



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/EV/21/1488**

**Re: Property at Flat 4, 289 Castlemilk Road, Kings Park, Glasgow, G44 4LE (“the Property”)**

**Parties:**

**Mr Adeniyi Shonubi, 73 Lovelace House, 96 - 122 Uxbridge Road, Ealing, London, W13 8RB  
 (“the Applicant”)**

**Unicorn Homes, 1016 Cathcart Road, Mount Florida, Glasgow, G42 9XL  
 (“the Applicant’s Representative”)**

**Mr Christopher Gordon Hassen, present whereabouts unknown, previously residing at Flat 4, 289 Castlemilk Road, Kings Park, Glasgow, G44 4LE  
 (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)  
 Ms. Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”):**

**(1) was satisfied that Ground 10 in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that the Respondent is not occupying the Property as the Respondent’s only or principal home; the Property’s not being so occupied is not attributable to a breach of the Applicant’s landlord’s duties**

**under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006; that it was reasonable to make an order for eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act.**

**The decision of the tribunal was unanimous.**

## **Statement of Reasons**

### **Procedural Background**

1. The Applicant's Representative made an application to the tribunal on 1 September 2021 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act on Ground 10 of Schedule 3 to the 2016 Act.
3. The Applicant's Representative provided the following documents in support of the Application:
  - 3.1. Notice to Leave to the Respondent dated 14 April 2021, with attachments and proof of service by email and letter dated 14 April 2021;
  - 3.2. Correspondence between the Applicant's Representative and the Respondent between 19 November 2020 and 4 April 2021; and
  - 3.3. Chronology of contact between Applicant's Representative and the Respondent.
4. On 22 June 2021, the tribunal's administration obtained a copy of the Title Sheet for the Property which showed the Applicant as registered proprietor of the Property.
5. On 5 July 2021, the tribunal requested further information from the Applicant's Representative and in response the Applicant's representative provided:
  - 5.1. Letter of authorisation to act from Applicant;
  - 5.2. Private Residential Tenancy agreement dated 17 January 2020;
  - 5.3. Certificate of posting;
  - 5.4. Further information as regards the work address provided for the Respondent.
6. On 4 August 2021, the tribunal requested further information from the Applicant's Representative.

7. On 17 August 2021, the Applicant's Representative submitted further information, including:
  - 7.1. A clear copy of the certificate of posting previously submitted; and
  - 7.2. A note of intention to apply for service by advertisement on the Respondent.
8. On 14 October 2021, the Applicant's Representative submitted an application for Service by Advertisement with supporting information.
9. The Application was accepted for determination by the tribunal. A Case Management Discussion ("CMD") teleconference was fixed for 11 January 2022 at 1400h.
10. The tribunal sent letters of notification to all parties dated 24 November 2021 with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application to take place at on 11 January 2022 at 1400h by teleconference. The Respondent was invited to make written representations in response to the Application by 15 December 2021. All parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
11. The Respondent did not submit any representations in the specified time period.
12. The tribunal served the Respondent by advertisement on the tribunal's website.

**CMD: 11 January 2022, 1400, Teleconference**

13. Mr Guidi from the Applicant's Representative attended on behalf of the Applicant.
14. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with and proceeded with the application upon the representations of the party present, in term of Rule 29.

## **Applicant's Representative's submissions**

15. The Applicant's Representative referred to the lodged documentation and sought an eviction order on the basis of ground 10 and the submission that it was reasonable for such an order to be granted.
  
16. Mr Guidi stated that he did not know exactly when the Respondent abandoned the Property prior to the Respondent's email of 19 November 2020 in which he stated that he had left the Property and asked for the tenancy to be terminated. Mr Guidi stated that subsequently he visited the Property on a number of occasions, with the first visit on 6 January 2021. He stated that each time he visited he entered and nothing appeared to be changed from the first visit. There was no food in the fridge. It did not look like the Respondent had gone back to the Property. Other than the emails which were lodged and listed in the chronology, the Applicant and his representative had no communication from the Respondent. Mr Guidi stated that every couple of months or so, as noted on the chronology, he went up and knocked on the door. If there was no response, he opened the flat and went in. He arranged access for the gas safety inspection on 9 March 2021 as there had been no response from the Respondent. Regarding the Respondent's belongings in the Property, it was let on a unfurnished basis. On inspections on 6 January 2021 and subsequently, there have been the same belongings of the Respondent in the Property. There is a 3 seater settee in the living room; in the master bedroom there is a double bed base, mattress and bedside cabinet; in the second bedroom there is a single bed base and mattress; and in both bedrooms there are a smattering of clothes (in bedroom 1 they were an adult's clothes, and in bedroom 2 child's clothes); and there is a clothes drier in bedroom 2 with clothes on it. Mr Guidi believes that the Respondent is separated from his wife and occasionally his daughter would stay on occasion but that it was not a permanent arrangement.
  
17. In relation to rent, Mr Guidi stated that the tenancy started in January 2020, at which point the tenant paid a deposit of £625.00 and first month's rent of £625.00 in advance on 17 January 2020. The deposit is lodged with a deposit protection company. The Respondent has subsequently made no further payment towards his rent. It is currently somewhere in the region of £13,750 for 22 months of arrears. The rent is £625.00 payable on 17<sup>th</sup> of the month. Mr Guidi intends to assist their client to recover the monies. It is just the eviction case before the tribunal at present. It is their intention to consider a civil application for rent arrears.
  
18. Mr Guidi stated that the situation has placed strain on their client. He resides with his family in London. He has not received the funds that he is due and he does not have vacant possession of his property. Mr Guidi did not have specific information but stated that he is sure that it has placed financial pressure and from an emotional point of view having this dragging out for so long was not good for his client. Mr

Guidi stated that the Application process took some time due to further information requests and trying to track down the Respondent to submit a service by advertisement application. He stated that they were originally corresponding at a workplace address but the Respondent has left that address. Sheriff officers attended at a new workplace and left information for the Respondent to get in touch but he has not done so.

19. It remains the position that the keys for the Property have never been returned to the Applicant or his representative.

20. Mr Guidi submitted that for all of the above reasons it would be reasonable for the tribunal to make an eviction order.

**21. The tribunal makes the following findings-in-fact:**

21.1. The registered proprietor of the Property is the Applicant.

21.2. There is a Private Residential Tenancy agreement between the Applicant and the Respondent.

21.3. The start date of the tenancy was 17 January 2020.

21.4. The Property was let unfurnished.

21.5. The Respondent left the Property on or before 19 November 2020.

21.6. On 19 November 2020 the Respondent notified the Applicant's Representative that he had not been living in the Property and requested that the tenancy be ended.

21.7. The Applicant's Representative sent correspondence to the Respondent 19, 20 and 26 November and 4 December 2021, requesting the Respondent to remove his belongings from the Property and return the keys to the Property.

21.8. The Respondent sent correspondence to the Applicant's Representative on 8 December 2020 stating that Shelter Scotland would contact the Applicant's Representative.

21.9. Shelter Scotland did not contact the Applicant's Representative.

21.10. The Applicant's Representative sent correspondence to the Respondent on 9 and 17 December 2020, again requesting that the Respondent remove

his belongings from the Property and return his keys and requesting contact from the Applicant or his representative.

21.11. On 6 January 2021, a Property inspection was carried out by the Applicant's Representative.

21.12. At inspection on 6 January 2021, there were a number of large items of furniture and personal belongings in the Property.

21.13. On 7 January 2021, the Respondent stated that he had contacted Police Scotland in relation to contact being made via his employer.

21.14. On 7 January 2021, the Applicant's Representative sent correspondence to the Respondent requesting contact regarding the Respondent's wish to terminate the tenancy, noting that they had not received vacant possession and stating that the Respondent was still responsible for the Property. They offered to speak to a legal representative of the Respondent if the Respondent wished him to do so.

21.15. The Applicant's Representative sent correspondence to the Respondent by email on 27 January 2021, again requesting that the Respondent remove his belongings from the Property and return his keys.

21.16. The Respondent sent correspondence to the Applicant's Representative on 3 February 2021, asking that the Applicant's Representative stop contacting him and his former employer.

21.17. On 3 February 2021, the Applicant's Representative sent correspondence to the Respondent stating again that if he wished to terminate his tenancy agreement he must return the keys for the Property having removed his belongings, or by requesting that the Applicant's Representative remove his belongings, as well as noting that the work contact address was the only available line of communication.

21.18. On 3 March 2021, the Applicant's Representative sent an email to the Applicant stating that the gas safety check would be carried out on 9 March 2021.

21.19. The Applicant's Representative arranged access to the Property on 9 March 2021 for the gas safety inspection.

21.20. On 9 March 2021, the Applicant's Representative sent a hard copy letter to the Respondent in relation to the tenancy of the Property, again requesting

that the Respondent remove his belongings or instruct them to do so; and for return of keys. The Respondent was also informed that he had substantial rent arrears.

- 21.21. A further hard copy letter was sent by the Applicant's Representative to the Respondent on 23 March 2021 requesting vacant possession of the Property.
- 21.22. On 8 April 2021, a Property inspection was carried out by the Applicant's Representative and there was no sign of the Respondent living in the Property.
- 21.23. On 14 April 2021, the Applicant's Representative sent a Notice to Leave to the Respondent by email and by hard copy to his home and work addresses.
- 21.24. The Notice to Leave dated 14 April 2021, which was served on the Respondent by email, includes notice that the ground upon which eviction is sought is that the Respondent is not occupying the Property as his only or principal home.
- 21.25. The Notice to Leave specified that an application to the tribunal would not be made before 21 May 2021.
- 21.26. On 25 May 2021, a Property inspection was carried out by the Applicant's Representative and the utility supplies appeared to have been cut off by the suppliers.
- 21.27. The Respondent's furniture and personal belongings have remained in the Property since 6 January 2021 and no items have been removed or moved.
- 21.28. There has been no food in the Property during any Property inspection.
- 21.29. The Application to the tribunal was made on 21 June 2021.
- 21.30. The Respondent has made one rental payment of £625.00 on 17 January 2020 and a deposit of £625.00 which is held with a tenancy deposit scheme.
- 21.31. As at 11 January 2022 there are rent arrears of around £13,750.00.
- 21.32. The Respondent was served with documentation at his workplace by Sheriff officers asking him to contact the Applicant's Representative and he has not done so.

21.33. As at 11 January 2022, the Respondent is not occupying the Property as his only or principal home.

21.34. The Property's not being so occupied is not attributable to a breach of the Applicant's landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

## **22. Findings in fact and law**

22.1. The tribunal is satisfied that the facts required in para 10 of Schedule 3 to the 2016 have been established.

22.2. The tribunal is satisfied it is reasonable to make an eviction order.

## **Discussion**

23. The Respondent's eviction is sought on ground 10 in Schedule 3 to the 2016 Act.

24. Reference is made to the tribunal's findings in fact and findings in fact and law. The tribunal was satisfied that since on or before 20 November 2020, and as at 11 January 2022, the Respondent is not occupying the Property as the Respondent's only or principal home; and that the Property's not being so occupied is not attributable to a breach of the Applicant's landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006. The tribunal was satisfied that in all the circumstances of the case, as found in fact, it was reasonable to evict the Respondent.

25. The tribunal made an order for eviction in terms of Section 51 of the 2016 Act.

## **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.



11 January 2022

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**Ms. Susanne L. M. Tanner Q.C.**  
**Legal Member/Chair**