



**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/21/2244**

**Re: Property at 26 Caledonian Court, Dundee, DD2 3FF (“the Property”)**

**Parties:**

**Mr Brian Wilkinson, 129 Kinross Road, Lillington, Warwickshire, CV32 7EW (“the Applicant”)**

**Mr James Williams, 18 Murray Street, Dundee, DD4 7JG (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.**

**Background**

1. By application dated 15 September 2021 the Applicant’s representatives Pavillion Properties, Dundee applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the Tenancy Agreement, Notice to Leave with proof of Service, Section 11 Notice, Rent Statement and in subsequent correspondence confirmation from the Applicant of the reasons for selling the property and an email from the Applicant’s solicitor confirming they were to be instructed in marketing the property for sale.
2. By Notice of Acceptance dated 29 November 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. A CMD assigned for 27 January 2022 was postponed as Sheriff Officers were unable to serve the case papers on the Respondent as he had removed from the property. The Respondent was traced to his current address at 18 Murray Street, Dundee and a further CMD was assigned and the papers served on him there by Sheriff Officers on 18 January 2022.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 3 February 2022. The Applicant was represented by Mr Baxter of the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the application having been made to the Respondent determined to proceed in his absence.
5. Mr Baxter confirmed that the parties had entered into a Private Residential tenancy agreement a copy of which had been submitted to the Tribunal. He also confirmed that a Notice to Leave had been sent by Recorded Delivery Post to the Respondent on 16 February 2021. The Tribunal noted that it had been delivered on 19 February 2021. The Tribunal also noted that in terms of the 2016 Act it would have been deemed to have been delivered on 18 February 2021 and therefore the earliest date for making an application to the Tribunal would have been 19 August 2021 but the Notice said 18 August 2021. However, the Coronavirus (Scotland) Act 2020 provides that an error in the date of a Notice to Leave does not invalidate the Notice provided an application to the Tribunal is made after the correct earliest date. The Tribunal noted that the application was dated 15 September 2021 and therefore on this occasion the Notice to Leave was valid.
6. Mr Baxter confirmed that the Section 11 Notice had been sent to Dundee City Council and confirmation of the email sent to the Tribunal administration.
7. Mr Baxter advised the Tribunal that he had first become aware that the Respondent had abandoned the property when he was made aware that the Sheriff Officers had been unable to serve the case papers in January. He confirmed the Respondent had not been in communication and had not returned the keys to the property.
8. Mr Baxter referred the Tribunal to the correspondence submitted with the application confirming the Applicants change in financial circumstances and his reasons for wishing to sell the property and asked the Tribunal to grant the order.

### **Findings in fact**

9. The parties entered into a Private Residential Tenancy that commenced on 3 March 2020 at a rent of £495.00 per calendar month.
10. The Applicant wishes to sell the property due to a change in his financial circumstances.

11. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was sent to the Respondent by Recorded Delivery post on 16 February 2021 and delivered on 19 February 2021.
12. A Section 11 Notice was sent to Dundee City Council.
13. The Respondent vacated the property in about September 2021. He did not return the keys to the property.
14. The Respondent had accrued some rent arrears during his tenancy of the property.

### **Reasons for the Decision**

15. The Tribunal was satisfied from the written submissions and oral representations that the parties had entered into a Private Residential Tenancy that commenced on 3 March 2020 at a rent of £495.00 per calendar month.
16. The Tribunal was also satisfied that the Respondent had fallen into arrears with his rent and that due to a change in the financial circumstances of the Applicant following medical difficulties he wished to sell the property.
17. The Tribunal was satisfied that although there was an error in the Notice to Leave it remained valid as the application to the Tribunal was not made until 15 September 2021.
18. The Tribunal was satisfied that proper intimation of the proceedings had been given to Dundee City Council by way of a Section 11 Notice.
19. Given that the Respondent had vacated the property and had not participated in the proceedings the Tribunal was satisfied that it was reasonable in the circumstances to grant the order.

### **Decision**

- 20 The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property.

### **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.**

**Graham Harding  
Legal Member/Chair**

**3 February 2022  
Date**