



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/5117

Re: Property at D 29 Borestone Crescent, Stirling, FK7 9BQ (“the Property”)

Parties:

Mr Graham Duff, 15 Littlejohn Street, Stirling, FK8 1ZG (“the Applicant”)

Mr Alexander Ian Babiak, D 29 Borestone Crescent, Stirling, FK7 9BQ (“the Respondent”)

Tribunal Members:

Hilary Macandrew (Legal Member) and Elizabeth Dickson (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 be granted

1) Background

- 1.1 By Application dated 26th November 2025 the Applicant seeks an order for eviction relying on Ground 12 (rent arrears for three or more consecutive months) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was conjoined with an application seeking an order for payment in respect of rent arrears under reference FTS/HPC/CV/25/5119
- 1.2 The application to the Tribunal was made by Form E and was accepted for determination by the Tribunal on 9 March 2026.
- 1.3 Intimation of the application and of the Initial Case Management Discussion (CMD) was effected upon the Respondent by sheriff officers on 29 April 2026.

- 1.4 The Applicant lodged the following documents in advance of the case management discussion (CMD) ;
- Private residential tenancy agreement
 - Notice to Leave
 - Section 11 Notice to Local Authority
 - Rent statement
 - Updated Rent Statement
 - Pre Action Requirement correspondence

2) The Case Management Discussion

- 2.1 The CMD took place by tele conference on 4 June 2026 at 10am. The Applicant was represented by Ms Anderson of Clarity Simplicity. The Respondent did not take part. The start of the CMD was delayed to allow the Respondent to attend. The Respondent did not attend.
- 2.2 Ms Anderson confirmed that the property is D 29 Borestone Crescent, Stirling, FK7 9BQ
- 2.3 Ms Anderson confirmed that the parties entered into a Private Residential Tenancy Agreement which commenced on 19 August 2022 at a monthly rent of £600.
- 2.4 At the time of making the application the rent arrears were £3,745. The amount of arrears outstanding at the date of the Tribunal was £7,945
- 2.5 Ms Anderson provided a current rent statement showing an increase in the amount of arrears to £7,945. The Tribunal noted that no rent had been paid by the Respondent since payment of £5 on 26 August 2025.
- 2.6 Ms Anderson was able to talk about the personal circumstances of the Applicant and the Respondent. She was unable to confirm the age of the Respondent. She understood the Respondent was single and lived alone. The Respondent had made the landlord aware in January 2025 that he had lost his job and then subsequently advised the Applicant that he had secured employment and would commence payment of rent. The Applicant has attempted to visit the property. The Applicant's agent had written on behalf of the Applicant in November 2025, again on 28 May 2026, on 1 June 2026 bringing the arrears of rent to the Respondent's attention and in an effort to engage with the Respondent. The Respondent has not communicated with the Applicant. The Applicant attempted an inspection over the weekend of 29 and 30 May 2026. It appeared to the Applicant that the property was empty and had been vacated. The keys have not been returned. By viewing through the window the Applicant noticed numerous alcohol bottles and drug paraphernalia.

- 2.7 The Applicant's agent was not aware of the Respondent having any disability issues which would prevent communication. The Applicant had been advised by the Respondent in early 2025 that having lost his job he had obtained alternative employment but nonetheless the rent had not been paid.
- 2.8 The landlord's circumstances are that the property is the landlord's only tenanted property. The subjects are burdened by a mortgage. The landlord is having to use savings to maintain mortgage payments in the absence of payment of rent. The absence of payment of rent is having a detrimental effect on the Applicant's financial position.
- 2.9 Rule 17 of the First-Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 provides that the Tribunal may do anything at a CMB which it may do at a hearing, including making a decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a hearing.

3) Findings in Fact and Law

- 3.1 The Applicants and the Respondent entered into a Private Residential Tenancy Agreement in respect of the property which commenced on 19th August 2022.
- 3.2 The monthly rent due under the Private Residential Tenancy is £600 per month.
- 3.3 The rent arrears due as at the date of the Notice to Leave was £2,545.
- 3.4 The rent arrears due as at the date of the hearing is £7,945
- 3.5 The Applicant complied with the pre-action requirements
- 3.6 Ground 12 in Schedule 3 of the 2016 Act has been established
- 3.7 It is reasonable to grant an order for eviction

4) Issue For The Tribunal

- 4.1 The issue for the Tribunal is to determine whether or not to grant the order sought.
- 4.2 The ground on which the Application proceeds is ground 12 which states:

“(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (2)....(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 the 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.”

4.3 The Tribunal was satisfied that the ground had been met and that the Respondent had been made aware of the consequences of their failure to pay rent.

4.4 Therefore, the statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the order.

5) Decision and Reasons for Decision

5.1 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah 1943 SC 245* whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the Application was made.

5.2 The Tribunal had regard to the fact that the Respondent had been in arrears since January 2025. The Tribunal’s view is that the level of arrears being £7,945 combined with the length of time which arrears have existed leads to it being untenable for the Respondent to continue as a tenant in the Property. The Tribunal found that the Applicant is entitled to receive payment of rent and that this entitlement outweighs the Respondent’s right to remain in the Property. Accordingly, the Tribunal was satisfied that it is reasonable to issue an Eviction Order.

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.

Hilary MacAndrew

Legal Member/Chair

Date: 4th June 2026