



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/21/2905**

**Re: Property at 131 Victoria Road, Ground Floor Right, Torry, Aberdeenshire, AB11 9LY (“the Property”)**

**Parties:**

**Mr Forbes Fleming McLennan, 1 East Craibstone Street, Aberdeen, AB11 6YQ (“the Applicant”)**

**Mr Marek Zurynski, 131 Victoria Road, Ground Floor Right, Torry, Aberdeenshire, AB11 9LY (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made in terms of paragraph 12 of Schedule 3 of the 2016 Act.**

**1. Background**

- 1.1 This is an application under Rule 109 of the Chamber Rules, being an application for an eviction order in respect of a private residential tenancy. The application was accompanied by copies of the tenancy agreement between the parties, the notice to leave sent to the Respondent, letters sent to the Respondent, notice to the local authority in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a rent statement.
- 1.2 The Respondent had not lodged any written representations in advance of the Case Management Discussion.

## **2. The Case Management Discussion**

- 2.1 The Case Management Discussion took place on 28 February 2022 by teleconference. The Applicant was personally present. An observer, Hannah Cruickshank, was also present. The Respondent was neither present nor represented.
- 2.2 The Tribunal noted that intimation of the application and the Case Management Discussion had been given to the Respondent on 20 January 2022 by Sheriff Officers. Accordingly, the Tribunal considered it appropriate to proceed in the Respondent's absence as permitted by Rule 29 of the Chamber Rules.
- 2.3 The Applicant confirmed that the eviction order was sought. Since the application had been made, no further rent had been paid by the Respondent. The rent arrears were now in excess of £8500.00. The Respondent had initially been in receipt of Universal Credit, with rent being paid directly by the Department for Work & Pensions to the Applicant, however, this entitlement appeared to have ended in March 2020 with no further payments since then. In addition to the letters sent to the Respondent, copies of which were accompanying the application, attempts to contact the Respondent by the telephone had been unsuccessful. The Respondent resided at the property alone. The Applicant believed him to be in his 30s and that he had no apparent vulnerabilities. The Applicant thought that the Respondent, a Polish national, had perhaps returned to Poland.

## **3. Reasons For Decision**

- 3.1 In coming to a decision, the Tribunal considered the application and accompanying documents and that which was said by the Applicant at the Case Management Discussion. Given the material before it, the Tribunal considered it could determine the application without the need for a hearing, as permitted by Rule 19 of the Chamber Rules.
- 3.2 The Tribunal noted that a notice to leave dated 17 May 2021 had been given to the Respondent by Sheriff Officer on the same date and had been posted to the Respondent. The said notice specified the appropriate ground relied upon by the Applicant and gave the requisite period of notice before an application to the Tribunal could be made, being six months. The rent statement accompanying the notice to leave demonstrated that the Respondent had been in arrears of rent for a period far in excess of three months as of the date of service of the notice.
- 3.3 As the notice to leave was served after 7 April 2020 and relied upon rent arrears accruing, in part, after 27 May 2020, section 51 and paragraph 12 of schedule 3 of the 2016 Act required the Tribunal to consider it reasonable before issuing an eviction order and, in considering whether it was so reasonable, was to have regard to the measure of the Applicant's compliance with the pre-action requirements set out in The Rent Arrears

Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 (“the 2020 Regulations”) and whether the arrears have at all accrued as a consequence of a delay or failure in payment of a relevant benefit.

3.4 The Tribunal considered that the Applicant had complied with the pre-action requirements. The information prescribed by regulation 4(2) of the 2020 Regulations had been given to the Respondent by letter in February 2021. The Applicant’s representatives had made further efforts to contact the Respondent to discuss the arrears by telephone and email, without success, satisfying regulation 4(3). In the absence of any response, proposal or payment by the Respondent, there was little for the Applicant to consider in terms of Regulation 4(4).

3.5 In the absence of any written or oral representations by the Respondent, there was nothing to suggest to the Tribunal that the arrears had accrued as a result of any issue with a relevant benefit, albeit the Respondent’s entitlement to Universal Credit appeared to have ended. The Tribunal further considered the Respondent’s circumstances, namely, that he was an adult residing alone with no apparent vulnerability. The Tribunal attached particular weight to the level of arrears in this case, with the equivalent of almost three years’ worth of rent outstanding. In all of the circumstances, it was reasonable that the Tribunal granted an eviction order.

## **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.**

**A. H**

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**Legal Member/Chair**

**28 February 2022**  
**Date**