

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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**

**Chamber Ref: FTS/HPC/EV/19/3152**

**Re: Property at 2nd Floor Right 21 Scott Street, Dundee, DD2 2AH (“the Property”)**

**Parties:**

**Cox & Co, 20 Cherry Tree Park, Balerno, Edinburgh, Midlothian, EH14 5AJ (“the Applicant”)**

**Mr Alex McMurray, 2nd Floor Right 21 Scott Street, Dundee, DD2 2AH (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member)**

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

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

**Background.**

**This matter called for a Case Management Discussion at 11:30 on 15 January 2020 at Dundee Carers Centre, Seagate House, 132-134 Seagate, Dundee. The Applicant was personally present. There was no appearance by or on behalf of the Respondent. The Application had been validly served on the Respondent. The Tribunal therefore continued with the Case Management Discussion.**

**The Case Management Discussion.**

**The Applicant sought an Eviction Order against the Respondent in respect of a tenancy between the parties at the Property commencing 8 July 2019. The Applicant had emailed a Notice to Leave to the Respondent on 4 September 2019 indicating the Notice to Leave was served on the following basis: “ You are in rent arrears over three consecutive months” and “You have breached a**

**term of your tenancy agreement". The Notice to Leave stated that "An Application will not be submitted to the Tribunal for an Eviction order before 5 October 2019." The tenancy had commenced on 8 July 2019. The Applicant advised that the Respondent had paid July's rent but no other payments had been received.**

### **Preliminary Matters.**

**The Applicant was provided with notice by letter dated 18 November 2019 that the Tribunal intended to raise two preliminary matters at the Case Management Discussion. These were as follows:**

- 1. The Notice to Leave served on the Respondent was not accurate as it said the Respondent was in three months rent arrears when in fact at the time the Respondent was only in two months rent arrears.**
- 2. The Application to the Tribunal was signed 3 October 2019 which was before the expiry of the period set down in the Notice to Leave.**

**This letter referred to the decision of the Upper Tribunal in *Majid vs Gaffney UTS/AP/19/0037* dated 17 October 2019 in which the Upper Tribunal determined, amongst other things, that the grounds set out in a Notice to Leave must be applicable as at the date it is served.**

**The Applicant was also referred to s54 of the Private Housing (Tenancies) (Scotland) Act 2016 which states that an Application may not be submitted to the Tribunal prior to the expiry of the period of notice contained within the Notice to Leave.**

**The Applicant was not a position to suggest that these observations were not well founded. Instead he made representations regarding an unfairness resulting from an application of the law in this matter. The Tribunal noted that the Applicant accepted that when the Notice to leave was issued the Respondent was in two months rent arrears as opposed to the three months claimed in the Notice to Leave.**

### **Findings in fact.**

**The Tribunal made the following findings in fact:**

- I. There was a Private Residential Tenancy between the parties which commenced on 8 July 2019.**
- II. The tenancy commenced on 8 July 2019.**
- III. The Respondent had paid his contractual rental payment for the month of July.**
- IV. No rental payments had been made by the Respondent since the rental payment for July.**
- V. The Applicant served the Respondent a Notice to Leave by email on 4 September 2019.**

- VI. That Notice to Leave stated that it was on the basis of the Respondent being in three months rent arrears and breaching a term of his tenancy.
- VII. When the Notice to Leave was served, the Respondent was only two months in rent arrears.
- VIII. The Grounds set out in the Notice to Leave were inapplicable at that time.
- IX. The Notice to Leave stated that no Application would be submitted to the Tribunal before 5 October 2019.
- X. The Application was lodged on 3 October 2019.

### Decision

The Tribunal concluded that as the grounds for the Eviction Order set out in the Notice to Leave were not applicable at that time, the Application must be refused. Accordingly the Tribunal did not go on to consider whether notwithstanding the breach of s54 referred to above, the Tribunal should consider whether it was reasonable to consider the Application as per the discretion provided in s52 (2) (b).

The Tribunal accordingly refused the Application.

### 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.

A. McLaughlin

Legal Member/Chair

\_\_\_\_\_ Date

15/11/2020