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 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act")

Chamber Ref: FTS/HPC/EV/26/1158

Re: Property at 23 Sutherland Court, Kirkcaldy, Fife, KY1 3EB ("the Property")

Parties:

Mr Neil Watson, 1 Stewart Lane, Alford, Aberdeenshire, AB33 8UE ("the Applicant")

Mr Anthony Rogers, 23 Sutherland Court, Kirkcaldy, Fife, KY1 3EB ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for eviction should be granted.

Background

1. By application dated 11 March 2026, the Applicant sought an order for eviction under section 51 and Ground 12 of Schedule 3 of the Act (tenant in arrears for three or more consecutive months) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). On 28 May 2026 the application was accepted by the Tribunal and referred to it for determination.

2. Letterbox service of the application was made by Sheriff Officers on 19 August 2026, since the Respondent had not formally vacated the Property. A trace of him on or about 19 May 2026 indicated he still appeared to be residing there. A further trace of him on or about 21 May 2026 advised he was possibly residing at 27 Viceroy Street, Kirkcaldy, despite not having taken any steps to formally end his tenancy at the Property. Parties were notified that a

Case Management Discussion ("CMD") would take place on 28 October 2026 at 10am by telephone conference call and that they were required to participate. The Respondent was required to submit any written representations in response to the application by 5 September 2026. No written representations were lodged.

3. The Tribunal had before it:

   i. The Application Form E;
   ii. A Private Residential Tenancy agreement dated 7 May 2019 between the Applicant and his late wife and the Respondent;
   iii. Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Applicant;
   iv. Notice to Leave dated 18 December 2025 with proof of service by email of the same date;
   v. Confirmation from YourMove letting agents that the Respondent has been advised of his rent arrears between 11 May and 8 July 2026;
   vi. A Rent Statement for the period from 7 November 2024 to 6 October 2026; and
   vii. Case Papers.

Case Management Discussion

4. A CMD took place on 28 October 2026 at 10am by teleconference call. The Applicant, Mr Watson represented himself. There was no appearance by the Respondent although the Tribunal delayed the start of the CMD by a few minutes.

5. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions with regard to the application.

6. Mr Watson confirmed he was seeking an order for eviction today. The arrears of rent are continuing to accrue and are close to £6000.00. He has been through another Tribunal process in connection with those. He thinks that the Respondent has not been living in the Property for about a year but he has never handed back the keys despite promising to do so on a few occasions. The Tribunal had noted from the papers that the flat is still full of the Respondent's possessions. Mr Watson stated that during the course of trying to recover payment of the rent arrears from the Respondent, he has claimed not to know who the Applicant is. Mr Watson does not know if the Respondent is still working. He did have another address for him, 27 Viceroy Street, Kirkcaldy but does not know if he is still there or not. The Respondent lived alone in the Property.

7. Mr Watson stated that the rent arrears situation is impacting him considerably. He is semi-retired and the income from the Property was part of his plan to retire early. He has one other rental property in Aberdeen. There is no mortgage on the Property but he does have other outlays which he needs to

fund. These include a factoring fee, a Fife Council factoring and cleaning fee relating to the laundry block, letting agent fees and insurances. As regards his future plans for the Property, Mr Watson stated he does not know if he will continue to rent it out or not. He may well decide to sell it.

8. The Tribunal adjourned for a short period. On reconvening, the Tribunal advised Mr Watson that it was satisfied the ground for eviction had been established and that it was reasonable to grant an eviction order. A written decision with reasons would be issued as soon as possible.

Findings in Fact

9. The Property was let to the Respondent under a Private Residential Tenancy Agreement between the Applicant and his late wife and the Respondent dated 7 May 2019.

10. The tenancy commenced on 7 May 2019.

11. In terms of Clause 8 of the tenancy agreement, the rent was £350.00 per month which increased to £400.00 per month.

12. The Applicant competently served a notice to leave on the Respondent dated 18 December 2025 stating that proceedings would not be raised before 20 January 2026 in terms of ground 12 of Schedule 3 of the Act. Said notice was served by email as provided for in terms of Clause 4 of the tenancy agreement. The Notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.

13. As at the date of the Notice to Leave the Respondent had been in arrears of rent since April 2025, a period of three or more consecutive months as required under ground 12 of Schedule 3 of the Act. The arrears of rent were £1 910.00 in accordance with the rent statement produced.

14. As at the date of lodging this application, the Respondent was in arrears of rent of £3 690.00.

15. The Respondent has made no payments of rent since October 2025 and the rent arrears as at October 2026 are £5 970.00.

16. The Applicant has obtained an order for payment in respect of some of the arrears under application FTS/HPC/CV/25/5379.

17. The Applicants letting agents have confirmed in a letter dated 11 May 2026 that the Respondent was informed of the rent arrears and sent a link to guidance and signposted to various sources of help and financial assistance. Further letters were sent to him on or around 12 June 2026 and 8 July 2026. This is in accordance with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

18. The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.

19. The Property is a one-bedroomed flat.

20. The Applicant is incurring costs relating to the Property from his own funds including factoring and letting fees and insurances. The financial impact of the rental situation is considerable. The Applicant is semi-retired and he had factored in receiving income from the Property to enable him to retire early.

21. The Applicant is unsure whether he will rent out the Property if he obtains vacant possession or sell it.

22. The basis for the order for possession on Ground 12 of the Act is established.

Reasons for Decision

23. The order for possession sought by the Applicant was based on grounds specified in the Act. Ground 12 of Schedule 3 of the Act was properly narrated in the notice to leave served on the Respondent. The Tribunal was satisfied that notice had been served in accordance with the terms of the Act and the Applicant is entitled to seek recovery of possession on that ground.

24. The Tribunal accepted the evidence provided by the Applicant with regard to the rent arrears. Rent statements were produced which set out the history of the arrears. Since April 2025, the Respondent has failed to pay the full rent as it fell due and the rent arrears as at October 2026 are £5 970.00 which is a significant sum.

25. The Tribunal was satisfied that the Respondent has been in arrears for a period of three consecutive months or more. The Tribunal accepted the unchallenged evidence of the Applicant relating to the arrears. The Tribunal accepted that the Applicant made appropriate attempts to encourage the Respondent to deal with the arrears.

26. The ground for eviction based on rent arrears is established.

27. An eviction order on ground 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts (Ground 12 (3)(b)).

28. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson [1942] 2 All ER 653 at 655* in which Lord Green MR said in an often quoted passage:

> "*In 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 common sense 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 factors 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."*

29. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and weigh the various factors which apply to the parties.

30. In this case the Tribunal finds it is reasonable to grant the order. The balance of reasonableness is weighted toward the Applicant for the following reasons:

31. The level of arrears is high and is long-standing. It is unlikely that the arrears will be paid. The Respondent is making no attempt to meet the current rent as it falls due or the arrears of rent. The Applicant has already obtained a payment order in respect of some of the arrears of rent. The Respondent has made no attempt to engage with the Applicant. The Applicant is meeting ongoing payments relating to the flat from his own funds which is impacting on him considerably.

32. The Respondent has not engaged with the Tribunal process despite having an opportunity to do so.

33. The Tribunal decided to exercise the power within rule 17 of the Rules and determined that a final order should be made at the CMD.

34. Following conclusion of the hearing, it came to the Tribunal's attention that the Applicant had not served a notice in terms of section 56 (2) of the Act and section 11 (3) of the Homelessness etc (Scotland) Act 2003. Accordingly, the Applicant served a Section 11 Notice in the prescribed form on Fife Council on 31 October 2026 and it was acknowledged by the Council on the same date.

Decision

The Tribunal makes an order for eviction of the Respondent, Mr Anthony Rogers, from the Property at 23 Sutherland Court, Kirkcaldy Ky1 3EB.

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.



Fiona Stephen
Legal Member/Chair

2 November 2026
Date