



**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/24/3954**

**Re: Property at 117 Elder Crescent, Cambuslang, G72 7GL (“the Property”)**

**Parties:**

**Mr Robert Cochrane, 381 D Hamilton Road, Uddingston, G71 7SG (“the Applicant”)**

**Mr Steven Harvey, 117 Elder Crescent, Cambuslang, G72 7GL (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are 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 eight weeks.

In terms of section 51(4) of the 2016 Act, the private residential tenancy between the parties will end on 27 March 2026.

**Background**

- 1 This is an application for an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 and rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant sought to rely upon ground 12, stating that rent account had been in arrears for three or more consecutive months.

- 2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 27 May 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers.

### **The CMD**

- 3 The CMD took place on 27 May 2025 by teleconference. The Applicant was represented by Mr Graham Whiteford of Loam Property Ltd. The Respondent also joined the call. The following is a summary of the key elements of the submissions.
- 4 The Respondent accepted that arrears were due in the sum of £13,324.05. He explained that he was trying to bring the rent up to date. He was due an inheritance from the sale of a home owned by his mother and aunt. The distribution of the sale proceeds had been delayed due to difficulties in tracing the Respondent's cousin who required to sign documents. The Respondent was a single parent with three children, a son aged 13 and two daughters aged 8 and 6. The Respondent's youngest daughter had cerebral palsy. The Respondent was not receiving the full benefits he was entitled to and was in the process of sorting this out with Social Security Scotland. The Respondent had given up work to care for his three children following a separation from his wife.
- 5 Mr Whiteford confirmed that he wished to add ground 12 to the application, as he had included ground 11 in error. The notice to leave referred to the rent arrears. The Respondent did not oppose this. The Tribunal therefore allowed the addition of ground 12 to the application under section 52(5)(b) of the 2016 Act.
- 6 Mr Whiteford explained that the Applicant had around 6 rental properties and could not afford to let matters continue. There was a mortgage over the property, as well as other property costs.
- 7 Having heard from the parties, the Tribunal determined it would be appropriate to refer the application to a hearing. Whilst the arrears were accepted by the Respondent, it appeared that there was some prospect of them being substantially reduced soon by way of the Respondent's increased benefits and inheritance. The Tribunal further determined to issue a Direction to the Respondent requiring him to obtain information from the solicitor dealing with the sale of his mother's property with regard to how much he was due to inherit, when the funds would be available, and why he could not receive a payment to account pending final disbursement of the estate.
- 8 The Tribunal received no response to the Direction from the Respondent.

## The hearing

- 9 The first hearing took place on 23 September 2025 by teleconference. The Applicant did not attend but was represented by Mr Whiteford. The Respondent joined the call.
- 10 The Tribunal noted that despite issuing formal Directions to the Respondent he had not provided the documents requested. The Respondent stated that he had not received the Direction. The Tribunal clerk confirmed that the Direction and CMD note had been emailed to the Respondent on 29 May 2025. The Respondent stated that the email may have gone to his spam folder.
- 11 The Respondent explained that he had hoped the winding up of his late mother and aunt's estates would have been completed and his share of the estates released to him but that it had proved difficult to trace his cousin who lived in Sweden. His cousin was being awkward about release of the funds. The Respondent advised that he had drafted an email to the solicitor but had not sent it as he was awaiting the firm's complaint partner's email address. The Respondent provided the Tribunal with the terms of the email which essentially asked the firm to make a payment to the Respondent to prevent his eviction from the property.
- 12 Mr Whiteford confirmed that a payment had been received by way of backdated benefits to the rent account which had reduced the balance to £10,824. The Respondent had been paying £750 per month towards a rent of £1500, but this had increased to £1100 per month leaving a shortfall of £400 per month. If the Respondent received his inheritance the Applicant would be content for him to continue as a tenant. The Applicant was prepared to agree to a short adjournment of the hearing to allow the Respondent further time to obtain the funds from his inheritance.
- 13 The Respondent confirmed that his housing allowance was due to increase again to £1500 which would cover the rent. The payments should commence in the next two months.
- 14 Having heard from the parties the Tribunal determined to adjourn the hearing to allow further progress to be made and for the Respondent to hopefully obtain a payment to account from his inheritance that would clear the rent arrears. The Tribunal made it clear to the Respondent that there was still a substantial amount of arrears and that this would be considered at the next hearing if they had not been cleared. The Tribunal reminded the Respondent that he should keep the Tribunal administration advise of any developments regarding the release of funds from his inheritance and any communications received from the solicitors dealing with the estate.
- 15 The second hearing took place on 19 January 2026 by teleconference. The Applicant was in attendance and represented by Mr Whiteford. The Respondent joined the call.

- 16 Mr Whiteford explained that the Applicant had agreed to adjourn the previous hearing to allow the Respondent further time to clear the arrears. Since then, the rent had not been maintained as promised and the arrears had increased to £12,356.37. The Applicant wished to proceed with the hearing.
- 17 Mr Harvey explained that he was still awaiting payment from the estates of his late mother and aunt. He had asked for £20,000 from the solicitor meantime but they had failed to respond to his request. His benefits were now in order, and he has requested that his housing allowance be paid directly to the Applicant. He would pay the full rent from 3 February 2025 and will have funds to make up the rent from January. Mr Harvey advised that he had a pending claim with the local authority after he broke his hip in a fall. He stated that the local authority had admitted liability, albeit in response to questions from the Tribunal he advised that he had inferred this as the local authority had since carried out a repair. He was seeking a further postponement of the hearing for his compensation claim to be processed. He believed this would take around 6 to 8 weeks. The Respondent advised that he had documentation from his solicitor regarding his claim that he could send to the Tribunal, however the Tribunal stated that any documents he wished to rely upon should have been submitted in advance of the hearing, as per the Tribunal's Direction.
- 18 Mr Whiteford opposed the request for postponement. The Applicant wished to pursue the eviction order.
- 19 The Tribunal adjourned the CMD to consider the request for postponement. The Tribunal noted that the previous hearing had been adjourned for the Respondent to take steps to clear the arrears. He had however failed to produce any evidence to suggest repayment of the arrears would take place within a reasonable timescale. The Tribunal had to balance the competing interests of both parties. The Tribunal noted that the Applicant had not opposed the previous adjournment and had given the Respondent the opportunity to address the arrears. Instead, the arrears had increased once more. They were now almost double the balance outstanding when the application was raised. The Tribunal therefore concluded that the Applicant was entitled to proceed with the hearing if that was his wish and determined to refuse the request for postponement.
- 20 The Tribunal proceeded to hear evidence from the Applicant, Mr Whiteford and the Respondent.
- 21 Mr Whiteford spoke to the actions that had been taken by Loam Property on the Applicant's behalf to address the rent arrears with the Respondent. The rent account fell into arrears in 2023. Loam Property had been in touch with the Respondent throughout to highlight the arrears and discuss proposals for repayment. The Respondent had repeatedly stated his mitigating circumstances, such as the sale of his late mother's property. The Applicant had given the Respondent every opportunity to maintain the rent payments and repay the arrears.

- 22 The Applicant spoke to the impact of the arrears upon him. It had been frustrating. The Respondent had committed to addressing the matter. The Applicant felt he had been very patient. He has several rental properties. This one has a mortgage. The Applicant has had to find money from other sources to make the mortgage payments. It has put him under a lot of pressure. The Applicant is in full time employment.
- 23 The Respondent resides in the property with his three children. He previously had his own business as a florist. He gave it up in 2022 to look after his children. He had never been on benefits before. He has always worked since the age of 16. He did not know how the benefits system worked. He wasn't getting his full entitlement. Things started to deteriorate for him financially. He also had to spend money on legal fees to secure custody of his children. He now has full custody. He hasn't previously had the funds to pay the arrears, however moving forward he will be able to pay the rent in full. He will address the rent arrears as soon as possible. He apologised to the Applicant for the situation. The Respondent now receives universal credit, child disability payments and is applying for adult disability payments. His income is around £4200 per month. It has taken time for him to get to this stage. He has received some assistance from a local advice agency. The Respondent explained that he was previously only receiving local housing allowance for a three-bedroom property, but this has now been adjusted to cover a four-bedroom property. He has not been in touch with the local authority to discuss his housing options. He is concerned about his youngest daughter.
- 24 Both parties confirmed that they did not wish to make any closing submissions. The Tribunal therefore concluded the hearing and determined to issue its decision in writing.

### **Findings in fact**

- 25 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement which commenced on 4 September 2023.
- 26 The Applicant has sent the Respondent a notice to leave prior to making this application. The notice to leave was delivered to the Respondent by sheriff officers on 8 March 2024.
- 27 The Applicant has sent the local authority a section 11 notice as required by section 56 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 28 The rent due under the terms of the tenancy agreement is £1500 per month.
- 29 When the notice to leave was delivered to the Respondent, the arrears stood at £4500.
- 30 When the application was made to the Tribunal, the arrears stood at £6000.

- 31 As at the date of this decision, the arrears stand at £12,356.37.
- 32 The Applicant's representative, Loam Property, has written to the Respondent with details of the rent due and outstanding arrears, has offered to enter into payment plans, and has directed the Respondent to agencies for advice and support.
- 33 The Respondent resides in the property with his three children, aged 14, 9 and 6. The Respondent's youngest child is disabled. The Respondent has sole custody of his children.
- 34 The Respondent is in receipt of benefits. The Respondent's benefits are now up to date. There is no indication that any further backdate is due. The arrears are not therefore due to any failure or delay in the payment of a relevant benefit.
- 35 The Respondent is due to inherit funds from the estate of his late mother and aunt. There is no timescale for receipt of the funds.
- 36 The Respondent is pursuing a compensation claim with the local authority after he broke his hip in a fall.
- 37 The Applicant has a mortgage over the property. The Applicant has had to draw funds from other sources to meet the mortgage payments.

### **Reasons for decision**

- 38 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having considered all of the documentary evidence, the submissions heard at the CMDs, and the oral evidence at the hearing.
- 39 The Tribunal considered the wording of section 51:-

#### ***"51 First-tier Tribunal's power to issue an eviction order***

*(1) 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.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may... find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order."*

40 Section 52 of the 2016 Act goes on to state 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 had before it a copy of a notice to leave that had been delivered to the Respondent by sheriff officers. The Tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.

41 The Tribunal considered ground 12 of schedule 3 of the 2016 Act:-

*“Rent arrears*

*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.”*

- 42 The Tribunal was satisfied that the rent account had been in arrears for three or more consecutive months when the notice to leave was delivered to the Respondent, and at the date of this decision, based on the rent statement produced. The Respondent did not dispute this.
- 43 The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which requires the Tribunal to identify those factors relevant to reasonableness and determine what weight should be applied to them.
- 44 The Tribunal gave most weight to both the level of arrears and the length of time they have been outstanding in this case. When this application was made to the Tribunal back in August 2024 the arrears stood at £6000. They have since more than doubled to £12,356.37. It is a significant balance and the Tribunal accepted that it would have caused the Applicant a level of stress, particularly as the Applicant has the ongoing burden of the mortgage payments and associated property costs. There is no evidence that a further backdate of benefits is forthcoming that would reduce the arrears any further. The Respondent had confirmed that his benefits are now up to date and he is receiving his full entitlement.
- 45 The Tribunal also gave weight to the efforts the Applicant has made in supporting the Respondent to address the arrears and remain in the property. The Tribunal was satisfied based on the correspondence produced that the Applicant has complied with the rent-arrears pre-action protocol. He has allowed the Respondent repeated opportunities to reduce and repay the arrears, an example being his agreement to the adjournment of the first hearing to give the Respondent additional time. Whilst the Respondent has put forward potential funding sources that he is pursuing, ultimately these have yet to come to fruition. It has been nearly two years since the notice to leave was served and the arrears have continued to accrue. The Tribunal considered that the Applicant has been more than patient in the circumstances of this case and pursuit of an eviction order is not a decision he has made lightly.
- 46 The Tribunal carefully considered the Respondent's personal circumstances. The Tribunal did have concerns about the impact of eviction on his children, particularly his youngest daughter. However, the Tribunal noted that he now appears to have a steady income by way of benefit payments, one that would likely enable him to secure another private let in the area if required. The Tribunal was also aware that the local authority would have a duty to provide the Respondent with advice and assistance should an eviction order be granted and he would likely receive a level of priority given his familial circumstances. The Tribunal considered that any concerns about the risk to the Respondent's family could be mitigated by a suspension of the execution of the eviction order to allow them sufficient time to source alternative accommodation.
- 47 The Tribunal therefore concluded that the provisions of ground 12 have been met in this case and determined to make an eviction order, with execution of the order suspended for a period of eight weeks.



48 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.**

# R O'Hare

**Legal Member/Chair**

**Date 30 January 2026**