

# 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 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/4310**

**Re: Property at Inchmartine Cottage, Perth, PH14 9QQ (“the Property”)**

**Parties:**

**Perthshire Caravans Limited, Dundee Road, Errol, Perthshire, PH2 7SR (“the Applicant”) and**

**Thorntons Law LLP, Third Floor, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant’s Representative”) and**

**Mr Frank Sime, Inchmartine Cottage, Perth, PH14 9QQ (“the Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**G. Darroch - Ordinary Member**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:**

### **Background**

1. This Application, was brought in terms of Rule 109 (Application for an eviction order) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).
2. The Applicant had provided the Tribunal, in the Application, with copies of the parties’ Private Residential Tenancy Agreement (“the PRT”), the Notice to Leave served on the Respondent and the Section 11 (Homelessness Etc.

(Scotland) Act 2003) Notice intimated to Perth and Kinross Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied.

3. The Application papers and Guidance Notes had been validly served upon the Respondent by Sheriff Officers on 4<sup>th</sup> January 2023.
4. The Respondent had not lodged any representations in respect of the Application.

### **Case Management Discussions**

5. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 14<sup>th</sup> February 2023. Reference is made to the Notes on that CMD, dated 15<sup>th</sup> February 2023. A further CMD proceeded remotely by telephone conference call at 10.00am on 16<sup>th</sup> May 2023. The Applicant’s Representative’s Mr C. Gordon attended. The Respondent did not attend and was not represented.
6. Mr Gordon had lodged papers in advance of the second CMD seeking to amend the Application so that it would proceed on ground 12 (1)(A) in Schedule 3 to the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”), on the basis that the Respondent is in substantial rent arrears, the accumulative amount of which exceeds 6 months’ rent under the parties’ PRT. Mr Gordon also lodged documentation in respect of the Respondent’s continuing non-payment of rent following the previous CMD. Mr Gordon sought that the Tribunal amend the Application’s ground of eviction from original ground 3, regarding proposed refurbishment of the Property, to ground 12(A) in respect of 10 months’ rent arrears from August 2022, in the total sum of £8,750.00. Mr Gordon re-iterated his submission, made at the previous CMD, that after making payment of the deposit monies of £875.00 at the commencement of the parties’ tenancy agreement, on 1<sup>st</sup> August 2022, the Respondent had not made payment of any rent. Mr Gordon submitted that the Respondent’s non-payment of any rent in terms of the parties’ PRT was unusual and merited amendment of the periods for enforcement of an eviction order through Sheriff Officers. Mr Gordon stated that he was not aware of the Respondent’s up to date circumstances, other than that the Applicant understands that the Respondent is a self-employer gardener and has been residing in the Property with his wife. Mr Gordon asked the Tribunal to grant the Eviction Order on the amended ground. Mr Gordon also sought that the Tribunal consider dispensing with the requirement for the Sheriff Officers to serve a Charge in respect of enforcement of any Eviction Order on a period of notice of 14 days, and provide notice of removal of at least 48 hours, in terms of Rule 41C of the 2017 Rules and Section 216 of the Bankruptcy and Diligence etc.(Scotland) Act 2007.

## **Decisions on Preliminary Matters**

7. The Tribunal considered Mr Gordon's request to amend the Application's eviction ground. The Respondent was aware of the Application proceedings, having contacted Mr Gordon on the day of the last CMD, as referred to in the Notes on that CMD. The Respondent had also been served with the Application papers by both Sheriff Officers and the Tribunal's Office. As the Respondent had not made representations to contradict the terms of the papers lodged by Mr Gordon, and his submissions, the Tribunal found, on a balance of probabilities, that the Respondent had not paid any rent since the commencement of the tenancy and the current arrears are in the sum of £8,750.00, which exceeds 6 months' rent under the parties' PRT. The Tribunal was persuaded that the rent arrears are substantial, and continuing, and that it was in the interests of justice to allow the Applicant to amend the eviction ground. The Tribunal was not persuaded that it was in the interests of justice to amend the time periods for Sheriff Officers enforcement of an eviction order. The Tribunal found that this Application was not unique by virtue of the fact that no payment of rent had been made in terms of the parties' PRT.

## **Findings in Fact and Law and Reasons for Decision**

8. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
9. Schedule 3 (12) (1) (A) of the 2016 Act provides that it is an eviction ground that the tenant is in substantial rent arrears equating to, or exceeding, an amount equivalent to 6 months' rent under the parties' PRT.
10. The Tribunal considered all of the Application papers, including the PRT, Notice to Leave and Rent Statements lodged by the Applicant, as well as the submission of Mr Gordon.
11. The Respondent had not lodged representations with the Tribunal regarding the reasonableness of the grant of an eviction order or attended the CMDs to provide any evidence, and/or make any submission, to oppose, and contradict the basis for the order sought by the Applicant.
12. Having considered all of the evidence, representations and submissions, the Tribunal found in fact that the Respondent is in 10 months' rent arrears, in the total sum of £8,750.00, having not paid any rent since the commencement of the tenancy in August 2022. The Tribunal found in law that the ground in Schedule 3 (12)(1)(A) of the 2016 Act was met and determined that it was reasonable that an eviction order be granted.

## **Decision**

13. The Tribunal therefore made an eviction order as sought in this 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.**

**Gerald McWilliams**

**16<sup>th</sup> May 2023**

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**Legal Member**

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**Date**