



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/26/1534

Re: Property at 57/3 Mayfield Road, Edinburgh, EH9 3AA (“the Property”)

Parties:

Mr Peter Dillon, Mrs Suzanne Dillon, 21 Craigmount Grove North, Edinburgh, EH12 8BY (“the Applicant”)

Mr Graham Dolan, Miss Kaitlyn Smith, 57/3 Mayfield Road, Edinburgh, EH9 3AA (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member) and Gerard Darroch (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 8 April 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 4 May 2026 the application was accepted by the Tribunal and referred to it for determination. The application is conjoined with FTS/HPC/CV/26/1540 in which the Applicant seeks an order for payment in respect of rent arrears.
2. A copy of the application was served on the Respondent by Sheriff Officer conform to execution of service dated 11 August 2026 and parties were notified that a Case Management Discussion (“CMD”) would take place on 23 September 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 29 August 2026. No written representations were lodged.

3. On 18 August 2026, the Applicant lodged an application to amend the application to incorporate Ground 1(Landlord's intention to sell) as a ground for eviction. The Tribunal granted the amendment on 26 August 2026 in terms of Rule 14(2) and allowed the Respondent to lodge any written representations to the Tribunal by 8 September. No representations were lodged.
4. On 7 September 2026, in the conjoined application FTS/HPC/CV/26/1540, the Applicant sought to amend the sum sought to £13 750.00 in accordance with a rent statement produced. On 16 September 2026, the parties were informed that the amendment had been allowed by the Tribunal.
5. At around 9.15am on the morning of the CMD, the Tribunal received notification from the Tribunal administration that Mr Graham Dolan (who signed the email Graham Dolan Loughran) had sent an email to the Tribunal on 22 September 2026 (at 21:21) asking for the CMD to be postponed in this application only "due to an unexpected family emergency". No information was provided as to the nature of the family emergency. There was no indication in the email that Miss Kaitlyn Smith, Respondent would not be able to attend the CMD or that she was also requesting a postponement. The Tribunal considered the request and refused it in terms of Rule 28 of the Rules. This was on the basis that Mr Dolan had provided no details of the nature of the "family emergency"; that the Respondent had lodged no written representations in the case and, given the circumstances giving rise to the application (substantial rent arrears) did not consider it reasonable to postpone the CMD. The parties were informed of the Tribunal's decision by email which, it appreciated, may not reach the parties by 10am. That was sent out at 10:04am.
6. The Tribunal had before it:
 - i. The Application Form E;
 - ii. A Private Residential Tenancy agreement dated 24 and 25 July 2025 between the Applicant and the Respondent;
 - iii. Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Applicant;
 - iv. Title Sheet MID187556 confirming that the Applicant owns the Property;
 - v. Notices to Leave dated 23 February 2026 (in respect of Ground 12) and 23 February 2026 (in respect of Ground 1) with Execution of Service by Sheriff Officers of both notices dated 23 February 2026;
 - vi. Section 11 Notice dated 8 April 2026;
 - vii. Pre-action protocol letters dated 16 December 2025 and 1 April 2026;
 - viii. Sale Valuation from Warners, Solicitors and Estate Agents dated 17 August 2026;

- ix. A Rent Statement for the period from 25 July 2025 to 1 September 2026; and
- x. Case Papers.

Case Management Discussion

- 7. A CMD took place on 23 September 2026 at 10am by teleconference call. The Applicant, Mr and Mrs Dillon appeared along with their solicitor, Ms Callaghan of T C Young, Solicitors. There was no appearance by the Respondent although the Tribunal delayed the start of the CMD by a few minutes in case they appeared.
- 8. The Tribunal confirmed to Ms Callaghan that it had considered the request to postpone this hearing by Mr Dolan Loughran which had been received around 9.15am this morning. Ms Callaghan confirmed that she had also received notification of the request this morning. The Tribunal refused the request on the basis that it was unreasonable in the circumstances, particularly as no details were provided about the nature of the “family emergency” and Miss Smith had not sought a postponement.
- 9. 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.
- 10. Ms Callaghan confirmed that the Applicant was seeking an order for eviction today. The arrears of rent were continuing to accrue and this was causing considerable stress to the Applicant. No payment of rent had been received since September 2025 (other than a partial payment that month) and the Respondent had demonstrated no willingness to enter a payment arrangement. The Applicant had therefore decided to try and seek recovery of possession of the Property and then sell. The Applicant was feeling helpless and this was impacting their mental health and financial position. There is a mortgage over the Property which the Applicant has to service despite no rental payments being made by the Respondent. The Applicant has taken on additional credit card debt to deal with the financial position. The longer matters continue, the greater the financial pressure there is.
- 11. Ms Callaghan submitted that the Respondent is well aware of the Tribunal process. The Respondent has been involved in previous cases before the Tribunal where rent arrears at a substantial level have been involved. Ms Callaghan provided the case reference numbers FTS/HPC/EV/24/4983 and FTS/HPC/CV/24/1893. The Applicant is concerned that the rent arrears will continue to accrue. The Tribunal asked some questions about the Applicant’s financial position. It noted that there is a mortgage over the Property. Mr Dillon confirmed that he is paying the mortgage monthly together with insurance which leaves very little left from the rental payment (if it was being paid). The Applicant has 3 children. His youngest daughter lives at home and his two elder children are both away from home at university which he is trying to fund. Mr Dillon confirmed there had been no response from the Respondent to the pre-action protocol letters. The Property is a one-bedroomed flat.

12. The Tribunal asked what was known about the Respondent's circumstances. Ms Callaghan submitted that she understood they were both in their 20's. Mr Dolan works in hospitality, and Miss Smith is a student although it is understood she also runs a magazine. They have no children and no adaptations were made to the Property. The position on benefits is unknown.
13. The Tribunal asked if there was any reason given by the Respondents for not paying the rent, such as repairing issues. Ms Callaghan said the Respondent had not indicated they were withholding rent. Any maintenance issues have been addressed by the Applicant. For example, a new boiler has recently been installed and a leak was fixed by a plumber.
14. Ms Callaghan confirmed that the Applicant was seeking eviction on both Ground 12 and Ground 1 today. She was also seeking interest on the rent appears in the payment application at the rate of 8% although appreciated this was a matter which was in the discretion of the Tribunal.
15. The Tribunal adjourned for a short period. On reconvening, the Tribunal advised the Applicant and Ms Callaghan that it was satisfied the grounds for eviction had been established and that it was reasonable to grant an eviction order on the basis of both grounds 1 and 12 of Schedule 3 of the Act. A written decision with reasons would be issued as soon as possible.

Findings in Fact

16. The Property was let to the Respondent under a Private Residential Tenancy Agreement between Mrs Suzanne Dillon, Applicant and the Respondent dated 24 and 25 July 2025.
17. The tenancy commenced on 25 July 2025.
18. In terms of Clause 10 of the tenancy agreement, the rent was £1 100.00 per month.
19. The Applicant competently served a notice to leave on the Respondent dated 23 February 2026 in terms of ground 12 of Schedule 3 of the Act. Said notice was served by Sheriff Officer on 23 February 2026 confirm to execution of service of the same date. The notice became effective on 26 March 2026. The Notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
20. As at the date of the Notice to Leave the Respondent had been in arrears of rent since September 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 £6 050.00.

21. As at the date of lodging this application, the Respondent was in arrears of rent of £8 250.00.
22. The Respondent has made no payments of rent since making the first payment of rent on 25 July 2025 (£1 100.00) and a partial payment of rent (£550.00) on 1 September 2025.
23. The Respondent remains in rent arrears. The amount of rent arrears as at September 2026 is £13 750.00.
24. Pre-action protocol letters were sent to the Respondent by letter dated 16 December 2025 and 1 April 2026 in terms of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
25. The Respondent did not respond to the pre-action protocol letters.
26. The Applicant competently served a notice to leave on the Respondent dated 23 February 2026 in terms of ground 1 of Schedule 3 of the Act. Said notice was served by Sheriff Officer on 23 February 2026 confirm to execution of service of the same date. The notice became effective on 21 May 2026. The Notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
27. The Applicant is entitled to sell the Property and intends to sell it for market value or at least put it up for sale within 3 months of the tenant ceasing to occupy the Property.
28. The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.
29. The Property is a one-bedroomed flat. No adaptations required to be made to the flat prior to the tenancy commencing to meet the Respondent's needs.
30. Mr Dolan is in employment in the hospitality industry and Miss Smith is a student. They have no children.
31. The Applicant pays for a mortgage over the Property on a monthly basis, together with insurance, which is placing significant financial strain on the Applicant given no rent is being paid.
32. The Applicant has taken on credit card debt to help meet their financial needs. This is adding to the financial strain on them.
33. The Applicant has three children. Two children are away from home at university which the Applicant funds. The youngest child still lives at home.

34. The Applicant cannot afford to retain the Property with no rent being paid and intends to sell it. The Applicant obtained a valuation of the Property in August 2026 in advance of a sale.
35. The basis for the order for possession on Ground 12 and Ground 1 of the Act is established.

Reasons for Decision

36. 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.
37. 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 September 2025, the Respondent has failed to pay the full rent as it fell due and the rent arrears as at September 2025 are £13 750.00 which is a very significant sum.
38. 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.
39. The ground for eviction based on rent arrears is established.
40. Ground 1 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.
41. The Tribunal accepted the evidence of the Applicant that they intend to sell the Property as soon as possible. They have obtained a valuation of the Property with a view to selling it. The Applicant has been placed under financial strain as a result of the lack of rental payments being made, coupled with the need to maintain mortgage payments and insurance as well as maintaining the Property. The Applicant also has other financial commitments. In those circumstances, it is understandable that the Applicant has decided to sell the Property. The Tribunal accepted the unchallenged evidence of the Applicant relating to their intention to sell.
42. The ground for eviction based on the Applicant's intention to sell the Property is established.
43. Since 7 April 2020, in terms of changes made initially by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform)

(Scotland) Act 2022, an eviction order on grounds 1 and 12 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

44. 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.”

45. 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.
46. 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:
47. 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 Respondent has made no attempt to engage with the Applicant despite reasonable attempts to do so.
48. The Property is a one-bedroomed flat.
49. The Applicant cannot afford to keep the Property with no rental income being received.
50. The Applicant intends to sell the Property given the lack of rental income and the strain that this has placed on their financial situation.
51. The Respondent has not engaged with the Tribunal process despite having an opportunity to do so.
52. 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.
53. Following conclusion of the CMD at which the decision to evict was made, the Tribunal had regard to the two published cases mentioned by the Applicant's solicitor, namely FTS/HPC/EV/24/4983 and FTS/HPC/CV/24/1893.

54. The Tribunal noted from decision FTS/HPC/EV/24/4983 that an eviction order was granted on 31 May 2025 in favour of the landlord, Mr Morton against the tenants, Kaitlyn Smith and Graham Dolan (also known as Graham Dolan-Loughran) in respect of a property at 2f1, 1 Victor Park, Edinburgh. The basis of the ground for eviction was Ground 12 of Schedule 3 of the 2016 Act and the arrears as at the date of the hearing in that case were £6 175.00. The date of the tenancy agreement was 26 April 2024.
55. The Tribunal noted from the decision that on 22 May 2025, Kaitlyn Smith asked for a postponement of the CMD on 30 May 2025 because she had exams and was going back to her family in Orkney. That request was refused given the request was made late, considering that papers in the case had been served on 25 March 2025 and the level of arrears were increasing. The Tribunal in that case did not consider it in the interests of justice to postpone the CMD. The Tribunal notes that in the instant case, a similar late request for an adjournment to the CMD was made on the basis of an inadequate reason.
56. The Tribunal noted from decision FTS/HPC/CV/24/1893 that a payment order was granted on 3 October 2025 in favour of the landlord, Lochburn Limited against the tenants, Mr Graham Dolan and Miss Kaitlyn Smith in respect of the property at 3/2 Moncrieff Terrace, Edinburgh. An order for payment of £4 282.25 was made against the tenants in respect of rent arrears relating to a private residential tenancy. The decision does not specify the date of the tenancy nor the period for which rent arrears were due.
57. The Tribunal noted from that decision that Mr Dolan requested a postponement of a CMD fixed for 20 January 2025 at short notice due to an “urgent family matter”. Miss Smith lodged written submissions disputing the rent arrears due and suggested an alternative sum. The Tribunal did not make an order due to the uncertainty over whether Miss Smith agreed that the alternative sum was due and so the CMD was continued. A Direction was issued requiring the Respondents to confirm their position as to the sum owed. They did not respond to that Direction. On 15 September 2025 the Tribunal received an email from Miss Smith stating that she would not attend the second CMD as it clashed with her university timetable. She reported that Mr Dolan would not attend either as he had a trial for a new job. She did not request an adjournment. She did not provide any information as requested in the Direction. The Tribunal did not consider that either reason given for non-attendance was adequate and so the CMD proceeded and a payment order was made.
58. The Tribunal did not have access to either of these reported decisions prior to the CMD in this case, nor were they taken into account when the Tribunal made its decision. However, the Tribunal considers it important to mention them as it demonstrates that these Respondents have displayed a pattern of

behaviour which involves failing to pay their rent (to three Landlords in a relatively short time frame) and seeking adjournments of hearings in the Tribunal at short notice for inadequate reasons. The Tribunal considers that such behaviour is unacceptable.

Decision

The Tribunal makes an order for eviction of the Respondent, Mr Graham Dolan and Miss Kaitlyn Smith, from the Property at 57/3 Mayfield Road, Edinburgh, EH9 3AA.

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**

**24 September 2026
Date**