



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/24/5534

Re: Property at 71 Corbieshot, Edinburgh, EH15 3RZ (“the Property”)

Parties:

Langah Ltd, 12 Blackchapel Road, Edinburgh, EH15 3QU (“the Applicant”)

Mr Mohammad Owais Riaz, Ms Mariyam M Ahmed, 71 Corbieshot, Edinburgh, EH15 3QU; 71 Corbieshot, Edinburgh, EH15 3RZ (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it is unreasonable to grant an eviction order and refused the Application.

Statement of Reasons

1. This Application called for a Hearing by teleconference call on 20 January 2026 alongside the related application CV/24/4960. The Applicant was represented by Mrs Rashevskaja. The First Named Respondent was not present or represented. The Second Named Respondent was represented by Miss Bennett of CHAI, and was also present. The Tribunal arranged for an interpreter to attend the Hearing to assist the Second Named Respondent.
2. In this Application the Applicant seeks an eviction order. It claims that the Respondents have been in rent arrears for a period in excess of three consecutive months and that it is reasonable to grant the eviction order. The First Named Respondent has not appeared to oppose the Application. The Second Named Respondent accepts that she has been in continuous arrears

for the requisite period. Her position is that it is not reasonable to grant the eviction order.

3. At the Hearing evidence was led from Mrs Rashevskaja and the Second Named Respondent on the question of reasonableness.

The Evidence

Mrs Olga Rashevskaja

4. Mrs Rashevskaja spoke to the level of arrears, which now stand at £8,554. Since the case called in August 2025 the arrears had increased by £220, albeit that was largely due to the Respondents having paid sums in two instalments each month with one instalment early in the month and one later in the month. If the payment anticipated at the end of January were made then the arrears would have decreased slightly since August 2025.
5. Mrs Rashevskaja spoke of arrears having first accrued during the period July to November 2024. She spoke of having received no payments during the period November 2024 until April 2025. Attempts to engage with the tenants had been unsuccessful. The Second Named Respondent had suggested that she was going to get assistance from non-governmental organisations regarding her arrears but nothing was forthcoming in that regard. The Applicant then had to instruct debt collectors to assist in recovering payment from the Respondents at a cost of 15% of the sums to be collected. Payments commenced once proceedings were raised.
6. Mrs Rashevskaja accepted that payments had been received from the Respondents since September 2025. The payments were generally made in two equal instalments during the course of a month, with the first instalment early in the month and the second later in the month. She said that the Respondents had paid £1,300 in September 2025, £1,300 in October 2025, £1,400 in November 2025, £1,300 in December 2025, and £575 in January 2026. Mrs Rashevskaja said that there was no agreement between the parties that rent could be paid in two instalments each month. She also said that payments received from the Respondents had been applied by the Applicant to the earliest debts, such that payments received were being applied entirely to old arrears and not to ongoing rent.
7. Mrs Rashevskaja confirmed that the Applicant had a portfolio of properties that it owned and let out for residential purposes. The Applicant also manages lets at properties it does not own. The Applicant's portfolio currently comprises somewhere between 35 and 40 properties, but Mrs Rashevskaja was unable to confirm the exact number. She confirmed that the Property is subject to secured lending, but was unable to provide details regarding that lending such as the sum outstanding or the contractual monthly instalment due to the lender. She said that the current arrears had effectively been absorbed into the business of the Applicant. There was no suggestion of financial hardship. She spoke of other costs being incurred for the Property, including

insurances, maintenance costs and administrative costs associated with pursuing rent.

8. Mrs Rashevskaja's position was that she did not believe that the Respondents could afford the Property. She spoke of having no trust that the Respondents would continue with payments if the eviction order was not granted. She said that if the Respondents were allowed to remain in the Property then it could result in the rents for other tenants being increased to offset the unpaid rent here. She also doubted that the First Named Respondent had left the Property under explanation that certain payments continue to be received from him, and that he had been present when a contractor attended at the Property.
9. Mrs Rashevskaja invited the Tribunal to determine that it was reasonable to grant the eviction order and to do so.

Ms Mariyam Ahmed

10. Mrs Ahmed spoke to living at the Property with her two children aged five and four. The First Named Respondent is her husband, but they have separated and he has moved out. The First Named Respondent continues to contribute to the costs of the tenancy. Her children are enrolled at a local primary school. She has a local support network comprising one friend who assists with childcare to allow the Second Named Respondent to work.
11. The Second Named Respondent is employed. She works at a restaurant. She does not have fixed hours. Her income is dependant on the hours she works. She is paid fortnightly. She asked the Applicant if she could pay the rent fortnightly but did not receive a reply. She is a foreign national and is resident in the UK under a VISA for skilled workers.
12. The Second Named Respondent is unable to afford to pay more than £150 per month to her arrears. She spoke to having paid the rent in full plus £150 in each month from August 2025 until December 2025, and £575 in January 2026. She has other debts which she pays, including student loans that are due to be repaid in seven or eight months. She anticipates being able to make additional payments to her arrears once her student loans are paid off. She was adamant that payments made since August 2025 had comprised £1,150 to ongoing rent and £150 to arrears.
13. The Second Named Respondent does not qualify for state assistance with housing or other benefits. If an eviction order is granted she and her children will be made homeless. She has not sought assistance from the local authority regarding housing.
14. On behalf of the Second Named Respondent, Miss Bennett invited the Tribunal to find that it was not reasonable to grant the eviction order and to refuse the Application.

Discussion

15. The Tribunal found both Mrs Rashevskaja and Ms Ahmed to be credible and reliable. Their evidence did not appear to contradict the other. The Tribunal does not doubt that Mrs Rashevskaja has concerns about whether the Respondents will continue to make payments, nor does it doubt Ms Ahmeds determination to continue with her current payment arrangements.
16. In terms of section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016, the Tribunal must issue an eviction order if it finds that one of the eviction grounds in Schedule 3 of the Act applies. The Applicant founds on ground 12 of Schedule 3, which is in the following terms:-

“12 Rent arrears

- (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
[...]
- (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.”
17. There is no dispute that the Respondents have been in arrears for longer than the three consecutive months required. The only question is whether it is reasonable to grant the eviction order. The assessment of reasonableness is a judicial function. What a judicial body requires to do in such circumstances was set out by Lord Greene MR in *Cumming v Danson*, [1942] 2 All ER 653, at 655:

“[I]n considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”

18. In this case, the arrears which have accrued appear significant. However, the monthly rent is £1,150. That means that the arrears equate to a sum which is less than eight months' arrears. On the assumption that the second January payment of £575 is made as anticipated, together with the £150 contribution to arrears, then the total sum outstanding will be £7,829, which is less than seven months' arrears. Comparatively speaking, the sum outstanding is not excessive. The Tribunal gives considerable weight to the level of arrears in its assessment, but not so much that it is determinative.
19. The Respondent has been making sufficient monthly payments to clear the monthly rent in full since August 2026. The Tribunal was satisfied that she also paid an additional £150 towards her arrears in each of August, September, October and December 2025, and an additional £250 towards her arrears in November 2025. Those payments towards arrears are modest, but they have operated to reduce the arrears.
20. The addition of late payment charges to the Respondent's account is affecting the inroads made to repaying the arrears. The late payment charge amounts to £57.50 per month, which eats into the payment towards the arrears. In terms of the Private Residential Tenancy Agreement:-

Rent

10. Subject to the provisions of this Agreement, the rent for the Property is £1150.00 per month (the "Rent").
11. The Tenant will pay £575 on signing and first months rental of £1150/- on entry, and then additional £575 with 2nd month rental and then £1150/- on or before the 5th of each and every month of the Term to the Landlord by standing order to beneficiary Langah Limited account.
12. The Tenant will be charged an additional amount of 5% of the Rent for any late payment of the Rent.
21. Having had regard to the Tenancy Agreement, the Tribunal was satisfied that the Applicant has been entitled to issue a late payment charge against the Respondents, but not for the reason given. Mrs Rashevskia suggested that all payments from the Respondents were being applied to the earliest debts such that no payments were being applied to rent falling due. The right of a creditor to presume that payments be appropriated in the order that debts have been incurred was established in *Devaynes v Noble*, (1816) 35 E.R. 781, more commonly referred to as "Clayton's Case". However, that presumption only applies in the absence of a contrary intention. In this case, the Tribunal was satisfied that the Respondents were paying £1,150 per month towards ongoing rent and £150 towards arrears. The Applicant ought to have applied the payments received on that basis. However, there was no dispute that the Respondent had failed to pay all regular rent payments on or before the fifth day of each month. At least some of the rent was paid in the

final fortnight of the month. It was accordingly late, and the charge legitimately applied.

22. If the Respondents are able to pay all rent prior to the fifth day of the month, that would result in £150 being applied to the outstanding arrears. That would see the arrears paid off within 53 months. Whilst that period is longer than what would ordinarily be considered reasonable from, for example, a time to pay order, the Tribunal determined that, having regard to the Respondents' means, the Applicant's best chance of recovery of the arrears likely rests in the Second Named Respondent's continued occupation of the Property and continuing payments.
23. The Tribunal also had regard to the Second Named Respondent's lack of state support for housing. The grant of an eviction order in this case would likely result in homelessness for her and her young children. In circumstances where the arrears represented less than 8 months' rent and there was recent history of regular payments reducing the arrears, the Tribunal considered that the likely serious consequences for the Second Named Respondent and her children of homelessness was the factor carrying most weight in the Tribunal's determination. The Tribunal considered that the Respondent's local support network, local employment and desire not to disrupt her children's education were relevant factors but did not carry as much weight.
24. In all of the circumstances, the Tribunal was not satisfied that it was reasonable to grant the eviction order. The Second Named Respondent appears to have taken steps to address ongoing and historic liabilities, and the Tribunal is satisfied that she intends to continue to do so. The impact on her, and her young children, of granting the order will be far more detrimental than the impact on the Applicant of not granting the order. The Applicant is receiving payment of rent in full, with a contribution to arrears. Evidently, payment of the full rent on or before the fifth day of each month would prevent the 5% late payment charge from being applied, but that is a matter for the Respondents. The Tribunal notes that any failure by the Respondents to continue with the current payments would expose them to further eviction proceedings in which the Tribunal would be much less likely to afford an opportunity to address arrears whilst remaining in the Property. The Tribunal also carefully considered the evidence provided by the Applicant regarding the impact of the arrears on its business and management of the Property. While the Applicant highlighted administrative costs and the need to recover outstanding rent, the evidence presented was limited and did not demonstrate any financial hardship or other pressing detriment that would render eviction reasonable at this time, particularly while the Respondents are paying monthly rent in full and making a payment towards arrears. The Applicant also has the assurance of the order granted in the related civil case (CV/24/4960) for the full amount of the arrears. On the balance of the evidence, the Applicant has therefore failed to satisfy the Tribunal that it would be reasonable to grant an eviction order, given the ongoing payments and efforts made by the Second Named Respondent to address the arrears.
25. The Tribunal's determination 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.

Legal Member/Chair
Andrew Upton

Date: 20/01/2026