



**Decision 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/24/5348

Re: Property at 12/1 Hopetoun Street, New Town, Edinburgh, EH7 4GH (“the Property”)

Parties:

Mrs Martine Callaghan, 5/9 Rennie's Isle's, Edinburgh, EH6 6QA (“the Applicant”)

Dr Andrew Nurse, Mrs Margaret Rose Nurse, 12/1 Hopetoun Street, New Town, Edinburgh, EH7 4GH (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Applicants and the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 19th November 2024. The application was submitted under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 12 of the Private Housing (Tenancies) (Scotland) Act 2016 which was namely that the Respondents were in rent arrears for three months or more.
2. The case was conjoined with case FTS/HPC/CV/24/3769.
3. The case was conjoined with the payment case. A date was set for 27th June 2025. On 29th March 2025, all parties were written to with the date for the Case Management Discussion (“CMD”) of 27th June 2025 at 2pm by

teleconferencing. The letter also requested all written representations be submitted by 19th April 2025.

4. On 2nd April 2025, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by personal service. This was evidenced by Certificate of Intimation dated 2nd April 2025. A postponement request was received by the Respondents representative. Both cases were then postponed.
5. A new date was set for 28th July 2025 at 2pm. All parties were written to on 1st July 2025 informing them of the date.

The Case Management Discussion

6. A CMD was held on 28th July 2025 at 2pm by teleconferencing. The Applicant was present and was represented by Mr Jackson Deane, Trainee Solicitor, Bannatyne, Kirkwood, France & Co. The Respondents were not present but were represented by Mr Sam Donegan, Housing & Money Adviser, CHAI (Community Help and Advice Initiative).
7. Mr Donegan said that he had only recently been instructed so did not have enough time to put in a full submission. He said that he believed that the reference on the rent account to the CEC payment was a payment of the Housing Element of Universal Credit. He said that the rent charge is being fully addressed and that the arrears have reduced by £3300 since February 2025. He said that he requires further time with the Respondents to be able to submit a sustainable plan with regarding to paying the rent and the arrears. He is opposed to an order for eviction being granted in the circumstances and motioned for a hearing to be fixed. Mr Donegan said that he is to do a full income and expenditure assessment with the Respondents. A Time To Pay Direction ("TTPD") will be discussed with the Respondents at that point to see if it is a viable or desired option after that. He did not have full instructions as to exactly what the Respondents income consisted of and of any benefit entitlement. He did think that there would probably be a Discretionary Housing Payment ("DHP") in payment as he did not think that Universal Credit would fully cover the rental charge. Mr Donegan said that the Respondents current income was unlikely to change.
8. The Applicant said that the only reason that the arrears had reduced was due to a Universal Credit backdate not the Respondents addressing the arrears. She said that it is a three bedroomed property.
9. Mr Donegan said that he was trying to get instructions but that it has been difficult due to the Respondents health conditions. However, he has had a face to face meeting with the Respondents. He is sure that there are additional support needs. Mr Donegan said that the Respondents were not present at this CMD as they were overwhelmed by the situation.
10. The Applicant said in regard to the First Named Respondent's, Dr Nurse, daughter that she has never lived in the Property. She lives in Yorkshire.

11. The Applicant said that she only owns this property and one other property for renting. This is her first time at a tribunal. She owns the Property outright. She relies on the income as means of supporting her grandchildren through university. One of her grandchildren is starting university in the USA in autumn. She is concerned that if the Respondents continue to live in the Property she will not be financially able to support her grandchildren.
12. Mr Deane said that the order for payment should be granted as it is envisaged that the Respondents will not address this further. It is appropriate to make a decision on this at this point.
13. The Applicant said that the Respondents have delayed each stage of this process. There has already been a postponement of the hearing. She said that the First Named Respondent gave up his job in 2022 but told the local authority that he had lost his job. She felt that this was disingenuous and leads to issues of credibility. She does not see how the Respondents can pay the rent or the arrears going forward. She considers that they are standing still. Neither she nor her letting agent have been approached regarding a repayment plan. The Respondents have been offered a smaller property for them to downsize to as the letting agent has many properties. The Respondents have refused. She does not think that they can afford the Property. Remaining in it further will cause them to be in further debt.
14. Mr Deane noted that the reference to the 9.5% interest was a contractual one at clause 36 of the lease which stated that the rate would be 5% over the base rate. The Tribunal accepted this point but Mr Donegan said that he did not. As matters are in dispute this case will proceed to a hearing. Mr Donagan will have the opportunity to lodge a submission to the Tribunal as to why he considered that this rate of interest should not be imposed.
15. The Tribunal noted that Mr Donegan said that the Respondents engaged better in a face to face setting. If a face to face hearing is required then this will need to be notified to the Housing and Property Chamber no later than close of business on Friday 8th August 2025. The Tribunal continued the case to a hearing as matters were in dispute. A direction was issued.
16. On 13th January 2026, the First Named Respondent emailed the Housing and Property Chamber to advise that his mother, the Second Named Respondent, was gravely ill. The First Named Respondent then emailed on 14th January 2026 to advise that sadly the Second Named Respondent had passed away. The Tribunal was content to grant a postponement in this circumstance. On 15th January 2026, the Respondents representative emailed to advise that the Respondents were not opposed to both orders being granted and that a delay for the order was no longer being sought.
17. On 19th January 2026, the Applicants solicitor emailed the Housing and Property Chamber to advise that, given the circumstances, that there was no opposition to the postponement. The Applicants solicitor proposed that this

case and the joint case were dealt with on the papers in terms of Rule 18. The Respondents representative was contacted to obtain the Respondents views in terms of proceeding on the papers. On 23rd January 2026, the Respondents email confirmed that there was no objection to proceeding on the papers. It was also noted that there was no objection to the rate of interest being 5% above the base rate for the conjoined application.

The Continued CMD

18. A CMD was heard on the papers on 3rd February 2026. Only the Tribunal members were present. As both parties were in agreement that an order for eviction should be granted. The Tribunal was satisfied that it was reasonable to grant an order for eviction.

Findings and reason for decision

19. A Private Rented Tenancy Agreement commenced 1st March 2021.
20. The Respondents have persistently failed to pay their rent charge of £1450 per month. The rent payments are due to be paid on the first day of each month.
21. The Respondents had been in rent arrears for three or more consecutive months when the notice was served.
22. The arrears outstanding are £8223.59.
23. The Respondents are not opposed to the granting of the order.
24. There are no issues of reasonableness that prevent an order from being granted.

Decision

25. The Tribunal found that ground 12 has been established and granted an order in favour of the Applicant.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland

(Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Gabrielle Miller

20th February 2026

Legal Member/Chair

Date