



**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”)**

**Chamber Ref: FTS/HPC/EV/24/3499**

**Re: Property at Flat 6 Barncluith Court 25a, Miller Street, Hamilton, ML3 7EW (“the Property”)**

**Parties:**

**Mrs Judith Maclean, Mr Jonathan Gilmour, Ms Ruth Gilmour, c/o 11 Shearer Avenue, Ferniegair, ML3 7FX (“the Applicant”)**

**Mr Chidi Peter Oyita, Flat 6 Barncluith Court 25a, Miller Street, Hamilton, ML3 7EW (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Tony Cain (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 12 of schedule 3 of the 2016 Act have been met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act with execution of the order suspended for a period of three months.

In terms of section 51(4) of the 2016 Act the private residential tenancy between the parties will end on 7 April 2026.

**Background**

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicants relied upon ground 12 of schedule 3 of the 2016 Act as the ground for possession, citing outstanding rent arrears. The application was conjoined with an application involving the same parties and the same tenancy under reference FTS/HPC/CV/24/3500.

- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 10 April 2025. The Tribunal gave the parties notification of the CMD in terms of Rule 17(2) of the Rules. The Respondent received notification by sheriff officers on 5 March 2025.
- 3 Both parties were given the opportunity to make written representations in advance of the CMD. The Respondent submitted an application for a time to pay direction in the conjoined case, which was received by the tribunal on 20 March 2025. The Applicants submitted an updated rent statement by email on 1 April 2025, and an objection to the Respondent’s application for a time to pay direction by email on 7 April 2025.

### **The CMD**

- 4 The CMD took place by teleconference on 10 April 2025. Mr John Rowan of Miller Beckett Jackson Solicitors represented the Applicants. The Respondent joined the call.
- 5 The Tribunal explained the purpose of the CMD and asked parties for their submissions on the application. Mr Rowan advised that he was appearing on behalf of his colleague who was the principal agent for the application as she had an urgent medical appointment. He referred to the private residential tenancy agreement in place between the Applicants and the Respondent. The rent was £643.75, payable on the 13th of the month. The Applicant had accrued arrears over the period from 13th February 2024 to 13th July 2024, amounting to £3586.62 when the application was submitted to the tribunal. The arrears had since increased to £4506.25. The Applicants wished to remove the Respondent and re-let the property. They had been financially impacted by the arrears, which had placed a personal burden upon them.
- 6 The Respondent explained that he had lived in the property since December 2019. He had regularly paid his rent up until February 2024 when there was a change in his personal and business circumstances. He made efforts to explain to the Applicants’ letting agent what was happening to ensure he could remedy the situation. However, things had not gone as expected. He understood that the landlord required the rental income. He explained that from December 2023 to July 2024 he had no income which impacted on his ability to pay the rent. As soon as he started receiving universal credit he started making payments towards his rent. He had tried to work out a payment plan with the Applicants’ letting agent but had been unsuccessful. The Respondent explained that he had paid his rent consistently since August 2024 when he began receiving universal credit.
- 7 The Respondent explained that he was actively trying to improve his employability and was looking for paid employment, having previously ran his own business. He intended to increase payments towards the arrears once his financial position improved. The Respondent confirmed that he had made an application for discretionary housing payment, which had not been accepted. He

instead decided to take steps to repay the arrears himself. The Respondent confirmed that he resided alone in the property. He accepted responsibility for the arrears but he wished to keep his tenancy.

- 8 Having heard from the parties the Tribunal held a short adjournment of the CMD, at which point parties left the call, before resuming the proceedings. The Tribunal decided that the application must proceed to a full hearing. The Tribunal required to assess the reasonableness of making an eviction order and considered it was unable to do so on the basis of the information before it at the CMD.
- 9 Following the CMD the Tribunal issued a Direction requiring parties to submit additional documentary evidence and details of witnesses in advance of the hearing. On 22 September 2025 the Tribunal received documents from the Respondent. The documents contained potentially sensitive personal information. In accordance with standard procedure, the Tribunal contacted the Respondent to ask if he wished to submit redacted versions of the documents. 3 On 30 September 2025 the Tribunal received redacted versions of the documents from the Respondent. It was noted, however, that not all personal information had been redacted. On 30 September 2025 the Tribunal received an inventory of productions from the Applicant.
- 10 The hearing was scheduled for 1 October 2025 at Brandon Gate, Hamilton. Due to the late lodging of representations by both parties the Tribunal determined to adjourn the hearing as neither the Tribunal member, nor the parties, had been given the opportunity to fully consider the representations.

### **The hearing**

- 11 The hearing took place on 10 December 2025 by teleconference. The Applicants were again represented by Mr Rowan. The Respondent joined the call.
- 12 The Tribunal had the following documents before it:-
  - (i) Form E application form dated 31 July 2024 and paper apart;
  - (ii) Excerpt from the online landlord register confirming the Applicants' landlord registration;
  - (iii) Title sheet LAN101772;
  - (iv) Private residential tenancy agreement dated 12 December 2019;
  - (v) Email from the Applicants' letting agent to the Respondent confirming change of landlord;
  - (vi) Notice to leave dated 11 June 2024 and proof of delivery by email;
  - (vii) Rent statement;
  - (viii) Rent increase notice dated 7 April 2023;
  - (ix) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("section 11 notice") to South Lanarkshire Council and proof of delivery by email;
  - (x) Copy correspondence from the Applicants' letting agent to the Respondent in compliance with the rent arrears pre-action protocol;

- (xi) The Applicant's written representations dated 30 September 2025 which included an updated rent statement and email correspondence between YourMove and the Respondent;
  - (xii) The Respondent's written representations dated 30 September 2025 which included bank statements, screenshots from the Department of Work and Pensions website, email correspondence between YourMove and the Applicant and Form DS01 strike off application; and
  - (xiii) The Applicant's further written representations dated 26 November 2025 which included an updated rent statement.
- 13** The Tribunal heard oral evidence from both parties. Mr Rowan explained that the Applicants did not intend on giving evidence but he would make submissions on their behalf. The following is a summary of the key elements of the evidence.
- 14** Mr Rowan explained that the situation remains unchanged since the CMD. The arrears were not disputed. He referred to the most recent rent statement submitted which confirmed a balance of £4506.25. The Applicants accept that rent is now being paid however there has been no attempt by the Respondent to remedy the balance that is due and no reasonable proposals for repayment. He referred to the email correspondence from YourMove which highlighted a lack of communication from the Respondent. The Applicants have been left with no other choice but to seek an eviction order. The rent arrears have been outstanding over a continuous period, nearly two years. The Applicants were financially worse off. Mr Rowan explained that the Applicant's letting agent, YourMove, had proposed a rent increase however the Applicants had decided not to proceed with the increase at this time due to the arrears situation, in the hope that there may have been some efforts to repay the arrears.
- 15** Mr Rowan confirmed that the Applicants had purchased the property as an investment. They rely on the income. For one of them it is their sole income. Mr Rowan questioned whether it is reasonable for the Applicants to have no indication of when they would be repaid. He confirmed that the balance of arrears has remained static since August 2024.
- 16** The Respondent spoke to the circumstances that had led to the cessation of rent payments. Before the coronavirus pandemic he was self employed with his own company. The pandemic had impacted upon his business plan, affecting his earning ability. He had to rely upon savings. He tried other investments which were unsuccessful. He had no income coming in. He was in touch with YourMove asking for support. They had stated they could not help him. He had tried to keep to his financial commitments but had been unable to do so. It took him some time to realise he could obtain support from the local authority. He had applied to universal credit and was now in receipt of payments. He had applied for discretionary housing payments but had been refused. He did not know why. The Respondent felt he had a good relationship with the Applicants and YourMove. He is now meeting his ongoing rental payments. The only difference is the balance of arrears. He is committed to drastically reducing the arrears as soon as he can get back into paid employment. He is actively seeking employment but has so far been unsuccessful. The only options so far have been zero hours

contracts which he cannot commit to due to the uncertainty. The Respondent resides alone in the property and is aged 43. He has no dependents.

- 17 In response to questions from the Tribunal, the Respondent confirmed that his background was in biotechnology but he has interests in procurement. He would look at any opportunity with any organisation. He can offer £40 per month to the arrears at present. He confirmed that he had previously invested in training courses to improve his employment prospects and cryptocurrency. This was before the arrears began to accrue. It depleted his last source of funds. He reiterated that he would increase his payment offer as soon as his financial position improves.
- 18 Both parties made closing submissions. Mr Rowan appreciated that the Respondent had experienced some unfortunate circumstances and had made some bad investments. However, it appears there may have been some opportunities for him, such as zero hour contracts, to aid him in clearing the arrears balance. There has been no movement or change in the arrears for nearly two years. It does not appear that the Respondent will be able to repay the arrears in the near future in any reasonable terms. The Applicants maintained their motion for an eviction order.
- 19 The Respondent has lived in the property since 2019. He compared the level of arrears compared to what he has paid the Applicants over the term of the tenancy. His circumstances have changed. He has never been dependent on benefits before. He did not know they were an option. It did not form part of his thought process at the time. The Respondent did not hold the Applicants responsible for providing him with that information. However, if he had known there was support that would have hugely helped him in addressing the situation. He has been able to sustain payments of rent since obtaining universal credit. He intends to get back into employment.

### **Findings in fact**

- 20 The Applicants are the owners and landlords, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement.
- 21 The Applicants have given the Respondent a notice to leave which includes ground 12 of schedule 3 of the 2016 Act.
- 22 The Applicants gave the local authority a section 11 notice when making this application.
- 23 The rent under the terms of the tenancy agreement is £643.75 per month.
- 24 Between 13 February 2024 and 13 August 2024 the Respondent did not pay the contractual rent, resulting in rent arrears of £4506.25.
- 25 On 7 March 2024, 20 March 2024, 3 April 2024, 17 April 2024, 30 April 2024, 10 May 2024 and 21 May 2024 the Applicants' letting agent wrote to the Respondent

providing him with information regarding the rent arrears, offering to work with him towards a payment plan, advising him of the availability of universal credit, and directing him to agencies for advice and support.

- 26 The Respondent was previously self-employed. The Respondent's company was struck off the companies register following difficulties arising from the coronavirus pandemic.
- 27 The Respondent is currently in receipt of universal credit. The Respondent is seeking paid employment.
- 28 The arrears are not due to any failure or delay in the payment of a relevant benefit. The Respondent's application for discretionary housing payment has been refused. There is no indication that the Respondent is entitled to a backdate of universal credit.
- 29 The Respondent is 43 years old. The Respondent resides alone and has no dependents.
- 30 The Respondent can offer £40 per month towards the arrears at this time.

#### **Reasons for decision**

- 31 The Tribunal carefully considered all of the oral and documentary evidence before it, and the submissions from the parties in reaching a decision in this case.
- 32 Section 51 of the 2016 Act states that "*The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*"
- 33 Section 52 of the 2016 Act states that "*an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant*". The Tribunal was satisfied based on the documentary evidence before it that the Applicants have given the Respondents a notice to leave that complies with the requirements of the 2016 Act. The Tribunal was further satisfied that the Applicants have given the local authority a section 11 notice in accordance with the requirements of section 56 of the 2016 Act.
- 34 The Tribunal went on to consider the wording of ground 12:-  
  
"(1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*  
(2) .....  
(3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—(a) for three or more consecutive months the tenant has been in arrears of rent, and*  
*(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

*(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—*

- (a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*

*(5) For the purposes of this paragraph—*

- (a) references to a relevant benefit are to—*
  - (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*
  - (ii) a payment on account awarded under regulation 91 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.*

*(6) Regulations under sub-paragraph (4)(b) may make provision about—*

- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),*
- (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,*
- (c) such other matters as the Scottish Ministers consider appropriate.”*

- 35** The Tribunal accepted based on the rent statements produced that the rent account has been in arrears for more than three consecutive months. The arrears were not in dispute between the parties. The Tribunal therefore found paragraph 3(a) of ground 12 to be established in this case.
- 36** The Tribunal went on to consider whether it was reasonable to make an eviction order on account of these facts, which requires the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to them.
- 37** Paragraph 4(a) requires the Tribunal in assessing reasonableness to consider whether the arrears are due wholly or in part to a failure or delay in the payment of a relevant benefit. The Respondent is now in receipt of universal credit but has produced no evidence to suggest that any further payments are due. He confirmed that no discretionary housing payment, which may reduce the arrears, would be forthcoming as his application had been refused. The Tribunal was therefore satisfied that the arrears in this case are not a result of a failure or delay in the payment of a relevant benefit.
- 38** Paragraph 4(b) further requires the Tribunal to take account of the extent of the Applicants' compliance with the pre-action protocol contained within the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations"). The 2020 Regulations set out certain requirements that

landlord should comply with when seeking to end a private residential tenancy due to rent arrears. These include providing the tenant with information regarding the tenancy, the rent arrears and sources of advice and support, as well as making reasonable efforts to agree a payment plan. The Tribunal had before it various letters sent from YourMove to the Respondent, the first dating back to 7 March 2024, with information regarding the arrears, entitlement to benefits, and access to support, as well as offers to work towards a payment plan with the Respondent. The Respondent had not sought to dispute these. The Tribunal therefore accepted that the Applicants had fully complied with the pre-action protocol and the requirements of the 2020 Regulations.

- 39 The Tribunal went on to consider those other factors relevant to reasonableness in the particular circumstances of this case.
- 40 The Tribunal gave most weight to the level of arrears in this case, which were significant. The account has now been in arrears for nearly two years. Whilst the Respondent has been paying rent since August 2024, it remains a significant balance and there is presently no reasonable payment plan that the Respondent can offer to reduce the debt.
- 41 The Tribunal accepted that the Respondent's financial situation deteriorated in early 2024 and he is now in receipt of universal credit. There was no evidence however to suggest that he had proactively contacted the letting agent when he began to experience financial difficulty in early 2024, which may have gone some way to mitigate the increasing balance of arrears. The Tribunal would have expected him to have been upfront about his situation at the time. The correspondence sent to him from Yourmove contained clear information about the availability of universal credit and agencies he could contact for advice and support. However, there was no explanation as to why it had taken him from January 2024 to August 2024 to get his universal credit in place.
- 42 The Tribunal had regard to the Respondent's personal circumstances. There was no evidence of any health issues or particular vulnerabilities on his part, and no dependents who would be at risk were an eviction order to be granted.
- 43 The Tribunal has therefore concluded that an eviction order would be reasonable in view of the circumstances of this case. However, considering the length of time the Respondent has resided in the property, and the fact that the rent is currently being paid, the Tribunal determined to suspend execution of the order for a period of three months to give the Respondent the opportunity to secure alternative accommodation.
- 44 The Tribunal therefore determined that paragraph 3(b) has been met and made an eviction order with execution of the order suspended for a period of three months. The decision of the Tribunal was 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.

Ruth O'Hare

7 January 2026

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Legal Member/Chair

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Date