



**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.**

**Chamber Ref: FTS/HPC/EV/19/2495**

**Re: Property at 1/4 Loganlea Terrace, Edinburgh, EH7 6NU (“the Property”)**

**Parties:**

**Mr Allan Gourdie, 5 Moredunvale Loan, Edinburgh, EH17 7RJ (“the Applicant”)**

**Ms Gemma McLaughlin, 1/4 Loganlea Terrace, Edinburgh, EH7 6NU (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants an order against the Respondent for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. 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. By application dated 7 August 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an

order for recovery of possession of the Property in terms of Section 51 of the Private Housing (tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. On 21 August 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 2 September 2019, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 23 September 2019. The Tribunal advised parties on 30 August 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 9 October 2019. This paperwork was served on the Respondent by Steven Morrison, Sheriff Officer, Glasgow on 3 September 2019 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 23 September 2019.

### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 9 October 2019. The Applicant was represented by Miss Morrison from T C Young, Solicitors. The Respondent did not appear and was not represented.
6. The Tribunal had before it a rent statement, a Notice to Leave dated 20 June 2019 with signed Recorded Delivery proof of service on 21 June 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council dated 7 August 2019.
7. The Applicant’s solicitor explained that although the Applicant had sent a copy of the Private Residential Tenancy Agreement for the Respondent to sign, she had not sent it back to him. She passed the Tribunal a copy of the unsigned tenancy agreement. The Tribunal noted the terms of the agreement and in particular Clause 7 which showed a calendar monthly rent of £400.
8. Miss Morrison moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”). She referred to the rent statement lodged and explained that the Respondent had paid £400 on 7 December 2018 for the period from 1 -31 December 2018. No payments had been made since then and arrears had increased to £4000. She further explained that the Applicant was not aware that the Respondent had made or was eligible for any benefit.

9. The Tribunal noted the Notice to Leave under Section 50(1) and Ground 12 of Schedule 3 of the 2016 Act dated 20 June 2019 addressed to the Respondent and served on the Respondent by way of Recorded Delivery post and signed for at the Property address on 21 June 2019. The Tribunal also noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the Edinburgh City Council on 7 August 2019.

### **Findings in Fact**

10. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement starting on 1 December 2018 in relation to the Property. The tenancy agreement was not returned signed by the Respondent. In terms of Clause 7 of that tenancy agreement, the Respondent agreed to pay the Applicant a calendar monthly rent of £400 due on 1st of each month.
11. In terms of the rent statement the Respondent had accrued arrears to 31 August of £3200. She had paid £400 on 7 December 2018 for the period 1-31 December 2018. The Respondent has paid no rent since then. The Respondent is in breach of Clause 7 of the tenancy agreement.
12. The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.
13. On 20 June 2019, the Applicant served a Notice to Leave on the Respondent by way of Recorded Delivery post requesting that she remove from the Property by 21 July 2019.
14. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Edinburgh City Council on 7 August 2019.

### **Reasons for Decision**

15. The Applicant provided evidence of non-payment of rent in the form of the rent statement. The Tribunal was satisfied on the basis of the rent statement and the supporting oral submissions made on behalf of the Applicant that the Respondent has been in arrears of rent for over three consecutive months and is in excess of over a month's arrears. The Tribunal was satisfied on the basis of the Applicant's oral submissions that the arrears had not accrued due to a delay or failure in payment of any benefit. The Respondent was accordingly in breach of Clause 7 of the tenancy agreement. In the circumstances, the Notice to Leave having been served, the Applicant is entitled to repossess the Property.

**Decision**

16. The Tribunal granted the order for repossession.

**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.

S Evans

  
Legal member/Chair

— 9 October 2019.  
Date

\*Insert or Delete as required