



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/25/5074

Re: Property at 192 D High Street, Dalkeith, EH22 1AZ (“the Property”)

Parties:

Mr Kenny Dunn, 51 Dundas Street, Bonnyrigg, EH19 3AY (“the Applicant”)

Mr Thando Mtiya, Miss Shirley McPherson, 192 D High Street, Dalkeith, EH22 1AZ (“the Respondents”)

Tribunal Members:

James Bauld (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondents)

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 24 November 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 5 January 2026 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 11 June 2026, and appropriate intimation of that hearing was given to both parties. Service on the respondents was effected by sheriff officers on 11 May 2026.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 11 June 2026 via telephone case conference. The applicant was not present but was represented by his letting agent Mr. Neil Reid from Neil Reid Property, Bonnyrigg. The Respondents did not take part in the CMD.
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 representative 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 Respondents, as respectively the landlord and tenant entered into a tenancy of the property which commenced on 3 July 2022.
10. The tenancy was a private residential tenancy in terms of the Act.
11. The agreed monthly rental was £720. 00. The current monthly rental is now £760.00
12. On 23 October 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 24 November 2025
13. The notice informed the tenants 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 February 2025 and at the date of the lodging of the application arrears amounted to £3,650.00.

17. The amount of arrears at the date of the CMD was £6,505.76.
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 February 2025 until the date of the CMD, the respondents failed to pay the whole rent as it fell due and significant arrears have accrued.
23. Rent payments have been made intermittently since February 2025. It is understood that second named respondent, Ms McPherson, has been in employment during the period and was also in receipt of benefits including Universal Credit. No formal agreement had been reached with regard to repayment of the arrears, and it was indicated that the respondents have generally refused to cooperate with the landlord's letting agent in respect of dealing with the rent arrears.
24. The applicant's letting agent has sent letters to the respondents on various dates in compliance with the provisions of the pre action protocols set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
25. The applicant's representative advised the tribunal that the respondents are now separated and that the first named respondent, Mr Mtiya no longer occupied the property. Ms McPherson now occupies the property alone. The applicant's representative advised the tribunal that Ms. McPherson is in employment in the retail industry and that she has made various promises to deal with the rent arrears but has failed to do so. So far as he was aware she

had no health problems and was aged in her mid-30s. There were no dependent children living in the property. The property is a two-bedroom flat

26. The tribunal were satisfied that the respondents were well aware of the proceedings. They had received the notice to leave in October 2025. They had received intimation of the case management discussion by service upon them by sheriff officers in May 2026. The tribunal noted that the respondents had not attended the case management discussion nor had they provided any written representations setting out any reason why the order being sought should not be granted.
27. Subsequent to the conclusion of the CMD the tribunal members were made aware that the tribunal administration had received an e-mail from Ms. McPherson that morning shortly before 9.15 a.m. In the email, Ms. McPherson stated that ***"I am supposed to attend a hearing today via dial in. However I currently have no internet services and also my phone has been cut off due to me missing bills. The hearing is at 10 and unfortunately won't be able to make it"***.
28. She provided no other information nor any representations setting out any proposal to deal with the rent arrears nor any representations suggesting why it would not be reasonable that the eviction order should be granted. The terms of the e-mail seemed to confirm that the second name respondent had a number of financial problems given the ignition that she had missed paying phone bills and that her phone and Internet services had been disconnected
29. The tribunal was satisfied that the tenants 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.
30. 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.
31. 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.
32. 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”.

33. The tribunal further notes that in an Upper Tribunal case, **Scott Mackellar v. Nicola Carlin** (2025UT19 UTS/AP/24/0008), Sheriff Reid issued a decision dated 25 March 2025. In that decision the Upper Tribunal quashed a decision of the First-Tier Tribunal refusing an eviction application and granted an eviction order.

34. In that decision at paragraph 31, Sheriff Reid indicated that:-

“the FTS has fallen into error in its overall assessment of reasonableness, in respect that no reasonable tribunal could properly have concluded, on the evidence available, that it was not reasonable to grant an order for eviction in circumstances where the tenant (i) has not paid full rent in more than a year (a fortiori to the objectively-significant extent proven by the Appellant); (ii) has not responded to correspondence seeking payment of the arrears or cessation of the persistent ongoing monthly shortfalls in rent; and (iii) has made no proposals whatsoever to clear the arrears or to resume full contractual payments, still less within a reasonable period”.

35. In this case the tribunal finds that it is reasonable to grant the order.

36. The level of arrears is significant. The arrears are not currently reducing. The respondents have failed to communicate with the applicant's letting agent to enter into a payment arrangement to deal with ongoing rent and arrears.

37. The respondents have lodged no written representations with the tribunal despite being offered the opportunity to do so. They 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

38. In all the circumstances the tribunal decided that it was reasonable to grant the order sought.

39. 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.

Josephine Bonnar

Legal Member/Chair

Date 11 June 2026