



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/25/3499

Re: Property at 24 MacIndoe Crescent, Kirkcaldy, KY1 2JG (“the Property”)

Parties:

Jess and Jinx Ltd - SC685768, Caledonian House, Links Road, Leven (“the Applicant”)

Mr Nicholas Robertson, 24 MacIndoe Crescent, Kirkcaldy, KY1 2JG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 8 August 2026.

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 was in arrears of rent. The application was conjoined with an application for a payment order under reference FTS/HPC/CV/25/3503 as they related to the same parties and same tenancy.

- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion ("CMD") was scheduled to take place on 11 March 2026 at 10am. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 23 January 2026 and required the Respondent to make written representations in response to the application no later than 12 February 2026.
- 3 No written representations were received from the Respondent.

The CMDs

- 4 The first CMD took place by teleconference on 11 March 2026 at 10am. The Applicant was represented by Mr David Aiton, Sinclair Services. The Respondents attended on his own behalf. The tribunal heard oral submissions from the parties on the application. The following is a summary of the key elements of the submissions.
- 5 Mr Aiton referred to a rent statement that had been submitted on the morning of the CMD which showed arrears had increased to £8704.95 as of 2 March 2026. The Applicant sought an eviction order. The arrears were high and the Respondent had been aware of the issue for a considerable period of time. The Respondent had been provided with information on where to access advice in the pre-action correspondence that had been submitted. Mr Aiton stated that the Applicant was a large-scale corporate landlord however he was not aware of the precise number of rental properties they owned.
- 6 The Respondent accepted that the arrears figure was correct. He opposed the order on the grounds of reasonableness. He stated that he had submitted written representations to the Tribunal however these were not before the Tribunal. He explained that the arrears had arisen shortly after the ownership of the property transferred to the Applicant. The Respondent stated that he is employed as a roofer. He stopped working in December 2025 and had struggled with his income since then. He had recently submitted an application for universal credit and understood he would receive a housing element of £450 per month. He had requested this be paid directly to the Applicant. The Respondent stated that he would also receive living costs from universal credit but would continue to work a couple of days a week.
- 7 The tribunal discussed whether the Respondent would be able to make regular payments towards the arrears. He confirmed his intention to make payments of £800 per month to rent and arrears, inclusive of the housing element of his universal credit. He would pay additional sums if possible. He confirmed he would be applying for disability benefits which may increase his income. The Respondent referred to health issues and issues with his mental health which had prevented him from dealing with the arrears at an earlier stage. The Respondent confirmed that his daughter lived locally and was a source of support for him. He had applied for local authority housing some years ago but had heard nothing further. He had not informed the council about the CMD. The

tribunal discussed that the Respondent may benefit from housing and benefits advice to ensure he was receiving all benefits to which he was entitled.

- 8 Having heard from the parties, the tribunal determined to adjourn the application to a further CMD to give the Respondent the opportunity to demonstrate his ability to make regular payments towards the rent and arrears, and to allow him to confirm the details of his benefits entitlement. The tribunal required the Respondent to submit proof of his benefits entitlement in advance of the adjourned CMD.
- 9 Following the CMD the tribunal received further written representations from Mr Aiton on behalf of the Applicant including an updated rent statement on 24 April 2026, case law and copy correspondence from Mr Aiton to the Respondent on 19 May 2026, and written submissions from Fife Property on 3 July 2026. No written representations were received from the Respondent.
- 10 The second CMD took place on 8 July 2026 at 2pm by teleconference. Mr Aiton appeared on the Applicant's behalf. He was joined by Miss Marshall and Mr Cook, both directors of the Applicant. The Respondent also joined the call.
- 11 The tribunal had the following documents before it:-
 - (i) Form E application form and supporting documents including private residential tenancy agreement, notice to leave with proof of service, notice under section 11 of the Homelessness etc (Scotland) Act 2003 ("section 11 notice") and proof of delivery to the local authority, rent statement and pre-action correspondence between the parties.
 - (ii) Land Certificate confirming the Applicant's ownership of the property and proof of the Applicant's landlord registration.
 - (iii) The Applicant's written representations dated 24 April 2026, 19 May 2026 and 3 July 2026.
- 12 The tribunal heard oral submissions from the parties. The following is a summary of the key elements of the submissions.
- 13 Mr Aiton noted that the Respondent had accepted the rent arrears at the previous CMD. The arrears have now increased to £10,934.55. Mr Aiton pointed out that the tribunal had adjourned the previous CMD to provide the Respondent with the opportunity to commence regular payments towards the rent and arrears. The Respondent was also invited to submit proof of his benefit entitlements. Mr Aiton explained that there had been no positive developments in this regard. No payments have been made to the rent account by the Respondent since 27 March 2026. There has been no communication from the Respondent regarding his benefits. The Applicants have continued attempts to engage with the Respondent by sending him correspondence. The Respondent has been given opportunities to enter into payment plans which had not been adhered to. Mr Aiton referred to the submissions from Fife Property which

outlined the extensive efforts they had made to support the Respondent. However, the debt is now excessive and the situation cannot continue. Mr Aiton referred to the Upper Tribunal decision in *Mackellar v Carlin* (UTS/AP/24/0008) in which Sheriff Reid had stated “*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 now paid full rent for more than a year....;(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.*”

- 14 The Respondent accepted that he had not made payments as proposed at the previous CMD. He stated that the arrears figure quoted by Mr Aiton must be correct. He explained that he is not making any excuses. He referred to his mental health and his medication which make it difficult for him to function. The Respondent cannot live on his benefits so has now commenced full time employment as a roofer. He will earn around £625 per week after tax and will be able to make payments to the rent and arrears. He may also be entitled to a personal independence payment. The Respondent stated that he had attempted to contact Mr Aiton twice by telephone. The Respondent confirmed that he is 57 years old. He has been advised by the council that they will not rehouse him because of the rent arrears. His oldest daughter tries to help him but she has children to look after.
- 15 Mr Aiton advised that he had no record of any calls from the Respondent. Mr Aiton was of the view that the council would offer the Respondent emergency accommodation if an eviction order was granted.
- 16 The tribunal adjourned the CMD to deliberate before resuming the proceedings and confirming the outcome.

Findings in fact and law

- 17 The Applicant is the owner and landlord, and the Respondent is the tenant of the property in terms of a private residential tenancy agreement.
- 18 The Applicant has given the Respondent a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 12.
- 19 The Applicant has given the local authority a section 11 notice at the time of making this application.
- 20 The rent payable under the tenancy agreement was £520 per calendar month. The rent was increased to £582.40 per month from 13 March 2025.
- 21 The Respondent has been in arrears of rent for three or more consecutive months. The balance of rent arrears outstanding as at the date of this decision is £10,934.55. The Respondent last made a payment towards the rent account on 27 March 2026.

- 22 The rent arrears are not known to be due to any failure or delay in the payment of a relevant benefit. There is no evidence that the Respondent is due any backdated payments that would reduce the arrears.
- 23 The Applicant has written to the Respondent with the information required under the rent arrears pre-action protocol. The Applicant has provided the Respondent with information regarding his rental obligations and rent arrears, has offered to enter into payment plans, and has directed him to agencies for advice and support.
- 24 The Respondent has recently commenced employment as a roofer. The Respondent will earn around £625 per week after tax.
- 25 The Respondent has been in receipt of universal credit with a housing element.
- 26 The Respondent is 57 years old. The Respondent has mental health issues.
- 27 It is reasonable to make an eviction order.

Reasons for decision

- 28 The tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application based on the documentary evidence and submissions at the CMDs, and that to do so would not be contrary to the interests of the parties in this case. The tribunal could identify no issues to be resolved that would require a hearing to be fixed on the application.
- 29 Section 51 of the 2016 Act provides that *“The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”*
- 30 Section 52 of the 2016 Act goes on to state that *“an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.”* The tribunal had before it a copy of a notice to leave in the prescribed form that had been given to the Respondent which cites ground 12 of schedule 3 of the 2016 Act. The tribunal was also satisfied that the Applicant had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 31 The tribunal considered the wording of paragraph 12 of schedule 3 of the 2016 Act:-

“Rent arrears

12 (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.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

- 32 The tribunal accepted the documentary evidence and submissions from the Applicant. There was no contradictory evidence before the tribunal.
- 33 The tribunal therefore determined that the rent account had been in arrears for three or more consecutive months based on the rent statement produced. The Respondent did not seek to dispute this.
- 34 The tribunal went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which requires the tribunal to identify those factors relevant to reasonableness and determine what weight should be applied to them.
- 35 The tribunal gave great weight to both the level of arrears and the length of time they have been outstanding. It is a significant balance. When the notice to leave was given to the Respondent the arrears stood at £4395.75. They have since more than doubled to £10,934.55. Despite his proposals at the first CMD,

the Respondent has failed to demonstrate any commitment to making payment towards the rent and arrears. Instead, the arrears have continued to increase, to the Applicant's financial detriment.

- 36 There was no evidence before the tribunal to suggest that the arrears were due in any part to a failure or delay in the payment of a relevant benefit. The Respondent had provided no evidence of this. The tribunal was further satisfied based on the correspondence produced that the Applicant has fully complied with the rent-arrears pre-action protocol. The tribunal had before it written submissions from Fife Property, which narrated the extensive efforts they had made to support the Respondent in addressing the rent arrears so that he could remain in the tenancy. It was clear from the various attempts made to engage with the Respondent that the Applicant considered eviction to be a last resort.
- 37 The tribunal carefully considered the Respondent's circumstances. The tribunal took into account his health issues, which he states have hindered his ability to deal with matters. However, the tribunal noted that he has now been able to secure employment. The tribunal further noted that the notice to leave was given to the Respondent back in July 2025. If the Respondent required assistance in dealing with his tenancy situation, he has had ample time to engage with advice services.
- 38 The tribunal also noted that the Respondent has recently resumed employment and has offered again to make payment towards the rent and arrears. However, it was clear from the rent account produced that the Respondent has consistently failed to make his contractual rent payments over a prolonged period during which he had been in and out of employment. The rent account has been consistently in arrears since January 2024, and the arrears have increased rapidly in recent months. The fact that the Respondent was now again employed did not inspire confidence that he would now resume payments given his repeated defaults over the past two years.
- 39 Accordingly, whilst the risk of homelessness to the Respondent was a cause for concern, having regard to the level of the arrears, and the sustained period over which rent had gone unpaid in full, there was nothing in terms of reasonableness the tribunal could identify that would outweigh the making of an eviction order in the particular circumstances of this case.
- 40 The tribunal therefore concluded that the provisions of paragraph 12 of schedule 3 of the 2016 Act have been met in this case and determined to make an eviction order.
- 41 The decision of the tribunal was 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.

8 July 2026

Legal Member/Chair

Date