

**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/21/0184**

**Re: Property at 36 Strathclyde Court, Helensburgh, G84 9PW (“the Property”)**

**Parties:**

**Mrs Catriona Morton, Lower Flat, 134 West Princes Street, Helensburgh, G84 8HA (“the Applicant”)**

**Angela Porter, End View, Chapel Lance, Toynton All Saints, Spilsby, PE23 5AF (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Frances Wood (Ordinary Member)**

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

- 1. The tribunal determined that an order for the eviction of the respondent from the property at 36 Strathclyde Court Helensburgh G84 9PW be made on the basis of ground 10, that the respondent is not occupying the property as her only or principal home, this is not attributable to any breach of the landlord’s duties in terms of the Housing (Scotland) Act 2006, and it is reasonable in all of the circumstances to grant the order.**
- 1. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’. There was a second application before the tribunal in terms of s71 of the Act and rule 111 to recover rent arrears for the property. The applicant was represented by Ms Matheson solicitor. The respondent did not attend, and she was not represented. The tribunal had sight of the execution of service of the application on the respondent dated 23 February 2021. Service was effected by personal service.**

The tribunal was satisfied that the respondent had received appropriate notice in terms of rule 24. The tribunal proceeded with the CMD in the respondent's absence in terms of rule 29.

2. The tribunal had before it the following copy documents:
  - (1) Application dated 25 January 2021 with written submissions.
  - (2) PRT dated 10 July 2019.
  - (3) Rent statements with rent arrears as at 10 January and 10 March 2021.
  - (4) Land certificate.
  - (5) S11 notice.
  - (6) Emails between the parties dated July 2019 – September 2020.
  - (7) Trace report from Walker Love dated 18 January 2021.
  - (8) Notice to leave dated 27 November 2020.
  - (9) Email intimating notice to leave dated 27 November 2020.
  - (10) Extract from land registry.

## **Discussion**

3. Ms Matheson was seeking an order for eviction today. This was on the basis that the respondent has never resided in the property. On any occasion that the applicant has required access the respondent's daughter who lives in Helensburgh, has facilitated this. The respondent has always denied that her daughter resides in the property and it is the applicant's position that the property is likely to be lying empty. The respondent has indicated in her emails of July and August 2020 that she is unable to give up the tenancy and that for reasons she is unable to disclose, she requires an eviction to be granted. Ms Matheson stated that the respondent indicated in her emails that her business (which the applicant understands to be one which involves the respondent caring for other people's animals in her own home) has been adversely affected by the pandemic. Ms Matheson pointed out that the lease states that animals may not be kept in the property without the consent of the owner so it does not seem likely that the respondent would be able to run her business from it. Ms Matheson also stated in her submission that the respondent is the owner of a property in Spilsby and she had lodged a copy of the title sheet. The search report confirmed that she resides there. Further, it was her position that the respondent's non occupation was not due to any breach by the applicant. She invited the tribunal to grant the order sought on the basis that it was reasonable in all of the circumstances to do so.

#### **4. Findings in fact**

- (1) The applicant is the owner of the property.
- (2) The parties entered into a PRT in July 2019 for let of the property.
- (3) The tenancy commenced on the 10 July 2019.
- (4) The agreed rent was £600 per month.
- (5) Arrears began to accrue in April 2020.
- (6) The arrears as at 10 March 2021 were £6400.
- (7) The respondent has never resided in the property.
- (8) The respondent has not occupied the property as her only or principal home.
- (9) The property not being occupied is not attributable to a breach of the applicant's duties under the Housing (Scotland) Act 2006.
- (10) A valid notice to leave dated 27 November 2020 was served by email on that date.
- (11) It is reasonable in all of the circumstances that an eviction order be granted.

#### **Reasons**

5. This was an undefended application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.
6. The tribunal was satisfied that the notice to leave served on the respondent on 27 November 2020 was valid. This was served on the respondent at the email address noted in the PRT. The correct notice period is 28 days in terms of the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020. The date given on the notice to leave was 28 December 2020. The tribunal was satisfied that the terms of s49 and 54 of the Act had been complied with.
7. The tribunal took into account the written documents lodged in support of the application and the oral submissions of Ms Matheson. There was no contrary evidence.
8. The tribunal was satisfied on the balance of probability that the respondent is not occupying the property as her only or principal home. It appears to the tribunal from the documents lodged that the respondent has never registered there. She owns a property in England and according to the trace report she is residing there. She states in her emails of July and August 2020 that she is unable to give up the tenancy and requires an eviction order to be granted for reasons she does not disclose.
9. The tribunal was satisfied that it is reasonable to grant the eviction order sought. Having regard to the whole circumstances of the case, the respondent has

received her notice to leave and has not given up the tenancy. The respondent does not reside in the property and she does not appear to have any intention of doing so. She has accrued substantial rent arrears and has paid nothing towards the rent since July 2020. In accordance with the overriding objective the tribunal was satisfied that the eviction ground 10 was met and that it was reasonable to grant the eviction. The tribunal accordingly granted the order for eviction.

### **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.**

**26 March 2021**

---

**Lesley A Ward Legal Member**

---

**Date**