



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) 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/EV/25/2033

Re: Property at 55 Kemnay Gardens, Dundee, DD4 7TR (“the Property”)

Parties:

Mrs Linda Findlay, 23 Park Road, Dundee, DD3 8LA (“the Applicant”) per Front Row Lettings, Suite 11, Castlecroft Business Centre, Dundee, DD4 8XD (“the Applicant’s Representatives”)

Miss Cheryl Strachan, 55 Kemnay Gardens, Dundee, DD4 7TR (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

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 12 May 2025 and 20 August 2025 (“the Application”), the Applicant’s Representatives applied to the Tribunal for an

Order for eviction and possession of the Property based on Grounds 11 and 12 of Schedule 3 to the 2016 Act.

2. The Application comprised the following:

- i) copy private residential tenancy agreement between the Parties showing an initial monthly rent of £825.00 and an entry date of 6 April 2024;
- ii) copy Notice to Leave in terms of Grounds 11 and 12 of Schedule 3 to the Act dated 19 March 2025 with proof of issue;
- iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Dundee City Council being the relevant local authority;
- iv) copy rent ledger statement showing arrears of £5,834.50 due and owing at June 2025 and a pattern of underpayment and non-payment of rent since the entry date;
- v) copy pre-action requirement letter sent to the Respondent.

3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 19 December 2025 at 10.00 by telephone conference and intimated to the Parties, and in particular, on the Respondent by Sheriff Officer on 19 November 2025.

CMD

4. The CMD took place on 19 December 2025 at 10.00 by telephone. The Applicant was not present and was represented by Mr. Wanless of the Applicant’s Representatives. The Respondent was not present and was not represented. She did not submit written representations. The Tribunal was satisfied that the Respondent had been made aware of the CMD and so proceeded in her absence.

5. The Tribunal explained that it required to be satisfied that the correct statutory process had been carried out, that the Grounds for the Application were satisfied and that it was reasonable to grant the Order. The Tribunal noted that, although both the Notice to Leave and Application cited Grounds 11 and 12, no supporting evidence had been submitted for Ground 11. Following discussion, Mr. Wanless withdrew this Ground.

6. The Tribunal asked Mr. Wanless to provide information on the tenancy and the accrual of arrears, and, in particular to explain the rent ledger lodged.
7. With regard to the rent ledger, Mr. Wanless explained that some of the entries related to payments towards a tenancy deposit which was guaranteed or underwritten by the local authority.
8. With regard to the circumstances of the Parties, Mr. Wanless advised that the Applicant is a retired head teacher and that the Property is a retirement investment. He stated that a mortgage of around £300.00 per month is secured on the Property and the lack of rent payments over the tenancy has had a significant financial impact on the Applicant. Mr. Wanless pointed out that no payments have been made by the Respondent in over a year and the rent due and owing now amounts to £11,609.00.
9. With regard to the Respondent's circumstances, Mr. Wanless stated that the Respondent is a single person with one teenaged child and is in receipt of benefits. Mr. Wanless stated that as far as he is aware, the Respondent received a housing element benefit but did not pass this on to the Applicant. Mr. Wanless explained that the Respondent had not engaged in any way with the Applicant's Representatives, had broken payment plans and had failed to attend meetings and visits to discuss the tenancy. Mr. Wanless was not aware of any issues regarding benefit payments.

Findings in Fact

10. 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 commencing on 6 April 2025;
 - ii) The monthly rent is £825.00;
 - iii) The current rent arrears amount to £11,609.00;

- iv) Rent has been in arrears for more than three consecutive months;
- v) The correct statutory procedure has been carried out;
- vi) The Respondent is a single person with a teenage child and is not in employment;
- vii) The Applicant relies on regular payment of the full rent to meet her financial commitments secured on the Property.

Issue for the Tribunal

11. 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 been in rent arrears for three or more consecutive months.(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

12. The Tribunal had regard to all the information before it and to its Findings in Fact.
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 no evidence in respect of issues with state benefits, 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 Applicant had followed the statutory procedures and had followed the Government Guidance on pre-action protocols for notices issued after 1st October 2022.
16. 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.
17. The Tribunal then had regard to the circumstances of the Parties.
18. 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.
19. The Tribunal then looked to balance the rights and interests of both parties.

20. The Tribunal accepted that the Applicant relies on the rental income in order to meet the running costs of the Property. The Tribunal had regard to the fact that the Respondent has been in rent arrears throughout the tenancy, has not maintained a payment plan and has paid no rent in over a year. The Tribunal took the view that the level of rent arrears and pattern of non-payment is not tenable for either Party.

21. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent and her family 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.

22. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

23. 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.

Karen Moore

Legal Member/Chair

19 December 2025

Date