

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/26/1631

Re: Property at 47 Overton Crescent, West Kilbride, KA23 9HG (“the Property”)

Parties:

Michael Young, 34 Ailsa Road, Saltcoats, KA21 6LR (“the Applicant”)

**Mr James William P Stevenson, 47 Overton Crescent, West Kilbride, KA23 9HG
 (“the Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs S Hesp (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 should be granted.**

Background

1. This is a Rule 109 application whereby the Applicant is seeking an eviction order under ground 12. The Applicant representative lodged a copy of a private residential tenancy agreement between the parties in respect of the Property, which tenancy commenced on 11th September 2023 at a monthly rent of £750, a notice to leave with evidence of service, a section 11 notice with evidence of service, and a rent statement showing arrears in the sum of £6600.
2. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officer on 14th August 2026.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 1st October 2026. The Applicant was in attendance. The Respondent was not in attendance. The start of the CMD was delayed to allow the Respondent to join the call. The Respondent did not join the call.

4. The Tribunal considered the terms of Rule 29 of the Procedural Rules. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
5. The Applicant said he spoke to the Respondent around a month ago and the Respondent said he was seeking alternative accommodation. The Respondent then requested a landlord reference through the letting agent.
6. The Applicant said he was seeking an eviction order. The Respondent is not engaging. There are concerns that the Respondent is subletting the Property, as another man has been seen to come and go. The Applicant said he believes the Respondent has adult children who stay at the Property sporadically. The Applicant said he has to pay a mortgage and insurance on the Property and the Respondent's failure to pay the rent and address the arrears is causing him difficulties. The Applicant said he understood the Respondent was in employment initially and again a few months ago, but he had suffered ill-health which had affected his earnings.
7. Responding to questions from the Tribunal, the Applicant said the current arrears are £6100. The Respondent paid £750 in July, and £1250 in August 2026. No rent was paid in September 2026.
8. Responding to the Tribunal, the Applicant said he had not complied with the pre-action protocol, and was unaware of its requirements, despite letting two other properties. He has contacted the Respondent, mostly by telephone, to discuss the arrears. The Applicant said his father visited the Property and offered the Respondent alternative accommodation but the Respondent was not interested.

Findings in Fact and Law

9.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 11th September 2023 at a monthly rent of £750.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.
 - (iii) The Respondent has accrued rent arrears.
 - (iv) The Respondent has been in rent arrears for three or more consecutive months.
 - (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.

(vi) The Applicant has not complied with the pre-action protocol.

(vii) It is reasonable to grant an eviction order.

Reasons for Decision

10. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that Ground 12 has been established.
11. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
12. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. The Tribunal noted with concern that the Respondent, despite letting three properties, was unaware of the pre-action protocol.
13. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
14. The Respondent has accrued significant rent arrears. Although the rent was paid in July and August, with an additional sum paid in August, the Respondent has not paid rent last month, and is failing to engage with the Applicant to address the arrears. There has been a pattern of failing to pay the rent since November 2024, and sustained periods of non-payment over several months at a time. The Tribunal considered it likely that, if no order was granted, the pattern would continue and the arrears would continue to rise.
15. The Respondent did not see fit to attend the CMD or make any representations to assist the Tribunal in considering reasonableness. The Tribunal took into account the information provided by the Applicant representative, including the fact that the Respondent previously had health issues. The Tribunal was unable to assess the likely effect of an eviction order upon the Respondent in the absence of any representations.
16. The Tribunal took into account the information provided by the Applicant in that he is suffering financially and personally as a result of the Respondent's failure to pay the rent and address the arrears. The Applicant is responsible for paying

a mortgage on the Property as well as insurance costs. The Applicant is entitled to expect to be paid rent.

17. The Tribunal considered the Applicant's failure to comply with the pre-action protocol as a serious matter. However, the Respondent is aware of the arrears and the responsibility to pay rent monthly and has failed to comply with his obligations in terms of the tenancy agreement. The Tribunal accepted the Applicant's evidence that he has phoned the Respondent to discuss the arrears. The Tribunal balanced the lack of compliance with the pre-action protocol against the high level of arrears, the pattern of behaviour by the Respondent, the failure of the Respondent to attend the CMD or make representations despite service of the application having been made upon him, and the likelihood of the arrears rising and the Applicant being further disadvantaged if no order was granted.

18. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. It was incumbent upon the Respondent to attend or make representations to the Tribunal to indicate why an order should not be granted, and the Respondent failed to do so. The Tribunal considered it was reasonable to grant the order sought.

Decision

19. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 4th November 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.

H Forbes

Legal Member/Chair

1st October 2026
Date