



**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 Act')**

**Chamber Ref: FTS/HPC/EV/19/0673**

**Re: Property at 52 Dunkeld Place, Hamilton ML3 9PT ('the Property')**

**PARTIES:**

**Mr Tanio D'Cruz, 14 Twynersh Avenue, Surrey KT16 9DE ('the Applicant') represented by Jewel Homes, Atrium Business Centre, North Caldeen Road, Coatbridge ML5 4EF**

**Mrs Margaret McMillan, 52 Dunkeld Place, Hamilton ML3 9PT ('the Respondent')**

**TRIBUNAL MEMBER:**

**Joseph C Hughes (Legal Member) [sitting alone]**

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**Craig Gemmell**

**Decision [in absence of the Respondent]**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Applicant was entitled to an Order for Possession of the property and the ejection of the Respondent from the property under Ground 12 of Schedule 3 of the Act.**

## **BACKGROUND**

By Application dated 26<sup>th</sup> February 2019 and received on 4<sup>th</sup> March 2019, the Applicant sought an Order for Possession of the property and the ejection of the Respondent in terms of Section 51 of the Act on the basis of Ground 12 of Schedule 3 of the Act since the Respondent has accrued arrears of rent by an amount equal to or greater than one month's rent and has been in arrears of rent for a continuous period of three consecutive months. The Application was lodged in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ('the Regulations').

The Tribunal had before it:

- (i) Private Rental Tenancy Agreement dated 7<sup>th</sup> June 2018;
- (ii) Rent Ledger showing rent paid and received;
- (iii) Notice to Leave dated 30<sup>th</sup> November 2018, served by sheriff officers on 5<sup>th</sup> December 2018;
- (iv) Section 11 Notice intimated to local authority on 26<sup>th</sup> February 2019;
- (v) Mandate dated 23<sup>rd</sup> February 2019 from the Respondent authorising Ms Vikki McGuire to act as his representative;
- (vi) Certificate of Service upon the Respondent from sheriff officers dated 2<sup>nd</sup> April 2019.

On 8<sup>th</sup> March 2019, the Application was accepted by the Tribunal and referred for determination by the Tribunal.

A Case Management Discussion ('CMD') took place on Thursday 18<sup>th</sup> April 2019 at 10am within Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. Appropriate intimation of that Hearing was given to both parties.

Miss Vicki McGuire (from Jewel Homes) appeared on behalf of the Applicant. Neither the Respondent nor a representative attended the Hearing.

The Applicants' representative confirmed that the Applicant wished the Tribunal to grant the Order for Eviction as sought in the Application.

## **FINDINGS IN FACT**

- (i) The Applicant and the Respondent are respectively the Landlord and Tenant. They entered into a tenancy agreement for the property at 52 Dunkeld Place, Hamilton on 7<sup>th</sup> June 2018.
- (ii) The Tenancy was a Private Residential Tenancy.

- (iii) The rent was initially set at £375 per four weeks payable monthly in advance. The Landlord agreed to reduce the monthly rental thereafter to £350.
- (iv) Rent arrears have accrued since June 2018.
- (v) The Respondent was served with a valid Notice to Leave dated 30<sup>th</sup> November 2018 served by sheriff officers on 5<sup>th</sup> December 2018.
- (vi) A Section 11 Notice was emailed to South Lanarkshire Council by email dated 26<sup>th</sup> February 2019.
- (vii) The rent arrears as at the date of the application was £2400.
- (viii) The current arrears as at 18<sup>th</sup> April 2019 (the date of this Hearing) is £2690.
- (ix) The arrears are in excess of one month's rent.
- (x) The Respondent has been in rent arrears for a continuous period in excess of three consecutive months.
- (xi) The Respondent is in receipt of Universal Credit. The Applicant received a payment on 17<sup>th</sup> April 2019 directly from DWP for £350.01. The Applicant is unable to obtain any of the accrued rent arrears from DWP.
- (xii) The rent arrears are not wholly or partly a result of a delay or failure in the payment of a relevant benefit.

### **REASONS FOR DECISION**

The Tribunal is satisfied that the Respondent has received notice of today's CMD in terms of Rule 24. The Tribunal proceeded with the CMD in the Respondent's absence in terms of Rule 29. The Tribunal considered that it had enough information before it today to make a decision and the procedure adopted has been fair. The Tribunal considered all the documents lodged including the Rent Ledger. The information lodged gives details of the rent arrears. The mandatory Ground 12 within Schedule 3 of the Act is clearly met.

The Tribunal was satisfied that the terms of Section 51 had been complied with and that on the basis of all the information available, the rent arrears were not as a result of any delay or failure in the payment of a relevant benefit.

Ms McGuire advised the Tribunal that she been in contact with the Respondent's daughter yesterday by telephone. Ms McGuire stated that the Respondent's

daughter had indicated the application pack had been received by the Respondent and that she was unable to attend the CMD. The Respondent continues to reside in the property.

Whilst Ms McGuire was aware that the Respondent did not keep well, the Applicant now feels he has no option but to seek an Order for Possession.

The requirements of Paragraph 12(2) of Schedule 3 of the Act are met and therefore Ground 12 for eviction must apply.

The basis for the Order for Possession was established.

The Tribunal accordingly granted the mandatory Order for Possession sought in terms of Section 51 of the Act.

### **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.**

Joseph C Hughes

Legal Member  
Housing Property Chamber

**Date: 18<sup>th</sup> April 2019**