug my heels in”. He accepted that, as a result, he did not pay rent and has not paid rent since December 2023.
17. Mr Gray advised the Tribunal that the Applicant had entered into a provisional arrangement with Mr Brydon during December 2024. It was agreed at that stage that, subject to Mr Gray commencing payments of rent again during January 2025, an amount of £8,750.00 would be written off against his outstanding arrears. It was also expected, however, that a lump sum of £8,750.00 would be paid by Mr Brydon with ongoing monthly rent payments being made thereafter. Mr Brydon, however, did not maintain any part of his side of that agreement and, as previously stated, no further payments were received.
18. Mr Gray also advised that a number of years ago there were arrears which were ultimately cleared by a grant from Edinburgh City Council. Part of the conditions of that grant were that ongoing rent payments would be paid in full. The previous arrears did not form part of the current arrears referred to in support of the application for an eviction order.
19. Mr Brydon advised the Tribunal that he did not maintain the arrangement entered into in December 2024 as, thereafter, it became apparent that repairs were required to the roof and he was expecting the Applicant to attend to those. When asked by the Tribunal whether he considered that the failure to pay rent may have affected the ability of the Applicant to make payment for repairs, Mr Brydon did not have any reasonable response to provide, beyond saying that he considered that if the roof was not repaired, he ought not to be paying rent. He accepted also, however, that he had not been setting any rental payments aside pending any repairs being carried out. He advised the Tribunal that he was not in a position to make payment of the outstanding

arrears, even assuming any outstanding work required at the Property was completed.

20. He advised the Tribunal that he was willing to leave the Property but wished to be allowed a three month period of grace before doing so. He stated that, if this was permitted, he would make payment of rent for the next three months and, thereafter, enter into an arrangement whereby he would clear the arrears, perhaps at £500.00 per month. He explained that he worked as a taxi driver and, while his income could fluctuate, he has not been working consistently. He is not in receipt of state benefits.
21. Referring to the suggestion by Mr Brydon that, following the agreement entered into in December 2024, it was not adhered to as repairs were required to the roof, the Tribunal enquired as to the likely cost of these repairs. Mr Brydon considered that the repairs would cost approximately £4,000.00. It was pointed out to Mr Brydon that, since then, he has withheld rent in the sum of not less than £9,000.00 and, as stated, accepted that he had withheld £23,750.00 in total. On what basis did he consider that to be a reasonable approach. Mr Brydon again advised that he had simply “dug his heels in”. When it was pointed out to Mr Brydon that, even allowing for the sum of £8,750.00 being removed from the outstanding rent account, there would still be arrears of £15,000.00 which he was unable to pay, he again was unable to provide any reasonable explanation to the Tribunal as to why that should be considered a reasonable state of affairs.
22. Returning to his request for an adjournment of the proceedings to enable him to obtain legal advice, the Tribunal enquired as to why he had not obtained legal advice previously. Mr Brydon pointed out that he had only recently been served with the Tribunal papers. The Tribunal noted, however, that a Notice to Leave was served upon him during January 2025. At that time arrears amounted to £15,000.00, as stated within the Notice to Leave, and the Notice to Leave also made it clear that legal proceedings would be taken to obtain an eviction order if the matter was not addressed. Why did he not obtain legal advice at any point since then? Mr Brydon commented that he did not know “where it was going” and he thought that he could reach an agreement with the Applicant in relation to the matter.
23. The Tribunal enquired as to why he felt it appropriate not to pay rent. He replied “I wouldn’t say it was appropriate but I done it”. He again indicated that, if he could come to an agreement to reduce the outstanding arrears, and if he could be allowed to leave in three months time, he would make the next three rental payments and then enter into an agreement in relation to the arrears.
24. In relation to his personal circumstances, Mr Brydon advised he now resided at the Property himself. He has adult sons who visit him at times but do not reside there permanently. He works as a taxi driver.

25. In all the circumstance of the case, the Tribunal did not consider it appropriate to grant an adjournment of the Case Management Discussion. While the Tribunal will often postpone or adjourn a case to enable an unrepresented party to obtain legal advice, there is no absolute rule that that requires to be done. The Tribunal requires to act justly in the interests of all parties and, having regard to the very significant level of rent arrears, with no rent whatsoever having been paid for almost two years, the acceptance by Mr Brydon that he did not consider it appropriate to withhold rent but he did it anyway and, having regard to the fact that, even allowing for any reduction in outstanding arrears to take account of any issues raised by Mr Brydon, there were still rent arrears in a five figure amount, it appeared highly unlikely that any information could be presented to the Tribunal to suggest that it was anything other than reasonable for an eviction order to be granted.
26. Any continuation of the Case Management Discussion was likely only to result in an increase in the arrears of rent. Given the complete failure of Mr Brydon to make any payments of rent since December 2023, the Tribunal could have no confidence that any payments would be made in the immediate future if the Case Management Discussion was adjourned. Given the extreme circumstances presented to the Tribunal in this case against an acceptance by the Respondent that it was not appropriate to withhold rent, but Mr Brydon had “done it” anyway and his own statement that he had “dug his heels in”, it was not appropriate, in the interests of justice, for an adjournment to be granted.
27. Separately, while Mr Brydon had indicated a desire to obtain legal advice, he is well aware that no rent has been paid since December 2023. He accepted that no rent had been paid since then. He accepted that a Notice to Leave was served upon him during January 2025. He accepted that the Notice to Leave gave notice of an intention to raise proceedings before the Tribunal. He still did not make any payments of rent. He can have been under no illusions whatsoever as to the likely consequences of his actions.
28. In all the circumstances, the Tribunal refused the request by Mr Brydon to adjourn the Case Management Discussion.
29. In relation to the grant of an eviction order, having regard to the facts referred to previously, and in particular, the very significant arrears of rent accrued over an almost two year period a straightforward admission by Mr Brydon that he had chosen not to pay rent as he had “dug his heels in” and an acceptance by him that the withholding of rent was not appropriate but he “did it anyway”, the Tribunal did not consider that it would be anything other than reasonable to grant an order for eviction.

FINDINGS IN FACT

30. The Tribunal found the following facts to be established:-

- a) The Applicant let the property to the Respondent. The copy lease provided to the Tribunal was unsigned. The start date of the tenancy, however, was 1st November 2021.
- b) Rent is payable at the rate of £900.00 per calendar month.
- c) The Respondents fell into arrears of rent. The Respondents have been in arrears of rent consistently since January 2022.
- d) The last rental payment made by the Respondents was on 1st December 2023.
- e) Notices to Leave dated 29th January 2025 was served upon the Respondents intimating that vacant possession was sought on the ground the Respondents were in arrears of rent over three consecutive months. The notices stated that arrears of rent, as of 1st January 2025, amounted to £15,650.00.
- f) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was served upon the local authority.
- g) An application was presented to the Tribunal seeking an order for eviction on the basis of arrears of rent for three or more consecutive months. The application was presented to the Tribunal on 7 March 2025.
- h) At the date of the application to the Tribunal arrears of rent amounted to £17,450.00. As at the date of the Case Management Discussion, arrears of rent amounted to £23,750.00.
- i) The Second Respondent no longer resides at the Property.
- j) The First Respondent deliberately withheld payments of rent. They were not entitled to do so.
- k) The First Respondent is an adult male. He is self employed and has an income.
- l) He resides at the Property alone. He has no dependent children.
- m) Arrears of rent are not due to any delay nor failure of any relevant benefit.

DECISION

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 12 of Schedule 3 to said Act.

Order not to be executed prior to 12 noon on 3rd December 2025

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.

Virgil Crawford

27 October 2025

Legal Member/Chair

Date