



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/25/0567

Re: Property at 6 Piccadilly, Montrose, DD10 8TH (“the Property”)

Parties:

Mr Paul Donaldson, Unit 25, 2 Coulson Street, Erskineville, Sydney, Australia (“the Applicant”)

Mr Jamie Hunt, 6 Piccadilly, Montrose, DD10 0TH (“the Respondent”)

Tribunal Members:

James Bauld (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 7 February 2025 the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 3 December 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 7 May 2026 and appropriate intimation of that hearing was given to both parties. Service on the respondent was effected by sheriff officers on 24 March 2026.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 7 May 2026 via telephone case conference. The applicant was represented by his solicitor, Mr Neil Wheat, Lamonts, Solicitors, Dundee.. The Respondent did not take part.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The tribunal asked various questions of the applicant's solicitor with regard to the application.
7. He confirmed that he wished the order for eviction to be made.

Findings in Fact

8. The Applicant is the registered owner of the property.
9. The Applicant and the Respondent, as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 October 2018.
10. The tenancy was a private residential tenancy in terms of the Act.
11. The agreed monthly rental was £300.
12. On 3 January 2025 the applicant served upon the tenant a notice to leave as required by the Act. Service was effected by email and the Notice became effective on 7 February 2025
13. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
14. The notice was correctly drafted and gave appropriate periods of notice as required by law.
15. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 12 (that the tenant had been in arrears of rent for three or more consecutive months)
16. Arrears had started to accrue in May 2024 and at the date of the lodging of the application arrears amounted to £2,550.

17. The amount of arrears at the date of the CMD was £1994.87.
18. Appropriate accounting had been provided in respect of the outstanding rent with the application to the tribunal.
19. The basis for the order for possession on ground 12 was thus established.

Reasons for Decision

20. The order for possession sought by the landlord was based on a ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.
21. The tribunal accepted the evidence presented on behalf of the landlord with regard to the rent arrears. A rent statement was produced which set out the history of the arrears.
22. From May 2024 until February 2025, the respondent failed to pay the rent as it fell due and significant arrears accrued. The applicant's solicitor indicated that the reason for the failure to pay rent during that period related to a previous eviction procedure which had been commenced where it had been intended that the landlord's brother would live in the property. That process was discontinued when the landlord's brother passed away. The non-payment of rent from May 2024 until February 2025 was the deliberate action by the respondent
23. Rent payments had recommenced in February 2025 when the respondent started to receive Universal Credit. Rent payments were sent directly to the landlord's mother (who acts informally as his agent) together with a contribution towards arrears of approximately £40 per month. Arrears had thus decreased in the period from February 2025 until the date of the CMD by approximately £550. No formal agreement had been reached with regard to repayment of the arrears, and it was indicated that the respondent has generally refused to cooperate with the landlord's mother in respect of dealing with the rent arrears.
24. The applicant's solicitor advised the tribunal that the respondent is a single man who lives alone in the property and has no dependants. He is believed to be aged in his mid-30s. On the basis that rent is currently being paid via Universal Credit it is assumed that the respondent is currently not in employment
25. The tribunal were satisfied that the respondent was well aware of the proceedings. He had received the notice to leave in January 2025. He had received intimation of the case management discussion by service upon him by

sheriff officers in March 2026. The tribunal noted that the respondent had not attended the case management discussion nor had he provided any written representations setting out any reason why the order being sought should not be granted

26. The tribunal was satisfied that the tenant had been in arrears for a period far in excess of three consecutive months and the arrears owed were significant. The ground for eviction based on rent arrears was accordingly established.
27. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
28. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
29. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

30. In this case the tribunal finds that it is reasonable to grant the order.
31. The level of arrears is extremely high. The arrears were initially accrued during a period of approximately nine months where the respondent deliberately decided not to pay rent. Although the arrears are currently reducing it will still take a period in excess of four years to clear the arrears at the current rate of repayment. The applicant's position is that this rate of repayment is unacceptable. The applicant is also concerned that should the respondent recommence employment then he will not continue to deal with the arrears and may again decide not to pay rent

32. The respondent has lodged no written representations with the tribunal despite being offered the opportunity to do so. He did not attend the case management discussions to provide any information to the tribunal to dispute the information provided by the applicant nor to set out any reason why it would not be reasonable to grant the order
33. In all the circumstances the tribunal decided that it was reasonable to grant the order sought.
34. The tribunal decided to exercise 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.

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.

Jim Bauld

Mr Jim Bauld

07.05.26

Legal Member/Chair

Date