

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/21/2241**

**Re: Property at 82 Main Street, Ayr, South Ayrshire, KA8 8EF (“the Property”)**

**Parties:**

**Mrs Katherine Hyslop, 26 Brewlands Drive, Symington, Ayrshire, KA1 5RD (“the Applicant”)**

**Mr Henry McLean, 82 Main Street, Ayr, South Ayrshire, KA8 8EF (“the Respondent”)**

**Tribunal Members:**

**David Preston (Convener) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that an order for eviction by granted in favour of the Applicants.**

**Background**

1. An application under Rule 109 of The First tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) for an Order for Eviction dated 15 September 2021 was made to the Housing and Property Chamber. The application was made under ground 12 of schedule 3 of the Private Housing (Tenancies) Act 2016.
2. The papers before the tribunal comprised:
  - a. Private Residential Tenancy Agreement dated 23 March 2020;
  - b. Notice to Leave dated 10 March 2021;
  - c. Notice under section 11 of the Homelessness et cetera (Scotland) Act 2003;
  - d. Rent Statement covering the period March 2020 to 23 August 2021 showing arrears at that date of £4875;
  - e. Pre-action Requirement letters dated 22 January and 12 February 2021, together with additional correspondence to the tenants regarding arrears of rent between October 2020 and March 2021;

3. By Decision dated 10 November 2021, a convener of HPC having delegated authority for the purpose, referred the application under Rule 9 to a Case Management Discussion (CMD).
4. On 21 December 2021 a CMD was convened by telephone in accordance with the provisions for dealing with business during the COVID-19 pandemic. Present by telephone at the CMD was Mr Scott Cairnie, of Murphy Scoular, Letting Agents. There was no appearance by or on behalf of the respondent.
5. The tribunal was satisfied that the application together with a full set of papers were served on the respondent on 19 November 2021 conform to Certificate of Execution of Service of that date. The tribunal determined that accordingly the respondent had voluntarily waived his right to be present or represented at the CMD and was content to proceed in his absence.
6. The convener explained that at the purpose of the CMD was to identify any disputed issues which might fall to be determined at a full hearing of the application unless the tribunal was satisfied that it had sufficient information to make a determination at the CMD and that it was satisfied that in all the circumstances it was reasonable for an Order for Eviction to be granted.

### **Discussion**

7. Mr Cairnie advised that there had been no communication with the respondent despite numerous efforts to make contact with him. As far as he was aware, the respondent was still in occupation of the property but in the absence of any communication he was unable to confirm this. In any event the landlord sought an Order for Eviction.

### **Outcome**

8. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
9. The tribunal was satisfied that the statutory requirements in relation to an Order for Eviction had been met. It noted that the respondent had not made any contact with the applicant despite having received communications regarding the arrears as well as protocol letters. The tribunal was satisfied that as at the date of the CMD the tenant was in arrears of rent by an amount greater than one month's rent and has been in arrears for a continuous period of more than three consecutive months.

### **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.**

**David Preston**

21 December 2021