



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/25/2640

Re: Property at 30/7 Kirk Street, Room 5, Edinburgh, EH6 5EZ (“the Property”)

Parties:

Mr Peter Aslet, Lynda Aslet, 104 Ravelston Dykes, Edinburgh, EH12 6HB (“the Applicants”)

Kyle Scott, 30/7 Kirk Street, Room 5, Edinburgh, EH6 5EZ (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member) and Eileen Shand (Ordinary Member)

Decision

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.

Background

1. By application dated 17 June 2025, the applicants sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”).
2. On 15 August 2025 the application was accepted by the tribunal and referred for determination by the tribunal
3. A Case Management Discussion (CMD) was set to take place on 16 February 2026, and appropriate intimation of that hearing was given to both parties.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 16 February 2026 via telephone case conference. The applicants were not present but were represented by their letting agent, Ms. Hazel Young, Rockford Properties, Dundee. The Respondent was also personally present.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.

Reasons for Decision

6. The application sought an eviction order in terms of the provisions of the Private Housing (Tenancies) (Scotland) Act 2016.
7. The Applicants are the registered owners of the property.
8. The Applicants and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 15 February 2020.
9. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
10. The initial agreed monthly rental was £350 per month. The current monthly rental is £695
11. The proposed ground for eviction was ground 12 as contained in schedule 3 to that Act
12. That ground indicates that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
13. On 15 May 2025 the applicant served a Notice to Leave (“NTL”) upon the respondent. The NTL indicated that eviction would be pursued at a date after 15 June 2025.
14. On the date of service of the NTL, the respondent had not been in rent arrears for three or more consecutive months
15. The rent account lodged by the applicant with the tribunal showed that the respondent owed no rent arrears as at 18 February 2025. He then entered into arrears on 18 March 2025. Accordingly, he would not be in arrears for a period of three consecutive months until at least 18 June 2025.
16. In the Upper Tribunal decisions in the cases of *Rafique v Morgan* (2022) UT 07 and *Majid v Gaffney* (2019) UT 59, the Upper Tribunal for Scotland considered whether it is competent for a notice to leave to be served before a

tenant has been in arrears for that required period of three consecutive months. The decisions confirmed that a notice to leave cannot be served until a tenant has been in arrears consecutively for a period of three months. The amount of the arrears has no bearing on it. The crucial element here is the period of time during which the arrears have existed consecutively. Any eviction application based upon a notice served prior to the ground being established is incompetent and must be dismissed.

17. This tribunal is bound to follow decisions which interpret relevant legal provisions issued by the Upper Tribunal. Accordingly, this application is incompetent and must be dismissed.

18. At the commencement of the CMD the tribunal asked whether the applicant representative was aware of the Upper Tribunal decisions mentioned. She indicated that she was not. She was asked whether she had sought legal advice on the application. She confirmed that she had not. The tribunal asked whether the applicants' representative wished to have the CMD adjourned to a later date to enable her to seek legal advice. She indicated she did not wish to do so and she accepted the position put forward by the tribunal that the application was invalid and incompetent and fell to be dismissed in light of the Upper Tribunal decisions.

19. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

The Tribunal determined that the application should be dismissed

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

17 February 2026

Date

