



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/25/4166

Re: Property at 13 Polton Street, Bonnyrigg, EH19 3HD (“the Property”)

Parties:

Mr Andrew Wesley, Mrs Elizabeth Wesley, 27 Union Park, Bonnyrigg, EH19 3DF (“the Applicant”)

Miss Eilidh Farricker, 13 Polton Street, Bonnyrigg, EH19 3HD (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision (in absence of the 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 whereby the Applicants are seeking an eviction order under ground 12. The Applicants lodged a copy of a private residential tenancy agreement between the parties which commenced on 1st March 2025 at a monthly rent of £850, a notice to leave with evidence of service, a section 11 notice with evidence of service, pre-action requirement correspondence, Universal Credit correspondence, and a rent statement.
2. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officer on 24th March 2026.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 7th May 2026. Mr Wesley attended on behalf of both Applicants. Mr Wesley was supported by his daughter. The Respondent was not in attendance. The start of the CMD was delayed to allow the Respondent to attend. The Respondent did not join the call.

4. 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 Respondent.
5. The Tribunal pointed out that the date at part 4 of the notice to leave was incorrect. The notice to leave was dated and served on 3rd July 2025. The date inserted at part 4 of the notice was 1st August 2025. The date ought to have been 3rd August 2025. Mr Wesley said this was an oversight on the part of the Applicants. Mr Wesley agreed that the application had not been lodged until 30th September 2025.
6. Mr Wesley said the Respondent has not paid rent since March 2025. The arrears are now £10,450. There has been no communication from the Respondent. An application to Universal Credit for direct payments of rent was unsuccessful. Mr Wesley said the Applicants are suffering financially as a result of non-payment of rent and arrears. There is a mortgage on the Property. The Applicants have another couple of properties to let, which allows them to cover the monthly mortgage payment on the Property.
7. Mr Wesley said the Respondent asked him to speak to a charity that might assist with the arrears and he did so in November 2025. Nothing further was heard from the charity.
8. Mr Wesley said the Respondent was previously a joint tenant in the Property and she had flatmates over the years. The Respondent requested a sole tenancy to commence in March 2025 after losing her job, stating that she wanted to claim benefits. No further rent was paid after that time. Mr Wesley said the Respondent has health issues. Mr Wesley said he suspects the Respondent wants a council house. Her father had indicated this to the Applicant some time ago. There are no children living in the Property.

Findings in Fact and Law

9.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 1st March 2025 at a monthly rent of £850.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.
 - (iii) The Respondent has accrued rent arrears.
 - (iv) The Respondent has been in rent arrears for three or more consecutive months.

- (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicant has complied with the pre-action protocol.
- (vii) The Respondent resides alone at the Property.
- (viii) It is reasonable to grant an eviction order.

Reasons for Decision

10. The Tribunal was satisfied that the failure of the notice to leave to correctly specify the day on which the Applicants expected to become entitled to make an application for an eviction order in terms of section 62(1)(b) of the Act was not an error which materially affected the effect of the notice for the purpose of section 73 of the Act. The Tribunal had regard to the Upper Tribunal decision *Halcrow -v- Davies and Hunter* – UTS/AP/25/0019 in reaching this decision.
11. 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.
12. 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 Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
13. 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 that the Applicant had complied with the pre-action protocol by sending emails and letters to the Respondent.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
15. The Respondent has not paid rent since March 2025. The arrears are now substantial and rising. The Respondent did not see fit to attend the CMD or make any representations to assist the Tribunal in considering reasonableness. The Tribunal took into account the information provided by the Applicant representative, including the fact that the Respondent has health issues. The Tribunal was unable to assess the likely effect of an eviction order upon the Respondent in the absence of any representations. The Respondent has disengaged and is making no effort to pay the rent or address the arrears. The

Tribunal considered it likely that, if no order was granted, the arrears would continue to rise. The Tribunal considered that the tenancy is not sustainable.

16. The Tribunal took into account the information provided regarding the Applicants' circumstances. The Tribunal considered the Applicants are suffering financially and personally as a result of the Respondent's failure to pay the rent and address the arrears.

17. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicants. It was incumbent upon the Respondent to attend or make representations to the Tribunal to indicate why an order should not be granted, and the Respondent failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

18. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 8th June 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

7th May 2026
Date