

# 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 Sections 51 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/3003**

**Re: Property at Flat 5/5, West Winnelstrae, Edinburgh, EH5 2ES (“the Property”)**

**Parties:**

**Mr Alex Spowart and Ms Ruth Lothian, Flat 82/3, West Ferryfield, Edinburgh, EH5 2PU (“the Applicants”) and**

**ELP Arbuthnott McClanachan Solicitors, 98 Ferry Road, Edinburgh EH6 4PG (“the Applicants’ Solicitors”) and**

**Miss Iona Hamilton, Flat 5/5, West Winnelstrae, Edinburgh, EH5 2ES (“the Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**A Lamont- Ordinary Member**

### **Background**

- 1. The Applicant had applied under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) (Application for an eviction order).**

## **Case Management Discussions**

- 2. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10am on 6<sup>th</sup> December 2022. Reference is made to the Notes on that CMD which were prepared by the Tribunal and issued to the parties.**
- 3. A further CMD proceeded remotely by telephone conference call at 10am on 10<sup>th</sup> January 2023. The Applicants’ Representative’s Mr I Wells attended. The Respondent, Miss Hamilton, did not attend. The Second Respondent in the linked Application, CV/22/3005, the Respondent’s father, Mr D Hamilton, attended.**
- 4. Mr Wells referred to the updated Rent Statement which his colleague, Mr Hamilton, had sent to the Tribunal’s Office on 20<sup>th</sup> December 2022. He submitted that no rental payments had been made since the CMD on 6<sup>th</sup> December 2022 and that the outstanding rent arrears amount now due to the Applicants is £8340.00. Mr Wells stated that the keys for the Property had not been returned and the Applicants had not been able to recover possession. He said that the Applicants had received a letter from an occupier of a property, which is situated near to the Property, during the recent Christmas period. That neighbour reported a concern that there were still persons residing within the Property. Mr Wells sought the grant of the Eviction Order as well as an Order for Payment of the outstanding rent arrears amount. Mr Wells said that the Applicants remain willing to discuss the possibility of reaching an agreement, for repayment of the rent arrears, with the Respondent.**
- 5. Mr Hamilton said that he had previously been told by his daughter, the Respondent, that she had moved out of the Property. He stated that he understood that his son, Kieran Hamilton, stopped occupying the Property on 6<sup>th</sup> January 2023. At the CMD on 6<sup>th</sup> December 2022 Mr Hamilton had stated that his son had left the Property. He re-iterated that he had told his daughter, and son, to return the Property keys to the Applicants’ Representative’s office. He acknowledged that he was guarantor for rental arrears and stated that he could not contradict the amount of arrears stated by Mr Wells. Mr Hamilton also re-iterated that he thought that his daughter was resolving the issue of payment of rent arrears through a debt advice company. He stated that he had been trying to contact his daughter over the last few days to ascertain her up to date position regarding this Application and the said linked Application, but that she had not yet responded to him.**

## **Statement of Reasons for Decision**

- 6. 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.**

7. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
8. The Tribunal considered all of the Application papers, including the parties' Private Residential Tenancy Agreement ("PRT"), the Notice to Leave, and updated Rent Statement lodged by the Applicants' Representative, as well as the statements and submissions of the Applicants' Representative and Mr D Hamilton.
9. The Applicants, through their Representative, had complied with the pre-action requirements for these proceedings.
10. The total rent arrears owing, at the date of the CMD on 10<sup>th</sup> January 2023, were in the sum of £8340.00, which sum represented arrears of rent of more than three consecutive months. Neither the Respondent nor Mr Hamilton had made any submissions or representations to contradict the Applicants' evidence regarding the issue of the rent arrears, compliance with the pre-action requirements and the reasonableness or otherwise of a grant of an eviction order.
11. Having considered all of the available evidence and submissions, the Tribunal found in fact that the Respondent had been in rent arrears for three or more consecutive months at the date of the Application, and was now in arrears in the sum of £8340.00. Accordingly, the Tribunal found in law that the ground in Schedule 3 (12) (1) of the 2016 Act was met. The Tribunal also found that it was reasonable that an eviction order be granted, in particular given the considerable sum of rent arrears owing, the impact of this on the Applicants' finances and as Mr Hamilton had told the Tribunal, at the CMD on 6<sup>th</sup> December 2022, that the Respondent was residing in alternative accommodation.
12. The Tribunal also stated to Mr Wells and Mr Hamilton that it was unfortunate that matters had not been resolved since the CMD on 6<sup>th</sup> December 2022 and that now, on balance, the Tribunal considered that it was fair and just to afford the Applicants the protection of the grant of the Order sought. The Tribunal expressed their hope that the keys to the Property will be returned to the Applicants' Representative's office as soon as possible so that the Order does not require to be enforced. Mr Hamilton said that he understood the Tribunal's reasoning for granting the Order.

### **Decision**

13. The Tribunal therefore granted 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.**

**G McWilliams  
Legal Member**

**10<sup>th</sup> January 2023**