



Decision 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/23/2274

Re: Property at 45 3/L Dens Road, Dundee, DD3 7JD (“the Property”)

Parties:

Ms Bharati Patel, 31 York Road, Middlesex, HA6 1JJ (“the Applicant”)

Mr Kane Stewart, 45 3/L Dens Road, Dundee, DD3 7JD (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application and determined that the Applicant is not entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondent from the property.
2. The Tribunal granted an order for eviction on 4 April 2024. Following receipt of the Respondent’s application dated 28 April 2025 to recall the order, the Tribunal held a case management discussion (“CMD”) on 1 August 2025. On that date, the Tribunal granted the Respondent’s application to recall the order and a hearing was assigned for 9 December 2025. The Tribunal issued a notice of direction to the parties on 1 August 2025, requiring the Applicant to lodge a list of witnesses, a note in relation to reasonableness and an update rent statement. The Respondent was required to lodge a list of witnesses, a note in relation to reasonableness and any information in relation to a delay or failure to pay a benefit which cause rent arrears to accrue.

3. The only response to the notice of direction came from the Applicant; on 2 December 2025, the Tribunal received an updated rent statement from the Applicant's representative.

The Hearing – 9 December 2025

4. The hearing took place by conference call. The Applicant was represented by Ms Hazel Young. The Respondent joined the call and was represented by Mr. Kenneth Marshall, solicitor. The Tribunal enquired whether the parties' positions had changed since the CMD. Both parties confirmed that their positions remained the same: the Applicant insisted on the application and the Respondent opposed it.
5. The Applicant's representative explained that she did not intend to lead any oral evidence and she relied upon the updated rent statement lodged. The Respondent's representative advised that the Respondent made payment of £90 towards the rent account on 2 December 2025, which cleared the small balance of arrears and therefore the rent account was up to date. The Applicant's representative confirmed that a payment of £90 was received on 3 December 2025 and she confirmed that there are currently no rent arrears. The Applicant's representative went on to explain that her office has had to contact the Respondent every month since the CMD on 1 August 2025 to prompt payment. She explained that the Applicant is concerned that if an order is not granted, the Respondent will revert to not paying rent. The Tribunal raised with the Applicant's representative apparent errors in the rent account which has been lodged. For example, the rent account shows that rent was charged on 28 October 2025 and the arrears balance shown was £560. However, the next entry on the rent account pre-dated that entry and showed that the Respondent paid £462.38 on 20 October 2025. The Tribunal observed that the rent statement did not appear to accurately reflect the balance of arrears at any given point. The Applicant's representative was not able to explain this and agreed that the statement appears not to capture the accurate rent arrears balance.
6. The Respondent's representative confirmed that he wished to lead oral evidence from the Respondent. The Tribunal summarised that evidence as follows:-

Mr Kane Stewart

7. He is 25 years of age. He has lived in the Property for 5½ years. Although the current tenancy started in 2023, he and his former partner had a tenancy at the Property from 2020.
8. He was previously employed as a forestry worker. At the time that he submitted the application to recall the decision on 4 April 2024, he was in receipt of sick

pay. He had been absent from work for 8-9 weeks, having suffered a head injury. His sick pay stopped in August 2025. He was in receipt of Discretionary Housing Payment ("DHP") but that payment finished on 23 September 2025. Since then, he has been in receipt of £775, which includes the housing element of his universal credit claim. He tried to arrange for the housing element to be paid directly to the Applicant and does not know why that has not happened. He would have no problem if that part was paid directly to the Applicant. Whilst he would like to return to work, he does not know how realistic a prospect that is. He is still awaiting medical treatment. He has been told that he suffered a bleed on his brain which did not require surgery. He suffers from fits, sensitivity to light and blackouts. He does not have a support worker and is supported by his family and friends. He has applied for Adult Disability Payment and received a response to the effect that his identification could not be verified. He has applied for a redetermination of his application and awaits the outcome of that application. He has reapplied for DHP and awaits the outcome of that application. He may also be entitled to an additional payment of universal credit because he has limited capability for work. These applications may lead to him having additional income. In the meantime, his parents and grandparents are assisting him with the shortfall in rent and he has been paying £560 each month towards rent. He does not know why the payments he makes are shown on the rent account as separate payments, because he has been making single payments of £560 per month to cover the monthly rent charge.

9. He likes living in the Property. Since he moved in, there have been some leaks in the roof, but he is happy that he has somewhere to live. He has never been homeless and does not know what he would do if an eviction order was granted. He acknowledged what the Applicant's representative said about prompts being issued to pay rent. His brain injury has affected his memory and he has not been using his mobile phone as much. He was unaware that he was being chased for payment and as far as he is concerned, he has been paying rent on time every month.

Submissions by Applicant's representative

10. The Applicant's representative explained that although the Respondent has been paying a single payment of £560, the software system splits the payment to allocate part of the payment towards arrears and the other part towards the ongoing rent charge.

Submissions by Respondent's representative

11. The Respondent has suffered from health problems. He is unlikely to return to work in the immediate future. There are therefore mitigating circumstances to explain why he fell into rent arrears. He has now brought the rent account up to date and is able to pay rent as it falls due. The Respondent is aware that if he were to fall into rent arrears again, his history of rent arrears would count against him. If the Applicant were to pursue a new application for an eviction order, the Respondent understands that the chance of an eviction order being granted would be greater. That is an incentive for the Respondent to maintain

payment of rent as it falls due. In the current circumstances, it is not reasonable to grant an order for eviction.

Findings in Fact

12. The Applicant is the heritable proprietor and landlord of the Property at 45 3/L Dens Road, Dundee, DD3 7JD.
13. The Respondent is the tenant of the Property.
14. The parties entered into a private residential tenancy which commenced 23 January 2023.
15. The contractual monthly rent is £560 per month, payable in advance.
16. The Applicant served Notice to Leave on the Respondent by email on 10 May 2023.
17. At the time the Notice to Leave was served, the Respondent had been in arrears of rent for more than 3 consecutive months.
18. The Tribunal granted an order for eviction in favour of the Applicant on 4 April 2024. The Applicant did not seek to enforce that order until April 2025. The decision granting that order was recalled on 1 August 2025.
19. As at 9 December 2025, the Respondent's rent account is up to date and there are no rent arrears due.

Reason for Decision

20. The Tribunal proceeded on the basis of the documents lodged, the oral evidence of the Respondent and the submissions made by both parties' representatives. The Applicant relied upon ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal found that the Respondent was in arrears of rent for more than 3 consecutive months. That having been established, the Tribunal had to consider whether it was reasonable to grant an order for eviction.
21. Although the Respondent accepted that he had a history of rent arrears, he has brought the rent account up to date and there are no rent arrears currently due. The rent statement does not appear to be accurate in respect of the balance of arrears for the last few months because the payments made by the Respondent appear to pre-date the rental charge. Since the CMD on 1 August 2025, the Respondent has cleared the arrears and since 7 October 2025, the highest the rent arrears reached was £89.62. The Respondent is confident that he can

maintain the tenancy and pay rent as it falls due. He has suffered significant ill health and, notwithstanding that, has brought the rent account up to date.

22. In light of the Respondent's circumstances, and the fact that he has paid all rent arrears due, the Tribunal was not persuaded that it is reasonable to grant an order for eviction. The Respondent appears to be aware that if he falls into rent arrears again, his history of rent arrears may make it difficult to challenge the reasonableness of an order being granted in the future.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Nicola Irvine

Legal Member/Chair

Date: 9 December 2025