



**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/21/1841**

**Re: Property at 16 East Woodstock Court, Kilmarnock, KA1 2AS (“the Property”)**

**Parties:**

**The Executor of the late James Corbett Leith, Mr Graeme Leith, c/o Ardanach Lettings Ltd., Andrew Barclay Heritage Centre, West Langlands Street, Kilmarnock, KA1 2PY (“the Applicant”)**

**Mr Robert Woods, 16 East Woodstock Court, Kilmarnock, KA1 2AS (“the Respondent”)**

**Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should not be granted.**

**Background**

1. This is an application received in the period between 2<sup>nd</sup> August and 1<sup>st</sup> September 2021, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order. The Applicant’s representative included with the application a copy of the private residential tenancy agreement between the parties, which tenancy commenced on 15<sup>th</sup> September 2020 at a monthly rent of £350, an invoice in the sum of £286.37 for damage to the Property, email correspondence relating to alleged antisocial behaviour, a Notice to Leave dated 22<sup>nd</sup> June 2021, Sheriff Officer’s notification of service of the Notice to Leave, correspondence sent to the Respondent, a Section 11 notice, and a rent schedule.
2. Service of the application and notification of a Case Management Discussion was made upon the Respondent by Sheriff Officers on 5<sup>th</sup> October 2021.

## Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 19<sup>th</sup> October 2021. The Applicant was not in attendance and was represented by Ms Carol Dickie, Ardanach Lettings Ltd. The Respondent was not in attendance.
4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent.
5. Ms Dickie said that it is believed the Respondent has left the Property. She has been informed by Social Work that he has been allocated social housing. The Property was left unsecured. The keys were not returned to the Applicant’s representative. There is furniture and belongings within the Property. An abandonment notice has been posted on the Property. Ms Dickie now has the new address for the Respondent. Ms Dickie moved the Tribunal to grant an eviction order on grounds 14 and 15 of the Private Tenancies (Housing) (Scotland) Act 2016.
6. There was some discussion about defects within the Notice to Leave which may affect its validity. Furthermore, the application did not include notification of the date of service of the Section 11 notice. Ms Dickie said that could be made available. The Tribunal also questioned whether the evidence of anti-social behaviour provided to satisfy ground 14 was sufficient, or whether witness statements and diaries would be required to evidence the anti-social behaviour. Furthermore, there appeared to be insufficient evidence to satisfy ground 15 of the Act.
7. There was some discussion as to whether an eviction order was necessary in the circumstances as it appeared that the Respondent was not occupying the Property, notwithstanding that he had not returned the keys and had left personal belongings within the Property.
8. The Tribunal asked Ms Dickie if she would wish to continue the case, notwithstanding the problems with the Notice to Leave, to allow further enquiries as to whether the Respondent has left the Property. Ms Dickie said there did not seem much point in continuing as she now has the new address for the Respondent and can continue with the abandonment process, if the Tribunal was not minded to grant an eviction order.
9. The Tribunal adjourned to consider matters and decided not to grant an eviction order, as it was not persuaded that an order was necessary in the circumstances. The Respondent appears to have left the Property and is living elsewhere in social housing. Clause 36(r) of the tenancy agreement covers the manner in which the Landlord should deal with abandoned belongings.

10. The Tribunal did not grant an eviction order.

### **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.**

Helen Forbes

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Legal Member/Chair

5<sup>th</sup> November 2021  
Date