



**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/21/0756**

**Re: Property at 10 Sandbed, Hawick, TD9 0HE (“the Property”)**

**Parties:**

**Mr Ross Stisi, 52 Wilson Place, Dunbar, EH42 1GG (“the Applicant”)**

**Mr Grzegorz Kowalski, Ingleston Hall, HMP Edinburgh, 33 Stenhouse Road, Edinburgh, EH11 3LN (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (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 order for recovery and possession should be granted in favour of the Applicant**

**Background**

1. An application was received by the Housing and Property Chamber. It was dated 24<sup>th</sup> March 2021. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to grounds 10 and 13 of the Private Housing (Tenancies) Act 2016.
2. The application included:-
  - a. Copy Scottish Government Model Private Residential Tenancy Agreement with commencement of tenancy being 11<sup>th</sup> December 2017;
  - b. Notice to Leave signed 19<sup>th</sup> February 2021 stating an application would not be submitted to the Tribunal before 22<sup>nd</sup> March 2021;

- c. Section 11 notice noting proceedings would not be raised before 24<sup>th</sup> March 2021;
  - d. Sheriff Officer execution of service dated 19<sup>th</sup> February 2021 serving both the section 33 notice and the Notice to Leave. This was left personally with the Respondent at HMP Edinburgh; and
  - e. Extract conviction report from Jedburgh Sheriff Court dated 27<sup>th</sup> October 2020 for a crime under the Misuse of Drugs Act 1971. It noted imprisonment for a 20 month period from 1<sup>st</sup> July 2020.
3. The Tribunal also had before it a copy of the title deeds numbered ROX5896.
  4. On 16<sup>th</sup> April 2021, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent leaving the letter in hands of a prison officer at HMP Edinburgh. This was evidenced by Certificate of Citation dated 16<sup>th</sup> April 2021. This included a letter regarding the hearing information including the date and time of the CMD (it is noted that the letter was erroneously dated in the certificate of citation as 15<sup>th</sup> April 2020 which was in fact dated 15<sup>th</sup> April 2021) and the joining instructions for the teleconference.

#### The Case Management Discussion

5. The Tribunal held a Case Management Discussion (“CMD”) on 17<sup>th</sup> May 2021 at 2pm by teleconferencing. The Applicant was not present but was represented by Ms Kirsty Morrison, Accredited Paralegal, TC Young solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the hearing.
6. On addressing reasonableness, Ms Morrison informed the Tribunal that prior to the Respondent’s arrest in or around 1<sup>st</sup> July 2020 the Property was raided by the police. The Property was then secured and the Respondent has not contacted the Applicant regarding gaining entry to the Property. In addition Ms Morrison told the Tribunal that when the Property was raided it was found that it was being solely used as a place to grow cannabis with a large quantity of plants found. The Property did not have a bed or washing facilities. The electricity meter had been bypassed. In addition the Respondent is now in arrears up to the amount of £4950 and has caused significant damage to the Property. There has been no contact from the Respondent.

#### Findings and reason for decision

7. A Private Rented Tenancy Agreement commenced 11<sup>th</sup> December 2017.
8. As the Respondent has been in jail since July 2020 he has not occupied the Property.

9. After the police raid in or around 1<sup>st</sup> July 2020 the Property was found not to be habitable as the bed and washing facilities had been removed. This made it clear that the Respondent had not lived in the Property for some time prior to his arrest.
10. The Respondent was convicted of an offence under the Misuse of Drugs Act 1971 on 27<sup>th</sup> October 2020. He was sentenced to 20 months in jail. His jail term commenced on 1<sup>st</sup> July 2020.

### Decision

11. The Tribunal was satisfied that grounds 10 and 13 had been met which was evidenced by the extract conviction lodged. The Property was inhabitable at the point of the police raid in or around 1<sup>st</sup> July 2020 indicating that the Respondent had not lived in the Property for some time prior to that date and has neither returned to the Property or indicated that it is his intention to do so.
12. The Tribunal did not consider that there were any issues of reasonableness. The Tribunal found that grounds 10 and 13 have been established and the granted an order in favour of the Applicant.

### **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.**

**Gabrielle Miller**

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**Legal Member/Chair**

**17<sup>th</sup> May 2021**

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**Date**