

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/25/4409**

**Re: Property at 5E Eden Street, Dundee, DD4 6HL (“the Property”)**

**Parties:**

**Positive Steps Partnership, Swan House, 2 Explorer Road, Dundee, DD2 1DX  
 (“the Applicant”)**

**Mr Kevin Booth, 5E Eden Street, Dundee, DD4 6HL (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and David Godfrey (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.**

**Findings in Fact**

1. The Applicant is the landlord and the Respondent the tenant under a Private Residential Tenancy Agreement that commenced on 27 October 2024.
2. The Respondent has a history of drug addiction.
3. The Respondent has not engaged with the Applicant in respect of support as much as he could have, and has cancelled appointments with the Applicant that he ought to have kept.
4. The Respondent has allowed rubbish and drug paraphernalia to accumulate in the Property.
5. The Respondent has stayed overnight at the Property on approximately twelve occasions in the past six months.
6. The Respondent spends the majority of his time at his parents’ house.
7. The Respondent is prone to avoiding formal appointments.

8. The Applicant is a provider of supported accommodation, which is to say accommodation where by community care services can be provided.
9. The PRT between the parties was entered into on account of the Respondent having an assessed need for community care.
10. The Respondent is a vulnerable person.
11. The Respondent is unlikely to engage with the support offered by the Applicant in the future.
12. The Respondent has not been assessed as no longer having a need for community care.

### **Findings in Fact and Law**

1. The Respondent has breached clauses 7, 17 and 32 of the tenancy agreement between the parties.
2. It is reasonable to grant an eviction order.
3. The Private Residential Tenancy Agreement between the parties will terminate on 1 October 2026.

### **Statement of Reasons**

1. This Application called for its Hearing in-person on 1 September 2026. The Applicant was represented by its Operations Manager, Ms Jane Reid. The Respondent was represented by Mr Kenneth Marshall of Dundee Law Centre.
2. In this Application the Applicant seeks an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). It contends that the Private Residential Tenancy between the parties was entered into on the basis that the Respondent had been assessed as requiring community care support. However, the Applicant now claims that the Respondent has breached his tenancy agreement by both failing to keep the Property in the contractually required condition and, separately, failing to engage with the Applicant in the provision of support. The Applicant separately claims that the Respondent has now been assessed as no longer having a need for community care. Accordingly, the Applicant now seeks to rely on Grounds 11 and 9 of the 2016 Act respectively.
3. Grounds 9 and 11 of the 2016 Act provide as follows:-

#### **9 No longer in need of supported accommodation**

- (1) It is an eviction ground that the tenancy was entered into on account of the tenant having an assessed need for community care and the tenant has since been assessed as no longer having that need.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
  - (a) the tenancy was granted in consequence of the tenant being assessed under section 12A of the Social Work (Scotland) Act 1968 to have needs calling for the provision of community care services,

- (b) the tenancy would not have been granted to the tenant on the basis of the latest assessment of the tenant's needs under that section, and
  - (c) the Tribunal considers it reasonable to issue an eviction order on account of that fact.
- (3) The condition in sub-paragraph (2)(a) is to be deemed to be met if the tenancy was granted as a result of a local authority taking urgent action by virtue of section 12A(5) of the Social Work (Scotland) Act 1968.

[...]

### **11 Breach of tenancy agreement**

- (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.
  - (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
    - (a) the tenant has failed to comply with a term of the tenancy, and
    - (b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.
  - (3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”
- 4. Ms Reid attended the Hearing together with her colleagues Alison Malcolm (Housing Officer) and Rachel Prophet (Service Manager). It was intended that all three would give evidence. However, Mr Marshall advised that the Respondent was not present and would not be attending. Mr Marshall advised the Tribunal that he had spoken to the Respondent the previous evening and been advised that the Respondent could not afford to travel to the Hearing in Perth from Dundee. He had hoped to be able to arrange assistance with transport from his brother but had been unable to do so. That notwithstanding, Mr Marshall confirmed that he was fully instructed and able to proceed with the Hearing.
- 5. In terms of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017:-

### **“2.— The overriding objective**

- (1) The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.
  - (2) Dealing with the proceedings justly includes—
    - (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
    - (b) seeking informality and flexibility in proceedings;
    - (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings,

including assisting any party in the presentation of the party's case without advocating the course they should take;

- (d) using the special expertise of the First-tier Tribunal effectively; and
- (e) avoiding delay, so far as compatible with the proper consideration of the issues.”

6. The Tribunal required to determine whether it was prepared to continue with the Hearing in the absence of the Respondent and, in particular, whether doing so would be contrary to the overriding objective. The Tribunal had regard to the Respondent's claim that he was unable to travel to give his evidence at the Hearing. The Hearing had been fixed for some considerable time. The location of the Hearing had been known for some time. Had steps been taken sufficiently in advance of the Hearing then the Tribunal might have been able to make other provision for the Respondent's remote attendance. The Tribunal also had regard to Mr Marshall's confirmation that he felt fully instructed to assert the Respondent's position for him. In those circumstances, the Tribunal determined that it would proceed with the Hearing for the purpose of making inquiries into what matters were actually in dispute between the parties.
7. Given the approach adopted, the Hearing took the form of an informal discussion between the Tribunal Members, Ms Reid and Mr Marshall. During the course of that discussion, the following matters were determined to be agreed:-
  - a. The Respondent has a history of drug addiction;
  - b. The Respondent accepts that he has not engaged with the Applicant in respect of support as much as he could have, and that he had cancelled appointments he ought to have kept;
  - c. The Respondent has not kept the Property in the condition that he ought to have. In particular, the Property is full of rubbish and drug paraphernalia;
  - d. The Respondent has stayed overnight at the Property on approximately twelve occasions in the past six months;
  - e. The Respondent spends the majority of his time at his parents' house; and
  - f. The Respondent is prone to avoiding formal appointments.
8. Where matters diverged related to the parties' respective views on whether the Applicant has done enough to support the Respondent. Mr Marshall advised the Tribunal that the Respondent had lost trust in the Applicant's support workers. He claims to feel belittled, in particular by his current Housing Officer, Alison Malcolm. He told Mr Marshall that he would be willing to continue working with the Applicant but would require a different Housing Officer. The Respondent also advised Mr Marshall that he was willing to remove from the Property but only if suitable alternative accommodation became available. Mr Marshall queried whether the Respondent had, in fact, been assessed as requiring community care within the meaning of section 12A of the Social Work (Scotland) Act 1968, and whether it was sufficient for

Ground 9 for eviction to apply that the PRT Agreement made reference to Support.

9. Ms Reid advised the Tribunal that Ms Malcolm was the fourteenth different employee of the Applicant that had been allocated to the Respondent. At present, only about 10% of the Applicant's staff have not worked with the Respondent. The Applicant is a charity. It has funders who provide funding for the provision of its housing support services. It does not provide support for substance addiction or mental health. It has provided support to the Respondent by assisting him previously with cleaning the Property, including the removal of needles and sharps. However, he is rarely at the Property and not engaging. Looking at the Respondent's case, the Applicant considers that what he really requires is support for his drug issues and mental health rather than wider housing support. That he is able to travel to his parents' home tends to suggest that he does not require the type of support that the Applicant offers. They need the Property back in order that it may be offered to a person who requires, and will engage with, housing support.

#### Ground 9

10. Ground 9 of Schedule 3 to the 2016 Act requires, as a starting point, that the tenancy was granted in consequence of the tenant being assessed under section 12A of the Social Work (Scotland) Act 1968 as having needs that require community care services. Section 12A provides as follows:-

**“12A.— Duty of local authority to assess needs.**

- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—
  - (a) shall make an assessment of the needs of that person for those services; and
  - (b) shall then decide, having regard to the results of that assessment, and taking account—
    - (i) if an adult carer provides, or intends to provide, care for that person, of the care provided by that carer,
    - (ia) if a young carer provides, or intends to provide, care for that person, of the care provided by that carer, and
    - (ii) in so far as it is reasonable and practicable to do so, [...] of the views of the person whose needs are being assessed [...] (provided that [...] there is a wish, or as the case may be a capacity, to express a view),whether the needs of the person being assessed call for the provision of any such services.
- (1A) In subsection (1)(b)(i) and (ia), the reference to the care provided by a carer means—

- (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,
  - (b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.
- (1B) In—
- (a) assessing the needs of a person for services under subsection (1)(a),
  - (b) deciding under subsection (1)(b) whether those needs call for the provision of any services, and
  - (c) deciding how any such services are to be provided,
- a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.
- (2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.
  - (3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies—
    - (a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board—
      - (i) in whose area he is ordinarily resident; or
      - (ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or
    - (b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,

the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.

  - (4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
    - (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and
    - (b) inform him that they will be doing so and of his rights under that Act.
  - (5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person

without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

(6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

(7) This section is without prejudice to section 3 of the said Act of 1986.

(8) In this section—

“*adult carer*” and “*adult carer support plan*” have the meanings given by the Carers (Scotland) Act 2016,

“*community care services*” means services, other than services for children, which a local authority is under a duty or has a power to provide, or to secure the provision of, under—

(a) Part 2 of this Act; or

(b) any of the following provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003—

(i) section 25 (care and support services etc.);

(ii) section 26 (services designed to promote well-being and social development);

(iii) section 27 (assistance with travel);

“*disabled person*” has the same meaning as in the said Act of 1986; and

“*medical practitioner*” means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.

“*person*” means a natural person;

“*young carer*” and “*young carer statement*” have the meanings given by the Carers (Scotland) Act 2016.”

11. Part 2 of the 1968 Act includes, at section 12, a duty on local authorities to promote social welfare generally. The duty has fairly wide ranging implications, but ultimately provides local authorities with wide discretion to determine what assistance is required to be provided. The support provided by the Applicant, being the provision of accommodation with support for looking after that Property, therefore appears to the Tribunal to fall within the definition of “community care services” for the purposes of section 12A of the 1968 Act.

12. The Applicant produced a copy of its Service Specification within its 2025-26 Contract with Dundee City Council setting out the community care services that it will provide. Clause 5 provides as follows:-

#### **“5. Referral/Assessment and Allocation”**

An open referral process exists for the **Service** which includes either Dundee based statutory or voluntary sector agencies, housing

providers within the City or national bodies (e.g. The Scottish Prison Service). The **Service** is designed to meet the needs of the people of Dundee. Individuals who are referred will have a history of homelessness or a need for housing related support within the Dundee area.”

The Contract goes on to describe the Applicant’s assessment functions:-

**“Assessment**

Carry out assessment to full **Health and Social Care Standards**; obtain formal reports from Social Work, Health professional and other agencies; liaise with referring agency; identify housing requirements and research availability of suitable accommodation; check benefits situation including qualification for housing benefit and eligibility for supporting people **Contract**; measure housing risk and support needs against available resources; make and communicate decision to referring agency and the applicant; place on and manage waiting list as appropriate.”

It follows that Dundee City Council has authorised the Applicant to carry out an assessment under section 12A of the 1968 Act for the purposes of determining whether supported accommodation ought to be provided under its Contract. A copy of the 2023-24 Contract has not been provided, but there is no reason to doubt that the position was substantially the same under that Contract.

13. It follows that the Applicant had the ability to assess the Respondent for need for community care and, if satisfied such a need existed, to offer supported accommodation. The Tribunal has seen the assessment application submitted to the Applicant by the organisation “We Are With You” in respect of the Respondent. We know that the Respondent was subsequently offered supported accommodation by the Applicant and that a PRT was issued. The Tribunal was therefore satisfied that the tenancy between the parties was entered into on account of the Respondent having an assessed need for community care. That satisfied the first requirement of Ground 9 for eviction.
14. However, the Tribunal was not satisfied that the Respondent had been assessed as no longer having that need. The Applicant’s evidence did not support a finding that an assessment had taken place. Rather, the Applicant’s evidence was that its attempts to reassess had been stymied by the Respondent’s failure to engage. Whilst it may well be the case that the Respondent was capable of being assessed in his absence as not having a need for community care because he was evidently not engaging with the care being offered, there is no evidence to support a finding that actually happened.
15. For those reasons, the Tribunal was not satisfied that Ground 9 for eviction applied in this case.

**Ground 11**

16. Ground 11 is more straightforward to determine. It requires only that the tenant has failed to comply with an obligation under the tenancy and that it is reasonable to grant an eviction order on account of that fact.
17. The Notice to Leave dated 15 May 2025 refers specifically to Clauses 7, 17 and 20 of the Tenancy Agreement, which provide as follows:-

#### **“7. OCCUPATION AND USE OF THE LET PROPERTY**

The Tenant agrees to continue to occupy the Let Property as his or her home and must obtain the Landlord’s written permission before carrying out any trade, business or profession there.

The Let Property has the sole use of Support Accommodation and if the Tenant does not proactively engage with support services, this tenancy agreement will be revoked.

[...]

#### **17. REASONABLE CARE**

The Tenant agrees to take reasonable care of the Let Property and any common parts...

[...]

#### **20. ACCESS FOR REPAIRS, INSPECTIONS AND VALUATIONS**

The Tenant must allow reasonable access to the Let Property for an authorised purpose where the Tenant has been given at least 48 hours’ notice, or access is required urgently...”

18. The Tribunal also separately noted that clause 32 of the Tenancy Agreement obliged the Respondent to “dispose of or recycle all rubbish in an appropriate manner at the appropriate time”. The Tribunal considered that clause 32 could be read together with clause 17 as a particularisation of how the Respondent was to take reasonable care of the Property.
19. In any event, given the candid admission on behalf of the Respondent, under reference to the photographs of the inside of the Property that had been produced by the Applicant, that he has not been keeping the Property in an appropriate condition and, separately, had not been engaging as he ought to have with the support offered by the Applicant, the Tribunal was satisfied that the Respondent had breached terms of the Tenancy Agreement. That being so, Ground 11 for eviction was engaged and the only question for determination was whether it was reasonable to grant the eviction order.

#### **Reasonableness**

20. The test of reasonableness is set out in the English authority of *Cumming v Danson*, [1942] 2 All ER 653. At page 655, Lord Greene MR said:
- “[I] 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 facts 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.”
21. In this case, the Tribunal had regard to the Respondent’s vulnerability. The Tribunal noted that the Respondent was sufficiently self-aware to recognise that he had not kept the Property in the condition that he ought to have, and that he had failed to engage with the Applicant in the way he should have. The Tribunal noted his offer to clean up the Property and his willingness to engage with the Applicant moving forward. However, the Respondent’s unwillingness to work with Ms Malcolm together with the fact that he had found issue with a previous 13 employees of the Applicant gave the Tribunal no confidence that he would in fact engage with the support offered by the Applicant. The reality is that he is a serial avoider of appointments. He is offered help and actively avoids accepting it.
22. However, the factor that carried the most weight in this case is the Respondent’s infrequent occupancy of the Property. He is not occupying the Property as his only or principal home. He is rarely there. The function of the Applicant is to provide supported accommodation to those who need it, and the Respondent is taking up a property that could be put to use housing someone with an urgent need for housing and nowhere else to go; someone who will occupy the Property daily as their home rather than sporadically as and when the notion takes them. The Respondent’s evident unwillingness to use the Property as intended is determinative in this case.
23. Accordingly, the Tribunal unanimously determined that it was reasonable to grant an eviction order.
24. For the purposes of section 51(4) of the 2016 Act, the Private Residential Tenancy Agreement between the parties will terminate on 1 October 2026.

## **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.**

**Andrew Upton**

**01 September 2026**

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**Legal Member/Chair**

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**Date**