



**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/22/1695**

**Re: Property at Flat 2/1 Top Flat Left otherwise, 43F Royal Street, Gourock, PA19 1PP (“the Property”)**

**Parties:**

**Gourock Property Company Limited, 18 Nicholson Street, Greenock, PA15 1JU (“the Applicant”)**

**Mr Sean Irvine, Flat 2/1 Top Flat Left otherwise, 43F Royal Street, Gourock, PA19 1PP (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

1. An application was received by the Housing and Property Chamber dated 6<sup>th</sup> June 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 12 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
  - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 28<sup>th</sup> January 2020;
  - b. Notice to Leave signed 6<sup>th</sup> October 2022 stating an application would not be submitted to the Tribunal before 7<sup>th</sup> April 2022;
  - c. Section 11 notice noting proceedings would not be raised before 31<sup>st</sup> May 2022;
  - d. Rent statement from 28<sup>th</sup> January 2021 to 28<sup>th</sup> May 2022. This detailed the rent of £350per month and arrears of £9390;

- e. Copy letter dated 6<sup>th</sup> October 2022 serving Notice to Leave upon the Respondent; and
  - f. Letter to the Respondent dated 30<sup>th</sup> May 2022 advising that the matter is to be lodged with the Housing and Property Chamber.
3. On 23<sup>rd</sup> July 2022 all parties were written to with the date for the Case Management Discussion (“CMD”) of 29<sup>th</sup> August 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 13<sup>th</sup> August 2021.
  4. On 26<sup>th</sup> July 2022, sheriff officers served the letter with notice of the hearing date and documentation upon Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 26<sup>th</sup> July 2022.
  5. This case is conjoined with FTS/HPC/CV/22/1696.

### The Case Management Discussion

6. A CMD was held 29<sup>th</sup> August 2022 at 10am by teleconferencing. The Applicant was represented by Mr Ken Caldwell, solicitor, Patten & Prentice Solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
7. The Tribunal had some concerns regarding the Pre Action Requirements (“PARs”). The Tribunal was concerned that it was not clear from the papers that the PARs had been adhered to which is necessary as it is a statutory provision. Mr Caldwell acknowledged that it was less overt than would be best practice. After substantial discussion the Tribunal adjourned to allow Mr Caldwell to take further instructions. The Applicant advised him that several letters and phone calls had been made to the Respondent. Copies of the letters had not been retained. The person who had been dealing with the matter had suddenly very sadly passed away in January 2022. This meant that further information regarding the content of the letters and telephone calls was not available. Mr Caldwell further noted that when he had written to the Respondent with the Notice to Leave on 6<sup>th</sup> October 2021 he had advised in the letter that the Respondent may wish to seek legal advice, he had given the Applicant’s contact details for the Respondent to contact them and had included the Government guidance with included support for Private Rented Sector Tenancy Support. The letter of 30<sup>th</sup> May 2022 included details of the outstanding amount due, the monthly rental charge, further Government guidance and a recommendation to contact a solicitor. Mr Caldwell submitted that unlike a Short Assured Tenancy there is not the statutory requirement for the PARs to be done prior to the lodging of the Notice to Leave. The Tribunal accepted that it was a cumulative effect of narrowly meeting the PARs and that best practice would be to ensure that this was sent out with arrears letters prior to raising the Notice to Leave. Further best practice would be that that copies of such letters and records of telephone calls be kept for the file. Mr Caldwell noted this and will

revert to the Applicant on these points. The Tribunal concluded that the PAR's had been met and the application was valid.

8. Mr Caldwell told the Tribunal that the Respondent has not made contact regarding the arrears. Mr Caldwell wrote to the Respondent on 6<sup>th</sup> October 2021 and 30<sup>th</sup> May 2022 regarding the eviction case and cited that this was due to rent arrears. The Respondent took no action and has made no offers of payment. The Applicant has also written to the Respondent. There has been no response to these letters either. There are no Housing Benefit or Universal Credit issues known to the Applicant. Mr Caldwell noted that the arrears outstanding have increased to £9740. Mr Caldwell was not aware of any issues of reasonableness that would prevent an order being granted.

#### Findings and reason for decision

9. A Private Rented Agreement commenced on the 28<sup>th</sup> January 2020.
10. The Respondent persistently failed to pay his rent charge of £350 per month. The rent payments are due to be paid on the 28<sup>th</sup> day of each month.
11. There are no known outstanding Housing Benefit or Universal Credit issues.
12. The Respondent has failed to communicate with the Applicant and has not made any offers of payment.
13. The arrears sought total £9390. The current arrears total £9740.
14. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the CMD.

#### Decision

15. The Tribunal found that ground 12 has been established and granted an order for eviction.

#### **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.**

# Gabrielle Miller

29<sup>th</sup> August 2022

Legal Member/Chair

Date

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