



**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/21/0155**

**Re: Property at Flat 0/1, 1 Kirkwood Street, Glasgow, G51 1QA (“the Property”)**

**Parties:**

**Mr Faraz Ahmad, 7 Parklands, 22 Mount Park Road, London, W5 2RS (“the Applicant”)**

**Ms Laura Marisa Paterson, Flat 0/1, 1 Kirkwood Street, Glasgow, G51 1QA (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Introduction.**

This Application called for a Case Management Discussion at 10 am on 28 April 2021. The Applicant was represented on the call by Mr Ezzatvar of Persotheos Letting Agency. There was no appearance by or on behalf of the Respondent. Sheriff Officers had served the Application and information about how to join the conference call on the Respondent on 25 March 2021. The Tribunal therefore considered it fair to proceed in the absence of the Respondent.

### **Basis of the Application.**

The Applicant sought an Eviction Order in respect of Grounds 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Grounds was said to be engaged because the Landlord intends to live in the Property. On receipt of the Application however, the Tribunal had indicated to the Applicant that the Tribunal would require to be addressed about apparent deficiencies with the Notice to Leave that was said to have been served on the Respondent and which underpinned the Application. The Tribunal raised these issues as a preliminary matter with Mr Ezzatvar.

### **Preliminary Matters.**

The Tribunal raised with Mr Ezzatvar that the Notice to Leave appeared to have been signed on 19 October 2020 and was said to have been personally served on the Respondent on that same day. The Notice to Leave stated that the end of the Notice Period would be 19 January 2021- a date exactly three months after the Respondent was said to have first received the notice.

The Tribunal noted that this did not provide the Respondent with the requisite period of notice as it did not account for s 62 (5) of the Act which suggests that a Notice to Leave is deemed to have been received 48 hours after it is sent.

Mr Ezzatvar directed the Tribunal to a text which was said to have been sent by the Respondent and which was said to demonstrate the Respondent acknowledging receipt of the Notice which would rebut the presumption of 48 hours being necessary.

The Tribunal considered these messages. The Tribunal however noted that these messages did not evidence the Respondent having understood or digested the contents of any letter or even having opened it for that matter. The Tribunal did not consider that there was sufficient evidence to disapply the presumption that the Respondent should be deemed to have received the Notice to Leave 48 hours after it was sent- and it was clear that it was only sent on 19 October 2020 meaning that the stated notice period of 19 January 2021 did not provide the Respondent with the necessary notice period. In any event the Notice Period would also have been only deemed to have expired the day after the date provided in the Notice to Leave. In that regard the Notice to Leave was also defective.

### **Decision**

Having found that the Notice to Leave was defective and provided the Respondent with insufficient notice, the Tribunal refused the 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.

**Andrew McLaughlin**

28/04/2021

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Legal Member/Chair

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Date