



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 23 of the Rent (Scotland) Act
1984**

Chamber Ref: FTS/HPC/EV/21/2999

**Re: Property at Drum of Carron Farmhouse, Aberlour, Banffshire, AB38 9NT
("the Property")**

Parties:

**Michael Woodcock T/A Carron Bridge Estate, The Estate Office, Inkersall Farm,
Bilsthorpe, Newark, Notts, NG22 8TL ("the Applicant")**

**Ms Emma Fraser, c/o Margaret Fraser, 50 The Cleaves, Cambus Park,
Tullibody, Clackmannanshire, FK10 2XD ("the Respondent")**

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Mary Lyden (Ordinary Member)

Decision in absence of the Respondent

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
FTTI") determined to grant an order for possession of the Property in favour of
the Applicant against the Respondent.**

A Background:

1. An application was received from the landlord on 1 December 2021 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the rules") seeking an eviction order.
2. Following correspondence with the FTT the application was lodged again under rule 79 (recovery of the property under section 23 (prohibition of eviction without due process of law) of the Rent (Scotland) Act 1984 ('the 1984 Act') on 29 December 2021 for an order for possession of the property.
3. Ultimately the following documents were lodged by the Applicant in support of the application:
 - (i) Copy Private Residential Tenancy Agreement between the parties which commenced on 21 August 2018.
 - (ii) Copy notice to terminate the tenancy from the Respondent received by the landlord on 20 October 2021, sent by the Respondent recorded delivery giving notice that she intended to

vacated the property on 20 November 2021.

(iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 with proof of sending by email to Moray Council on 27 January 2022.

(iv) Email from Respondent to Applicant dated 19 November 2021 stating she would now change the date of moving out to 20 December 2021

(v) Email from Respondent's mother to Applicant dated 20 December 2021 stating the Respondent would not move out on 27 December 2021.

The application was accepted as complete on 14 February 2022 by the FTT.

4. A Case Management Discussion (CMD) was scheduled for 22 April 2022 and parties were notified of the date and time and joining instructions. The documentation was served on the Respondent by Sheriff Officers on 7 March 2022. On 1 April 2022 the Respondent contacted the FTT by email intimating a new address and email address and stating that "As per our earlier telephone conversation please find below my contact address, but I would rather be contacted using this email (miskatonic_foxy@yahoo.co.uk) or my phone number 07845150593. I would be grateful if you could forward me all the relevant information regarding the above case that I did not previously receive due to moving out of my previous address. I am still able to get my mail via Royal Mail redirection, but obviously could not get anything put through the letterbox ie. Sheriff Officer delivery. " The FTT re-sent the documentation to the Respondent by email on the same day. The FTT was thus satisfied that the Respondent had received due notice of the application and CMD in terms of rules 17 (2) and 24 (2) of the procedure rules.

5. No further documentation was received by either party until 20 April 2022 when the Applicant sent an email attaching an email from the Respondent dated 4 January 2022 in which she states the moving out date will now be 20 January 2022 and a further email from the Respondent dated 20 January 2022 when she informed the Respondent she would not be moving out on 20 January 2022 and would await the decision from the tribunal.

6. On 22 April 2022 the Respondent sent an email to the FTT stating she would not be participating in the hearing due to disabilities and illness and made detailed representations regarding the related payment application calling on the same day under reference number CV/21/22681. She made no further representations regarding the application to recover possession. With the email the Respondent lodged emails from the Applicant to the Respondent dated 29 November 2021 and 10 February 2022 stating that the tenancy had come to an end on 20 November 2021 and an email of Respondent to the Applicant dated 2 December 2021 stating that she would not allow access to the property unless authorised by the FTT and that it would be a matter for the FTT to determine whether the property was occupied without legal authority. Various other documents regarding the water supply to the property and photographs were also lodged.

B The Case Management Discussion

Only the Applicant attended the CMD. The Respondent had provided an email stating " Please accept my apologies for my late submission of evidence and information. Due to my disabilities and illness, I have been physically unable to attempt to collate or send these any earlier. I understand the case meeting is at 10am today, but there is no way I will be physically or mentally fit to join. My doctor has said she is willing to write support of this if anyone needs it regarding my late submission or inability to attend the meeting." She had not requested a postponement. The email contained detailed representations regarding the related payment application but did not contain any opposition to the eviction application and made no representations regarding this. The FTT took into account the email of the Respondent dated 1 April 2022 and her email and the accompanying emails of 29 November 2021, 10 February 2022 and 2

December 2021 lodged by the Respondent were considered as additional valid evidence for the application as the documents sent by the Applicant on 20 April 2022 may not have reached the Respondent prior to the CMD whereas the documents lodged by the Respondent had been confirmed to have been received by the Applicant at the CMD. The FTT concluded that in light of that information the application could proceed.

The Applicant confirmed that the content of the emails of 29 November 2021 and 10 February 2022 sent by the Respondent was indeed still his position. He stated the Private Residential Tenancy (PRT) entered into by the parties over the property on 21 August 2018 had been formally and validly terminated on 20 November 2021 by the Respondent in her notice received on 20 October 2021, which had been sent by recorded delivery and which confirmed that the tenant would vacate the property on 20 November 2021. Although the property appeared from the outside to be empty, lots of rubbish was left outside the property, the keys had not been returned and no formal communication from the tenant had been received to confirm whether and if so, when, she had moved out. He asked the FTT to make a decision in the case as the Respondent had not formally informed him she had left although she had now stated this to the FTT. A formal eviction order or declarator that it would be legal for him to enter the property was now urgently required as the tenancy had ended in November 2021 and he still had no legal document to show that he could take back the tenancy.

C Findings in Fact:

1. The parties had entered into a PRT over the property commencing 21 August 2018.
2. The tenant had sent recorded delivery a notice to terminate the tenancy with an end date of 20 November 2021, which had been received by the Applicant on 20 October 2021.
3. The tenant had then by emails dated 19 November 2021, 20 December 2021, 4 January 2022 and 20 January 2022 sought to postpone the end date of the tenancy.
4. The landlord did not agree to a later end date and confirmed termination of the tenancy on 20 November 2021 as per the initial notice from the tenant in email of 19 November 2021.
5. The Private Residential Tenancy came to an end on 20 November 2021.
5. The tenant continued to reside at the property after 20 November 2021.
6. The tenant stated to the FTT that she had moved out of the property in an email dated 1 April 2022 without giving a specific date for her move.
7. The Respondent had not advised the Applicant that she had moved out.
8. Rental payments received after 20 November 2021 had been explicitly not accepted as rental payments by the Applicant.

D Reasons for Decision:

1. The Tribunal considered that the material facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

- (a) in any place where a hearing may be held;
- (b) by videoconference; or
- (c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

- (a) identifying the issues to be resolved;
- (b) identifying what facts are agreed between the parties;
- (c) raising with parties any issues it requires to be addressed;
- (d) discussing what witnesses, documents and other evidence will be required;
- (e) discussing whether or not a hearing is required; and
- (f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

2. However, in terms of Rule 18 of the Rules of Procedure:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

3. S 48 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) states: Tenant's ability to bring tenancy to an end

(1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.

(3) But a tenancy does not come to an end in accordance with subsection (1) if—

(a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and

(b) the landlord agrees to the request.

(4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

4. The documents lodged are referred to for their terms and held to be incorporated herein.

5. The Tribunal did not consider that there was any need for a hearing as there had been no representations from the Respondent opposing the application although information from the Respondent had been sent as late as 22 April 2022 with regard to the related civil claim. The FTT considered that the documentation lodged by the Applicant with the application and the documents lodged by the Respondent on 22 April 2022 as stated above showed clearly that the relevant facts of the case were not disputed and that the FTT was able to make the relevant findings in fact in this case based on the undisputed evidence. The FTT considered that since the Respondent had informed the FTT on 1 April 2022 that she had moved out of the property, making a decision in the application for

possession of the property was not contrary to the interests of the parties. The Respondent had moved out thus would not be inconvenienced by such an order and the Applicant would formally be able to document his position with regard to the property.

6. The tribunal noted that, in terms of section 49 of the 2016 Act, a notice to leave fulfils the requirements of section 48(1) of the 2016 Act, if it is: (a) given (i) freely and without coercion of any kind (ii) after the tenant begins occupying the let property (b) in writing, and (c) state as the day on which the tenancy is to end a day that is after the last day of the minimum notice period. In terms of section 49 (1)(c), "the minimum notice period" means a period which— (a)begins on the day the notice is received by the landlord, and (b)ends on the day falling— 5 (i)such number of days after it begins as the landlord and tenant have validly agreed between them, or (ii)if there is no such valid agreement, 28 days after it begins. Clause 23 of the PRT states that at least 28 days notice have to be given in writing and "the tenancy will come to an end on the date specified in the notice or, where appropriate, the earlier date agreed between the Tenant and Landlord". In this case the notice specified as the end date 20 November 2021. The notice was, as required, given in writing and sent recorded delivery as per the PRT Clause 3 requirements and the end date specified was more than 28 days after the notice was received by the landlord.

7. The FTT considered whether the subsequent emails by the tenant and her mother on 19 November and 20 December 2021 might have changed the position in terms of S 48 (3) of the 2016 Act. This states: *But a tenancy does not come to an end in accordance with subsection (1) if—*

(a)before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and

(b)the landlord agrees to the request.

The FTT is satisfied that the statements by the Respondent that she would be moving out at a later date did not meet the requirement of a formal request to continue the tenancy after the end date stated in the original notice as it was not sent in the format agreed for formal correspondence stated in the PRT at clause 3, which requires that all communications must be made in writing using hard copy by personal deliver or recorded delivery. Furthermore it was clear in the landlord's email of 19 November 2021 that there was no agreement to continue the tenancy past 20 November 2021.

8. The FTT, having had sight of the notice of the Respondent terminating the tenancy was satisfied that the notice met the requirements of section 48(1). In terms of section 48 (2), the effect of the notice to leave was to end the tenancy on the stated date 20 November 2021. The FTT having seen the further email correspondence between the parties as stated above was also satisfied that there had been no formal agreement by the Applicant for the Respondent to continue to reside in the property after that date. This was clear by the Applicant initially lodging the application with the FTT on 1 December 2021 and in the Applicant's emails to the Respondent lodged by the Respondent in evidence

when he stated that the end date of the tenancy was 20 November 2021 and the Respondent was thereafter unlawfully occupying the property.

9. The FTT is satisfied that the PRT ended on 20 November 2021 in terms of S 48 (2) of the 2016 Act. Continued occupancy and payment of what the Respondent stated were rent payments after that date did not create a new tenancy and did not extend the contractual relationship between the parties. The emails of the Applicant to the Respondent of 19 November 2021 and 10 February 2022 clearly confirmed that the contractual relationship would not continue and explicitly stated that the payments received from the Respondent for what she had stated was rent for the period following the date of 20 November 2021 would not be accepted as rent. Given the wording of S 48 of the 2016 Act the Respondent was not able to unilaterally revoke the notice she had given to the Applicant and insist on a continuation of the tenancy.

9. The FTT therefore accepted that it was appropriate that the application be brought under rule 79. An application under that rule is appropriate where an owner makes an application under section 23 (prohibition of eviction without due process of law) of the 1984 Act. The tribunal has jurisdiction in such an application in terms of section 71 of the 2016 Act, which confers on the tribunal whatever competence and jurisdiction a sheriff would have in relation to civil proceedings arising from a PRT.

10. The FTT determined that, as the tenancy had terminated on 20 November 2021, the Respondent no longer had any right or title to occupy the property. The Respondent, as shown in her and her mother's emails to the Applicant, continued to reside in the property after 20 November 2021. It is not clear when the Respondent moved out and whether she still has keys to the property. The landlord and Applicant in this case requires a formal conclusion to the occupancy of the property by the Respondent. The Respondent had made it clear in her email of 2 December 2021 that it would be for the FTT to determine whether she occupied the property "without legal authority" and if the Applicant wishes to evict her he would have to do so via the FTT process. This is what he is now seeking to do and what the application is about. On 1 April 2022 the Respondent wrote to the FTT and stated she had moved out but this had not given a date when this was the case. The landlord must be entitled to a formal order of possession of the Property to ensure that he can legally access and take back the property after the PRT had ended. The order does not present a detriment to the Respondent, who stated to the FTT that she had moved out already and who, because the tenancy had terminated on 20 November 2021, had been occupying the property without a right and title to do so.

11. The tribunal therefore determines that the Applicant is entitled to an order for possession of the property under section 23 of the 1984 Act. The decision was unanimous.

E 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.



**Petra Hennig McFtridge
Legal Member/Chair**

**22 April 2022
Date**