



**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/24/1553**

**Re: Property at 78 Main Street, Bainsford, Falkirk, FK2 7PA (“the Property”)**

**Parties:**

**Mr Jeremy Gilbert, 18 Franklin Avenue, Falkirk, FK2 7FU (“the Applicant”)**

**Mr Andrew Inglis, previously of 78 Main Street, Bainsford, Falkirk, FK2 7PA and whose present whereabouts are unknown (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Mary Lyden (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 78 Main Street, Bainsford, Falkirk, FK2 7PA 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 forth 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”) based on Ground 10 (not occupying Property) and Ground 12 (rent arrears) of Schedule 3 of the 2016 Act.

2. The application was accompanied by a Private Residential Tenancy Agreement between the Applicant, the Respondent and Pauline Scott dated 25 February 2019, an email dated 6 January 2020 from the Applicant to the Respondent, a Private Residential Tenancy Agreement between the Applicant and the Respondent dated 7 March 2020, letters from the Applicant to the Respondent dated 8 March 2023 and 11 December 2023, a letter dated 8 December 2023 from Falkirk Council to the Applicant, a Notice to Leave, a track and trace Recorded delivery receipt dated 5 and 6 January 2024, a photograph of a Recorded Delivery envelope addressed to the Respondent, , an email dated 8 April 2024 addressed to Falkirk Council with a Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003, an email dated 8 April 2024 from Falkirk Council and a negative trace result from uktracing.
3. On 5 August 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 7 November 2024 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 28 November 2024. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 17 December 2024. This paperwork was unable to be served on the Respondent as his present whereabouts were unknown. The application was thereafter served on the Respondent by advertisement in terms of Rule 6A of the Rules. A copy of the Execution of Service was received by the Tribunal administration and placed before the Tribunal.
5. The Respondent did not make any representations.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 17 December 2024 by way of teleconference. Mr Gilbert the Applicant appeared and represented himself. 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.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the Applicant, the Respondent and Pauline Scott dated 25 February 2019, the email dated 6 January 2020 from the Applicant to the Respondent, the Private Residential Tenancy Agreement between the Applicant and the Respondent dated 7 March 2020, the letters from the Applicant to the Respondent dated 8 March 2023 and 11 December 2023, the letter dated 8 December 2023 from Falkirk Council to the Applicant, the Notice to Leave, the

track and trace Recorded delivery receipt dated 5 and 6 January 2024, a photograph of a Recorded Delivery envelope addressed to the Respondent, , the email dated 8 April 2024 addressed to Falkirk Council with the Notice under Section 11 of the Homelessness etc.(Scotland) Act 2003, the email dated 8 April 2024 from Falkirk Council and a negative trace result from uktracing. The Tribunal considered these documents.

8. The Tribunal asked Mr Gilbert to confirm if its understanding of the tenancy position was correct, namely that the original tenancy agreement had been entered into with the Respondent and Ms Scott, that she had left the Property in or about June 2019 as shown in the email of 6 January 2020 and that thereafter the Applicant and the Respondent had entered into a tenancy dated 1 March 2020. The Applicant confirmed that was the position. He explained the Respondent and Ms Scott had been in a relationship. This broke down and Ms Scott left the Property. The email of 6 January 2020 showed that the Applicant was happy to proceed with a tenancy in the sole name of the Respondent. The Applicant confirmed he then got his paperwork in order and entered into a new tenancy agreement in the sole name of Mr Inglis.
  
9. The Applicant went on to explain the Notice to Leave had been sent by Recorded Delivery post to the Respondent on 5 January 2024. The Respondent had been absent from the Property from about the summer of 2023. He had previously been in contact with the Respondent by social media which showed that the Respondent was often in the Manchester area. The Respondent then stopped communicating with the Applicant and blocked him from social media. The Applicant explained he would drive past the Property and noted it was always empty with no sign of anyone living there. He entered the Property on January 2024 after the Notice to Leave had been sent to carry out electrical repairs as required by Falkirk Council. He found the Property in a terrible state and found the unopened Recorded Delivery envelope containing the Notice to Leave behind the door in a pile of mail. The Applicant believed the Respondent had moved out of the Property after the Respondent's father had died. His father had lived with the Respondent at some stage.
  
10. The Tribunal enquired as to the rent arrears, noting the letters of the 8 March and 11 December 2023, the latter of which set out arrears of £6701. The Applicant explained no rent had been paid since then. He did not have an exact figure of the arrears before him but he estimated arrears to be in the region of £10 000. Arrears were not his primary concern. The Applicant explained that he understood the Respondent did receive benefits to pay his rent which the Respondent then paid to him.

11. The Applicant advised the Respondent was a single man in his late 30s or early 40s with no dependents. The Respondent had changed after his father had passed. The Respondent did not discuss health issues with him, but the Applicant was of the opinion that the Respondent was affected by his father's death. The Applicant confirmed the Property was the only Property he owned

### **Reasons for Decision**

12. 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.

13. 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 Grounds 10 (not occupying the Property) and 12 (rent arrears).

14. 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.

15. 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 Grounds 10 and 12 of Schedule 3 is 28 days.

16. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Grounds 10 and 12 of schedule 3 of the 2016 Act and states the amount of arrears and that the Respondent is not living in the Property at Part 3 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 1 April 2024. 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 terms of Section 62(5) it is to be assumed the tenant received the Notice to Leave 48 hours after it was sent. In this case it was sent on 5 January 2024. 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.

17. The Tribunal considered the Respondent had not opposed the order for eviction. The Tribunal accepted the Applicant's submissions that the Property was lying empty having been vacated by the Respondent in or about the summer of 2023. The Respondent's arrears were increasing and stood at over £10 000, the monthly rent being £450. However, Grounds 10 and 12 are both discretionary grounds of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
18. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal was persuaded by the Applicant's submissions that Grounds 10 and 12 had been established and that it was reasonable to evict. The Applicant had clearly taken steps to get the Respondent to engage with him in relation to the rent arrears before serving the Notice to Leave. The lines of communication had been shut down by the Respondent. The Respondent was not residing in the Property and had abandoned it. The Respondent did not oppose the application. He had not engaged at all with the Applicant. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Falkirk Council had been served. The balance of reasonableness in this case weighted towards the Applicant.
19. In the circumstances, the Tribunal considered that in terms of Grounds 10 and 12 of Schedule 3 the Respondent was no longer in occupation of the Property and is in rent arrears and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

20. 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

18 December 2024

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Legal Member

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Date