



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/25/1903

Re: Property at 25 Elm Drive, Abronhill, Cumbernauld, G67 3LL (“the Property”)

Parties:

Simpson Family Properties, Makkathran, 3 Mill Road, Cambusbarron, FK7 9LP (“the Applicant”)

Miss Ann Forrest, 25 Elm Drive, Abronhill, Cumbernauld, G67 3LL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the parties)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application.

Background

- 1** This is an application for an eviction order under section 51 of the 2016 Act and rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 12 as the ground for eviction, stating that the Respondent had been in rent arrears for three or more consecutive months.
- 2** The application was accepted and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take place on 17 March 2026 at 2pm. The Tribunal administration gave notice of the CMD to the parties. Said notice along with the case papers was served upon the Respondent by sheriff officers.

The CMD

- 3 The CMD took place on 17 March 2026. Mrs Donna Cramb of K Property represented the Applicant. The Respondent did not participate and was not represented.
- 4 The tribunal had the following documents before it:-
 - (i) Form E application and supporting documents including a copy of the private residential tenancy agreement, notice to leave and proof of service on the Respondent, notice under section 11 of the Homelessness etc (Scotland) Act 2003 and proof of service on the local authority, and rent statements.
 - (ii) Land certificate confirming the Applicant's ownership of the property and proof of the Applicant's landlord registration.
- 5 The tribunal explained that the various rent statements submitted by the Applicant were difficult to understand and all appeared to provide different information. The tribunal queried when the current arrears first began to accrue. Mrs Cramb attempted to locate the information on her office IT system and stated that the last full payment of rent appears to have been made in August 2024. However, she could not be certain that information was accurate or when the arrears commenced. The tribunal advised that, if the arrears did not start until 19 September 2024, there was a possible problem with the validity of the notice to leave. The tribunal referenced the Upper Tribunal decisions in the cases of *Majid v Gaffney* (2019 UT 59) and *Rafique v Morgan* (2022 UT 07) which established that the tenant had to be in arrears for three full consecutive months at the date of service of the notice to leave. Otherwise, the notice would be invalid and could not be relied upon in the application.
- 6 The tribunal subsequently determined to adjourn the CMD so that Mrs Cramb as the Applicant's representative could investigate the position and provide an accurate rent statement. The tribunal noted that if the rent arrears did not start until 19 September 2024, and if it was accepted that the notice to leave was served before the ground was established, the Applicant may choose to withdraw the application.
- 7 Following the CMD the tribunal issued a Direction to the Applicant requiring them to provide an accurate up to date rent statement for the whole period of arrears which clearly showed when the rent arrears commenced. The tribunal further directed the Applicant, if the arrears started on 19 September 2024, to provide a submission which addressed the validity of the notice to leave with reference to the aforementioned Upper Tribunal decisions.
- 8 On 7 May 2026 the tribunal received an updated rent statement from K Property on the Applicant's behalf. The rent statement demonstrated that the rent arrears first began to accrue on 19 September 2024.

- 9 The second CMD took place on 13 July 2026 at 2pm by teleconference. Neither party joined the call. The tribunal noted that both parties had been given notice of the CMD in accordance with Rule 17(2) of the Rules. The tribunal held the conference line open until 2.20pm before concluding the CMD.

Reasons for decision

- 10 In terms of section 52(3) of the 2016 Act, an application for an eviction order in relation to a private residential tenancy must be accompanied by a valid notice to leave. The notice to leave submitted with this application was served on the Respondent on 16 December 2024 and includes ground 12 of schedule 3 of the 2016 Act. Ground 12 requires the tenant to have been in arrears of rent for three or more consecutive months when the notice to leave is served.
- 11 In terms of the tenancy agreement between the parties, the rent falls due to be paid in advance on the 19th of each month. The updated rent statement produced by the Applicant shows that the Respondent first fell into arrears on 19 September 2024. The notice to leave was delivered to the tenant on 16 December 2024.
- 12 The calculation of rent arrears for the purpose of a notice to leave that includes ground 12 has been addressed by two decisions of the Upper Tribunal. In *Majid v Gaffney* the Upper Tribunal considered an appeal against a decision by the Tribunal to reject an application in circumstances similar to the present application. The landlord had sent a notice to leave to the tenant on 1 July 2019 citing ground 12 as the eviction ground. Sheriff Fleming in his decision outlined the requirements for a notice to leave relying upon ground 12, stating “*as at the date of the notice to leave the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 30 April 2019 then the expiry of the three month period would be 30 July 2019*”. Sheriff Fleming went on to say “*the basis for the decision of the First-tier Tribunal is that the notice to leave specified a ground for eviction which was not satisfied as at the date of service. That being the case, the notice itself is invalid*”. He concluded that an invalid notice to leave could not be founded on in an application to the Tribunal under the 2016 Act. His opinion was later confirmed by Sheriff Kelly in the case of *Rafique v Morgan*.
- 13 In this case, the rent account first fell into arrears on 19 September 2024. The expiry of the three month period would therefore be 19 December 2024. As such, the Respondent had not been in rent arrears for three or more full consecutive months when the notice to leave was delivered to her on 16 December 2024. The notice to leave is therefore invalid and the application cannot comply with the requirements of section 52(3) of the 2016 Act.
- 14 The tribunal noted that the Applicant was made aware of this potential defect with the notice to leave, by way of their representative, at the first CMD. The tribunal can therefore reasonably assume that their lack of attendance at the second CMD indicates their acceptance that the notice to leave is invalid. They have not sought to present any written submissions to the tribunal, as required by the tribunal’s direction, to indicate otherwise.

- 15** The tribunal therefore determined to dismiss the application. The decision of the tribunal was unanimous.

13 July 2026

Legal Member/Chair

Date