



**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/22/2498**

**Property : Flat 10, 7 Hawkhill Close, Edinburgh EH7 6FE (“Property”)**

**Parties:**

**Vicente Ramon Fernandez Roman, 5/2 Morningside Drive, Edinburgh EH10 5LZ (“Applicant”)**

**Emma Louise Patricia Mitchell, 5/2 Morningside Drive, Edinburgh EH10 5LZ (“Applicant’s Representative”)**

**Gregor Thomson Peat, Flat 10, 7 Hawkhill Close, Edinburgh EH7 6FE (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for possession of the Property should be made.**

**Background**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Tenancy Agreement which commenced on 1 May 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 10 June 2022 ("Notice to Leave") email to the Respondent dated 10 June 2022 attaching the Notice to Leave; copy emails from the Applicant’s Representative to the Respondent regarding rent arrears; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 20 July 2022 and sheriff officer's execution of service certifying service of the Application on 18 January 2023.

## **Case Management Discussion**

A case management discussion took place before the Tribunal on 1 March 2023 by teleconference. The Applicant and the Applicant's Representative were in attendance. There was no appearance by the Respondent. Ms Mitchell told the Tribunal that as far as she was aware the Respondent continued to reside in the Property. She said that as far as she was aware the Respondent was employed in the construction industry although he may have suffered ill health. She said she had signposted the Respondent to get support such as housing benefit and had supported the Respondent's application to the tenant hardship fund. She said that the last payment received was £1200 from the hardship fund on 22 April 2022. She said that no rent had been paid since then and the arrears were currently £8450. Ms Mitchell said that she and the Applicant did not own other property aside from their family home. She said they have two young children. Ms Mitchell said they had not had access to the Property for over a year. They would decide whether to re-let the Property if they obtained possession. She said that the level of arrears plus paying expenses such as factor's fees meant that she and the Applicant had suffered financial hardship. She said she did not know if the Respondent had taken any steps regarding alternative accommodation although she had highlighted to him the obligation of the local authority as regards rehousing.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement which commenced on 1 May 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by email on 10 June 2022.
3. The Notice to Leave stated that an application for an eviction order would not be submitted to the Tribunal before 11 July 2022.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 20 July 2022.
5. Notice of the date of the case management discussion had been given to the Respondent on 18 January 2023.
6. The Respondent had failed to pay the rent in full for the period 1 January 2022 to 1 June 2022.
7. At the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months

## **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that he sought recovery of possession of the Property on the basis set out in Ground 12 which states :

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

The Tribunal considered the statement of rent arrears included in the Notice to Leave and determined that the ground for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

## **Decision**

The Tribunal grants an order for possession of the Property.

## **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.**

**Joan Devine  
Legal Member**

**Date : 1 March 2023**

J. Devine