



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/25/2316 and FTS/HPC/EV/25/4096

Re: Property at 119 Kincaidston Drive, Ayr, KA7 3XX (“the Property”)

Parties:

Mrs Emily Hamilton, 14 Shanter Wynd, Alloway, Ayr, KA7 4RS (“the Applicant”)

Mr Adam Forsyth, Miss Amy Cross, UNKNOWN, UNKNOWN (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr T Cain (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. These are Rule 109 applications for an eviction order made under grounds 10 (FTS/HPC/EV/25/4096) and 12 (FTS/HPC/EV/25/2316). The Applicant lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 13th June 2019 with a monthly rent of £500, rent increase notices, notices to leave with evidence of service, section 11 notices with evidence of service, pre-action requirement correspondence, communication between the parties, a negative tracing report and rent statements.
2. Service of the application and notification of a Case Management Discussion was made by Service by Advertisement upon the Housing and Property Chamber website from 21st October to 3rd December 2025, and by Sheriff Officer at the Property on 15th August and 27th October 2025.
3. Prior to the Case Management Discussion, the Applicant lodged further representations. An updated rent statement was lodged by email dated 14th November 2024 showing arrears in the sum of £5624.10.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 3rd December 2025. The Applicant was in attendance. The Respondents were not in attendance. The start of the CMD was delayed to allow the Respondents to attend.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondents.
6. The Applicant explained the background to the application. The Respondents were originally good tenants, but arrears began to arise from December 2024. At that time, there was some discussion between the parties regarding the financial difficulties of the Respondents, and the Applicant agreed to take the monthly rent in two instalments. The first instalment only was paid for that month. The last payment of rent was made in January 2025. No further payments have been made since that time. The Applicant has issued letters, emails, and messages to the Respondents. The Applicant has signposted the Respondents to sources of advice. Payment plans agreed between the parties have failed. The Applicant said she has tried to sustain the tenancy, offering as much assistance as she could. There have also been issues in attempting to gain access to the Property for inspection purposes.
7. The Applicant was contacted by the local authority for a tenant reference in July 2025. At that time, she visited the Property and saw that several windows were open. In August 2025, through comments made by neighbours to a tradesman, the Applicant was made aware that the Respondents may not be residing in the Property. In August 2025, one of the Respondents confirmed they had left the Property and were in temporary accommodation. The Respondent said they were storing their furniture in the Property and awaiting removal of the furniture, to be stored by the local authority. The Respondent also said the local authority would pay the arrears of rent. No payment was received. One of the Respondents told the Applicant thereafter that he was residing with his parents, and the other Respondent remained in temporary accommodation. One of the Respondents promised to allow the Applicant access to the Property on 28th November 2025 for repair purposes. The Respondent failed to attend and no access was provided. The Applicant has had complaints from neighbours about rubbish left at the Property. The Respondents continue to store their furniture in the Property.
8. The Applicant said she has financial commitments and family responsibilities that are affected due to the loss of rental income. There is a mortgage to be paid on the Property. The situation has been time-consuming, and it has had a negative impact on the Applicant’s health.

9. The Applicant said the Respondents have been in employment during the tenancy. One of the Respondents became a student and may have had issues with SAAS funding. No children are living in the Property, although one Respondent had a child from a previous relationship who visited the Property occasionally.

Findings in Fact and Law

10.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 13th June 2019 at a monthly rent of £500.
- (ii) The rent has been increased at intervals throughout the tenancy and is now £535 each month.
- (iii) The Applicant has served Notices to Leave upon the Respondents.
- (iv) The Respondents have accrued rent arrears.
- (v) The Respondents have been in rent arrears for three or more consecutive months.
- (vi) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vii) The Applicant has complied with the pre-action protocol.
- (viii) The Respondents are not occupying the Property as their only or principal home.
- (ix) The Property not being occupied is not attributable to a breach of the Applicant's duties.
- (x) It is reasonable to grant an eviction order.

Reasons for Decision

11. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
12. Ground 10 of Schedule 3 of the Act provides that it is an eviction ground that the tenant is not occupying the let property as their home. The Tribunal may

find that the ground applies if the let property is not being occupied as the tenants only or principal home and the property not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

13. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondents were in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
14. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Applicant has complied with the pre-action protocol by sending emails and letters to the Respondents.
15. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
16. The Respondents have not paid rent since January 2025. The arrears are now substantial and rising. The Respondents have left the Property and have been accommodated elsewhere, but they have not seen fit to remove their belongings from the Property and allow the Applicant to recover possession.
17. The Tribunal considered it was unlikely there would be any detrimental effect of an eviction order upon the Respondents, as they are living elsewhere. The Respondents have made no effort to pay the rent or engage to address the arrears. The Tribunal considered it likely that, if no order was granted, the arrears would continue to rise.
18. The Tribunal considered the Applicant is suffering financially as a result of the Respondents' failure to pay the rent. The Applicant has suffered stress and ill-health as a result of the Respondents' failure to properly vacate the Property and end the tenancy.
19. The Tribunal considered it was reasonable to grant the order sought.

Decision

20. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 3rd January 2026.

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.

H Forbes

3rd December 2025

Legal Member/Chair

Date