



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules

Chamber Ref: FTS/HPC/CV/24/4931

Re: Property at 3 Knowes, Dunbar, EH42 1XJ (“the Property”)

Parties:

Lord Haddington of Mellerstain, Gordon, Berwickshire, TD3 6LG (“the Applicant”) per his agents, Turcan Connell, solicitors, Princes Exchange, 1 Earl Grey Street, Edinburgh, EH3 9EE (“the Applicant’s Agents”)

Ms Emma Innes, 3 Knowes, Dunbar, EH42 1XJ (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.

Background

1. By application received between received between 27 May 2025 and 30 June 2025 (“the Application”), the Applicant’s Agents on his behalf applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 12 of Schedule 3 to the 2016 Act, that the tenant is in rent arrears over three consecutive months.
2. The Application comprised the following:
 - i) copy private residential tenancy agreement between the Parties at a current monthly rent of £818.35;
 - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 10 April 2025 with proof of service;
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to East Lothian Council being the relevant local authority;
 - iv) copy rent statement showing arrears of £15,165.41 due and owing at 1 March 2025;
 - v) pre-action requirement letters sent to the Respondent.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 28 October 2025 at 10.00 by telephone conference and was intimated to both Parties. In particular, it was intimated to the Respondent by Sheriff Officer service on 18 September 2025.
4. Prior CMD, the Applicant’s Representatives submitted an amended statement of rent due and owing showing the sum due to be £20,893.86. A copy letter evidencing that an increased sum had been sent to the Respondent was also lodged.

5. The CMD took place on 28 October 2025 at 10.00 by telephone. The Applicant was not present and was represented by Mr. P. Forrester-Smith of the Applicant's Agents. The Respondent was not present and was not represented. She did not submit written representations. The Tribunal was satisfied that the Respondent had had service of the Application that she was aware of the proceedings and was aware that she was required to attend the CMD. The Tribunal, therefore, proceeded in her absence.
6. The Application was heard alongside a payment order application for the same Parties in respect of the rent arrears accrued by the Respondent. The Tribunal granted an Order for £20,893.86
7. Mr. P. Forrester-Smith confirmed that an eviction Order was sought.
8. With regard to the circumstances of the Parties, the Tribunal was advised that the Applicant is a landowner and that the Respondent is a single person with no dependents and that she appears to be in employment. She did not respond to the pre-action requirement letters sent to her.

Findings in Fact

9. From the Application and the CMD, the Tribunal made the following findings in fact: -
 - i) There is a private residential tenancy of the Property between the Parties;
 - ii) The monthly rent is £818.35;
 - iii) There are rent arrears of £20,893.86, which amounts to in excess of 25 months' rent;
 - iv) The correct statutory procedures have been carried out;
 - v) The Respondent is a single person, in employment and has no dependents;
 - vi) The Applicant is a landowner and is entitled to receive rent for the Property.

Issue for the Tribunal

10. The issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 12 of Schedule 3 to the Act as set out in the Application. Ground 12 states “(1) *It is an eviction ground that the tenant has substantial rent arrears.* (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods, (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.* (3) *In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).* (4) *For the purpose of this paragraph (a) references to a relevant benefit are to (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (ii) a payment on account awarded under regulation 93 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.*”

Decision and Reasons for Decision

11. The Tribunal had regard to all the information before it and to its Findings in Fact.

12. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussionincluding making a decision*” . The Tribunal took the view that it had sufficient information to make a decision and so proceeded to determine the Application.

13. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
14. The Tribunal, having heard no evidence in respect of state benefits, and having found that the Respondent is in employment with no dependents, took the view that she is unlikely to be entitled to state benefits. Accordingly, the Tribunal was satisfied that the Respondent being in arrears of rent is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
15. The Tribunal noted that the statutory procedures and the Scottish Government Guidance on pre-action protocols had been followed by the Applicant's Agents and representatives on his behalf and that the Respondent did not engage in any way.
16. The Tribunal then had regard to the circumstances of the Parties.
17. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is 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.
18. The Tribunal then looked to balance the rights and interests of both parties.
19. The Tribunal accepted that the Applicant is entitled to rental income for the Property. The Tribunal had regard to the fact that the Respondent had not engaged in any way with the Applicant's Agents and representatives in respect of the rent arrears and has not made any payments of rent in over two years. The Tribunal had regard to the fact that the Applicant is in employment and has no dependents. The Tribunal took the view that the level of rent arrears is not tenable for either Party.
20. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
21. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

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.

Karen Moore

Legal Member/Chair

28 October 2024.

Date