



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 (Act)

Chamber Ref: FTS/HPC/EV/24/4883

Re: Property at Flat 6, 13 Constitution Place, Leith, Edinburgh, EH6 7DJ (“the Property”)

Parties:

Mr Colin Ramsay, 10 Tayview Terrace, Newport On Tay, DD6 8AT (“the Applicant”)

Mr Kevin MacLeod, Flat 6, 13 Constitution Place, Leith, Edinburgh, EH6 7DJ (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted but that execution of the order should be postponed to 30 June 2025.

This is an application under Rule 109 and section 51(1) of the Act under Ground 12 of Schedule 3 to the Act.

The Tribunal had regard to the following documents lodged in advance of the Hearing:

1. Application received 22 October 2024;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 1 March 2024;
3. Notice to Leave dated 27 August 2024 and served by email on 28 August 2024;
4. Section 11 Notice and email serving on local authority dated 21 October 2024;
5. Rent statements as at 2 October 2024 and 7 April 2025;
6. PARS correspondence.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 1 May 2025. The Applicant did not participate but was represented by Ms Kirstie Donnelly, Solicitor. The Respondent participated and was represented by Ms Sophie Bennet, Housing and Benefit Adviser (CHAI).

The Respondents' position

The Respondent did not seek to oppose the order for recovery of possession.

The Respondent was no longer working due to his health. He was in receipt of Housing Benefit which did not cover the full amount of the rent.

He lived in the 2 bedroom Property alone. He had been in contact with the local housing department, housing associations and had been searching without success. He has been allocated a Housing Officer and was waiting to be given gold priority for housing.

He accepted it was in both Parties' interests for the eviction to take place and sought a few extra weeks to obtain alternative housing. He sought postponement of execution of the order to mid July.

He accepted that he was £7,195.87 in rent arrears.

The Applicant's position

The Applicant's position was that this was the only property he owned and it was subject to a mortgage. He had been living abroad and using the rental income from the Property to sustain him. He was returning to Scotland on 21 May 2025 and would require to sofa surf until the Property was vacated and he was able to move in and use it as his own home.

He was struggling financially to cover the mortgage payments given the rental arrears which had now increased to £7,195.87.

The Applicant did not oppose postponement of execution of the order to 30 June 2025.

Decision and Reasons

The Tribunal considered the documentary evidence and agreement between the Parties.

The Tribunal had regard to Ground 12 of Schedule 3 to the Act which provides:

Rent arrears

- 12(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

- (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.

The Tribunal then considered the documentary evidence it had received and the submissions made. In so far as material the Tribunal made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 1 March 2024;
2. The monthly rent was £1,400;
3. Notice to Leave had been served on the Respondent on 28 August 2024;
4. As at the date of service of the Notice to Leave the Respondent was £3,691.95 in arrears of rent and had been in arrears for a continuous period of three or more consecutive months;
5. As at the date of the CMD the Respondent was in arrears of rent in the sum of £7,195.87;
6. The rental arrears were not due to any delay or failure in the payment of a relevant benefit;
7. Section 11 notification had been served on the local authority;
8. The Respondent is a single person with no dependents in the Property;
9. The Respondent did not oppose the eviction order;
10. The Respondent had been in contact with the local housing department, housing associations and had been searching without success;
11. The Respondent has had to give up work due to his health;
12. The Respondent has an allocated Housing Officer and awaits confirmation of gold priority for housing;
13. The Applicant is returning to Scotland on 21 May 2025 and requires the Property for his own home;
14. The Applicant only owns this Property which is subject to a mortgage;

15. The Applicant is dependent on the rent payment to cover the mortgage;
16. Pre Action requirements have been complied with by the Applicant's agents;
17. It was reasonable to issue an eviction order in the circumstances.

The Tribunal was satisfied that Ground 12 had been established.

The Tribunal weighed the competing interests of the Parties and determined that it was reasonable in the circumstances to grant the application for eviction and recovery of possession and to postpone execution of the order to 30 June 2025 under Rule 16A of the Tribunal Procedure Rules.

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.

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1 May 2025

Legal Member/Chair

Date