



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/1179**

**Re: Property at Breck be south, Birsay, Orkney, KW17 2ND (“the Property”)**

**Parties:**

**Mr Graham Ballantyne, Choinamo, Birsay, Orkney, KW17 2ND (“the Applicant”)**

**Angelina Maytum, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (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 eviction order should be granted against the Respondent in favour of the Applicant.**

**Background**

1. The Applicant seeks an eviction order in terms of Section 51 and Ground 10 of schedule 3 of the 2016 Act. A tenancy agreement, Notice to leave and section 11 notice were lodged with the applicaton.
2. The Tribunal was unsuccessful in serving the application on the Respondent at the address provided by the Applicant as she was no longer residing there. A scheduled CMD was cancelled and re-scheduled for 30 January 2025 at 2pm. The application was served by advertisement on the Chamber website.
3. The CMD took place on 30 January 2025 at 2pm. The Applicant participated. The Respondent did not participate and was not represented.

## **Summary of discussion at CMD**

4. Mr Ballantyne told the Tribunal that he has had no contact with the Respondent since January 2024. He has tried to call and email, without success. His wife saw the Respondent at the property on 5 January 2024, but she has not been seen since. He went into the property during the winter of 2024 and turned off the water. The property was still full of the Respondent's belongings but was clearly unoccupied. In the summer of 2024, he was contacted by Council Tax but told them that the Respondent was still the tenant. He received a Council Tax notice on 14 January 2025. He contacted them and was told that they had been in touch with Ms Maytum, and she told them that she is no longer resident at the property. As a result, the Council Tax account has been amended to his name. However, Ms Maytum did not return the keys or give notice to terminate the tenancy.
5. In response to further questions from the Tribunal, Mr Ballantyne said that the property is located on his farm, and he sees it every day. It is still unoccupied. He said that the tenancy started in 2020. The Respondent resided at the property with two small children and an older child. Her rent was always paid on time, but no rent has been received since 30 November 2023. There is a shed attached to the property, and she was supposed to be operating a business upgrading furniture from it, but this didn't really happen.

## **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
8. The Respondent has not resided at the property since January 2024.
9. The Applicant has been notified by the Local Authority Council Tax department that they have been informed by the Respondent that she no longer resides at the property.
10. The Respondent has not paid rent for the property since November 2023

## **Reasons for Decision**

11. The application was submitted with a Notice to Leave dated 6 February 2024, together with a certificate of posting and track and trace report which establish that the Notice was sent to the Respondent on 6 February 2024 and delivered on 8 February 2024. The Notice states that an application to the Tribunal is to

be made on ground 10, the tenant is not occupying the let property.

12. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
13. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
14. Ground 10 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states “(1) It is an eviction ground that the tenant is not occupying the let property as the tenant’s home. (2) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) the let property is not being occupied as the only or principal home of – (i) the tenant, or (ii) a person to whom a sub-tenancy of the let property has been lawfully granted.(b) the property’s not being occupied is not attributable to a breach of the landlord’ duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and (c ) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”
15. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Respondent has ceased to occupy the property.
16. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted that the Respondent appears to have vacated the property in January 2024 and has not paid rent since November 2023. She has notified the Local Authority that she does not reside there, and the Applicant is liable for the Council tax from 14 January 2025.
17. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 10 has been established. For the reasons outlined, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

## **Decision**

18. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

A handwritten signature in black ink, appearing to read 'Josephine Bonnar', written in a cursive style.

**Josephine Bonnar, Legal Member**

**30 January 2025**