



**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/20/1035**

**Re: Property at 10 Park Road, Cowdenbeath, KY4 9LG (“the Property”)**

**Parties:**

**Mrs Helen Buchanan, Elgin Cottage, Dunfermline, KY12 7LH (“the Applicant”)**

**Miss Cheryl Marshall, 10 Park Road, Cowdenbeath, KY4 9LG (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted entitling the Applicant to repossess the Property**

**Introduction**

This is an application under Rule 109 and Section 51 of the Private Residential (Tenancies) (Scotland) Act 2016 in which the applicant seeks an eviction order.

A Case Management Discussion (CMD) took place by teleconference at 2.00 pm on 12 August 2020.

The applicant was represented by Mr Ralph McCran of Messrs Malcolm Jack and Matheson, solicitors. The respondent did not participate. Service of the application and notification of the CMD was made upon the respondent by Sheriff Officer delivery on 14 July 2020. The Tribunal was satisfied that the respondent had received notice of the application and was aware of the CMD. She had not lodged any written representation. She did not participate in the CMD. There was no barrier to her doing so.

## Findings and Reasons

The property is 10 Park Road, Cowdenbeath, Fife KY4 9LG.

The parties entered into a private residential tenancy which commenced on 10 April 2019. The rent was fixed at the rate of £650 per calendar month.

The written tenancy agreement was not provided at the time of the application. The applicant's agent required to lodge this subsequently together with a rent statement which had also not been provided.

The minute of lease provided suggests that an attempt was made for the parties to enter into a short assured tenancy. This was not legally possible after 30 November 2017. Though neither of the parties were perhaps aware, the contract between them is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016.

On the grounds of rent arrears, the applicant seeks to evict the respondent. A valid notice to leave dated 6 March 2020 was served upon the respondent by the applicant's agent. The basis of the notice was ongoing rent arrears for more than 3 months – ground 12.

The notice to leave is dated 6 March 2020. There is a Sheriff Officer's execution confirming that service of the notice to leave was made upon the respondent on the same day. Accordingly the assumption for the purposes of section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016 is displaced. This provision makes an assumption that the tenant will receive the notice to leave 48 hours after it was sent. The Sheriff Officer delivery puts beyond doubt that the respondent received the notice on 6 March 2020. Twenty-eight days' notice requires to be provided and the date upon which the landlord is able to seek an eviction order is the day after. The notice to leave specifies this date as being 4 April 2020 which is the valid notice period under section 62 of the Act.

The rent statement provided to the Tribunal discloses that no rent has been paid since July 2020. The monthly rental payments which the respondent is under a contractual duty to pay to occupy the property has not been paid for the months of August, September, October, November and December 2019 and from January 2020 onwards.

The applicant is entitled to recover possession of the property. The respondent is in rent arrears of more than one month's rent and rent arrears have existed for a continuous period prior to the hearing for more than 3 months. The ground relied upon is a mandatory one under schedule 3 part 3 ground 12 of the Act.

The Tribunal placed reliance upon the documentary evidence which was found to be credible and reliable, together with the submissions made by the applicant's agent. The Tribunal attached weight to the totality of this evidence.

## **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.**

**R Mill**

**Legal Member/Chair**

**Date 12 August 2020**