

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/20/1664**

**Re: Property at 2C Lime Street, Greenock, PA15 4HR (“the Property”)**

**Parties:**

**Mr Duncan Learie, 4 Kingston Crescent, Port Glasgow, PA14 5DQ (“the Applicant”),**

**Patten & Prentice LLP, 2 Ardgowan Square, Greenock, PA16 8PP (“the Applicant’s Representative”) and**

**Mr Robert Temporal, 2C Lime Street, Greenock, PA15 4HR (“the Respondent”)**

**Tribunal Member:**

**G McWilliams- Legal Member**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:**

### **Background**

1. This Application, contained in papers lodged with the Tribunal on 6<sup>th</sup> August 2020, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant’s Representative had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave served on the Respondent and the Section 11

(Homelessness Etc. (Scotland) Act 2003) Notice intimated to Inverclyde Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 17th September 2020, and the Certificate of Intimation was produced.

### **Case Management Discussion**

4. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 10am on 15th October 2020. The Applicant's Representative's Mr K Caldwell attended. The Respondent did not attend and was not represented. Mr Caldwell stated that in March 2020 the Applicant had been told by the Respondent's brother, Mr John Temporal, that the Respondent had stopped occupying the Property as his home on 19<sup>th</sup> March 2020. Mr Caldwell stated that the Respondent had not paid any rent since January 2020. He further stated that the Respondent's brother, Mr John Temporal, was residing in the Property and that the Applicant had received complaints regarding behaviour from neighbours. Mr Caldwell submitted that the Respondent was no longer occupying the let Property as his home and had been effectively served with all papers in respect of the Application for an eviction order through Sheriff Officers. Mr Caldwell further submitted that as the Respondent had not lodged any representations with the Tribunal, nor attended at the CMD, the eviction order should be granted.

### **Statement of Reasons**

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (10) (1) of the 2016 Act provides that it is an eviction ground that the tenant is not occupying the let property as the tenant's home.
7. The Respondent had not lodged representations with the Tribunal or attended the CMD to provide any evidence, and/or make any submission, opposing the order sought. Having considered the Application, the PRT and the submission of the Representative's Mr Caldwell, the Tribunal was satisfied that the Respondent is not occupying the Property as his home. The Tribunal noted that Sheriff Officers had effected service of all papers in respect of the Application at the Property and, relying on the submission of Mr Caldwell, found that the Respondent had been given sufficient notice of these proceedings. The Property remains the Respondent's designated address and it was reasonable to infer that the Respondent's brother would have been in a position to pass the papers to him in the event that he had not collected them personally. In all the

circumstances the Tribunal determined that it was reasonable that an eviction order be granted.

### **Decision**

8. The Tribunal therefore made an eviction order as sought in this Application.

### **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.**

Gerald McWilliams  
**Legal Member**

15th October 2020

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**Date**