



**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/24/2152**

**Re: Property at Flat 23, 1 Heron Place, Edinburgh, EH5 1GG (“the Property”)**

**Parties:**

**Mr Jamie Greenan, Savoch Manse, Auchnagatt, AB418YB (“the Applicant”)**

**Mr Kierian Johnjo Fraser, Flat 23, 1 Heron Place, Edinburgh, EH5 1GG (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 23, 1 Heron Place, Edinburgh, EH5 1GG under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant 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 Respondent. The order will include a power to Officers of Court to eject the Respondent 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 Applicant 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 10 December 2018, a rent statement showing arrears of £5100 to 10 November 2023, a Notice to Leave with Sheriff Officer's Executions of Service dated 24 November 2023, various emails between the parties regarding rent arrears and a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 with an email addressed to Edinburgh City Council on 10 May 2024.
3. On 24 June 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 Respondent to make written representations to the application by 13 September 2024. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 2 October 2024. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 27 August 2024 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not make any representations.
6. On 13 September 2024 the Applicant submitted an up to date rent statement showing arrears to 10 September of £6130 and a rent increase notice.

### **Case Management Discussion**

7. The Tribunal proceeded with a CMD on 26 September 2024 by way of teleconference. Mr Greenan appeared on his own behalf. His wife was also in attendance. There was no appearance by or on behalf of the Respondent despite the CMD starting 10 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
8. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 10 December 2018, the rent statements showing arrears of £5100 to 10 November 2023 and arrears of £6130 to 10 September 2024, the Notice to Leave with Sheriff Officer's Executions of Service dated 24 November 2023, the various emails between the parties regarding rent arrears, the rent increase notice and the Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003 with the email addressed to Edinburgh City Council on 10 May 2024. The Tribunal considered these documents.

9. Mr Greenan explained arrears had increased to £6130. There was simply no communication with the Respondent. Just before the Notice to Leave became live last year the Respondent contacted him at the last minute and offered to enter into a repayment arrangement. Mr Greenan explained he did not really want to do that but felt he had no choice but to give the Respondent an opportunity to clear the arrears. Rent was £1150 per month and the Respondent paid that in January 2024 and made some other payments up to 31 July 2024 when he paid £1725. The Tribunal noted the payments made on the rent statement and that arrears were not decreasing. Mr Greenan had emailed the Respondent many times, had sent recorded delivery letters which were never signed for or collected from the Royal Mail and had tried to call the Respondent but without success. Mr Greenan explained that the Respondent would not let contractors into the Property. He believed the Respondent was employed as a painter/decorator and that he lived in the Property alone. He confirmed the rent had never been paid by housing benefit.

### **Reasons for Decision**

10. 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.

11. 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 12 (rent arrears).

12. 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.

13. 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 12 of Schedule 3 is 28 days.

14. 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 1 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 Applicant as landlord expects to become entitled to make an application for an eviction order namely 23 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 23 November 2023 was delivered by Sheriff Officers on the Respondent on 24 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 Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

15. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears were increasing and stood at £6130, the monthly rent being £1150 to 10 August 2024 and being increased to £1280 on 10 September 2024. The arrears amounted to over five months arrears. However, Ground 12 is a 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.
16. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal was persuaded by Mr Greenan's submissions that Ground 12 had been established and that it was reasonable to evict. The Applicant had clearly done everything they could to avoid taking action and had tried unsuccessfully to keep the lines of communication open with the Respondent to assist the Respondent. He had reluctantly delayed taking eviction action to give the Respondent an opportunity to adhere to a repayment plan but he had not made any payments since 31 July. The Tribunal was satisfied he had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. On the other hand, the Respondent 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 Edinburgh City Council had been served. The balance of reasonableness in this case weighted towards the Applicant.
17. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent was in rent arrears for over three months and that

it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

18. 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

2 October 2024

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Legal Member

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Date