

**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) Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/CV/22/0226**

**Re: Property at 152, Hillcrest Avenue, Cumbernauld G67 1ES (“the Property”)**

**Parties:**

**HK Properties Scotland Limited, Heathery-knowe, High Barrwood Road, Kilsyth, Glasgow G65 0EE (“the Applicant”)**

**Mr John McMillan residing formerly at 152, Hillcrest Avenue, Cumbernauld G67 1ES and now present whereabouts unknown (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Grounds for eviction and recovery of possession having been established, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

1. By application received between 14, February 2022 and 30 March 2022 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for possession of the Property based on Ground 10, the tenant is not occupying the Property, and Ground 12, the tenant has more than three consecutive months arrears, of Schedule 3 to the Act. The Application comprised statement of rent of £5,484.00 due and owing to January 2022, copy Notices to Leave, photographic evidence showing that the Respondent appears not to reside in the Property. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 5 July 2022 at 10.00 am by telephone conference. The CMD was intimated to the Parties and, in particular, was served on the Respondents by public advertisement on 24 May 2022.

**CMD**

2. The CMD took place on 5 July 2022 at 14.00 am by telephone. Mr. Howard of the Applicant took part. The Respondent did not take part and was not represented. He did not submit any written representations.

3. Prior to the CMD, the Applicant advised the Tribunal by email of 23 March 2022 that the rent due had increased to £6,514.00 and that there had been no activity at the Property by the Respondent.
4. The Tribunal explained that the purpose of the CMD was to identify the issues between the Parties, and in the absence of any response from the Respondent, to determine if the Tribunal can grant the Order. The Tribunal noted from the Application that the correct statutory procedures had been carried out and that the Grounds on which the Application were raised are established.
5. Mr. Howard advised the Tribunal that the rent due has risen to £8,059.00 and that, in spite of employing sheriff officers to trace the Respondent, the Respondent has not been traced. Mr. Howard explained that he obtained a warrant to access the Property in February of this year and the Respondent was not present. He confirmed that a mortgage is secured against the Property.

#### **Issue for the Tribunal**

6. The statutory Grounds and the procedure being established, the issue for the Tribunal is to determine if it is reasonable to grant the Order. The Tribunal 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*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

#### **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a tenancy of the Property between the Parties at a monthly rent of £515.00 which began on or around 17 May 2019;
  - ii) Rent amounting to £8,059.00 is outstanding and due and owing by the Respondent to the Applicant and this amount continues to increase;
  - iii) The Applicant has a mortgage secured on the Property and requires the rental income to meet the costs of the Property;
  - iv) The Applicant has carried out the statutory processes required by the Act and
  - v) The Respondent no longer resides in the Property.

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

8. The Tribunal had regard to all the information before it and to its Findings in Fact.
9. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the high level of the rent arrears, the financial effect this has on the Applicant and to the fact that the Respondent no longer resides in the Property. The Tribunal was satisfied that it is reasonable to issue 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 Moore**

---

**Legal Member**

**05 July 2022**  
**Date**