



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/22/0307**

**Re: Property at Flat 1/L, 21 Moorburn Road, Largs, North Ayrshire, KA30 9JA (“the Property”)**

**Parties:**

**Lochscape Property LLP, Tansey Brae, Argyll Road, Kilcreggan, Helensburgh (“the Applicant”)**

**Mr Michael Devine, Flat 1/L, 21 Moorburn Road, Largs, North Ayrshire, KA30 9JA (“the Respondent”)**

**Tribunal Members:**

**Anne Mathie (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 1L, 21 Moorburn Road, Largs, North Ayrshire, KA30 9JA under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.**

**Background**

- 1. An application was made dated 8 December 2021 in terms of Rule 109 of the Chamber Rules for a Private Residential Eviction Order (along with a conjoined civil application for rent arrears ref FTS/HPC/CV/22/0309). Along with the**

application form, the Applicant's representative lodged the following documents:

- Copy Notice to Leave dated 5 June 2021
  - Copy Section 11 notice addressed to North Ayrshire Council
  - PARs correspondence
2. The Tribunal wrote to the Applicant on 21 February 2022 asking for a copy of the tenancy agreement, evidence of service of the Notice to Leave and a rent statement showing monthly rent due, monthly rent paid, monthly amount outstanding and cumulative total. The Tribunal also noted that the application referred to two grounds 11 and 12 whereas it appeared from the information provided in the application that the only breach related to rent arrears. The Applicant was asked to explain the breach and to provide evidence to support that ground of recovery. The title deeds showed the owner of the Property as Brett Neilson and the Applicant is Lochscape Property LLP and the Applicant was asked to explain and provide supporting evidence to establish the Applicant's right title and interest to bring the proceedings.
  3. The Applicant replied on 26 February 2022 with a copy of the tenancy agreement, evidence of service of the Notice to Leave, a copy of an up-to-date rent statement and a revised page of the application form relating only to ground 12. A copy of title documents was also sent to the Tribunal.
  4. The application was accepted and assigned to a case management discussion. Intimation of the application and the case management discussion were served on the Respondent by Sheriff Officers on 5 April 2022. The Respondent was advised that he was required to submit any written representations in response to the application by 25 April 2022.
  5. No written representations have been received from the Respondent.
  6. An email was received by the Tribunal the day before the case management discussion advising that CHAP would be representing the Respondent at the case management discussion and that they had no documents to submit in advance of the case management discussion.

#### The case management discussion

7. The case management discussion took place today by teleconference. Ms Anne Louise Young, Partner of the Applicant company attended and Alister Meek of CHAP attended on behalf of the Respondent. The Applicant presented her case in the form of the information on the application form and supporting documents. It was her position that the Respondent was not engaging and they had no other choice but to proceed with the eviction order application. On questioning by the Tribunal, she advised that the Property was a one bedroom flat and she understood the Respondent to live alone. She had no explanation for the delay between the second and third emails to the Respondent to comply with the Pre-action Requirement rules. She confirmed that the deposit was zero and that there was an error in the rent clause of the tenancy agreement where the date should read "23 November 2020" and not "23 October 2020". The

initial payments of £100 and £600 made by the Respondent were in respect of rent and had been rightly deducted from the rent arrears figure. The current level of rent arrears was £6370. The Applicant submitted that granting an eviction order in these circumstances was reasonable. Mr Meek advised that he had the Respondent's instructions to not oppose the granting on the eviction order and the Respondent fully understood the consequences of this course of action. CHAP would continue to support the Respondent going forwards. The Tribunal had a short adjournment to consider the application.

#### Findings in Fact

8. The Applicant and Respondent entered into a tenancy agreement from 24 October 2020 in relation to the Property.
9. In terms of the tenancy agreement the rent was payable in the sum of £380 per month.
10. The Respondent has accrued rent arrears in the sum of £6370.
11. A valid Notice to Leave had been served by email and recorded delivery on the Respondent.
12. The Respondent is a single person who lives in the Property.
13. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on North Ayrshire Council.

#### Reasons for Decision

14. The Tribunal made its decision based on the written papers and evidence before it and on the oral submissions on behalf of both parties at today's case management discussion. The Respondent had been served a valid Notice to Leave by email. The level of rent arrears satisfied Ground 12 of schedule 3 of the 2016 Act. It was reasonable to grant the order for repossession in the circumstances. In reaching this view, the Tribunal took into account the level of rent arrears, the lack of engagement of the Respondent, the Applicant's compliance with the pre-action requirements and the instructions of the Respondent not to contest the application.

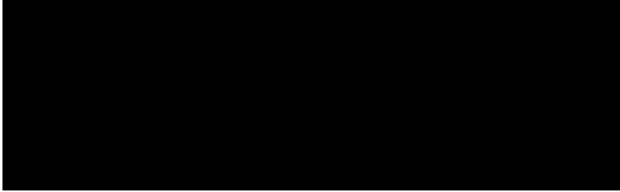
#### Decision

15. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

#### **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.



20 May 2022

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Legal Member/Chair

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Date