



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/21/1014

Re: Property at 27 Kirk Street, Strathaven, ML10 6LB (“the Property”)

Parties:

Ms Sandra Nelson, 41 Gallowhill Road, Lenzie, Glasgow, G66 4AH (“the Applicant”)

Mr Mark Murphy, Unknown, Unknown (“the Respondent”)

Tribunal Members:

Lesley-Anne Mulholland (Legal Member), David MacIver (Ordinary Member) and Josephine Bonnar (Legal Member [Reviewer])

Decision (in absence of the Respondent)

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

## BACKGROUND

1. This is an application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016 for an Order for Possession under Ground 10 of Schedule 3 of the Act.
2. The Applicant is the rightful owner and landlord of the property at 27 Kirk Street, Strathaven, ML10 6LB (“the Property”). The Respondent is the Tenant. They entered into a Tenancy Agreement on 6 November 2019. The Tenancy Agreement specifies that £475 is due in respect of rent each calendar month payable in advance.

3. A two-member hearing took place at 10.00 am on 1 October 2021 by teleconference. The Applicant was not present but was represented by Miss Howard from Purple Bricks.
4. Notice of the hearing on 1<sup>st</sup> October 2021 was placed on the Housing and Property Chamber website on the 27<sup>th</sup> of August 2021. Accordingly, we are satisfied that the Respondent has been properly notified of today's hearing.
5. The Respondent was not present. He has failed to engage with the application. We waited until 10:10 am and the Clerk checked and confirmed that the Respondent had not made any attempt to contact the Tribunal or attend the remote hearing. We considered whether to adjourn the hearing but given the information before us which strongly suggests that the Respondent has not been seen at the property since November 2019, and having regard to the overriding objective, we decided to proceed to hear the application in his absence.
5. There were no apparent difficulties with sound or connectivity issues. We were grateful to the Applicant for allowing the hearing to proceed remotely during the current pandemic. We are satisfied that those taking part in the hearing had a reasonable opportunity to put their points across and that the hearing was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to our attention.
6. The sole ground for the Order relied upon in the application is Ground 10. This provides:

### **'PART 3 TENANT'S CONDUCT**

#### **Not occupying let property**

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

(3)In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).'

7. Miss Howard informed us that the Respondent is no longer living at the property and has not been seen there since November 2019 as evidenced by the letter from 'The Sheriff's Office.' He paid only the first month's rent and has accrued rent arrears, as at the date of the application, in the sum of £7,600 and by the date of the hearing the arrears had increased to £10,450.
8. Miss Howard informed us that the Applicant has tried to contact the Respondent by visiting the property on several occasions and speaking to neighbours there. The papers submitted with the application show that all enquiries reached a dead end. The Applicant then instructed the Sheriff's Office to do a search which again did not provide any information about the Respondent or his whereabouts. Accordingly, the Notice of Hearing was advertised on the Housing and Property Chamber website on the 27<sup>th</sup> of August 2021. This means that we are satisfied that the Respondent has received appropriate notice of the application. Despite doing so he has failed to engage with the application.
9. Having considered all of the information before us, individually and in the round, we are satisfied that the Applicant carried out checks at the property to show that the Respondent was not there over a considerable period of time. This along with the fact that the Respondent has failed to take part in the proceedings in anyway and has failed to meet his rent liability over a considerable time, leads to conclude that the Respondent is not occupying the property as his home. There is no information before us to suggest that the landlord is in breach of his duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.
10. As stated before, we are satisfied that the Respondent has failed to engage with the application in anyway. For that reason, we have no information before us to allow us to conclude that the granting of the Order would not be reasonable.
11. We are satisfied that the granting of an Order for Possession is reasonable in all of the circumstances, having regard to all the information before us.
12. Accordingly, we have decided to grant an Order for Possession.

## 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.

**L.A M**

Legal Member/Chair

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Date 1 October 2021