



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/5398

Re: Property at 27 Forres Crescent, Bellshill, ML4 1HL (“the Property”)

Parties:

Mr David Clelland, 4 Croftbank Crescent, Uddingston, G71 7JD (“the Applicant”)

Mr John Ferguson, 27 Forres Crescent, Bellshill, ML4 1HL (“the First Respondent”)

Miss Lesley Willis, 15 Register Avenue, Bellshill, ML4 2HF (“the Second Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member), Mr A Khan (Ordinary Member) and Ms E Paton (Legal Member [Observer])

Decision (in absence of the First Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted

Background

1. This is a Rule 109 application made under Ground 12. The Applicant was seeking an eviction order on the basis of rent arrears in the sum of £942 which arose as a result of non-payment of rent on two occasions by the Respondent in July 2023 and March 2024. The Applicant representative lodged a copy of a tenancy agreement between the parties which commenced on 16th February 2019 at a monthly rent of £595, notice to leave with evidence of service, section 11 notice with evidence of service, and pre-action requirement correspondence.
2. Service of the case papers and notification of the Case Management Discussion was made upon both Respondents by Sheriff Officer on 10th June 2025.

3. By email dated 10th June 2025, the Second Respondent lodged written representations stating that she left the Property in February 2022.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 30th July 2025. The Applicant was represented by Mr Kiernan, Premier Properties. The Second Respondent was in attendance. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the First Respondent.
5. The Second Respondent indicated she was not opposed to an order being granted. Following discussion, it was agreed to continue the CMD to a hearing on the reasonableness of granting an eviction order, particularly given the relatively low level of historic arrears and the fact that there is a child in the Property with an undiagnosed condition that may be affected by an eviction order.
6. The Applicant representative lodged further representations prior to the hearing.

The Hearing

7. A Hearing took place by telephone conference on 21st January 2026. The Applicant was represented by Mr Kiernan, Premier Properties. The Second Respondent was in attendance. The First Respondent was not in attendance.
8. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the First Respondent.
9. Mr Kiernan said the Applicant was unable to be present for health reasons.
10. Asked by the Tribunal what procedure was carried out when the Second Respondent gave notice that she was leaving the Property in 2022, Mr Kiernan said it had been made clear to the First Respondent that he could apply to take over the tenancy in his own name but he had not done so.
11. The Second Respondent said she has no contact with the First Respondent and has not been at the Property since 2022. She understood there was no written agreement regarding a new tenancy.
12. Mr Kiernan explained that the First Respondent has not paid any rent since shortly before the CMD. The last rent statement showed arrears of £5192. Mr Kiernan said everything possible had been done to encourage and assist the First Respondent to make payment and address the arrears. Numerous attempts had been made to contact the First Respondent by email, letter and telephone, with no success.

13. Mr Kiernan said the Applicant purchased the Property in 2019 and has spent around £30,000 on refurbishment. There is a mortgage on the Property, and there is insurance and letting agent fees to be paid. The Applicant is losing around £400 per month due to the First Respondent's failure to pay rent. The Applicant has a portfolio of 17 properties. The Applicant has a young family.
14. Responding to questions from the Tribunal, the Second Respondent said her son is aware that he and his father are likely to be evicted, and he appears to accept this. The Second Respondent confirmed that the granting of an eviction order would have no effect upon her.

Findings in Fact and Law

15.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 16th February 2019 at a monthly rent of £595. The rent has been increased during the tenancy.
- (ii) The Second Respondent no longer resides at the Property.
- (iii) The joint tenancy was not brought to an end in 2022 when the Second Respondent ceased to occupy the Property.
- (iv) The Applicant has served a Notice to Leave upon the Respondents.
- (v) The Respondents have accrued rent arrears.
- (vi) The Respondents have been in rent arrears for three or more consecutive months.
- (vii) The Respondents being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (viii) The Applicant has complied with the pre-action protocol.
- (ix) It is reasonable to grant an eviction order.

Reasons for Decision

16. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.

17. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondents were in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
18. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Tribunal was satisfied on the evidence before it that the Applicant has complied with the pre-action protocol by sending emails and letters to the Respondent.
19. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of all parties.
20. The Second Respondent left the Property in 2022. She gave notice to the Applicant representative, but no notice appears to have been given by the joint tenants to allow a sole tenancy to be considered in respect of the First Respondent. The Second Respondent confirmed that she was not opposing the eviction order and that it would have no effect upon her.
21. The First Respondent has accrued arrears which are now substantial and rising. The situation has changed considerably since the CMD was continued, at which point there was a relatively small amount of historical arrears. The First Respondent did not see fit to attend the CMD or the Hearing, or make any representations to assist the Tribunal in considering reasonableness. The Tribunal took into account the limited information available that there is a child in the Property who may be affected by the granting of an eviction order. The Tribunal also took into account, given the First Respondent's refusal to pay any rent for a significant period, that he may be considered to be intentionally homeless, which may affect how the local authority treats any application for social housing. However, in the absence of any representations from the First Respondent, the Tribunal was unable to assess the likely outcome of the granting of an order upon the child. The Tribunal considered it likely that, if no order was granted, the arrears would continue to rise. The Tribunal considered the tenancy is not sustainable
22. The Tribunal took into account the information provided regarding the Applicant's circumstances. The Applicant is entitled to expect rent to be paid. The Tribunal considered the Applicant is suffering financially as a result of the First Respondent's failure to pay the rent and address the arrears.
23. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the First Respondent to attend or make representations to the Tribunal to indicate why an order should not be granted, and the First

Respondent failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

24. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 23rd February 2026.

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.

H Forbes

Legal Member/Chair

21st January 2026
Date