

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/2490

Re: Property at 131 Lady Campbells Court, Dunfermline, KY12 0LE (“the Property”)

Parties:

Adluis Ltd, Albany House, 80 Rose Street, Dunfermline, KY12 0RE (“the Applicant”) and

Morgans Solicitors and Lettings, 33 East Port, Dunfermline, KY12 7JE (“the Applicant’s Representative”) and

Miss Hazel Elizabeth Dryburgh formerly residing at 131 Lady Campbells Court, Dunfermline, KY12 0LE and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
T Cain - Ordinary Member**

Decision in absence of the Respondent

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

Background

1. This Application was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant’s Representative had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”),

the Notice to Leave served on the Respondent and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to Fife Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. The Application papers and Guidance Notes had been served by deposit through the letterbox at the Property by Sheriff Officers on 28th November 2023.
4. The Respondent Miss Dryburgh had not lodged any representations in respect of the Application.

Case Management Discussion

5. A Case Management Discussion (“CMD”) proceeded by remote tele-conference call at 10am on 25th January 2024. The Applicant’s Representative’s Mrs L Kettles attended. Miss Dryburgh did not attend and was not represented.
6. Mrs Kettles referred to the Application, and supporting papers and photographs, lodged with the Tribunal in July 2023. She said that further property and gas safety inspections had taken place since then. She stated that Miss Dryburgh’s belongings remain within the Property but all furniture has been removed and the kitchen and bathroom are not capable of being used due to the boxes etc which have been left there. Mrs Kettles said that there is milk in the fridge dated April 2023 and mail from that period onwards is lying behind the front door of the Property. She said that it is clear that Miss Dryburgh, and her young daughter, have not been resident in the Property for many months and that this was the position when the Application was lodged. Mrs Kettles stated that, in the circumstances, the Applicant company, Adluis Ltd, seek the grant of a formal order to recover possession of the Property as soon as possible. She said that, as stated in the Application, Miss Dryburgh has not paid rent since March 2023. She said that she is not aware of Miss Dryburgh and her daughter’s current whereabouts.

Findings in Fact and Law and Reasons for Decision

7. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
8. Schedule 3 (10) (1) of the 2016 Act provides that it is an eviction ground that the tenant is not occupying the let property as the tenant’s home. Schedule 3 (10) (2) provides that this eviction ground applies if the let property is not being occupied as the only or principal home of the tenant, or a person to whom a sub-tenancy of the let property has been lawfully granted, and the property’s

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

9. The Tribunal considered all of the Application papers and the submission of Mrs Kettles.
10. Miss Dryburgh had not lodged representations with the Tribunal regarding the eviction ground and the reasonableness of the grant of an eviction order, or attended the CMD to provide any evidence, and/or make any submissions, to oppose, and contradict the basis for the order sought by Adluis Ltd.
11. Having considered all of the evidence and Mrs Kettle's submission, the Tribunal finds in fact that the Miss Dryburgh has not been occupying the Property as her only or principal home for many months, since around April 2023, and that Adluis Ltd are not in breach of any of their landlord's duties. The Tribunal finds in law that the ground in Schedule 3 (10) (1) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

Decision

12. The Tribunal therefore makes an eviction order as sought in this Application.

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 McWilliams

Tribunal Legal Member

25th January 2024

Date