



**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/22/3284**

**Re: Property at 11 Mackenzie Court, Hill Street, Elgin, IV30 1AU ("the Property")**

**Parties:**

**Mr Stephen Parker and Mrs Gillian Parker, L'Abbaye des Châteliers, 79340 Fomperron, France ("the Applicants")**

**Miss Saphphrinn Christmas Sim, 11 Mackenzie Court, Hill Street, Elgin, IV30 1AU ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Mike Scott (Ordinary Member)**

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

At the Case Management Discussion ("CMD"), which took place by telephone conference on 9 February 2023, the First Applicant was in attendance in his own right and on behalf of the Second Applicant. The Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/CV/22/3285.

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-**

**Background**

The Tribunal noted the following background:-

- i. The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 7 February 2019.

- ii. The rent payable in terms of the PRT was £495 per calendar month payable in advance on the first day of each month.
- iii. On 20 December 2022 the parties entered into an Arrears Resolution Agreement facilitated by Safe Deposit Scotland Resolution Service in terms of which the Respondent agreed to pay to the Applicants the ongoing monthly rent due plus an additional sum of £50 per month.
- iv. On 8 August 2022, the Applicants served on the Respondent by email of the same date a Notice to Leave requiring the Respondent remove from the Property by 8 September 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £2,195.00.
- v. By email dated 7 September 2022 the Applicants served on Moray Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vi. The rent arrears due as at the date of the application were stated to be £4,041.00.

### **The CMD**

At the CMD the First Applicant made the following representations in respect of this application and the associated application FTS/HPC/CV/22/3285:-

- i. That the current rent arrears outstanding and due by the Respondent are £6,021.00.
- ii. The last payment received from the Respondent was the sum of £495 on 18 October 2022 and prior to that she paid £300 on 19 July 2022.
- iii. The Respondent is still in occupation of the Property.
- iv. The Respondent lives in the Property alone.
- v. The Respondent works in the hospitality industry and is believed to have several part-time jobs.
- vi. The Respondent defaulted in the payments agreed in terms of the Arrears Resolution Agreement.
- vii. The Respondent does not answer her phone. The Applicants communicate with the Respondent by email or text. She has failed to engage with them for some time.
- viii. Within the last couple of weeks the Applicants asked an agent on their behalf to call by the Property to see if the Respondent was still living there. The lights and TV were on. The agent left a note for the Respondent to get in touch. The Respondent phoned the agent and stated that she was looking for somewhere more affordable to live. No indication was given as to when she would leave the Property.
- ix. The Applicants seek an eviction order.

### **Findings in Fact**

- i. The Applicants leased the Property to the Respondent in terms of the PRT that commenced on 7 February 2019.
- ii. The rent payable in terms of the PRT was £495 per calendar month payable in advance on the first day of each month.
- iii. On 20 December 2022 the parties entered into an Arrears Resolution Agreement facilitated by Safe Deposit Scotland Resolution Service in terms of which the Respondent agreed to pay to the Applicants the ongoing monthly rent due plus an additional sum of £50 per month. The Respondent defaulted in payments due in terms thereof.
- iv. On 8 August 2022, the Applicants served on the Respondent by email of the same date a Notice to Leave requiring the Respondent remove from the Property by 8

- September 2022 on the basis that the Respondent had allowed rent arrears to accrue over 3 consecutive months in a total sum of £2,195.00.
- v. By email dated 7 September 2022 the Applicants served on Moray Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
  - vi. The rent arrears due as at the date of the application were £4,041.00.
  - vii. That the current rent arrears outstanding and are £6,021.00.
  - viii. The last payment received from the Respondent was the sum of £495 on 18 October 2022 and prior to that she paid £300 on 19 July 2022.
  - ix. The Respondent is still in occupation of the Property.
  - x. The Respondent has failed to engage with the Applicants.
  - xi. That it reasonable, in the circumstances, that an eviction order be granted in favour of the Applicant.

### **Reasons for Decision**

The Respondent did not submit any representations to the Tribunal and did not attend the CMD. The factual background narrated by the Applicants within the application papers and by the First Applicant orally at the CMD was not challenged and was accepted by the Tribunal.

The Tribunal considered whether or not it would be reasonable to grant an eviction order.

The Tribunal considered in particular whether the Applicants had complied with the pre-action protocols referred to in Schedule 3, Ground 12, paragraph 4(b) of the 2016 Act. Whilst the Tribunal took the view that the Applicants had not so complied the Tribunal, having regard to the background and in particular (a) the parties participation in the SDS Resolution Service process resulting in the Arrears Resolution Agreement dated 20 December 2020, and (b) the Respondent's indication to the Applicants' agent that she is looking for alternative accommodation, determined that it is reasonable to grant an eviction order under Ground 12 of Schedule 3 of the 2016 Act.

### **Decision**

The Tribunal granted an eviction order in favour of the Applicants.

### **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. Buchanan

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Legal Member/Chair

9 February 2023  
Date