



**in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/24/1970**

**Re: Property at 377/2 Leith Walk, Edinburgh, EH6 8SE (“the Property”)**

**Parties:**

**Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN (“the Applicant”)**

**Miss Jennifer Tritschler, 377/2 Leith Walk, Edinburgh, EH6 8SE (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order for possession and eviction.**

1. By application received between 29 April 2024 and 7 May 2024 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession on the basis of Ground 12 of Schedule 3 to the Act, more than three consecutive months’ rent arrears. The Application comprised a copy of the tenancy agreement between the Parties, a statement of rent due and owing, rent increase notice, evidence of a Payment Order granted on 7 March 2024 for rent previously accrued, copy bank statements, copy correspondence from the Applicant to the Respondent in terms of the Pre-action Regulations, copy Notice to Leave and proof of issue to the Respondent and copy Notice under

Section 11 of the Homelessness Etc (Scotland) Act 2003 to Edinburgh City Council, being the relevant local authority.

2. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 29 August 2024 at 10.00 by telephone conference. The CMD was intimated to the Parties, and to the Respondent, in particular, by Sheriff Officer on 30 July 2024.
3. Prior to the CMD, the Applicant submitted updated rent statements showing the rent due and owing by the Respondent to have risen to £9,570.00.

### **CMD**

4. The CMD took place on 29 August 2024 at 10.00 by telephone. The Applicant was present and was not represented. The Respondent was not present and was not represented. The Tribunal took the view that the Respondent was aware of the CMD and had chosen not to attend. Accordingly, the Tribunal proceeded in the absence of the Respondent.
5. The Applicant confirmed the Order sought. He confirmed that the Respondent had been advised of the increased amount by email sent monthly to her and that she had not made contact with him.
6. With regard to the circumstances of the Parties, the Applicant advised that he is a small business landlord with three rental properties. He has no other income and is now out of pocket by over £10,000.00 due by the Respondent. He stated that he had been unable to enforce the Payment Order granted in March 2024.
7. With regard to the circumstances of the Respondent, the Applicant advised that, as far as he is aware, the Respondent is a single person who is no longer in employment. He explained that she had been employed when the tenancy began, however, Sheriff Officers who tried to arrest her wages had been told that she is no longer employed. The Applicant advised that it is his understanding that the Respondent is an American citizen and her visa does not allow her access to benefits.

### **Findings in Fact**

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a private residential tenancy of the Property between the Parties at a monthly rent of £950.00;
  - ii) The Respondent has failed to pay the full rent since November 2023;

- iii) Rent arrears amounting to £9,570.00 have accumulated to 16 August 2024;
- iv) There is a previous payment order for the sum of £3,920.00 owing to the Applicant by the Respondent in respect of the accumulated arrears for the Property;
- v) The Applicant's business is that of residential landlord with a small portfolio of three properties;
- vi) The Applicant has no other income;
- vii) The Respondent is a single person;
- viii) The Respondent is not entitled to state benefits.

### **Issue for the Tribunal**

9. The Application being unopposed and the Tribunal being satisfied that the statutory ground and process had been met and complied with and being satisfied that the rent arrears are not due to benefits which have not been paid, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
10. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Decision and Reasons for Decision**

11. The Tribunal had regard to all the information before it and to its Findings in Fact.
12. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
13. The Tribunal then looked to balance the rights and interests of both parties.
14. The Tribunal noted the level of arrears and noted that the arrears had increased steadily throughout the tenancy and that no rent had been paid at all for the past six months. The Tribunal noted that the Applicant relied on the rent as part of his income. The Tribunal noted that the Respondent is a single person and does not appear to have dependants.
15. The Tribunal took the view that, if matters continued as they have done throughout the tenancy, the increasing debt is not tenable for either Party. Not

granting the Order would be detrimental to both as the Applicant would be further affected by the continuing loss of income and the Respondent would be burdened with an increasing debt. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

### **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.**

K. Moore

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**Legal Member/Chair**

**29 August 2024**  
**Date**