



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/23/4195 and FTS/HPC/EV/24/2371**

**Re: Property at 1/2 40 Thornwood Terrace, Glasgow, G11 7QZ (“the Property”)**

**Parties:**

**Mr Scott Findlay, 30 Kekewich Avenue, Edinburgh, EH7 6TY (“the Applicant”)**

**Mr Matthew Hardie, Jennifer Hardie, 1/2 40 Thornwood Terrace, Glasgow, G11 7QZ; 1/2 40 Thornwood Terrace, Glasgow, G11 7QZ (“the Respondents”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision (in the absence of both parties)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that both applications should be dismissed.**

**Background**

1. The Applicant made an application (FTS/HPC/23/4195) for an eviction order against the Respondents under Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) i.e. rent arrears on 22 November 2023. Two case management discussions (CMDs) were held to consider this application on 12 March and 18 April 2024. The tribunal adjourned the proceedings on 18 April 2024 as the Applicant was not present or represented at the CMD and had not responded to the tribunal’s previous direction (dated 12 March 2024) requiring him to provide further information.
2. A further direction was issued on 18 April 2024, again requiring the Applicant to provide further information. A partial response was received from the Applicant on around 13 May 2024, but most of the information required had not been provided.

3. The original application was later conjoined with a second eviction application which was received on 23 May 2024 under Ground 5 of the 2016 Act (FTS/HPC/EV/24/2371), namely that a family member of the landlord intends to live in the let property.
4. On 7 August 2024, the tribunal issued a further direction requiring the Applicant to provide an updated rent statement in relation to the original eviction application (FTS/HPC/23/4195). It also directed the Applicant to confirm which of the two applications he wished to proceed with and whether he wished to withdraw either of these. Finally, the Applicant was required to provide, in relation to the second eviction application (FTS/HPC/EV/24/2371), further evidence to support the ground under which the application was brought. No response was received from the Applicant by the specified deadline.

#### **The CMD on 27 August 2024**

5. A CMD took place by teleconference call on 27 August 2024. This was the third CMD in relation to the original eviction application (FTS/HPC/23/4195) and the first relating to the second eviction application (FTS/HPC/EV/24/2371). The second Respondent was present but the Applicant was not present or represented. The tribunal was satisfied that the Applicant had been given reasonable notice of the date and time of the CMD in terms of rule 17 (2) of Schedule 1 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulation 2017 (“the 2017 rules”). It therefore proceeded with the CMD in the absence of the Applicant or his representative.
6. The tribunal noted that the Applicant had failed to provide the information required by three directions. It considered that in the circumstances it would not be appropriate, having regard to the overriding objective, to postpone the matter to a further CMD. There had already been three CMDs, and at none of these had both parties been present. It was therefore difficult to identify what facts were agreed between the parties, to discuss whether a hearing was required, and what witnesses and other evidence would be required..
7. The tribunal therefore decided to fix a hearing on the issues in relation to both applications. The tribunal notified the parties in the CMD note that it would at that hearing consider all of the evidence before it as at that date and make a decision on either or both applications (depending on which application(s) the Appellant wished to pursue). The CMD note stated that the tribunal’s intention was to reach a decision following the hearing, unless there was a good reason not to do so.
8. The tribunal noted in the CMD note that it was for the Applicant to prove that the ground(s) on which he was relying to obtain an eviction order had been satisfied. As things stood, the tribunal did not have sufficient information before

it to make a decision in relation to either application as to whether the relevant grounds were established.

9. The tribunal issued a fourth written direction to the parties on 27 August 2024, setting out the further information which it required from them before the hearing. The direction again required the Applicant to provide the information set out in the three previous directions with regard to the original application. It also required the Applicant to confirm whether he wished to withdraw either application, and to provide further evidence to support the second application, as required by the third direction.
10. The parties were also directed to:
  - a) make any further written submissions they wished the tribunal to consider at the hearing with regard to:
    - i) the grounds of eviction relied upon
    - ii) whether it would be reasonable to grant an eviction order in all the circumstances, and
  - b) provide details of any other witnesses they may wish to call to give evidence at the hearing.
11. On 16 September 2024, an email was received from the Applicant's representative stating: "I can confirm that the landlord would like to proceed with the second application as she needs the property for her son to live in". An email response was sent by the tribunal administration the following day asking the Appellant's representative to confirm whether the Applicant was seeking to withdraw the original application. No response was received to this email.
12. Aside from the email of 16 September 2024, no response to the direction was received from either party by the deadline of 19 November 2024.

### **The hearing**

13. A hearing took place by teleconference call on 3 December 2024. Neither the Appellant or the Respondents were present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, in case either party or their representative had been detained. Neither party attended the teleconference call, however, and no telephone calls, messages or emails had been received from them.
14. The tribunal was satisfied that the requirements of rule 24 (1) of the 2017 rules regarding the giving of reasonable notice of the date and time of a hearing had been duly complied with. It therefore proceeded with the application on the basis of all the material before it, in terms of rule 29 of the 2017 rules.

## Reasons for decision

15. The tribunal noted that the Applicant had not appeared or been represented at two of the three CMDs which had been held to consider one or both of the two applications. The Applicant had failed to provide the information required by the tribunal in four separate directions. The Applicant had failed to attend the hearing, and had not been in contact with the tribunal at all since 16 September 2024.
16. In the circumstances, the tribunal considered that the Applicant had been provided with ample opportunity to provide it with the information which it required in order to make a decision on both applications. The Applicant had not done so, however, despite having been directed to do so on four occasions overall. The tribunal advised the parties at the CMD on 27 August 2024 that it intended to make a decision at the hearing and had invited them to submit further evidence prior to the hearing, but nothing was received.
17. The tribunal therefore decided to dismiss both applications in terms of rule 27 (2) (b) of the 2017 rules as it determines that the Applicant has failed to co-operate with the tribunal to such an extent that it cannot deal with the proceedings justly and fairly.

## 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.**

# Sarah O'Neill

**3 December 2024**

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**Legal Member/Chair**

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**Date**