

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/24/4025

Re: Property at 5 Magnolia Drive, Glasgow, G72 7NP (“the Property”)

Parties:

Mr Michael McLoughlin, 87 Scalloway Road, Cambuslang, G72 8QF (“the Applicant”)

Ms Kirsty Montgomery, 5 Magnolia Drive, Glasgow, G72 7NP (“the Respondent”)

Tribunal Members:

Virgil Crawford (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

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

BACKGROUND

1. In or around August 2012 the Applicant let the Property to the Respondent. At that time there was no written lease. On 1 November 2023, a written Lease was entered into between the parties.
2. The lease provided for rent to be paid at the rate of £450.00 per calendar month, payable in advance.
3. On 16 May 2024 the Applicant served a Notice to Leave upon the Respondent. The Notice to Leave intimated three separate grounds upon which the Applicant was seeking vacant possession of the Property. The grounds are as follows:-

Ground 4 – the Applicant intends to reside in the Property for a period of not less than three months.

Ground 5 – a relative of the Applicant intends to reside in the Property for not less than three months.

Ground 12 – rent arrears.

4. The supporting documentation submitted to the Tribunal intimated that the Applicant's son, his son's partner and their young child intended to occupy the Property as their family home, that to be on a long-term basis and, therefore, for a period of not less than three months.
5. The Applicant intimated that he also intended to occupy the Property also to assist his son and his son's partner in caring for their young child. Prior to the Case Management Discussion, however, the Applicant forwarded further submissions to the Tribunal intimating that, having regard to the passage of time, it was no longer his intention to occupy the Property although it was still intended that his son, his son's partner and their child would reside in the Property.
6. Separately, the Respondent was in arrears of rent. The arrears of rent amounted to £4,260.00 when the Notice to Leave was served. As at the date of the Case Management Discussion, the arrears of rent amounted to £7,620.00. Those arrears of rent, however, related to the period of the tenancy since a written agreement was entered into. A greater sum is due having regard to arrears which had arisen prior to the written lease being entered into on 1 November 2023.
7. Affidavits from the Applicant and his son were provided to the Tribunal, these Affidavits confirming the intention of the Applicant's son, his partner and their child to occupy the property as their family home.
8. A rent statement detailing rent arrears was provided to the Tribunal.
9. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.

THE CASE MANAGEMENT DISCUSSION

10. The Applicant participated personally in the Case Management Discussion. He was represented by Miss Herd of Clarity Simplicity Limited Solicitors, Glasgow. The Respondent did not participate in the Case Management Discussion. The Tribunal, however, was in receipt of a certificate of intimation by Sheriff Officers confirming that the proceedings had been intimated upon the Respondent. In the circumstances, the Tribunal was satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the FTT Regs") that the respondent had received intimation of the date and time of the Case Management Discussion and considered that it was appropriate to proceed with the Case Management

Discussion in the absence of the Respondent in accordance with Rule 29 of the FTT regs

11. Miss Herd confirmed that the Applicant was still seeking an eviction order under grounds 5 (member of the Landlord's family intends to live in the let property) and ground 12 (the tenant is in rent arrears for over three consecutive months).
12. Affidavits had previously been provided in support of the ground 5 Application confirming the make up of the family and the intention of the Applicant's son and his family to live in the Property. Further, the level of up-to-date arrears - £7,620.00 – was confirmed.
13. The Tribunal enquired in relation to the personal circumstances of the Respondent insofar as these are known to the Applicant. The Tribunal was advised:-
 - The Respondent is still occupying the property.
 - It is believed she is approximately 38 or 39 years of age.
 - She lives at the property alone.
 - She has children but the children reside with her ex-partner.
 - She previously had pets at the Property but the pets no longer reside at the Property either.
 - The Applicant is not aware of any health issues affecting the Respondent.
 - The property has not been adapted in any way for the benefit of the Respondent.
 - The Applicant is not aware of any issue in relation to the payment of benefits which may be due to the Respondent.
14. Miss Herd confirmed, quite simply, that the Respondent has failed to engage with the Applicant or his Solicitors and, in the circumstances, no further information was available.
15. The Tribunal was provided with correspondence which had been sent to the Respondent in relation to the rent arrears in compliance with the pre-action protocol provided for in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
16. In the circumstances, having regard to the information contained in the Affidavits which supported an eviction order being granted under ground 5, and on the basis of the information in relation to rent arrears, which supported an eviction being granted in terms of ground 12, and in the absence of an appearance by the Respondent, and in the absence of any submissions having been lodged with the Tribunal by the Respondent, the Tribunal considered it was reasonable that an eviction order be granted.

FINDINGS IN FACT

17. The Tribunal found the following facts to be established:-

- a) The Applicant let the Property to the Respondent in or around August 2012. At that time there was no written lease between the parties.
- b) A written lease was entered into on 1 November 2023.
- c) Rent was payable at the rate of £450.00 per calendar month.
- d) The Respondent fell into arrears of rent. As at the date of service of a Notice to Leave, rent arrears amounted to £4,260.00.
- e) As at the date of the Case Management Discussion rent arrears amounted to not less than £7,620.00.
- f) The Applicant complied with the pre-action protocol.
- g) The Respondent has been in arrears of rent for more than three consecutive months.
- h) The Applicant has a son. His son has a young child, approximately 18 months old. The Applicant's son, his partner and their child intend to live in the Property as their family home. They intend to live in the Property for a period of not less than three months.
- i) A Notice to Leave was served upon the Respondent.
- j) A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.

DECISION

The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 5 and 12 of Schedule 3 to said Act.

Order not to be executed prior to 12 noon on 4 June 2025

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.

Virgil Crawford

28 April 2025

Legal Member/Chair

Date

