

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

Chamber Ref: FTS/HPC/EV/26/1717

Re: Property at 46 Norman Rise, Livingston, EH54 6LY (“the Property”)

Parties:

Mr Colin McKean, Mrs Valerie McKean, 26 Hoghill Court, East Calder, EH53 0QA (“the Applicants”)

Mr Mike Bennell, Mrs Catriona Bennell, 46 Norman Rise, Livingston, EH54 6LY (“the Respondents”)

Tribunal Members:

Andrew Cowan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

Background

1. This is an application for an eviction order in regard to a Private Residential Tenancy (“PRT”) made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended) (“the Rules”). The PRT is between the Parties and relates to the Property. The tenancy commenced 9th August 2022.
2. The application relies upon a Notice to Leave dated 17th March 2026, issued in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email on 17th March 2026, all in accordance with the provisions of the PRT. The Notice relied upon Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in that “the tenant has been in rent arrears for three or more consecutive months”. The Notice to Leave intimated that an application to the Tribunal would not be made before 17th April 2026.

3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon West Lothian Council by email on 17th April 2026.
4. The Respondents lodged written submissions with the Tribunal by email dated 5th September 2026.

Case Management Discussion

5. A Case Management Discussion ("CMD") took place by teleconference on 12th October 2026. Both the Applicants and both the Respondents joined the CMD conference call. At the CMD the Tribunal asked questions of all parties and ascertained that there was no material dispute as to any factual matter before the Tribunal in relation to the application. Parties were given an opportunity to provide any relevant information (beyond what was contained in the written material supplied to the Tribunal). The purpose of the CMD was explained to all parties and in particular the Tribunal explained that it could reach a decision at the CMD if there was no disputed facts which required to be determined at a hearing of evidence. All parties confirmed that they were content for the Tribunal to reach a decision at the CMD.
6. At the CMD the Tribunal was able to consider:
 - a. The terms of the tenancy agreement between the parties. The tenancy agreement is a Private Residential Tenancy Agreement in relation to the Property. The tenancy between the parties had commenced on 9th August 2022. The monthly rent due in terms of the tenancy agreement between the parties was initially £750 per month and had been increased to £825 per month on 10th April 2025.
 - b. A statement of rent and arrears had been lodged with the application. That statement showed total rent arrears due by the Respondents as of 10th March 2026 (being the date of service of the Notice to Leave upon the Respondents) in the sum of £4569.50.

Findings in Fact and Law

7. The Applicants are the owners of the Property.
8. The Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 9th August 2022 ("the Tenancy"). The rent charged under the tenancy agreement was initially £750 per month and had been increased to £825 per month on 10th April 2025.

9. The Applicant has issued a Notice to Leave dated 17th March 2026 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The notice was served upon the Respondent by email on 17th March 2026.
10. The Applicant has raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 12 of Schedule 3 of Part 1 of the 2016 Act, in terms of an Application to the Tribunal dated 17th April 2026.
11. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served on West Lothian Council on 17th April 2026.
12. The Respondents have been in consistent arrears of rent due, in terms of the tenancy between the parties, from June 2024. Since that date the Respondents' arrears of rent have continued to accrue. The Respondents' last payment towards the rent and arrears of rent due to the Applicants was made in April 2026. The Respondents have made no further payments towards the rent due, or the arrears of rent accrued since that date. The amount of rent arrears due by the Respondents to the Applicant as at the date of the CMD is £9519.50.
13. The Respondents live together in the Property. They have no dependants.
14. The Applicant has provided information and support to the Respondents in compliance with the Rent Arrears Pre-Action Requirements Regulations.
15. It is reasonable to issue an eviction order.

Reasons for Decision

16. The Tribunal were satisfied that the Notice to Leave had been competently drafted and served upon the Respondent.
17. The Tribunal were satisfied that it had had sufficient information upon which to make a decision at the CMD, having considered the written and oral representations made by the parties. The Rules allow, at rule 17(4), for a decision to be made at a CMD as at a hearing before a full panel of the Tribunal. There was no material disagreement between the parties on the evidence before the Tribunal. All parties agreed that there were no material facts in dispute and that it was appropriate for the Tribunal to reach a decision in relation to the application at the CMD.
18. Ground 12 of Schedule 3 to the 2016 Act (as amended and applying to this application) states that:

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

19. The Tribunal were satisfied, on the uncontested evidence provided, that the Respondent has been in arrears of rent for three or more months. The Respondents accepted that they are in arrears of rent and that they have accrued arrears of £9519.50 as at the date of this hearing. On that basis the Tribunal determined that paragraph 3(1)(a) of Ground 12 was satisfied.

20. The Tribunal then considered whether it was reasonable to issue an eviction order under paragraph 3(b) of Ground 12.

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

22. In this case the Tribunal finds that it is reasonable to grant the order.

23. At the CMD the Applicants referred to the terms of their written application together with statements of rent arrears which had been lodged with the Tribunal. They confirmed that the Respondents had consistently been in arrears of rent from June 2024. The last payment which the Respondents had made towards their rent and arrears was made in April 2026. It was further confirmed that the Respondents had accrued arrears of rent in the sum of £9519.50 as at the date of the CMD. The Applicants have written to the Respondents on several occasions, reminding them of their obligation to pay rent and to request payment of rent arrears which had accrued. In September 2025 the Respondents, at their suggestion, had agreed to start paying the rent arrears at the rate of £50 per week, in addition to the ongoing monthly rent due. The Respondents formalised this arrangement in a written agreement with the Applicants. By October 2025 the Respondents had failed to keep to that commitment to pay the arrears by way of instalments. The Respondents have been provided with information and advice in compliance with the pre-action protocol prescribed by the Scottish Ministers. The Applicant wishes to recover possession of the property because of the level of rent arrears which have been accrued by the Respondent. The Applicants submitted that they do not consider it is reasonable for the Respondents to continue to live in the Property given the level of rent arrears incurred and whilst rent arrears continue to accrue. The Applicants consider that they have acted reasonably at all times in their discussions with the Respondents and that they have offered them opportunities to repay the arrears of rent whilst also providing them with details of organisations who can provide them with

advice and support. In all the circumstances the Applicants consider that it would be reasonable to grant an order for eviction.

24. The Respondents confirmed to the Tribunal that they agreed that they had accrued rent arrears of £9519.50 by the date of the CMD. In their written submissions to the Tribunal the Respondents highlighted that the first named Respondent has been diagnosed with PTSD for 16 years and that his mental health had been in decline since October 2022. The first named Respondent has struggled to maintain employment because of his mental illness and the Respondents have struggled to maintain monthly rent payments as a consequence. The Respondents have contacted several organisations, including veterans' charities, for help and financial support. Such support has not been forthcoming. The first Respondent has recently gained employment, and both Respondents are hopeful that they can now start to make regular payments of rent together with an additional payment of £250 per month towards the arrears of rent which had accrued. They intend to start making payments towards those arrears as soon as possible. The Respondents have approached the local authority to seek alternative accommodation but have been advised that the local authority would not consider them for rehousing until such time as the Tribunal had granted an order which terminated the tenancy of the Property. The Respondents were very frank and honest in their submissions to the tribunal. They recognised the difficult position in which they had placed the Applicants. The first Respondent recognised that the Applicants "deserved tenants who paid their rent". The Respondents were hopeful that the Tribunal could be persuaded not to grant an order of eviction to allow them to demonstrate that they could now make regular payments of rent and additional payments towards the arrears of rent which had accrued.
25. Having considered the written submissions made by both the Respondents and the Applicants, together with the further oral submissions made by parties at the CMD, the Tribunal consider that it is reasonable to grant the eviction order.
26. In reaching a decision on whether it was reasonable to grant the order sought the Tribunal consider that the balance of reasonableness is weighted towards the Applicants. The Respondents concede that they are due arrears of rent in the sum of £9519.50. The Tribunal considers that this is a significant amount and that there is little prospect of the Applicants recovering that level of arrears from the Respondent. The Applicants have acted in a reasonable manner throughout the period that the arrears of rent due by the Respondents have accrued. The Applicants have previously agreed to accept regular instalments from the Respondents towards the arrears which have accrued, but the Respondents have been unable to maintain such an arrangement. The Tribunal have considerable sympathy for the Respondents' circumstances. However, considering of all of the facts of the case, the Tribunal consider that the history of rent arrears, along with the current level of arrears, are a significant factor which outweighs the effect of the eviction order against the Respondents. Taking these factors into account, alongside the efforts of the Applicants to support the Respondents in dealing with the

rent arrears, the Tribunal is satisfied that it is reasonable to grant an order for eviction.

27. As there were no material disputes on the facts, the Tribunal exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

28. In all the circumstances, the Tribunal grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

29. The decision of the Tribunal is unanimous.

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.

Andrew Cowan

Legal Member/Chair

12th October 2026

Date