



**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 (“The Act”)**

**Chamber Ref: FTS/HPC/EV/21/2646**

**Re: Property at Upper Flat, 143 Commercial Street, Kirkcaldy, KY1 2NS (“the Property”)**

**Parties:**

**Mr Malcolm Howes, 20 Strathalmond Road, Edinburgh, EH4 8AF (“the Applicant”)**

**Mr Christopher Symaniak, Unknown, Unknown (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:**

**Background**

The Applicant seeks an Eviction Order on the basis of Ground 10 of Schedule 3 to the Act in that it is said that the Respondent is not occupying the Property as the Respondent’s home. The Application is accompanied by a copy of the tenancy agreement between the parties; a Notice to Leave dated 22 September 2021 emailed to the Respondent on that date calling upon the Tenant to vacate the Property by 23 October 21 together with an extensive collection of emails and text messages between the Applicant, the Respondent and third parties attempting to establish his whereabouts. A notice issued to the relevant local authority under s 11 of the Homelessness (etc) (Scotland) Act 2003 was also produced.

## **The Case Management Discussion**

The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 27 January 2022. Sheriff Officers had been unable to locate the Respondent and so permission had been granted for the Application to be served on the Respondent by advertisement on the Tribunal's website, which was the subsequently effected. The Application called alongside a related Application in respect of a Payment Order between the parties. The Applicant was personally present. There was no appearance by or on behalf of the Respondent. The Tribunal decided it was appropriate to proceed in the absence of the Respondent.

Having heard from the Applicant and considered the comprehensive and very thorough evidence supplied by the Applicant, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The Applicant and the Respondent entered into a tenancy at the Property which commenced on 25 May 2019;*
- II. *The Applicant was the landlord and the Respondent was the tenant;*
- III. *Around July 2021, the Respondent stopped paying the contractual monthly rent due of £450.00;*
- IV. *Around this same time the Applicant first became aware that the Respondent had vacated the Property without informing the Applicant;*
- V. *The Applicant has made extensive attempts to contact the Respondent to confirm his whereabouts but has received no response;*
- VI. *The Applicant has communicated with neighbours who have confirmed that the Respondent appears to have left the Property some time ago and moved to Ireland;*
- VII. *The Local Authority have suggested to the Applicant that the Respondent may not be living in the Property;*
- VIII. *The Applicant emailed a Notice to Leave to the Respondent's email address on 23 Septembers 2021;*
- IX. *The Notice to Leave was competently completed and served on the basis of the Applicant seeking recovery of the Property on the basis of Ground 10 of the Act;*

- X. *All the evidence points to the Respondent having abandoned the Property;*
- XI. *The emails produced refer to plants and a heat lamp being present in the attic of the Property. This indicates the Respondent may have been involved with illegal drugs and may explain his sudden departure from the Property and subsequent reluctance to engage with the Applicant;*
- XII. *The Applicant has complied with the terms of s 11 of the Homelessness (etc) (Scotland) Act 2003.*

### **Reasons for Decision**

The Tribunal carefully considered the reasonableness or otherwise of granting the order. Having done so and having made the above findings in fact, the Tribunal unanimously found Ground 10 of the Act to be established and that it was reasonable to grant the Application.

The Application was accordingly granted and the Tribunal made 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.

**Andrew McLaughlin**

**27/01/2022**

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**Legal Member/Chair**

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**Date**