



**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/24/4796**

**Re: Property at 32 Reveston Lane, Bathgate, EH47 8HJ (“the Property”)**

**Parties:**

**Kornelia Ambroziewicz, 59 Hunter Grove, Bathgate, EH48 1NN (“the Applicant”)**

**Jane Moffat McLellan, Scott Patrick McLellan, 32 Reveston Lane, Bathgate, EH47 8HJ (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The Applicant relied on a PRT by the Applicant to the Respondents but this was not lodged with the original application papers.
2. The application was lodged with the Tribunal on 17 October 2024. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondents by Sheriff Officer on 1 May 2024. The Notice relied upon Ground 12 of Schedule 3 Part 1 of the 2016 Act, referring to arrears at the time of the Notice of £7,700.
3. Prior to the case management discussion (“CMD”) we issued a Notice of Direction to the Applicant seeking: a copy of the Tenancy Agreement; an updated

statement of arrears; evidence of the landlord being registered; and submissions or further productions regarding the pre-action protocol.

4. In advance of the CMD, the Respondents (through the first named Respondent) lodged:
  - a. A partial copy of the Tenancy Agreement;
  - b. Photographs said to illustrate various repairs issues with the Property; and
  - c. A lengthy hand-written note of submissions (which formed the basis of discussion at the initial CMD).
5. Further to the Notice of Direction the Applicant lodged (9 days after the deadline set in the said Notice):
  - a. Evidence of the landlord being registered for the Property;
  - b. A copy of a PRT agreement, showing the Tenancy commencing on 27 May 2022 (but, as discussed further below, the background to this document was non-conventional); and
  - c. An updated rent statement, showing that rent had been paid in full since 27 February 2025 but that, due to a long period of non-payment and part-payment, arrears stood at £11,583.87;but no further documents or submissions regarding the pre-action protocol.

### **Procedural history**

6. Reference is made to the terms of the Case Management Discussion notes and Notices of Direction referred to in this Decision for further detail where relevant.
7. The matter called for an initial CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 3 June 2025. We were addressed by the Applicant's representative, Mike Lewis, consultant, Aikman Bell solicitors. The first named Respondent represented herself and her son (the second named Respondent). The first named Respondent said that her son lacked capacity to deal with his legal affairs (and had lacked capacity since before the Tenancy Agreement of May 2022). Further details on this issue are noted below.
8. At that initial CMD two defences on reasonableness were clearly made out:
  - a. In terms of paragraph 12(4)(a), whether it was reasonable to evict given that the Respondents held that the "arrears of rent over the period in question is wholly or partly a consequence of a delay or failure the payment of a relevant benefit"; and
  - b. In consideration of the health and caring commitments, and that they have not yet been rehoused despite a long-standing application for rehousing, whether it was reasonable to evict in terms of paragraph 12(3)(b).Further details as to the nature of these defences are discussed below.
9. Thereafter, we continued to a further CMD and issued a further Notice of Direction. First, we sought further vouching of the benefits issue and the medical issues. Second, as the Respondents' submissions touched on other potential defences, they sought time to seek further advice from, at least, the Advice Shop (from whom the first named Respondent said she had already sought advice). In

the Notice of Direction we sought that the Respondents confirm their position on any additional defence, such as:

- a. Whether the arrears in the rent statement were disputed;
- b. Whether any issue was taken as to the enforceability of the Tenancy Agreement, in consideration of the circumstances described by the first named Respondent as to how the Tenancy Agreement had been signed and/or the alleged lack of capacity of the second named Respondent;
- c. Whether any defence was extended in regard to the complaints about the condition of the Property; and
- d. Whether the Notice to Leave was accepted as validly completed and/or intimidated.

These matters arose in the context of the first named Respondent providing details of a number of unusual circumstances that culminated in her and her son being purported tenants of the Applicant. In short, the Property had been the first named Respondent's parental home, but it had been transferred into the names of her and her now-ex husband during their marriage. She described that an intervening bankruptcy of her ex-husband had led to the title being transferred to her brother-in-law (though the details were unclear to us as to how this occurred) and, in turn, he sold the Property to the Applicant. The first named Respondent confirmed that she had been paying a monthly payment to her former brother-in-law but that there was no written lease until the Applicant's husband had appeared at her door to have a document signed. The Tenancy Agreement now relied upon was said to be the second attempt by the Applicant to have a lease signed, and that it was at a rent over 25% higher than had been paid to the previous owner. The change of landlord, the issues with signing a new lease, and the higher rent all led to a prolonged issue with regularising benefit payments to cover the rent, during which time the arrears accrued.

10. The Notice of Direction also provided the Applicant with a further opportunity to lodge any vouching, in particular regarding the pre-action protocol.
11. The continued CMD was assigned for 15 August 2025. In advance of this, the Applicant lodged WhatsApp messages between the Applicant's husband and the first named Respondent regarding signing of the Tenancy Agreement, payment of the rent from benefits, and voluntary vacating, along with some other documents such as a copy of the signed Notice to Leave. Nothing was lodged by the Respondent.
12. At the continued CMD, the Applicant was again represented by Mr Lewis but there was no appearance by the Respondents. The first named Respondent had sent an email to the Tribunal shortly before the CMD outlining various health issues affecting her and one of her grandsons, and stating that she would not be able to appear. The Applicant sought an order for eviction, which we declined to grant at that time, instead assigning a Hearing. A further Notice of Direction was issued providing a timetable for the parties to give unsuitable dates and lodge Lists of Witnesses, for the Respondents to provide an update on the two reasonableness defences noted (benefits, and health/family issues), and for the Applicant to lodge an updated rent statement and for the Respondent to comment on whether it was admitted (and, if disputed, to what extent). Further

to this Notice of Direction, there was no compliance with the requests for documentation and Lists of Witnesses by either party.

13. Two days prior to the Hearing, the Applicant's agent provided an updated rent statement showing that the level of arrears was unchanged since the original CMD. (Though helpful to have a fully updated statement just prior to the Hearing, we noted that the third Notice of Direction had asked for a statement of arrears to be lodged almost 5 months earlier, but none had been.) Nothing was lodged late by the Respondent.

### **The Hearing**

14. The matter called for a Hearing, conducted by video-conference, at 10:00 on 18 February 2026. We were again addressed by the Applicant's representative, Mike Lewis, consultant, Aikman Bell solicitors. There was no appearance for either of the Respondents.
15. We held off commencing until 10:05 and then directed the clerk to call a telephone number held for the first named Respondent. She called twice, and twice the number rang out and then went to answerphone. (We directed that no message be left.) We asked the Applicant's agent whether he had any recent contact. He said that there had been none. He added that there had been no contact from the Respondents at all, on any matter, since the commencement of the application, other than through the Tribunal process. In the circumstances, and particularly the lack of contact by the Respondents with the Tribunal since the email shortly prior to the second CMD, we continued with the Hearing in the absence of the Respondents.
16. We noted the Applicant's position was materially as set out before:
  - a. The Tenancy Agreement lodged, said to be signed on 23 May 2022 by the Respondents (though no evidence of the Applicant's signature) and commencing on 27 May 2022, at a passing rent of £700, was a valid PRT Tenancy Agreement.
  - b. That after a period of no rental payment, and then payment at only £350/m, payments of £700 have been received since 27 February 2025. By that point arrears of £11,583.87 had amassed and had remained outstanding.
17. All other submissions from the Applicant were directed to the Respondents' reasonableness defences. The background to this, as detailed by the first named Respondent at the initial CMD, is as follows:

*The second named Respondent's health, the first named Respondent's caring duties, and health and family issues*

- a. Around June 2021, the second named Respondent – Scott McLellan – was hospitalised for around a year. The first named Respondent said that he lacked capacity since June 2021, having spent a significant period of time in a coma and having suffered brain injuries.

- b. Prior to his hospitalisation, the second named Respondent had his own home where he lived with his two sons. He had custody of his sons following issues arising since his relationship with their mother broke down.
- c. The second named Respondent had been suffering from ill-health and sought medical treatment from his GP but there was no diagnosis of any serious ailment.
- d. The first named Respondent provided significant support, and one morning attended at the second named Respondent's home to help take his younger son to his place of education. She found the second named Respondent lying on the floor, unconscious and unresponsive. She called for an ambulance. There was then a prolonged period when the second named Respondent was in a coma, and then came out of a coma and entered a slow recovery. The reason for the illness was explained as pneumonia that had led to sepsis, and the period of being unconscious (plus the nature of the illnesses) had caused permanent brain injury.
- e. The second named Respondent now required constant care, repeated hospital treatment, and would "never be the same man again" (in the words of the first named Respondent).
- f. During the initial period when he was in a coma (and it was not known if he would survive), the first named Respondent agreed to take over custody of his two children. Since that time, she has cared for her grandsons and, since he was discharged from hospital, she also cares for the second named Respondent, all at the Property.
- g. As at the date of the initial CMD, one grandson was 16 and in the local high school, sitting his Highers in Spring 2026. The other was 19 and in a nearby college (in Livingston).
- h. When she was presented (by the Applicant's husband) with a new tenancy agreement (for the second time) and told to sign, she did not have a chance to consider it and felt she just needed to sign it, which she did. It was also given to the second named Respondent to sign at that time (which he did), but the first named Respondent said that "he would sign anything" as he would not understand what he was being provided.
- i. Further, as at the date of the initial CMD:
  - i. The second named Respondent had started to suffer from mental health issues;
  - ii. The first named Applicant was turning 70, and had her own health issues; and
  - iii. The first named Respondent admitted that, due to the stairs in the Property, it was no longer entirely suitable for their needs (due to her and her son's health issues), and that she had been on a housing list for six years but without any rehousing. She had been informed by the local authority's Homelessness unit that they will only rehouse her if an order for eviction is granted. She had at that time recently received a letter from her GP in support of her housing application, which she had passed to the local authority. She did not have any other information in regard to her long-standing housing application.

### *Issues with payment of benefits*

- j. The first named Respondent described (in both her written submissions and at the initial CMD) a lengthy and troubled period seeking benefits to support payment of the rent. She said that at first she was unable to claim benefits as the Property was listed as a house in multiple occupancy. She believed that her ex-husband must have done something that resulted in this incorrect registration of the Property.
  - k. Once the HMO issue was resolved, she was able to seek Housing Benefit and, after a long period, it was granted with a payment of backdated arrears. (We noted from the rent statements lodged by the Applicant that £4,166.13 was paid around 27 June 2023.)
  - l. She then found out that only £350/month was being paid, being her share of the rent. (We noted from the rent statements lodged by the Applicant that payments of £350 a month were paid from around 27 July 2023 to 27 January 2025.) She enquired and was told that the second named Respondent needed to put in his own application. She said that no one had told her of this issue up to that point, and that she had not realised this (having never been involved in paying rent or claiming housing benefit before).
  - m. She then started to seek payment of benefit on behalf of her son for Housing Benefit or a housing element of Universal Credit. This was initially stymied as she was told that, for benefits purposes, her ex-husband was listed as her son's Attorney. This was eventually resolved in her favour. There were then issues about a "migration letter" being issued (so as to migrate her son from one set of benefits to another). The letter was promised but the time-scale for issuing it was not fixed. She also received advice that the order in which she has been told to apply for the benefits may mean that her son will not receive his full entitlement of back-dated benefits.
  - n. Throughout this time, she has had meetings with the DWP, the local authority, and the Advice Shop (who advised her on benefits, at least at the time of the initial CMD). As of January 2025, a benefits application for current rent was accepted for the second named Respondent, so a full £700/month was now being paid.
  - o. Around "6-8 weeks" prior to the initial CMD she had sent a letter to the local authority pressing them for the back-dated benefits claim for the second named Respondent, and had been told by the Advice Shop that the second named Respondent should receive a back-dated payment but it may not cover everything that was due to the Applicant.
18. In response to this the Applicant made the following submissions:
- a. No vouching had been provided for any of the medical or family issues relied upon, though we noted that nothing was denied. The Applicant's agent stated only that he could neither confirm nor deny the medical and family issues.
  - b. In regard to arrears, it was accepted that there clearly had been some issue with payment of benefits but that nothing had altered since February 2025. The Applicant's submission was that these issues were now long in the past, and that if a further lump sum back-dated payment was due for the second named Respondent, it would likely have been received by now. In

the absence of any vouching as to continued issues, the Applicant moved that little weight should be given to the issues with benefits.

19. We noted from the Applicant that no application had been yet been raised for payment of the rent arrears, and that there was no known application raised by the Respondents in regard to any repairs issues. (The Respondents had been provided with an opportunity to detail any defence on repairs issues but, other than detailing some wants of repair at the initial CMD and lodging photographs prior to the CMD, the Respondents confirmed that this was not the reason for any rent being withheld and did not state any defence based on the condition of the Property, even though some of the wants of repair seemed significant.)
20. In regard to compliance with the pre-action protocol, the Applicant has not lodged any letters or emails containing the required information, and has not claimed that these were issued to the Respondents. The Applicant's agent confirmed at the Hearing that his complete submissions on the pre-action protocol were:
  - a. The brief comment made to the Tribunal in correspondence prior to the application being accepted: "the tenants refused to engage with our client who made repeated attempts to contact them by telephone and text message to discuss the position and establish the reason for non-payment, none of which were responded to"; and
  - b. The text message exchanges lodged after the second Notice of Direction which cover the issues of signing of the Tenancy Agreement, the progress of the benefits claim and payment of rent, and whether the Respondents will be leaving voluntarily.We noted that the text messages (to which the first named Respondent clearly responds) did not contain any discussion of sources of advice. They refer solely to seeking an update as to the progress with West Lothian Council. The Applicant's agent did not demur.
21. We raised with the Applicant's agent the issue of one of the occupants having upcoming Highers, and that any eviction on regular terms could interfere with his schooling. The Applicant's agent readily conceded that any eviction order granted could be suspended until after the end of the 2025/26 academic year.
22. No motion was made for expenses.

### **Findings in Fact**

23. On 23 March 2022, the Applicant let the Property as a Private Residential Tenancy to the Respondents with commencement on 27 May 2022 ("the Tenancy").
24. In terms of clause 7 of the Tenancy Agreement, the Respondents required to pay rent of £700 a month in advance on the 27<sup>th</sup> day of each month.
25. As of 30 April 2024, the Respondents were in arrears of rent of £8,433.87 having failed to make payment of any rent prior to 27 June 2023. The Respondents started making regular payment of £350/m from on or about 27 July 2023, following a lump sum payment of £4,166.13 on or about 27 June 2023.

26. On 30 April 2024, the Applicant drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears (erroneously said to be in the sum of £7,700).
27. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 30 May 2024.
28. The Applicant served a copy of the Notice to Leave on the Respondents through Sheriff Officer's service on 1 May 2023.
29. The Applicant raised proceedings on 17 October 2024 for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
30. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon West Lothian Council on 17 September 2024 by the Applicant.
31. The Respondents made payments of £350/month from on or about 27 July 2023 until on or about 27 January 2025, and have paid £700/month since on or about 27 February 2025.
32. The Respondents have made no payment against arrears, which have remained stable at £11,583.87 since 27 February 2025. As of 18 February 2025 the Respondents remain in arrears of rent of £11,583.87, being the equivalent of over 16 months' rent.
33. The rent has been in arrears to some extent since the commencement of the Tenancy.
34. The sum of arrears for the period to 18 February 2025 is wholly a consequence of a delay or failure in the payment of a relevant benefit but the reasons for the delay or failure cannot fully be attributed on the evidence heard.
35. The Respondents have been anticipating payment of a lump sum payment of back-dated benefits in respect of the second named Respondent's benefits since in or around Spring 2025 but, as of 18 February 2025, no such payment has been received.
36. The first named Respondent is 70 years old and has health issues that result in the Property no longer being entirely suitable for her (on account of the stairs).
37. The second named Respondent suffered significant brain injuries as a result of a period of ill-health commencing in or around June 2021. The first named Respondent acts as his carer. The Property is no longer entirely suitable for his care.

38. The first named Respondent is principal carers for the second named Respondent's two sons. The younger son is in full-time education in the local high school and is to sit his Higher examinations in Spring 2026.
39. The Respondents have been on the housing waiting list for around six years but have been informed that they will be unlikely to be rehoused unless under threat of eviction.

### **Reasons for Decision**

40. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondents in respect of the interests of the Applicant (albeit it took until 9 June 2025 for the signed Notice to Leave to be lodged).
41. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...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.*
  - ...
42. The arrears information provided in the application clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. Ground 12 is satisfied subject to paragraph 3(b) regarding reasonableness. In regard to reasonableness, both the issues in paragraph (4) required consideration.
43. In regard to (4)(a), there was ample evidence that the entirety of the arrears arise as a result of (at least some of) the multiple issues with benefits the Respondents relied upon. What was not clear to us, however, was whether this was a succession of unhappy occurrences or due to the first named Respondent's failure to seek benefits in a prompt and appropriate fashion. We lack the evidence

to attribute the cause for the current delay, as we lacked evidence as to whether there was a current delay. With some reticence, we accepted that the benefits issues have been ongoing for so long without any sign of a further back-dated payment that, in the absence of the Respondents providing any update, we could not attribute any current weight to any issue with benefits when considering reasonableness.

44. In regard to paragraph 4(b), we reject the Applicant's submissions that the failure to comply with the pre-action protocol can be attributed to the Respondents' lack of engagement, or that the Applicant's husband's texts were some replacement for proper compliance. The Applicant's failure to comply with the pre-action protocol was flagrant. Rather than guide the Respondents to sources of advice, the texts pressure for signing of the Tenancy Agreement, then for payment, and then for voluntary vacation. The Respondents did not, however, seek to advance a defence relating to these texts. Further, despite the Applicant's behaviour, the first named Respondent did seek advice and was aware from the Tribunal process that she should continue to do so. The purpose of the pre-action protocol was satisfied before we reached the Hearing date and the Respondents were provided with ample time to engage with the process, seek advice, and advance their defences (or additional defences). In the circumstances, we do not attribute significant weight to the non-compliance when considering reasonableness.
45. Turning to a general consideration of reasonableness, we require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to persistent and significant arrears. We were satisfied that the Applicant's reasons for seeking eviction were reasonable given the amount and duration of the arrears. There was no evidence of any engagement by the Respondents on payment of the arrears other than the promised back-dated benefit payment which, having not yet been made, seems unlikely to be paid.
46. The Respondents' health and family situation, even absent further vouching, does provide a compelling argument on reasonableness but it is weighed against the significant and persistent arrears. In addition, the first named Respondent accepted that the stairs at the Property meant that it was becoming less suitable for them due to their health conditions. Further, we noted the Applicant's agent's ready concession to a lengthy suspension of the order to allow completion of the current school year. In the circumstances, we did hold that on balance it was reasonable to grant eviction subject to a suspension to mid-July 2026.
47. The Rules allow at rule 17(4) for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time, suspended to 19 July 2026.

## Decision

48. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 12 of Schedule 3 of that Act suspended to 19 July 2026.

### **Post-script: failures in compliance**

49. This application has been beset by poor compliance. The Respondents failed to comply with deadlines for lodging of documents and submissions, and their defence was weakened as a result. The Applicant similarly failed to comply with deadlines in Notices of Direction, as well as the pre-action protocol. The Applicant's agent presented no witnesses at the Hearing. The Applicant received an order despite of this, materially because of the Respondents' failure to appear or engage more fully at an earlier stage. A slight change in the factual background or circumstances of the application could have rendered the Applicant's failures fatal to her application.
50. Further, we note that the entry for the Property on the Scottish Landlords Register states that the registration is expired as of today's date. This is another major compliance issue. In the circumstances, we direct the Tribunal's clerk to send a copy of this Decision to West Lothian Council.

### **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.**

# Joel Conn

18 February 2026

Legal Member/Chair

\_\_\_\_\_  
Date