



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016**

Case Reference Number: FTS/HPC/EV/19/2012

**Re : Property at 91 Honeywell Crescent, Chapelhall, North Lanarkshire ML6 8XW (“the Property”)**

**The Parties:-**

**Barry Hart, 15 Burn Crescent, Chapelhall, North Lanarkshire ML6 8TS (“the Applicant”)**

represented by Michael Ritchie, Anderson Strathern, Solicitors, 5<sup>th</sup> Floor, Atlantic Chambers, 45 Hope Street, Glasgow G2 6AE

**Ms Karen Owens, residing or formerly residing at 91 Honeywell Crescent, Chapelhall, North Lanarkshire ML6 8XW (“the Respondent”)**

**The Tribunal comprised:-**

**David Bartos (Legal Member)**

**DECISIONS**

**The private residential tenancy of the Respondent over the Property shall end on 31 October 2019.**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants an order to the Applicant for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 under ground 12 of schedule 3 to that Act, and that upon the end of the tenancy of the Respondent.**

**BACKGROUND**

- 1. The Applicant seeks recovery of possession of the Property and removal of the Respondent from it. He seeks recovery of possession**

under section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 on the basis of non-payment of rent.

2. A second case management discussion (“CMD”) took place on 14 October 2019 at 10.00 hrs at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Applicant’s representative Michael Ritchie of Anderson Strathern, solicitors appeared. There was no appearance by or on behalf of the Respondent. The Tribunal noted that Notice of the CMD at to-day’s date had been given to the Respondent in a letter from the Tribunal dated 18 September 2019 which had been served on her by recorded delivery post on 20 September 2019 as per the Royal Mail Track and Trace certificate of delivery. The Tribunal proceeded with the CMD. It took the view that in all the circumstances it was not unfair to the Respondent to proceed with the CMD and that it would be unfair to the Applicant for there to be delay. No written representations had been received by the Tribunal from the Respondent.
3. The hearing followed on from the CMD on 28 August 2019. The Notes of the CMD were sent to the Applicant’s representative and to the Respondent by letters from the Tribunal’s Casework Officer dated 13 September 2019. That to the Respondent was sent by recorded delivery and was signed for by the Respondent.
4. These Notes of the CMD on 28 August 2019 are referred to for their terms. The Notes from the CMD set out the procedural background prior to the CMD. They also identified a number of disputed issues.

### *The Evidence*

5. On 23 September 2019 the Applicant’s representative lodged with the Tribunal :-
  - Copy death certificate for Margaret Melville extracted on 13 September 2019 recording her death on 21 January 2014
  - Copy letter from Yvonne Graham, Home Manager of Forthbank Care Home, Drip Road, Stirling dated 17 September 2019 confirming that Margaret Melville of 91 Honeywell Crescent, Chapelhall, Lanarkshire was a resident at the home until she passed away on 21 January 2014
6. The Tribunal had no reason to doubt the veracity of the certificate or the letter from the care home.
7. The evidence before the Tribunal consisted of:-
  - Copy title for the Property numbered LAN14194

- Copy rental agreement of the Property between the Applicant and the Respondent dated 5 March 2018
- Copy rental statement covering the period from 1 March 2018 to 1 June 2019
- Copy AT5 form
- Copy notice to leave from Applicant to Respondent dated 22 May 2019 with sheriff officer's certificate dated 22 May 2019
- Copy section 11 notice with sheriff officer's certificate dated 21 June 2019

***Findings of Fact***

8. Having considered all the evidence, the Tribunal found the following facts to be established:-

(a) On 5 March 2018 the Applicant purported to enter into a private residential tenancy of the Property as landlord with the Respondent as tenant ("the Agreement"). At the time the Applicant was the owner of the Property;

(b) The Applicant had acquired ownership under burden of the interest of a liferentrix in the property, Margaret Melville. Margaret Melville was not in occupation of the Property at the time of the Agreement. She had died on 21 January 2014;

(c) The date of entry under the tenancy was 1 March 2018;

(c) The Agreement provided for the payment by the Respondent to the Applicant of "rent" of £600 per month payable in advance on the 1st day of each month. It also provided for payment by the Respondent of a deposit of £600. The Agreement has not been terminated. The Respondent remains in occupation of the Property.

(d) The Respondent has paid none or only part of the sums due in May 2018 to June 2019 under the Agreement;

(e) The total amount of sums due and unpaid up to the period ending 1 June 2019 under the Agreement is £8,100 in terms of the Applicant's statement of rent;

(f) On 22 May 2019 the Respondent received a notice to leave the Property from the Applicant. It informed her that there were arrears over three consecutive months and that they totalled £8,400 [*sic*];

(g) The Respondent has not made any payment to the Applicant since 22 May 2018. The non-payment has not been caused by any delay or failure in the payment of any relevant social security benefit;

(h) The Respondent continues to reside at the Property;

(i) On 21 June 2019 the Applicant, through sheriff officers instructed by him notified North Lanarkshire Council under section 11 of the Homelessness (Scotland) Act 2003 of his intention to make this application;

(j) The application to the Tribunal was made on 28 June 2019.

### *Reasons for Decision*

9. The Tribunal required to decide :

(A) whether the Applicant had title to seek an eviction order against the Respondent;

(B) whether the Applicant had interest to seek an eviction order against the Respondent;

(C) whether the notice to leave lodged with the Tribunal was valid;

(D) whether ground 12 of schedule 3 to the 2016 Act (three consecutive months of rent arrears) had been satisfied.

### *The Applicant's title and interest.*

10. Issues (A) and (B) fell to be considered together. The Tribunal was satisfied that the death certificate of Margaret Melville applied to the liferetrix of the Property as set out in the Applicant's title. Mrs Melville's interest having been brought to an end on her death, it followed that the Applicant as owner of the Property was the person with the sole interest as landlord in any tenancy and particularly one granted after her death.

11. As the Applicant had an interest in seeking eviction his apparent title to seek eviction originating from his grant of the tenancy could not be in doubt. In short he had both title and interest to present the application.

12. The Tribunal noted that it would be in the interests of all if the Applicant could proceed to rectify the Land Register to have Mrs Melville's interest removed from the register so that any person looking at it in the future would not think, as the Tribunal did, that a liferent still existed.

### *Notice to Leave*

13. The Tribunal was satisfied that the notice to leave given by the Applicant was valid, having been received by the Respondent on 22 May 2019 and giving notice that an application to the Tribunal would not be submitted before 20 June 2019 in respect of over three consecutive months of arrears of rent. While the notice stated that the arrears were £8,400 when in fact they were £8,100, as Mr Ritchie submitted, that did not affect the

fact that £8,100 was still well in excess of three consecutive months of arrears.

### ***Grounds of Possession***

**14. The Applicant relied on ground 12 of schedule 3 to the 2016 Act. Ground 12 provides that it is a mandatory ground for eviction where :**

“(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as 1 month's rent under the tenancy on that day, and

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of 3 or more consecutive months, and

(b) the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit”

**15. The tenancy provided that rent of £600 per month was due on the 1<sup>st</sup> day of each month, in advance. There was no dispute that the Respondent had paid none or only part of the sums due from May 2018 to June 2019 inclusive under the Agreement. That amounted to 13 consecutive months. There had been no payment since the application had been made.**

**16. Mr Ritchie submitted that there was no evidence of any application for a relevant benefit having been made. As far as the Applicant was aware no payments had been made in the form of benefits and this was supported by the regular monthly payments that had initially been made.**

**17. In those circumstances the Tribunal found ground 12 satisfied.**

### ***Date of Termination (ish) of Tenancy***

**18. In the circumstances the Tribunal was obliged to grant the eviction order sought. Section 51(3) provides that when granting an eviction order the Tribunal must specify the date upon which the eviction order brings the tenancy to an end. The Act does not give guidance as to how the date should be selected. However it will clearly not pre-date the eviction order.**

**19. In the circumstances, given that the Respondent was under a duty on 1 October to pay the monthly rent in advance, the Applicant was under a duty to allow the Respondent to remain for that month despite her arrears. Accordingly the Tribunal fixed 31 October 2019 as the date of termination of the Tenancy. This gave time for the Respondent to remove from the Property in response to the eviction order.**

## *Outcome and Decisions*

20. The Tribunal found that it was able to make sufficient findings in fact and that to do so was not contrary to the interests of the parties. It was therefore able to decide the case at the CMD without a hearing. It could see no benefit to be gained from a further hearing which would cause delay.
21. No doubt was cast on the documentary evidence or other information put before the Tribunal at the CMDs. On that basis the Tribunal made the findings in fact set out above.
22. The Tribunal found that section 51 of the 2016 Act had been complied with and that the Applicant was entitled to an order evicting the Respondent of the Property. The Tribunal made the decisions stated above.

### *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 this decision was sent to them.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

**D Bartos**

Legal Member

14 October 2019

Date