



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/25/3032

Re: Property at 54 Constantine Way, Motherwell, ML1 3US (“the Property”)

Parties:

Mrs Pauline Seal, 2 Knoll Close, Burntwood, Staffordshire, WS7 4TD (“the Applicant”)

Miss Leigh-Ann Fagan, 54 Constantine Way, Motherwell, ML1 3US (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application was made under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The applications contained: -
 - a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. rent statement
 - e. correspondence to the tenant about rent arrears

3. A case management discussion took place on 26 January 2026. In attendance was the applicant's agent, her son Simon Seal. Notice of the Case Management Discussion had been made by the sheriff officers on 1 December 2025. The respondent did not appear. The tribunal was prepared to proceed in their absence, given they had notice of the Case Management Discussion.

Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of possession of the property under ground 12 (three months' rent arrears).

5. He advised that the rent arrears had been £14,025 when the notice to leave had been served in April 2025. The rent arrears were now £20,325. The applicant had tried on a number of occasions to get the tenant to engage in a repayment arrangement. This had previously worked; on this occasion, the tenant had not engaged, and the arrears were now significant. The tenant had a history of rent arrears. The respondent had been ignoring all contact from the applicant and the letting agents. The applicant had also approached the DWP to have rent paid directly to her, but this had been refused three times. He did not know if the tenant worked; she had been a nurse at one time. She had been in the property for 10 years. Previously with a partner. This case had had a significant impact on his mother, the applicant. She has to pay for the upkeep of the property, which has included for repairs which

were not notified timeously and had then been more costly to fix, and for other repairs caused by the tenant herself. She also pays for factoring fees, letting agent fees and insurance. She has now expended over £4000 on the property in addition to the lost rental. This had been a property bought as an investment. The applicant's agent believed that his mother would move to sell the property if the eviction order were granted, as she had had such a difficult experience renting it out.

Findings in Fact

6. The Tribunal found the following facts established: -
7. There existed a private residential tenancy.
8. The tenant is Leigh-Ann Fagan.
9. The landlord is Pauline Seal.
10. The property was 54 Constantine Way, Motherwell.
11. It had commenced on 1 December 2021.
12. The tenancy stated that rent was £700 a calendar month payable in advance.
13. There was submitted a notice to leave dated 15 April 2025 stating that an application would not be made until 16 May 2025. It sought eviction under ground 12 rent arrears. It set out that the respondent had been in rent arrears for more than three consecutive months. The notice to leave had been posted to the tenant. There was evidence of service.
14. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
15. On 1 April 2025 rent arrears were £14,025.
16. As of 26 January 2026, the arrears were £20,325.
17. There were arrears on the rent account since at least February 2024.
18. There was evidence that the pre-action protocol requirements had been followed.

19. There was no evidence of failure or delay in any benefit payment to the respondent.
20. The respondent had regularly failed to pay their rent and arrears. The arrears had been steadily accruing.
21. The respondent had failed to enter into a repayment arrangement with the landlord.

Reasons for Decision

22. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.
23. The ground which the Applicant seeks eviction under is ground 12. It 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.

*(2) [...]*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 [—] ³ [

(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.] ³

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

24. The applicant's agent confirmed that they sought an order for eviction based on the fact that the respondent had been in rent arrears for three or more consecutive months. When the notice to leave was served on April 2025, the respondent had been in rent arrears for well over three months. The arrears had started to accrue since at least February 2024. There did not appear to be any benefit issues which were causing the arrears. It appeared that the first part of ground 12 was met.
25. Given that the first part of the ground is met, the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order. We find it would be reasonable to grant the order for eviction; in coming to this conclusion, we took into account the following matters:-
26. Matters in support of granting the order were as follows:- The arrears were now more than £20,000.00. There was a history of non-payment. The tenant was not engaging with the applicant or the letting agent. There were no proposals to repay the arrears. There had been a delay in the tenant reporting repairs. There were ongoing costs to keep the property, and those costs were not being met by rent payments. This was the only property the applicant rented out. We had no information on any mitigation in favour of the tenant.
27. Accordingly, considering the papers before us and the oral submission by the applicant's agent the tribunal was prepared to grant the order for recovery of possession, given that the first part of ground 12 was met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

28. The Tribunal grants an order in favour of the Applicants against the Respondents for recovery of possession of the private residential tenancy under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

Legal Member/Chair

Date: 26th January 2026