

**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/20/1450**

**Re: Property at West Nisbet No5, Nisbet, Jedburgh, TD8 6TR (“the Property”)**

**Parties:**

**Monteviot Trust, c/o Lothian Estates Office, Jedburgh, Roxburghshire, TD8 6UF (“the Applicant”) per their agents, Messrs, Shepherd and Wedderburn, solicitors, 1, Exchange Crescent, Conference Square, Edinburgh EH3 8UL (“the Applicants’ Agents”)**

**Miss Naomi Hare, West Nisbet No 5, Nisbet, Jedburgh, TD8 6TR (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Eviction Order be granted.**

**Background**

1. By application received between 3 and 15 July 2020 (“the Application”), the Applicant’s Agents on behalf of the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for an eviction order in terms of Section 51 of the Act. The Application comprised an application form, copy private residential tenancy agreement showing a monthly rent of £425.00, copy notice to leave dated 5 March 2020 citing Ground 12 of Schedule 3 to the Act and giving notice that the earliest date proceedings can be start is 3 April 2020 (“the Notice to Leave”) together with certificate of personal service on 5 March 2020 by Sheriff Officer, rent statement showing rent arrears amounting to £2,550.00 being rent arrears for three or more consecutive months and copy notice to Scottish Borders Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003.

2. On 10 August 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and fixed a Case Management Discussion (“CMD”).
3. The legal member issued a Direction in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 putting the Applicants on notice that the validity of the Notice to Leave may have to be addressed further at the CMD.
4. The CMD was fixed for 17 September 2020 at 11.30 by telephone conference call. The Application was intimated to the Respondent. The CMD and Direction were intimated to both Parties.

### **Summary of Case Management Discussion**

5. The CMD took place on 17 September 2020 at 11.30. The Applicants did not take part and was represented by Ms. Gina Johnston of the Applicant’s Agents. The Respondent took part. The Tribunal explained the purpose of the CMD in terms of Rule 17 of the Rules and explained to the Respondent the statutory process which a landlord must follow to recover possession of a property in terms of the Act and explained that, in particular, that the purpose of the Direction was to ensure that these processes had been followed properly.
6. With regard to the Direction, the Tribunal asked Ms. Johnston for her view on the validity of the Notice to Leave in respect of Section 62(1)(b) of the Act. Ms. Johnston submitted that the Notice to Leave complied with the Act in respect of Section 62(1)(b) of the Act. Ms. Johnston referred the Tribunal to Section 26(6) of the Interpretation and Legislative Reform(Scotland) Act 2010 and submitted that as, it had been evidenced that the Notice to Leave had been served on 5 March 2020 by Sheriff Officer, this is the operative date for receipt by the Respondent in terms of Sections 62(4) and Section 54 (2)(b)(i) of the Act. Ms. Johnston submitted, therefore, that the assumption set out in Sections 62(5) did not apply.
7. The Respondent accepted that she had received the Notice to Leave on 5 March 2020 and further accepted that she had eleven months of rent arrears. The Respondent advised the Tribunal that she had secured alternative accommodation and intend to vacate the Property. The Respondent stated that she did not bear any ill-will to the Applicants and that she wished the Tribunal and the Applicants to know that she held the Applicants’ housing officer in high regard and appreciated the support and assistance given to her.
8. The Tribunal had regard to the wording of the Act at Sections 62(1)(b), 62(4) and 62(5) and to the wording of Section 26, and, in particular, Section 26(6) of the Interpretation and Legislative Reform (Scotland) Act 2010. The Tribunal agreed with Ms. Johnston that, by virtue of Section 26(6) of the Interpretation and Legislative Reform (Scotland) Act 2010, the operative date for receipt the Notice to Leave by the Respondent is 5 March 2020 and so, in terms of Sections 62(4)

and Section 54 (2)(b)(i) of the Act, the relevant date for the purposes of Section 62(1)(b) of the Act is 3 April 2020, as set out in the Notice to Leave. The Tribunal then advised the Parties that it was satisfied that the statutory processes had been followed properly.

### **Findings of the Tribunal.**

9. From the Application and the CMD, the Tribunal found the following facts to be established: -
  - i) There is a private residential tenancy agreement between the Parties;
  - ii) The monthly rent is £425.00;
  - iii) A notice to leave dated 5 March 2020 citing Ground 12 of Schedule 3 to the Act and giving notice that the earliest date proceedings can be start is 3 April 2020 was intimated to the Respondent on behalf of the Applicants;
  - iv) Rent arrears amounting to £2,550.00 at the date of the Notice to Leave were due and owing by the Respondent to the Applicants, this sum had increased further at the date on which the Application was made and has increased further to today's date;
  - v) The rent arrears are for three or more consecutive months;
  - vi) Notice to Scottish Borders Council, being the relevant local authority, in terms of Section 11 of the Homelessness (Scotland) Act 2003, has been given

### **Decision of the Tribunal and Reasons for the Decision.**

10. The Tribunal had regard to Chapter 3 of Part 5 of the Act which sets out the steps which a landlord must take to bring an application for termination of a private residential tenancy to an end and determined that the Applicants had complied with these requirements.
11. The Tribunal then had regard to section 51 (1) of the Act which states:- "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
12. Accordingly, having been satisfied that the Applicants had complied with the statutory requirements and that Ground 12 of Schedule 3 to the Act is satisfied, the Tribunal is obliged to grant an order.
13. The Tribunal then 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" and so proceeded to make an eviction order to come into effect no earlier than thirty days from the date hereof, being 18 October 2020.

### **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

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**Legal Member/Chair**

**17 September 2020**