



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 (the 2016 Act) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/EV/25/2285

Re: Property at 117 Roxburgh Street, Kelso, TD5 7DU (“the Property”)

Parties:

Miss Samantha Myerscough, 3 Humebyres Farm Cottage, Kelso, TD5 7TL (the Applicant)

Mr Ian Cullen, 117 Roxburgh Street, Kelso, TD5 7DU (the Respondent)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Mrs Elizabeth Dickson (Ordinary Member)**

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) is satisfied that Ground 4 in Schedule 3 to the 2016 Act is established by the Applicant, namely the Applicant intends to live in the let Property as the Applicant’s only or principal home for at least three months; and that it is reasonable to issue an eviction order on account of those facts; and the tribunal made an order for eviction in terms of section 51 of the 2016 Act.

The decision of the tribunal is unanimous.

Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 28 May 2025 in terms of section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules).
2. The Applicant seeks an order for eviction of the Respondent from the Property under Ground 4 of Schedule 3 to the 2016 Act, in summary that a landlord intends to live in the let Property as the Applicant's only or principal home for at least three months.
3. The Applicant's Representative lodged with the Application:
 - 3.1. Private Residential Tenancy agreement;
 - 3.2. Notice to Leave;
 - 3.3. Proof of Notification of Notice to Leave;
 - 3.4. Section 11 Notice;
 - 3.5. Proof of service of Section 11 notice; and
 - 3.6. Letter from Applicant in relation to intention to sell.
4. The tribunal's administration obtained the Title Sheet for the Property on 29 May 2025 which shows that the Applicant is registered proprietor of the Property.
5. The Application was accepted for determination by a tribunal. All parties were notified by letters dated 20 October 2025 of the date, time and place of Case Management Discussion (CMD) in relation to the Application on 9 December 2025 at 1400h by teleconference. The Respondent was invited to make written representations in response to the Application by 10 November 2025. All parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was served on the Respondent by Sheriff Officers on 27 October 2025.
6. The Respondent did not submit any written representations in response to the Application, or make any contact with the tribunal before the CMD.

Case Management Discussion (CMD) 9 December 2025, 1400h: Teleconference

7. Ms James, from the Applicant's Representative attended. The Applicant attended.
8. The Respondent did not attend. The tribunal was satisfied on the basis of the certificate of service by Sheriff Officers that he had received the Application paperwork and notification of the CMD. The tribunal decided to proceed in his absence on the basis of the information before it and representations of the Applicant's Representative in terms of Rule 29 of the 2017 Rules.
9. Ms James said that as far as aware the Respondent is still residing in the Property. She has passed in the last few weeks and seen lights on in the Property.
10. Ms James invited the tribunal to make the eviction order today. She stated that when the Property was originally let out the Applicant was moving into another property with her partner. Following a relationship breakdown she needs the property back for herself and her daughter. The Respondent was issued with notice to leave on 25 February 2025. Notice expired on 23 May 2025. The Application to the tribunal was made on 28 May 2025. The Applicant's daughter is 15. They are still living with her ex-partner, which is difficult. Her daughter is at school in Kelso which is a ten minute walk from the Property. Prior to this tenancy the Applicant lived in the Property with her daughter. It is a two bedroomed property, on two floors. Her daughter is going to be sitting prelim exams in January 2026 and final exams in May 2026 and the Applicant would like for her to be settled in the Property close to school.
11. Ms James stated that the Respondent lives alone in the Property. When he moved into the Property he was working. He paid six months' rent up front. Then started to pay the rent monthly after six months. He has always lived alone in the property. There were no issues with the tenancy until the notice was served. He lost his job at some point earlier this year. He also has substantial rent arrears. As at today's date the rent arrears are £4350.00. His next payment is due on 15th December 2025. The agents have sent all the usual letters for rent arrears signposting him to help. He does not respond. He came into the office one day in the summer with his card to make the payment and the payment was rejected twice. He does not communicate with the agents. He viewed another property with the agents in Hawick but he decided it was too big and too expensive for him. He has not said why he is continuing to reside in the Property. He said in June 2025 that he had some mental health issues and was under medical treatment at that time. There are no adaptations to the Property. He previously told the agents that he had been offered a social housing property. They said to let them know when he had a date to move out but they have not had any further communication from him about that.
12. The tribunal adjourned to deliberate.

13. The tribunal makes the following findings-in-fact:

- 13.1. The Applicant is the registered proprietor of the Property.
- 13.2. The Applicant entered into a private residential tenancy with the Respondent with a start date of 15 January 2024.
- 13.3. The Applicant has recently separated from her partner and wishes to move back into the Property with her 15 year old daughter.
- 13.4. The Applicant and her daughter are continuing to reside in another property with her ex partner until they can move.
- 13.5. The Applicant's daughter has prelim exams in January 2026 and final exams in May 2026.
- 13.6. The Property is around 10 minutes' walk from the Applicant's daughter's school.
- 13.7. The Property has two bedrooms and is on two floors.
- 13.8. Notice to Leave was served on the Respondent on 25 February 2025 under Ground 4 of Schedule 3 to the 2016 Act, that the landlord intends to live in the let Property.
- 13.9. The Respondent has accrued rent arrears in relation to the tenancy.
- 13.10. The rent arrears as at 9 December 2025 are £4350.00.
- 13.11. The Respondent has not replied to communication from the Applicant's Representative about rent arrears or made any proposals for repayment.
- 13.12. The Respondent continues to reside in the Property alone.
- 13.13. There are no children under 16 in the Property.
- 13.14. The Property is not adapted for disabilities.

Discussion

- 14. The Application for an order for eviction was not opposed. The Respondent has not engaged with the tribunal proceedings.
- 15. The tribunal was satisfied on the basis of the findings in fact that Ground 4 in Schedule 3 of the 2016 Act is established, namely that the Applicant intends to live in the let Property with her daughter for at least three months as the Applicant's only or principal home.

16. The tribunal was satisfied that in all the circumstances, it was reasonable to make an order for eviction. In particular, there is no opposition from the Respondent; the Applicant wishes to move back in and for her daughter to be settled in the Property near her school before her formal examinations in 2026; and the Respondent has substantial rent arrears of £4350.00 which he has made no proposals to repay and has not engaged with the agents in response to their correspondence.

17. The tribunal therefore made an order for eviction in terms of Section 51 of the 2016 Act.

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.

9 December 2025

Ms. Susanne L. M. Tanner Q.C.
Legal Member/Chair