

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/24/3973**

**Re: Property at 5 Earns Heugh Walk, Cove Bay, Aberdeen, AB12 3PX (“the Property”)**

**Parties:**

**Miss Teri Haggerty, residing at 42 Redmoss Avenue, Aberdeen, AB12 3JR (“the Applicant”) and**

**D.J. Alexander, John Cotton Centre, 10 Sunnyside, Edinburgh, EH7 5RA (“the Applicant’s Representative”) and**

**Mr Malcolm Brown, residing at 5 Earns Heugh Walk, Cove Bay, Aberdeen, AB12 3PX (“the Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**E Shand - Ordinary Member**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined as follows:**

### **Background**

1. This Application, contained in papers lodged with the Tribunal, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant, through their Representative, had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave (“NTL”) served on the Respondent and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice intimated to

Aberdeen City Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

### **Case Management Discussion on 18<sup>th</sup> March 2025**

3. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 2pm on 18th March 2025. The Applicant Miss Haggerty’s Representative’s Mr R. Bar attended. Mr Brown did not attend and was not represented. The Tribunal noted that Sheriff Officers had served copies of the Application papers, and an intimation document in respect of the CMD, on Mr Brown by posting the papers through the letterbox of the Property on 17th February 2025.
4. Mr Bar stated that his office last had contact with Mr Brown in June 2024. He said that at that time Mr Brown stated that he had taken advice and understood that he could remain in the Property until an order for eviction was granted by the Tribunal. Mr Brown also had said that he would continue to pay rent. Mr Bar further stated that rent arrears have now accrued, in the sum of £1,590.00. He stated that he understands that Mr Brown lives alone and works as a painter and decorator. He said that he had no information regarding any health conditions that Mr Brown may or may not have. Mr Bar referred to the considerable amount of beer cans shown in the various photographs of the Property, taken during the Representative’s inspection visits, but said that he had no knowledge of Mr Brown suffering any health condition related to alcohol use. Mr Bar referred to the inspection reports and submitted that the Property was in considerably poor condition both internally and externally and that Mr Brown had failed to adhere to the terms of the parties’ PRT, in particular Clause 20 which requires him to maintain the Property in good condition. Mr Bar asked the Tribunal to find that Mr Brown was in breach of the parties’ PRT and to grant the order for eviction in order to prevent further deterioration to the Property, and consequent loss to Miss Haggerty.

### **Statement of Reasons**

5. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
6. Schedule 3 (11) of the 2016 Act provides that is an eviction ground that the tenant has failed to comply with an obligation under the tenancy and confirms the criteria for the grant of an eviction order on this ground.
7. The Tribunal considered all of the papers lodged with the Application, in particular the various inspection reports and attached photographs in respect of the condition of the Property internally and externally. They also took account of Mr Bar’s submissions. Having done so the Tribunal found in fact that Mr Brown has not been maintaining the Property in good condition and found in

law that he is in breach of Clause 20 in the parties' PRT and that Ground 11 in Schedule 3 to the 2016 Act is satisfied. The Tribunal, in making their findings in fact and law, placed reliance on the absence of any contradictory representations from the Respondent, Mr Brown. He was served with the Application papers but did not submit any representations to the Tribunal in advance of the CMD and did not attend at the CMD to contradict the terms of the Application and, in particular, did not provide any information to the Tribunal regarding the issue of whether or not it is reasonable to grant the order sought. The Tribunal therefore decided that it is reasonable to grant an eviction order.

### **Decision**

8. The Tribunal therefore makes an eviction order as sought in this Application.

### **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.**

**G McWilliams**

**24th March 2025**

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**Tribunal Legal Member**

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**Date**