



**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 (“the 2016 Act”) and Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/26/0194**

**Re: Property at 37 Rashierigg, Broxburn, EH52 6AN (“the Property”)**

**Parties:**

**Mr Brendan Stutt, Claire Stutt/Flemming, 4 Freeland Avenue, Broxburn, EH52 6EG (“the Applicant”)**

**Ms Fiona Elder, 37 Rashierigg, Broxburn, EH52 6AN (“the Respondent”)**

**Tribunal Members:**

**Evan Crainie (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be decided without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

1. By application dated 12 January 2026 (“the Application”), the Applicant sought an Eviction Order against the Respondent under Section 51 of the 2016 Act. The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the tenant has been in rent arrears for three or more consecutive months.
2. The application was accompanied by copies of:
  - i. Copy Private Residential Tenancy Agreement between the Parties, commencing on 4 July 2021, with a monthly rent of £550;
  - ii. Copy Notice to Leave dated 11 December 2025 advising the Respondent that an application to the Tribunal for an eviction order would not be made before 11 January 2026 together with proof of sending to the Respondent;

- iii. Copy notice under Section 11 of the Homelessness Etc. (Scotland) Act 2003 to West Lothian Council being the relevant local authority;
  - iv. Rent statement showing rent arrears throughout the majority of the tenancy and rent amounting to £5,070 as at 4 December 2025; and
  - v. Correspondence to the Respondent in respect of the pre-action protocol.
3. On 28 May 2026, the Tribunal advised the Parties of the date and time of a Case Management Discussion (“**CMD**”), and the Respondent was invited to make written representations by 12 June 2026. The Respondent did not make any written representations to the Tribunal.

### **The CMD**

4. A CMD was held by means of a telephone conference call on 19 June 2026. The Applicant was represented by Sean Nicoll of Local Letting Agency. The Respondent was present.
5. The Tribunal asked various questions of the Applicant’s representative and the Respondent with regard to the Application
6. The Respondent confirmed that she accepted that the arrears were due and was willing to pay £200 per month towards the arrears, whilst using Universal Credit to pay the ongoing rent. A payment of £5,760 was made on 8 June 2026 from Universal Credit (as evidenced by a recent rent statement) and she further stated that there had been problems with her Universal Credit which had led to some of the arrears but she also accepted that she had been in receipt of Universal Credit in some instances and not paid the rent. The Respondent noted that she had sent proof of the Universal Credit issues to the Tribunal. Mr Nicoll noted that notwithstanding the issues with Universal Credit, before those issues arose the account was in arrears and the Respondent did not make payments then either.
7. Mr Nicoll confirmed that an Order for eviction is sought and stated that the arrears have built up over a long period of time and it is on that basis which eviction is sought. Mr Nicoll also confirmed that this property is the only one he looks after for the Applicants and as far as he is aware, it is the only property they rent out. The Applicants are very distressed and upset by the situation. There is a mortgage on the Property which requires to be paid regardless of whether or not the Respondent is paying rent, and this is having financial implications for the Applicants in circumstances where they are not receiving rental payments.
8. The Respondent lives in the Property with her two children aged 11 and 16. She was out of work for a period of time but now has employment. The Respondent had no disabilities or health issues that the Tribunal needed to be aware of. Sporadic payments had been made to the rent and arrears, sometimes via Universal Credit, but there remain arrears on the account of £3,258 (evidenced by an updated rent statement submitted to the Tribunal prior

to the CMD). She had not sought independent advice on the Application and had not considered alternative accommodation options.

9. At this point the Tribunal adjourned the CMD to consider next steps as it had not had sight of the information regarding Universal Credit. Upon returning the Tribunal asked that the Respondent resend the information as the Tribunal staff had been unable to locate it. The Applicant's representative sent the information as the Respondent was having difficulty with emails. The Respondent was also asked for any submissions she may have on the possible delay of enforcement of any eviction order in the event that one was granted. The Respondent provided no date in response to this questioning but confirmed that her children would finish in education for the summer break in around 2 weeks' time. Mr Nicoll noted that he had no submissions on this point.
10. At this point the CMD was then further adjourned to allow the Tribunal to consider the information regarding Universal Credit. Whilst the information explained some of the arrears, it did not explain why £3,258 remained outstanding. This amount was understood to be outstanding as a result of the Respondent receiving Universal Credit for her housing but not passing this on to the Applicants to pay the rent.
11. 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 CMD 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.

### **Findings in Fact**

12. From the Application and the CMD, the Tribunal made the following findings in fact:
  - i. There is a private residential tenancy of the Property between the Parties;
  - ii. The correct statutory procedures have been carried out;
  - iii. The Respondent has been in rent arrears throughout the tenancy, being more than three consecutive months;
  - iv. The Respondent accepts the arrears are due; and
  - v. The Respondent is in employment and has two dependents residing with her at the Property.

### **Issue for the Tribunal**

13. The issue for the Tribunal was to determine whether or not to grant the Order sought.
14. 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 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.”*

15. The Tribunal was satisfied that Ground 12 had been met on the basis of the rent statements and the concession of the Respondent. The Respondent had been continuously in arrears of rent since December 2021 and had been made aware of the consequences of their failure to pay rent.
16. Therefore, the statutory ground and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application. Neither party indicated that there was evidence that should be brought before a hearing.

### **Decision and Reasons for Decision**

17. The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah 1947 SC 245* whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the Application was made.
18. The Tribunal had regard to the facts that the Respondent had been in arrears since December 2021. The Tribunal's view is that the level of arrears being £3,258 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 Respondents' rights to remain in the Property. Accordingly, the Tribunal was satisfied that it is reasonable to issue an Eviction Order.
19. The Tribunal determined that the application be granted and that an eviction order be made. The decision is unanimous.

### **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.

**Evan Crainie**

19.6.26

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Legal Member/Chair

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Date