

**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) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/EV/19/0594**

**Re: Property at 109 Almond Road, Cumbernauld, G67 3LT (“the Property”)**

**Parties:**

**Ms Audrey Smith, 2A Kinnoul Lane, Glasgow, G12 9HF (“the Applicant”)**

**Miss Eloise Buchan, Mr Thomas MacLeod, 109 Almond Road, Cumbernauld, G67 3LT (“the Respondents”)**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that be an order for the respondents’ eviction from the property at 109 Almond Road Cumbernauld G67 3LT be made on the basis of Ground 12 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 since the respondents have accrued arrears of rent by an amount equal to or greater than one month’s rent and has been in arrears of rent for a continuous period of three or more consecutive months.**

This was a case management discussion ‘CMD’ in connection with an application in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2107, ‘the rules’ and s51 of the Private Housing (Tenancies) (Scotland) Act 2016, ‘the Act’. The tribunal had before it the following copy documents:

1. Application dated 21 February 2019 and received by the Tribunal on 22 February 2019.
2. Notice to leave dated 22 January 2019.
3. Land certificate.

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4. Email sent from applicant to respondents dated 22 January 2019.
5. Tenancy agreement.
6. Exchange of emails between the Tribunal and applicant.
7. Email from applicant to Tribunal dated 17 June 2019.

The applicant attended the tribunal. The respondents did not attend and were not represented. The tribunal had sight of the sheriff officer's execution of service dated 31 May 2019 which confirmed that service on both respondents was carried out on that date. The tribunal was satisfied that notice had been carried out in terms of rule 24 and that it was fair in all of the circumstances to proceed with the CMD in terms of rule 29.

The tribunal also had an application in terms of rule 111 before it in respect of rent arrears.

### **Preliminary matters.**

1. The tribunal noted that the applicant sent a notice to leave to the respondents by email on 22 January 2019. The lease referred to one email address which was the first named respondent's email address. The tenancy agreement lodged gave details of this email address and the parties had agreed that this was the email address to be used. The applicant's position was that the second named respondent did not have an email and he requires that the same email be used for any correspondence. The tribunal also noted that the applicant's email to the tribunal of 8 May 2019 referred to Whatsapp messages which she sent to each tenant using the mobile numbers contained in the lease, drawing attention to the notice to leave which she had emailed to them. The Whatsapp messages were not attached to the email. The tribunal adjourned to enable the applicant to produce copies of the messages. The applicant lodged copies of the messages with the tribunal. The messages were dated 22 January 2019 and corresponded with the two phone numbers on the tenancy agreement.
2. The tribunal noted that the rent arrears calculations contained in the email attached to the notice to leave dated 22 January 2019 was different from the rent arrears calculations contained in the application and the subsequent emails from the applicant to the tribunal. The applicant was unable to account for this discrepancy. The tribunal noted that the email attached to the notice to leave contained a detailed calculation. It appeared to the tribunal that there was a difference of £100. The notice to leave calculation appears to be based on arrears to 18 January 2019 of £1380 (plus £57 taking the arrears as at the notice to leave on 22 January 2019 to £1437. Subsequent calculations lodged by the applicant refer to arrears of £1480 as at the 18 January 2019, a difference of £100. The applicant conceded that there was a difference. Her position is that she is relying on the calculations in the notice to leave.

3. The tribunal sought to ascertain the position regarding any housing benefit claim. The applicant stated that she asked the respondents around October 2018 about their entitlement to housing benefit given that neither of them appeared to be working. The first named respondent told her that she was not entitled to housing benefit. The applicant stated that she contacted the local authority in January 2019 and was told that no claim had been made by either of the respondents.

## **Discussion**

The applicant was seeking an order today. Her position was that rent arrears are continuing to accrue. Her position was that the rent arrears have not accrued due to any delay or failure in payment of housing benefit. She conceded that there was a discrepancy of £100 in the calculations.

## **Findings in fact and law**

1. The applicant is the owner of the property.
2. The applicant entered into a private rented tenancy agreement with the respondents for the let of the property in July 2018.
3. The rent agreed was £100 per week or around £433.33 per month.
4. Rent arrears accrued from October 2018.
5. The respondents were served with a valid notice to leave on 22 January 2019.
6. The rent arrears as at the date of the notice to leave were £1437.
7. The rent arrears as at the 3 July 2019 are £3680.
8. The sum of £3680 is in excess of one month's rent.
9. The respondents have been in rent arrears for a continuous period in excess of three consecutive months.
10. The rent arrears are not wholly or partly as a result of a delay or failure in the payment of a relevant benefit.

## **Reasons**

The tribunal was satisfied that it had enough information before it today to make a decision and that the procedure had been fair. The tribunal considered the notice to leave carefully. The tribunal noted that one notice to leave had been sent to the respondents to the email address given in the tenancy agreement. The applicant also lodged copies of Whatsapp messages sent individually to the respondents drawing their attention of the email. The Whatsapp message to the second named respondent referred to the fact that the respondent had not provided the applicant with a separate email address. The tribunal was satisfied that the notice to leave had been validly served. The tribunal took into account the discrepancy of £100 between the notice to leave calculation and the subsequent calculations lodged by the applicant. The arrears are considerable and the tribunal did not consider that there was any prejudice to the respondent by this slight arithmetical error. The tribunal

was also satisfied that the mandatory ground 12 had been met and on the information available, the rent areas were not as a result of any delay or failure in the payment of housing benefit. The tribunal accordingly granted the mandatory order sought.

### **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.**

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**3 July 2019**

**Lesley Ward Legal Member**

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**Date**