



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”)

Chamber Ref: FTS/HPC/EV/26/0256

Re: Property at 44 Bittern Court, Dunfermline, KY118HF (“the Property”)

Parties:

Ms Helen Black, Mr Mark Black, 7 Baberton Mains Green, Edinburgh, EH14 3EJ (“the Applicant”)

Miss Clair McCallum, 44 Bittern Court, Dunfermline, KY118HF (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application as it did not have jurisdiction in relation to the proceedings.

Background

1. An application was received from the Applicants’ representative on 19 January 2026 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 12 (rent arrears) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
 - (i) Copy Notice to Leave citing ground 12, dated 17 December 2025, and stating the date before which proceedings could not be raised to be 17 January 2026, together with covering email to the Respondent dated 17 December 2025.

- (ii) Copy private residential tenancy agreement between the parties which commenced on 23 May 2025
 - (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council, together with proof of sending by email on 19 January 2026
 - (iv) Copy rent statement showing a balance of £1308.06 to be due as at 14 January 2026
3. Following a request from the tribunal administration, further information was received from the Applicants' representative on 16 February 2026.
 4. The application was accepted on 12 March 2026.
 5. Notice of the case management discussion (CMD) scheduled for 19 August 2026, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 17 July 2026. The Respondent was invited to submit written representations by 6 August 2026.
 6. The tribunal issued a direction to the Applicants on 30 July 2026, asking them to produce an updated rent statement. A response was received on 3 August 2026.
 7. On 3 August 2026, an email was received from the Respondent advising that she would be represented at the CMD by an adviser at Frontline Fife.
 8. On the morning of the CMD, a telephone call was received from Frontline Fife to advise that the housing adviser who was due to represent the Respondent had been taken into hospital and was therefore unable to represent her. An email confirming this was also received from Frontline Fife at around 9.15am, shortly before the CMD at 10am. This email stated that the Respondent was also unable to attend, and requested that the CMD be postponed.

The case management discussion

9. A CMD was held by teleconference call on 19 August 2026. The Applicants were represented by Ms Ashley Divers, Ms Lindsey Yule and Mr Andrew Stevenson of Rent Locally. The Respondent was not present or represented on the teleconference call.
10. The tribunal noted that the Respondent's representative had requested a postponement for the reasons stated in the email which had been received shortly before the CMD. Ms Divers indicated that the Applicants wished to proceed with the CMD.

11. The legal member explained that it had come to the tribunal's attention that there was a fundamental issue relating to the validity of the application. The tribunal therefore considered that in the circumstances, and bearing in mind the tribunal's overriding objective, it would not be in the interests of justice or of either party to postpone the CMD without first considering this preliminary issue. The tribunal therefore decided to proceed with the CMD in the absence of the Respondent.

Preliminary issue

12. The legal member explained that it appeared to the tribunal on the basis of the application file that the Notice to Leave specified a ground for eviction which was not satisfied as at the date when it was served. If that was the case, the Notice to Leave was invalid, and the tribunal did not have jurisdiction to hear the application.
13. The tribunal noted that the Notice to Leave was dated 17 December 2025 and was served on the Respondent on the same date. The Notice to Leave was served on the basis of ground 12 i.e. that the tenant had been in arrears for three or more consecutive months. Ms Divers confirmed that this was correct.
14. However, it appeared from the rent statements provided that the Respondent had first gone into rent arrears on 23 September 2026. In terms of the tenancy agreement, the rent was due to be paid on the 23rd of each month. Ms Divers also confirmed that this was correct. She submitted, however, that the Respondent had been in arrears for three consecutive months, because she had not paid the rent for September, October, November and December 2025.

Reasons for decision

15. The application is made under section 52 of the 2016 Act and is accompanied by a Notice to Leave which was served on the Respondent, in terms of section 52(3) of the 2016 Act. In terms of section 51 of the 2016 Act, the tribunal may only grant an eviction order if it is satisfied that one of the grounds for eviction stated in Schedule 3 of the 2016 Act applies. It is clear given the terms of sections 51 and 52 that, for the tribunal to grant an eviction order, it must be satisfied that the Notice to Leave specifies a ground for recovery which applies both at the time of service of the Notice and at the date of application to the tribunal. While three consecutive months' rent may be due by the date on which the application is then made to the tribunal, that is not relevant.
16. The Upper Tribunal confirmed this to be the legal position in [Majid v Gaffney and Britton \[2019\] UT 59](#) (reaffirmed in [Rafique v Morgan \[2022\] UT 07](#)).

17. As Sheriff Fleming stated in *Majid v Gaffney and Britton* (see above):

“In terms of section 62(1)(b) reference is made to a date on which the landlord “expects to become entitled to make an application for an eviction order to the First-Tier Tribunal”. It is clear that the word “expects” relates to the date on which the application will be made. That is entirely distinct from the eviction ground. The statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not it is invalid. If it is invalid decree for eviction should not be granted.....in my view it could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to Leave is served or it does not. If it does not the Notice to Leave is invalid and it cannot be founded on as a basis for overcoming the security of tenure that the 2016 Act”.

18. In this case, ground 12 did not apply as at the date of service of the Notice to Leave. If the Respondent was first in rent arrears as at 23 September 2026, she would not be in three consecutive months’ rent arrears until 23 December 2026. The Notice to Leave was served on 17 December 2026. As at that date, the tenant was not in rent arrears for three or more consecutive months. While there may only have been a few more days to go before the ground would have applied, that is irrelevant.

19. Accordingly, the Notice to Leave is invalid. The tribunal does not therefore have jurisdiction to grant an eviction order for the reasons set out above.

Decision

The Tribunal dismissed the application in terms of rule 27(1) of the 2017 rules on the grounds that it did not have jurisdiction in relation to the proceedings.

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.

Sarah O'Neill

Legal Member/Chair

19 August 2026
Date
