

**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/21/2319**

**Re: Property at 46 Carlops Avenue, Penicuik, EH26 0DH (“the Property”)**

**Parties:**

**Mr Claire Burnet, Kilmartin Cottage, Woodhouselee, Easter Howgate (“the Applicant”)**

**Mr Craig Douglas, 46 Carlops Avenue, Penicuik, EH26 0DH (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)**

**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 the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016.**

**Background**

1. By application dated 21 September 2021 the Applicant’s representatives, Gilson Gray LLP, Solicitors, Edinburgh applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy tenancy agreement, rent statement, Order of the Tribunal dated 20 May 2021, Certificate of Service of Notice to Leave, Notice to Leave, Pre-action correspondence and Section 11 Notice.
2. Following further correspondence between the Tribunal administration and the Applicant’s representatives a legal member of the Tribunal with delegated powers by Notice of Acceptance dated 12 November 2021 accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was sent to the Applicant's representatives by post and was served on the Respondent by Sheriff Officers on 24 November 2021.
4. The Applicant's representatives submitted further written representations by email dated 15 December 2021.

### **The Case Management Discussion**

5. A CMD was held by teleconference on 23 December 2021. The Applicant did not attend but was represented by Ms Tanya Royale of Gilson Gray LLP. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent by Sheriff Officers determined to proceed in his absence.
6. The Tribunal heard from Ms Royale who confirmed that the parties had entered into a Private Residential Tenancy agreement that had commenced on 6 November 2020 at a rent of £695.00 per calendar month. She explained that the Respondent had paid the first month's rent but had then failed to pay any rent thereafter. She said that as a result a Notice to Leave had been sent to the Respondent by email on 17 March 2021 and also served on him by Sheriff Officers using letterbox service on the same day. The Tribunal noted that the Respondent would have been deemed to have received the Notice on 19 March and therefore the earliest date for raising proceedings would have been 20 September 2021 and not as stated on the Notice 18 September 2021. However, the Tribunal also noted that the Coronavirus (Scotland) Act 2020 provided that a Notice to Leave was not invalidated if there was an error in the date for making an application to the Tribunal if the application was made after the earliest date that ought to have been contained in the Notice.
7. Ms Royale went on to say that pre-action letters dated 16 March and 28 July 2021 had been sent to the Respondent in accordance with the Scottish Government's Covid Regulations for Landlords. She said that the Respondent had not replied to the letters.
8. Ms Royale confirmed a Section 11 Notice had been sent to Midlothian Council on 21 September by email.
9. Ms Royale went on to explain that the Applicant had already obtained an order for payment by the Respondent in respect of rent due in the sum of £3475.00 and she was aware that the Respondent had still been in occupation of the property as at 28 July this year. She said that there was currently another application with the Tribunal for access to the property and it appeared from recent attempts to gain access that the Respondent was no longer in occupation and had not lived there for some months. She referred the Tribunal to the photographs submitted with the email of 15 December and the report from Thomas Hannah & Company, Sheriff Officers dated 8 November 2021 advising that it seemed likely that the Respondent was no longer living in the property.

10. Ms Royale advised the Tribunal that the rent outstanding now amounted to £9035.00. No rent had been paid since the initial payment on 6 November 2020. The terms of Ground 12 of Schedule 3 of the 2016 had been met. She submitted it was reasonable to grant the order as the arrears had continued to build up with no payments being made. Despite several attempts to gain access to the property the Respondent had failed to respond. There was evidence to suggest the Respondent had abandoned the property. It was only reasonable that the Applicant be granted the order so that she could cut her losses and start to obtain an income from the property. Ms Royale also accepted that it would not be reasonable for the Respondent to continue to accrue a debt for rent if he was no longer living in the property.

### **Findings in Fact**

11. The parties entered into a Private Residential tenancy that commenced on 6 November 2020 at a rent of £695.00 per calendar month.
12. The Respondent paid the first month's rent on taking entry but has not paid any rent thereafter.
13. The rent now due amounts to £9035.00.
14. The Applicant has obtained an order for payment in the sum of £3475.00.
15. The Applicant's representatives sent Notices to Leave to the Respondent by email and by Sheriff Officers on 17 March 2021.
16. The Applicant's representatives sent pre-action letters to the Respondent dated 16 March and 28 July 2021.
17. The Applicant's representatives sent a Section 11 notice to Midlothian Council by email on 21 September 2021.
18. It appears that the Respondent is no longer residing at the property.

### **Reasons for Decision**

19. The Tribunal was satisfied that the parties had entered into a Private Residential Tenancy agreement at a rent of £695.00 per calendar month. It was also satisfied that by the time the Notice to Leave was sent to the Respondent on 17 March 2021 he had accrued rent arrears over a period of three months. Although the earliest date for making an application to the Tribunal ought to have been stated as 20 September 2021 and not 18 September 2021, in terms of the Coronavirus (Scotland) Act 2020 this does not invalidate the notice as the application was not submitted until 21 September 2021.
20. The Tribunal was satisfied that pre-action letters had been properly sent to the Respondent in accordance with the Scottish Governments regulations for

Landlords seeking an eviction. The Tribunal was also satisfied that a Section 11 Notice had been sent to the Local Authority advising them of the application.

21. The Tribunal was therefore satisfied that procedurally the application met the requirements of Ground 12 of Schedule 3 as the amount of rent owed at the date of the CMD was significantly in excess of the equivalent of one months.
22. The Tribunal was required under the terms of the Coronavirus (Scotland) Act 2020 to consider whether in all the circumstances it was reasonable to grant the order for eviction. In so doing the Tribunal took account of the fact that the Respondent had not participated in the proceedings. That could have been because he was unaware of them if as appeared likely from the photographs and documents submitted, he has abandoned the property. The Tribunal also took account of the fact that no rent had been paid by the Respondent for over a year with no explanation being given and a total failure to engage with the Applicant's representatives. The Tribunal was of the view that it was not reasonable to expect the Applicant to continue to be unable to obtain an income from the property. The Tribunal also considered it would not be fair on the Respondent to continue to accrue debt for rent if he was no longer occupying the property. The Tribunal was therefore satisfied that the order for eviction should be granted.

### **Decision**

23. The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property under Ground 12 of Schedule 3 of the 2016 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.**

**Graham Harding**  
**Legal Member/Chair**

**23 December 2021**  
**Date**