

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/26/0373

Re: Property at 20 Gardiner Square, Prestonpans, East Lothian, EH32 9NR (“the Property”)

Parties:

LAR Housing Trust, Buchan House, Enterprise Way, Dunfermline, KY11 8PL (“the Applicant”)

Mr David Mackie, 20 Gardiner Square, Prestonpans, East Lothian, EH32 9NR (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 12 of schedule 3 of the 2016 Act in favour of the Applicants.

1. Background

- 1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of ground 12 of schedule 3 of the 2016 Act, namely, the Respondent had failed to pay rent due. The application was accompanied by copies of the written tenancy agreement between the parties, the notice to leave given to the tenant, a rent statement and correspondence between the parties.
- 1.2 The application was conjoined with a civil proceedings application reference FTS/HPC/CV/26/0376. No written representations were lodged by the Respondent in advance of the Case Management Discussion. The Applicant lodged an up to date statement of the rent account on 15 July 2026.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 28 July 2026 by teleconference. The Applicant was represented by Miss Donnelly, solicitor. The Respondent was neither present nor represented.

2.2 Miss Donnelly confirmed that the application was insisted upon and that the Applicant wished to proceed in the Respondent's absence. The Tribunal noted that intimation of the application and Case Management Discussion had been given to the Respondent by Sheriff Officers. Accordingly, it was appropriate to proceed as permitted by rule 29 of the Chamber rules.

2.3 Ms Donnelly advised that the present arrears were £4597.52 as £42.49 paid through Universal Credit since the rent statement had been lodged. An email had been received purportedly from the Respondent in July 2026 albeit it came from his mother's email address. The Respondent had advised he had been out of work due to mental ill health. He was anticipating a return to work. His mother had contacted the Applicant last week to advise the Respondent had begun offshore work and would not be contactable. There had been no offer of payment from the Respondent and no details of his anticipated income provided. Universal Credit had been received in respect of the rental charge since March 2026 but the Applicant was now concerned that would reduce or cease if the Respondent had returned to work. No payment had been received at all between October 2025 and March 2026. The arrears were substantial and there had been little contact with the Respondent despite monthly reminders sent to him. The Respondent was understood to live alone. In the circumstances, it was reasonable to grant an eviction order.

2.4 The Tribunal indicated that the order sought would be granted.

3. Reasons For Decision

3.1 The Tribunal had noted that valid notice to leave had been given to the Respondent by the Applicant. The Applicant sought an eviction order on the basis of paragraph 12 of schedule 3 of the 2016 Act. Paragraph 3 is in the following terms:-

(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.

In the present case, the Applicant had provided a rent statement detailing the arrears outstanding. The Applicant had been in arrears since January 2024.

3.2 The Tribunal thereafter considered it reasonable to issue an eviction order.

There was nothing before the Tribunal to suggest that the arrears were due to a failure in payment of a relevant benefit. The application was accompanied by copies of correspondence and a diary of contact with the Respondent. Prior to service of the notice to leave, the Applicant had provided the Respondent with the information prescribed in terms of the pre-action protocol. They had encouraged him to take advice on benefit entitlement and provided him with sources of advice. They had invited proposals for repayment of the arrears. Accordingly, the Applicant had fully complied with the pre-action protocol.

3.3 The Tribunal also considered the whole circumstances in which the application was made. The arrears were substantial. Although the rental charge had been covered in recent months through Universal Credit, the Applicant had a reasonable apprehension this would reduce if the Respondent had now commenced work. The Respondent had failed to make any proposals for repayment or provide details of his financial position

to the Applicant. He lived alone and had no dependents. In all of the circumstances, it was reasonable to grant an eviction order.

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.

Legal Member/Chair

Date: 5 August 2026

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