



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Scotland) Act 2026.**

**Chamber Ref: FTS/HPC/EV/24/1355**

**Re: Property at 146 Townhill Road, Hamilton, ML3 9RN (“the Property”)**

**Parties:**

**Mrs Christina Mireca and Mr Norel Mireca, 44 Burnsknowe, Livingston Deans, EH54 8BQ (“the Applicants”)**

**Ms Christina Petcu and Mr Valeriu Damian, 146 Townhill Road, Hamilton, ML3 9RN (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Tony Cain (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 146 Townhill Road, Hamilton, ML3 9RN under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants 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 Respondents. The order will include a power to Officers of Court to eject the Respondents 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 Applicants or others in his name may enter thereon and peaceably possess and enjoy the same.**

**Background**

- 1. This is an action for recovery of possession of the Property raised in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a Private Residential Tenancy Agreement between the parties dated 7 September 2018, a rent statement showing arrears of £31 000 to 7 March 2024, a Notice to Leave with Sheriff Officer's Executions of Service on both Respondents dated 9 November 2023, a letter from the Applicants' solicitor to the Respondent dated 8 March 2024 and an email dated 21 March 2024 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003.
3. On 20 May 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 22 August 2024 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 12 September 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 26 September 2024. This paperwork was served on the Respondents by Andrew MacLean, Sheriff Officer, Glasgow on 28 August 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondents did not make any representations.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 26 September 2024 by way of teleconference. Ms Brechany from T C Young, solicitors appeared for the Applicants. There was no appearance by or on behalf of the Respondents despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in their absence. The case was heard together with a case for arrears under case reference number FTS/HPC/CV/24/1354.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 7 September 2018, the rent statement, the Notice to Leave with Sheriff Officer's Executions of Service on both Respondents dated 9 November 2023, a letter from the Applicants' solicitor to the Respondent dated 8 March 2024 and an email dated 21 March 2024 addressed to South Lanarkshire Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003. The Tribunal considered these documents.

8. Ms Brechany advised in terms of Clause 5 of the tenancy agreement the Respondents had agreed to pay £500 per month rent to the Applicants. When the Notice to Leave had been served on 9 November 2023 the arrears were £28 500. When the action was raised arrears were £31 000. Arrears had since increased to £34 000. The Tribunal noted the last payment to account was for £500 on 7 October 2019. She submitted that the Respondents were in substantial arrears and that Ground 12 A of schedule 3 of the 2016 Act had been established.
  
9. The Tribunal referred Ms Brechany to the Notice to Leave dated 9 November 2023 which had been served by Sheriff Officers on 9 November 2023. This stated action could be taken from 8 December 2023. Ms Brechany submitted that with reference to the Upper Tribunal case of *Smith v MacDonald & Munro [2021] UT 20*, a notice to leave is held to be served on the day it is delivered by Sheriff Officers. Applying *Smith v MacDonald* Ms Brechany submitted the Notices are deemed to have been received on 9 November 2023. There was no requirement to provide an additional 48 hours in terms of section 62(5) of the 2016 Act. Accordingly, sufficient notice had been given.
  
10. The Tribunal asked to be addressed on how the arrears had reached such a high level as they had to be satisfied it was reasonable to evict. Mr Brechany referred to the pre action requirement letter of 8 March 2024 and submitted there had been extensive correspondence between the parties by Facebook Messenger. At the start of the tenancy her clients had not asked for an upfront payment as the Respondents were short of money. The Applicants had helped the Respondents find work in a delivery warehouse, but after 2 weeks, the Respondents resigned. Ms Petcu had some health difficulties. Mr Damian then found work as a delivery driver. Arrears were increasing and in March 2019 Mr Damian promised to pay the rent but he had to buy a new car for his job. In June 2019 Ms Petcu left and returned to Romania. Mr Damian was overwhelmed and again promised the Applicants he would pay. In July 2019 a payment of £500 was received from a friend. In August 2019 Mr Damian said he was applying for a loan. There was regular correspondence between the parties to December 2019 at which point Mr Damian returned to Romania for Christmas. In January 2020 Mr Damian advised they both intended to return to Scotland but they had solicitors' fees relating to their immigration status. On 26 February 2020 Mr Damian advised he would return and made promises to pay the rent. When the pandemic hit in March 2020 the Respondents were still in Romania, but still indicated they intended to return to Scotland. On 9 July 2020 they indicated that they would meet the Applicants when they returned to Scotland. The Applicants then instructed a letting agent to help

them manage the tenancy. The letting agents served notices on 17 June 2022, October 2022 and January 2023, but these were invalid. Ms Brechany submitted that the Applicants had held onto hope that the arrears would be paid. They did not have funds to take action, but things have escalated they have had no choice. The Applicants are aged 37 and 40 and both in employment although there is a threat of redundancy. They would plan to move to the Property. The Respondents had effectively been living at the Property rent free. The Applicants had no other rental properties and accepted some responsibility where they were at. Ms Brechany when questioned by the Tribunal was uncertain as to whether there was a personal relationship between parties.

### **Reasons for Decision**

11. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
  - Private Housing (Tenancies) (Scotland) Act 2016
  - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
12. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12A (substantial rent arrears).
13. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
14. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12A of Schedule 3 is 28 days.
15. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12A of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expects to become entitled to make an application for an eviction order namely 8 December 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must

specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave dated 9 November 2023 was delivered by Sheriff Officers on the Respondents on 9 November 2023. Following upon the Upper Tribunal decision of *Smith v MacDonald & Munro [2021] UT 20* a Notice to Leave is held to be served on the day it is delivered by Sheriff Officers and there was no requirement to provide an additional 48 hours in terms of section 62(5) of the 2016 Act. Accordingly, sufficient notice had been given. In the circumstances the Tribunal is satisfied the Respondents has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

16. The Tribunal considered the Respondents had not opposed the order for eviction. The Respondents' arrears were increasing and stood at £34 000, the monthly rent being £500. The arrears amounted to over five years of arrears. However, Ground 12A is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
17. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal was persuaded by Ms Brechany's submissions that Ground 12A had been established and that it was reasonable to evict. The Applicants had clearly done everything they could to avoid taking action and had tried unsuccessfully to keep the lines of communication open with the Respondents to assist the Respondents. They had perhaps been slightly naive in their management of the tenancy and have unfortunately now found themselves in a situation where the arrears are so excessive that they have been left with no choice but to take action. On the other hand, the Respondents did not oppose the application. Various promises had been made to pay which had not transpired. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to South Lanarkshire Council had been served. The balance of reasonableness in this case weighted towards the Applicants.
18. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondents were in substantial rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

## **Decision**

19. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.

# Shirley Evans

26 September 2024

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Legal Member

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Date