



**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/23/4225**

**Re: Property at 75 Laggan Road, Airdrie, ML6 0LL (“the Property”)**

**Parties:**

**Mr Mario Zambonini, 11-15 Hallcraig Street, Airdrie, ML6 6AH (“the Applicant”)**

**Ms Laura Penmen, 75 Laggan Road, Airdrie, ML6 0LL (“the Respondent”)**

**Tribunal Members:**

**Ewan Miller (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant’s request for an order for possession of the Property against the Respondent should be refused**

**Background**

The Applicant is the owner of the Property. He had let the Property to the Respondent under a Private Residential Tenancy at a rental of £525 per month from 22 January 2019. The Applicant alleged that the Respondent had ceased paying rental around March 2023 and arrears of £5775 had accrued since then. The Applicant sought an order for possession of the Property from the Respondent on the basis of the outstanding rent arrears.

The Tribunal had before it:-

- A copy of the Private Residential Tenancy between the Applicant and the Respondent creating the tenancy from 22/1/19
- A copy of the Land Certificate of the Property evidencing the Applicant’s ownership of the Property
- An application form to the Tribunal dated 3/11/23

- Bank Statements from the Applicant
- A Rent Statement showing the payment history of the tenancy
- Notice to Leave served on the Respondent
- S11 Homelessness Notice to the relevant local authority

### **Case Management Discussion (CMD)**

The Tribunal held a Case Management Discussion regarding the matter on 15 May 2024. The Tribunal comprised Mr E Miller, Chair and Legal Member and Miss E Williams, Ordinary Member. The Applicant was not present but was represented by Mr Thomas Gallagher of Ness Gallagher, Solicitors, Wishaw. The Respondent was not present or represented but had been timeously and properly notified of the CMD

### **Findings in Fact and Law**

The Tribunal found the following facts to be established:-

- The Applicant was the owner of the Property;
- The Applicant had granted a Private Residential Tenancy to the Respondent of the Property at a rent of £525 per month from 22 January 2019;
- The Respondent had ceased paying rent to the Applicant from around March 2023;
- There were outstanding arrears at the date of the CMD of £5775;
- The Notice to Leave was dated 24 October 2023 and gave the date the Respondent required to vacate as 21 November 2023;
- The Notice to Leave was defective as the required statutory notice period had not been given to the Respondent.

### **Reasons for Decision**

The Tribunal noted the evidence before it. The lease established the contractual relationship between the parties and the obligation for the payment of £525 per month from the Respondent to the Applicant. The Rent Statement and the Bank Statements evidenced the non-payment. There was nothing from the Respondent to challenge the information before the Tribunal and no reason for the Tribunal to doubt the information before it. The required period of arrears had been met and, had all other things been equal, the Tribunal would have granted an order for possession.

However, the Tribunal noted the terms of the Notice to Leave. A minimum period of 28 days plus 2 days for service should have been given to the Respondent in terms of the Act. The Notice gave only 27 days notice even before the 2 day service element was taken in to account.

The Respondent's solicitor submitted that the error was not material and asked the Tribunal to exercise discretion. He submitted that the Applicant had previously sent a Form AT6 to the Respondent. Whilst this was the incorrect form for a private rented tenancy it had, he submitted, made the Respondent aware of the intentions of the Applicant. He further submitted that the Applicant had not applied to the Tribunal until after the correct date that ought to have been put in the Notice to Leave and so

the Respondent had not been prejudiced. Further the arrears were significant and the Respondent would be prejudiced by having to re-apply to the Tribunal.

The Tribunal did not accept the submissions of the Respondent in respect of the defective notice. The correct period being given to a tenant was of fundamental importance. A tenant was being told of the time that they were entitled to remain in their home and, as a result, it ought to be correct.

The statutory notice requirements are set out in s54(2)(a) and s62(4)-(5) of the Act. The requirements are prescriptive and, simply put, require the correct arithmetical calculation to be carried out to ensure the requisite number of days are provided. The Applicant had failed to do so.

The submission of an AT6 was of no relevance to the Notice to Leave. A tenant of a private rented tenancy only need pay attention to the correct statutorily prescribed form.

The fact that the actual application was not raised until after the correct later date was also not of relevance. The Notice to Leave is where the correct date is to be inserted.

The Tribunal did appreciate that the arrears had been accumulating for some time to the prejudice of the Respondent. However, the Tribunal did note from the paperwork that the administrative office of the Tribunal and the legal members sifting the case had picked up the error in relation to the Notice to Leave at an early stage and had highlighted it to the Applicant's solicitor on more than one occasion. The Applicant wished the application to proceed to a CMD nonetheless. In advising the Applicant's solicitor that it would, at their request, be put to a CMD they highlighted in bold underline the perceived deficiency again. They also highlighted, again in bold underline, that previous cases had been rejected on similar grounds. It is not for the Tribunal office to give legal advice but a heavy hint as to the correct course of action of re-service of the Notice to Leave was given. Had that been heeded then the prejudice to the Applicant would have been significantly reduced.

## **Decision**

The Tribunal determined that the Applicant's request for an order for possession should be refused.

## **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.**

# Ewan Miller

19 June 2024

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**Legal Member/Chair**

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**Date**