

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order.

Chamber Ref: FTS/HPC/EV/20/2422

Re: Property at 35 Hutton Drive, East Kilbride, G74 4GJ (“the Property”)

Parties:

Mr Paul Sweeney, c/o 26 Cadzow Street, Hamilton, ML3 6DG (“the Applicant”)

Mr Declan Donnelly, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member), Ahsan Khan (Ordinary Member)

This was a Hearing fixed in terms of Rule 24 of the Procedure Rules and concerned an Application under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for an Eviction Order on the grounds that the Respondent is no longer living in the property. The Tribunal Hearing took place by teleconference due to the Covid-19 pandemic.

Attendance and Representation

The Applicant was represented by Ms Joanne Smith, director, Excel Letting Ltd, 26 Cadzow Street, Hamilton, ML3 6DG.

The Respondent did not attend the Tribunal and no written representations had been received. Service by Advertisement of the Application had been affected appropriately by the Tribunal.

Preliminary Matters

There were no preliminary matters.

Decision (in absence)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Evidence (Summary)

Joanne Smith - For the Applicants

Ms Smith explained to the Tribunal that the Applicant sought an Eviction Order in terms of Ground 10 on the basis they considered the Respondent was no longer living in the property. Ms Smith said she has acted for the Applicant for some years. She advised further that the Respondent had paid 6 months' rent upfront for the property and had provided notice to the Applicant to leave the property early on 23rd March 2020. Ms Smith said that on 20th March 2020 the Respondent contacted her to say that due to the pandemic he was finding it difficult to move and it was agreed he would remain in the property. Ms Smith said on 19th May 2020 she contacted the Respondent to find out his plans as the rent had been paid until 23rd May 2020 and she wanted to clarify if he was to start paying rent. The Respondent said he needed to stay one further month and he paid another month's rental. Ms Smith said that her next contact was to be June 2020 and she had been unable to contact the Respondent. Ms Smith said she called numerous times, left voicemails, contacted his father as they had those details, sent letters and there was no contact with the Respondent.

Ms Smith said further that they visited the property to check the safety of same and had found that the Respondent appeared to have left the property leaving some items behind. She said all the letters were unopened and there were no beds or clothes there. The property she said is in the same state as it was in June 2020 and there has been no contact with the Respondent. Ms Simpson said she checked the property last week and it remained the same as in June 2020 and the Applicant was keen to progress with matters.

The Applicant's representative made oral submissions in support of seeking grant of an order under section 51(1) of the 2016 on ground 10. It was noted the relevant notice in terms of Section 50 (1)(a) of the 2016 had been sent.

Reasons for Decision and Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and not to do so would be contrary to the interests of the parties having regard to the Overriding objective. The Respondent had received notification of the proceedings by Advertisement and had not challenged same by written representations or attendance.**
- 2. The Applicant sought an Order for Eviction on the grounds that the Respondent was no longer residing in the property.**
- 3. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property as a copy title was lodged with the Application.**

4. The Tribunal was satisfied on balance after hearing evidence that the Respondent, in terms of Schedule 3, Part 3 Ground 10 of the 2016 Act, was no longer residing in the property.
5. Further the Tribunal was satisfied on a balance of probabilities that the Respondent appeared to have abandoned the property in June 2020.
6. The Tribunal noted that the Applicant's representative was credible and very detailed in her evidence about the number of attempts to make contact with the Respondent. The Tribunal was satisfied she took all reasonable steps to try to contact the Respondent.
7. The Tribunal found that the requirements of Ground 10 of Schedule 3 to the Act had been met.
8. The Tribunal noted the Local Authority had been notified in accordance with section 56 of the 2016 Act.
9. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents. The Tribunal considered in all the circumstances it was reasonable to grant 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.

Karen Kirk

15th February 2021

Legal Member/Chair

Date