



**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/21/2027**

**Re: Property at 53 Cessnock Road, Hurlford, East Ayrshire, KA1 5DD (“the Property”)**

**Parties:**

**Mr Darren Heinson, Flat 1, 34 Sloan Court West, London, SW3 4TB (“the Applicant”)**

**Mr Stuart O'Brien, 53 Cessnock Road, Hurlford, East Ayrshire, KA15DD (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction should be granted against the Respondent**

**Introduction**

This is an application for eviction under Rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

The applicant seeks an Eviction Order in respect of arrears of rent.

Service of the application and intimation of the Case Management Discussion (CMD) was made upon the Respondent by Sheriff Officers on 7 October 2021. Written submissions were required from the Respondent by 13 October 2021. None were received.

The CMD took place by teleconference on 28 October 2021 at 2pm. The applicant was represented by Mr Scott Crenay of Murphy Scoular, Letting Agents. The respondent failed to join the hearing. There was no known barrier to him doing so.

## Findings and Reasons

The property is 53 Cessnock Road, Hulford, East Ayrshire KA1 5DD. The applicant is Mr Darren Heinson. He is the landlord. The respondent is Mr Stuart O'Brien. He is the tenant. The parties entered into a private residential tenancy in respect of the property which commenced on 1 February 2020. The rent was stipulated at a rate of £500 per month.

The respondent has failed to make required payments of rent under and in terms of the lease between the parties. As at the date the application was made to the Tribunal the amount outstanding amounted to £4,070.08. This includes a small balance in respect of a former tenancy agreement in the sum of £615.08. The arrears are evidenced in terms of the formal rent statement which discloses the payments as they have fallen due, payments received and the balance outstanding. As at the date of the hearing the arrears had risen to £4,720.08, although it was noted one payment of £350 had been made on 26 October 2021. This reflects a significant number of months of rent being unpaid. The Tribunal found the rent statement a credible and reliable source of evidence and attached a significant degree of weight to this unchallenged evidence.

By way of Notice to Leave dated 15 February 2021, the respondent was advised of the applicant's intention to recover the property. The ground relied upon is ground 12 contained within Schedule 3 to the 2016 Act, namely that the respondent has been in rent arrears for 3 or more consecutive months. Prior to the application of the provisions of the Coronavirus (Scotland) Act 2020, the relevant notice period in respect of this ground was one of only 2 weeks. At the time that the Notice to Leave was served, the relevant notice period had been increased to one of 6 months.

The Notice to Leave is dated 15 February 2021. The Notice stated that the first day upon which the landlord expected Tribunal proceedings to commence was 16 August 2021.

In terms of section 62(5) of the Act it is to be assumed that the tenant will receive a Notice to Leave 48 hours after it is sent. It is to be assumed under the Act therefore that the Notice to Leave would not be received until 17 February 2021. The Tribunal however relied upon the Upper Tribunal decision of Sheriff Fleming in UTS/AP/20/0029 [2021] UT 20. The assumption under the 2016 Act regarding deemed service 48 hours after posting can be rebutted. Service upon the respondent took place by Sheriff Officer delivery on 15 February 2021. This has been evidenced. The 6 month notice period commenced from then and accordingly ended on 15 August 2021. Under Section 62(4) of the Act, the first day upon which the Tribunal could consider an application for eviction was the following day, namely 16 August 2021. Thus the Notice served upon the respondent was valid and can be relied upon. The eviction ground relied upon has been established.

The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 came into force on 30 September 2020. These apply to actions of eviction made to the Tribunal on the grounds of rent arrears.

In order to satisfy the Tribunal that the pre-action requirements had been adhered to, numerous items of correspondence were produced on behalf of the applicant which demonstrates compliance with these regulations. Communications had taken place by text and email with the respondent. A spreadsheet of the extensive correspondence issued to the applicant by the applicant's letting agents have been produced. Within this correspondence there are clear references to the options available to the respondent in the event of him having financial difficulties including the ability to enter into a repayment plan and the signposting of advice agencies. The Tribunal concluded that the regulations had been complied with and the respondent has received substantial support.

In considering the reasonableness of granting the Eviction Order, the Tribunal took into account the respondent's known personal circumstances and all other relevant circumstances.

The respondent has not opposed this application. He is known to have no dependents. He lives on his own and the applicant's agent is not aware of his having any health problems. He has worked recently in the construction industry. The respondent is in significant rent arrears. He has not engaged at all with the applicant's agents in relation to those arrears which continue to increase. It has not been possible nor would it be reasonable to expect the applicant or his agents to ascertain further information in relation to the respondent due to his lack of engagement. The applicant cannot be expected to maintain the property for the respondent in all of the circumstances. He is entitled to recover possession of the property.

The Tribunal concluded that the granting of an Eviction Order against the respondent was reasonable.

### **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.**

**Legal Member: Richard Mill**

**Date: 28 October 2021**

