

**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/21/1960**

**Re: Property at 121 Main Street (Ground Floor Left), Largs, Ayrshire, KA30 8JJ (“the Property”)**

**Parties:**

**Ms Emma Brooks, 45 Main Road, Fairlie, Ayrshire, KA29 0AB (“the Applicant”)**

**Mr Cameron Stewart, 121 Main Street (Ground Floor Left), Largs, Ayrshire, KA30 8JJ (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr D MacIver (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no order should be granted.**

**Background**

1. This is an application received in the period between 16<sup>th</sup> and 29<sup>th</sup> August 2021 made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a tenancy agreement that commenced on 10<sup>th</sup> August 2020. The Applicant lodged a copy of the tenancy agreement, a Notice to Leave dated 11<sup>th</sup> February 2021, Section 11 notice and rent statement. The Applicant is seeking an eviction order under Ground 12 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (‘the Act’).
2. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 20<sup>th</sup> September 2021.

## The Case Management Discussion

3. A Case Management Discussion took place by telephone conference on 22<sup>nd</sup> October 2021. The Applicant was in attendance. 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 Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
5. The Tribunal raised a preliminary point which had been notified to the Applicant in advance, namely that there were concerns about the validity of the Notice to Leave ('the Notice'), as there may have been less than three months' arrears at the time of serving the Notice. The first date the Respondent was in arrears was 10<sup>th</sup> December 2020. The Notice was served two months later. The Tribunal referred to the Upper Tribunal case *Majid -v- Gaffney* [2019] UT 59 UTS/AP/19/0037, where the facts were similar and the Upper Tribunal had found that the Notice was not valid.
6. The Applicant submitted that the Notice was valid as the tenancy agreement states that rent is due on the 10<sup>th</sup> of the month. No rent was paid on 10<sup>th</sup> December 2020 and 10<sup>th</sup> January 2021. On 10<sup>th</sup> February 2021, there was a shortfall of rent. Therefore, there were three months of rent arrears at the time of service of the Notice dated 11<sup>th</sup> February 2021. It was the Applicant's position that, in terms of the Scottish Government model tenancy agreement, she was correct in serving the Notice at the point when the Respondent had failed to pay the rent for three months, rather than at the end of the third month.
7. The Tribunal adjourned to consider the validity of the Notice.
8. The Tribunal may only order eviction if one of the grounds specified in Schedule 3 of the Act applies. It is clear from the terms of the Notice that ground 12 is being relied upon. As at the date of the Notice the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 10<sup>th</sup> December 2020, then the expiry of the three month period would be 10<sup>th</sup> March 2021. As at 11<sup>th</sup> February 2021, the tenant was not in rent arrears for three or more consecutive months. The tenant must have been in arrears for the specified period of time, not simply owing rent. For this reason, ground 12 does not apply as at the date of service of the Notice to Leave.
9. The Tribunal considered, therefore, that the Notice was not valid as it specified a ground for eviction which was not satisfied as at the date of the service.

## **Decision**

10. The Tribunal refused to grant the order sought.

## **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**

**22<sup>nd</sup> October 2021**

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**Date**