



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/19/1949**

**Re: Property at 23 Flat 5, Roseburn Maltings, Edinburgh, EH12 5LL (“the Property”)**

**Parties:**

**Mr John Leiper, Mrs Kally Leiper, 7 Havens Edge, Limekilns, Dunfermline, KY11 3LY; 7 Havens Edge, Limekilns, Dunfermline, KY11 3LJ (“the Applicants”)**

**Miss Louise Hanscombe, 23 Flat 5, Roseburn Maltings, Edinburgh, EH12 5LL (“the Respondent”)**

**Tribunal Members:**

**G McWilliams (Legal Member)**

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

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

**Background**

1. By Application, dated 21<sup>st</sup> June 2019, the Applicants, through their Representative Arden Property Management LLP, 43 Morningside Road Edinburgh, EH10 4DR, sought an Eviction Order against the Respondent in terms of Section 51 of the 2016 Act. The Representative lodged copies of the parties Private Residential Tenancy Agreement (“PRT”), a Notice to Leave, Section 11 Notice, and copy Air BnB advertisements. The Notice to Leave was based on Ground 11 in Schedule 3 to the 2016 Act.
2. The parties were notified of the date, time and venue of a Case Management Discussion (“CMD”), on 29<sup>th</sup> July 2019. The Respondent made written representations to the Tribunal in two emails, each dated 24<sup>th</sup> August 2019.

## **Case Management Discussion**

3. The CMD was held at George House, 126 George Street, Edinburgh, EH2 4HH, at 11.30am on 5<sup>th</sup> September 2019. Ms Catriona Smith, from the Applicants' Representative Arden Property Management LLP, attended. The Respondent was not present or represented. The Applicants' representative Ms Smith referred to the documentation lodged with the Application. She stated that she had met the Respondent at the Property on 13<sup>th</sup> June 2019 and noted that the Respondent was unaware of the exact position of the Property and did not know where the boiler was located within the Property. She stated that Philip Hanscombe had been referred to as the Respondent's next of kin in the original Tenancy application papers and referred to the Air BnB advertisements which referred to "Philip" as being the host. Ms Smith submitted that it was clear that the Respondent did not occupy the Property and had been subletting it in breach of the terms of the parties PRT ( Clause 13). Ms Smith stated that there were rent arrears and that the Applicants would take formal action in this regard. She sought an Eviction Order.

## **Reasons for Decision**

4. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all of the information and documentation it required and that it would determine the application.
5. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant in a Private Residential Tenancy, on application by the Landlords, if it finds that one of the Eviction Grounds named in Schedule 3 to the 2016 Act applies. Ground 11 of Schedule 3 states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy. The Tribunal, having considered all of the evidence, was satisfied, on a balance of probabilities, that the Respondent, either directly or through a third party, was subletting the Property in breach of the parties PRT. Accordingly Ground 11 had been met and the Tribunal determined to make an Eviction Order.

## **Decision**

6. The Tribunal made a determination without a Hearing and granted an Eviction Order.

## 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

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Legal Member

5/9/19

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Date