



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/21/0515**

**Re: Property at Flat 3/1, 149 Ingram Street, Old Sheriff Court Building, Glasgow, G1 1DW (“the Property”)**

**Parties:**

**Serena Solitaire Bute, Executor of the late John Bute, 5th Floor, Crown House, 56-58 Southwark Street, London, SE1 1UN;**

**Anthony Crichton Stuart, Executor of the late John Bute, 13 Horbury Crescent, London, W11 3NF;**

**Sophia Anne Crichton Stuart, Executor of the late John Bute, 31A Hatherley Grove, London, W2 5RB and**

**Stephen Hudson Jenkins, Executor of the late John Bute, 50 Westbourne Terrace, London, W2 3UH, collectively the “Executors of the late John Bute”**

**(“the Applicant”) represented by Ms. Leona Duff of c/o Aberdeen Considine, 2nd Floor Elder House, Elder Street, Edinburgh, EH1 3DX (“the Applicant’s Agent”)**

**Mr Craig Jones, Flat 3/1, 149 Ingram Street, Old Sheriff Court Building, Glasgow, G1 1DW (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision in the absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Eviction Order be granted.**

**Background**

1. By application received on 8 March 2021 (“the Application”), the Applicant’s Agent applied to the First-tier Tribunal for Scotland (Housing & Property Chamber) for an eviction order arising from a private residential tenancy agreement between the Parties. The Application comprised an application form, copy private residential tenancy agreement, copy Notice to Leave dated 20 July 2020 citing Grounds 1 and 12, rent statement showing more than three consecutive months’ arrears, copy

instruction to an estate agency in respect of the sale of the Property and copy notice in terms of Section 11 Notice of the Homelessness etc (Scotland) Act 2003.

2. On 9 March 2021, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion ("CMD") was fixed for 26 March 2021 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
3. Prior to that CMD, the Applicant's Agent by email intimated to the Tribunal that the rent due and owing by the Respondent had increased and, as at 24 February 2021, the sum due and owing amounted to £17,825.00.
4. Prior to that CMD, the Respondent wrote to the Tribunal by email dated 24 March 2021 explaining that he had lost his job, suffered from ill-health and offering to pay £10.00 per week towards the rent arrears. He also indicated that his daughter was assisting him and would represent him, albeit no further detail or information on that was provided by him.
5. Also prior to that CMD, the Applicant's Agent, by email dated 25 March 2021, wrote to the Tribunal to advise that the Applicant had passed away and that the Application would require to be amended in terms of Rule 31 of the Rules and sought a four-week adjournment for this purpose.

## **CMD**

6. The CMD took place on 26 March 2021 at 14.00 by telephone conference call. The Applicant's Agent was present. The Respondent was present on the call but withdrew from the call before the adjournment discussion concluded.
7. The Applicant's Agent advised the Tribunal that contact had been via the late Applicant's personal assistant with the four executors of the Applicant's estate and that instructions were being sought to act on their behalf and to amend the Application in terms of Rules 31 and 32 of the Rules. Accordingly, the Tribunal continued the CMD to Monday 26 April 2021 at 10.00 am for this purpose.
8. The Tribunal by Direction dated 26 March 2021, directed the Respondent in terms of Rule 16 of the Rules to submit a written note of any opposition which he might have to the Application together with any supporting documents and directed the Applicant's Agent to advise the Tribunal if Ground 1 as narrated in the Notice to Leave was being pursued.
9. Prior to the continued CMD, the Applicant's Agent, by email dated 9 April 2021 confirmed that Ground 1 as narrated in the Notice to Leave was being pursued.
10. Prior to the continued CMD, the Applicant's Agent submitted an application in terms of Rule 31 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") from the Applicant's Agent that

the Executors of the late John Bute be substituted in his place as Applicant. By Order dated 23 April 2021, The Tribunal granted that application, substituted the Executors of the late John Bute as Applicant and, in terms of Rule 31(3) of the Rules, continued the Application FTS/HPC/CV/21/0153 in their name.

11. No response to the Direction was received from the Respondent.

### **Continued CMD**

12. The continued CMD took place on Monday 26 April 2021 at 10.00 am by telephone conference call. The Applicant's Agent was present. None of the Applicants nor the Respondent was present on the call.

13. The Applicant's Agent by oral submission and in answer to the Tribunal's questions advised the Tribunal that the rent due and owing by the Respondent continued to increase and that no payments had been received since a £100.00 payment on 20 June 2020. There had been no correspondence or contact from the Respondent to the Applicant's Agents and although, there had been contact from the Respondent to the Applicant's Letting Agents, this related, as far as she knew, to matters concerning the Property and the Respondent possibly removing from the Property voluntarily and not in respect of settling the rent due. In any event, the now Applicant intended to sell the Property.

14. The Applicant's Agent confirmed that there had been no response from the Respondent to the Applicant's Agent's pre-action letter of 16 February 2021 and that there had been no communication from the Respondent's daughter or any other person or organisation on his behalf.

15. The Applicant's Agent confirmed that the Respondent remained in the Property.

### **Findings in Fact.**

16. From the Application and the CMD, the Tribunal found the following facts to be established: -

- i) There was a private residential tenancy agreement between the Parties in respect of which the monthly rent was £1,150.00 and was due and payable on the 24<sup>th</sup> of each month;
- ii) The Respondent failed to pay the rent due on 24 December 2019 and has failed to pay rent due on each consecutive month thereafter;
- iii) A Notice to Leave in terms of Act was issued on 20 July 2020 citing Ground 1, the landlord intends to sell the property, and Ground 12, rent is in arrears for more than three consecutive months.
- iv) Prior to the issue of the Notice to Leave, the landlord had instructed estate agent to market the Property and the now Applicant intends to proceed with the sale, in support of Ground 1;

- v) At the date of the issue of the Notice to Leave, rent was in arrears for ten consecutive months, in evidence of Ground 12;
- vi) Other than his email of 24 March 2021, offering to pay £10.00 per week towards the rent arrears, neither the Respondent nor any person or party on his behalf has made any further offer or payment towards the rent due and owing and
- vii) There is no evidence to show that the Respondent's being in rent arrears is wholly or partly a consequence or a delay or failure in the payment of a relevant benefit.

### **Issue for the Tribunal**

17. Having found in fact that the Ground 1 as cited in the Notice to Leave is satisfied in respect of evidence, the first issue for the Tribunal in respect of Schedule 1 of the Act as amended by the Coronavirus (Scotland) Act 2020, is exercising its discretion to find if Ground 1 applies and, if so, being satisfied of that it is reasonable in all the circumstances to issue an eviction order on account of these facts.
18. Having found in fact that the Ground 12 as cited in the Notice to Leave is satisfied in respect of evidence, the second issue for the Tribunal in respect of Schedule 1 of the Act as amended by the Coronavirus (Scotland) Act 2020, is exercising its discretion to find if Ground 12 applies and, if so, being satisfied of that it is reasonable in all the circumstances to issue an eviction order on account of that fact.

### **Decision and Reasons for Decision**

19. With regard to Ground 1 as cited in the Notice to Leave, the Tribunal is satisfied on the information before it that the Applicant intends to sell the Property and that within three months' of the Respondent removing from the Property in order to wind up the late Mr. Bute's estate. The Tribunal finds that Ground 1 applies. The Tribunal is satisfied that the Respondent has had opportunity to find alternative accommodation. Accordingly, it is reasonable in all the circumstances to issue an eviction order on account of these facts.
20. With regard to Ground 12 as cited in the Notice to Leave, is satisfied in respect of the information before it that rent of more than three consecutive months is in arrears, namely rent of fifteen consecutive months, and, is satisfied that Ground 12 applies. The Tribunal is satisfied that the Respondent has had opportunity to make arrangements to pay the rent due but has not done so. The Tribunal notes that the Respondent, in his email of 24 March 2021 to the Tribunal indicates ill-health, including mental ill-health and loss of employment. However, the Respondent, having had opportunity to provide further detail and evidence on his views and position in respect of the Application, has not done so. The Tribunal had regard to the position of the now Applicant in its duty to the executory estate, the high level of rent arrears both accrued and accruing and the fact the rent arrears began to accumulate before the inception of the coronavirus pandemic. There is no information before the Tribunal to show that the Respondent's being in rent arrears is wholly or partly a consequence or a delay or failure in the payment of a relevant benefit. Therefore, having regard to all of the

information before to it in respect of the positions of the Parties, the Tribunal took the view that it is reasonable in all the circumstances to issue an eviction order on account of that fact.

21. The Tribunal then had regard to Rule 17(4) of the Rules which states that the Tribunal “may do anything at a case management discussion .....including making a decision” and proceeded to make an order for eviction.

### **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.**

Karen Moore	26 April 2021
_____ Legal Member/Chair	Date