



**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/22/2506**

**Re: Property at 9 Alma Terrace, Laurencekirk, Aberdeenshire, AB30 1FL (“the Property”)**

**Parties:**

**Mr Calum Watt, Centrum Offices, 38 Queens Street, Glasgow, G1 3DX (“the Applicant”)**

**Mr Daniel Brand, 9 Alma Terrace, Laurencekirk, Aberdeenshire, AB30 1FL (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Sandra Brydon (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber dated 19<sup>th</sup> July 2022. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 12 of the Private Housing (Tenancies) Act 2016.
2. On 16<sup>th</sup> November 2022, all parties were written to with the date for the Case Management Discussion (“CMD”) of 19<sup>th</sup> December 2022 at 10am by teleconferencing. The letter also requested all written representations be submitted by 7<sup>th</sup> December 2022.

3. On 18<sup>th</sup> November 2022, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by a Certificate of Intimation dated 18<sup>th</sup> November 2022.
4. On 14<sup>th</sup> December 2022, the Respondent contacted the Housing and Property Chamber by email. The email could not be opened by the administrative team. The administrative team emailed the Respondent asking that he resend the email. There was no response to this email. The content of the email sent by the Respondent is unknown.
5. The case was conjoined with case FTS/HPC/CV/22/2511.
6. A CMD was held on 19<sup>th</sup> December 2022 at 10am. Neither the Applicant nor the Respondent were present or submitted representations that they would not attend the CMD. The Tribunal had insufficient information before it to grant the application. The Tribunal refused the application. No order was granted. The application was refused as neither party were present as such there was insufficient evidence and it was unknown if the application was still to be relied upon.
7. On 29<sup>th</sup> December 2022, Mr Alec Campbell emailed a letter to the Housing and Property Chamber from Mr Kenneth Soper, Partner, Campbell Boath Solicitors, to request that the orders for both cases be recalled. The reason being that their Mr Campbell could not connect to the CMD because he was in hospital after an operation and could not get a reception as he was phoning from hospital. It was stated that it was in the interest of justice to have the case recalled.
8. On or around 5<sup>th</sup> February 2023 the Tribunal allowed the case to be recalled to a CMD.
9. On 20<sup>th</sup> March 2023, the parties were written to advising of a new date for the CMD being 27<sup>th</sup> April 2023 at 10am.
10. A CMD was held on 27<sup>th</sup> April 2023 at 10am by teleconferencing. The Applicant was represented by Mr Alec Campbell, Campbell Boath Solicitors. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD. The CMD is to proceed to a further CMD to allow Mr Campbell or one of the other members of Campbell Boath staff to attend the CMD from a suitable location where they can get reception to allow the CMD to proceed. It was also adjourned to allow an up-to-date rent statement to be lodged. The Tribunal also directed that the Applicant responded, either by written submission or orally at the next CMD, to the following questions at the next CMD:
  - a. Information on when the Respondent last made contact with the Applicant;
  - b. What contacts the Applicant has attempted to make with the Respondent;

- c. What investigations have been undertaken to confirm if the Respondent is still in the Property;
  - d. If the Respondent has any vulnerabilities;
  - e. If the Respondent is in receipt of any state benefits;
11. On 9<sup>th</sup> June 2023, the parties were written to advising of a new date for the CMD being 13<sup>th</sup> July 2023 at 10am by teleconferencing. The Respondent was written to by recorded delivery. The recorded delivery letter was collected from the Post Office on 16<sup>th</sup> June 2023.
12. On 12<sup>th</sup> July 2023 the Applicant's representative emailed the Housing and Property Chamber responding to the direction issued within the CMD note on 27<sup>th</sup> April 2023. This included a rent statement for the period 1<sup>st</sup> March 2021 to 1<sup>st</sup> July 2023. The last payment was 1<sup>st</sup> June 2023 with the arrears being £8714.

### The Case Management Discussion

13. A CMD was held on 13<sup>th</sup> July 2023 at 10am by teleconferencing. The Applicant was represented by Mr Alec Campbell, Campbell Boath Solicitors. The Respondents were not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
14. Mr Campbell informed the Tribunal that the Respondent last paid his rent charge on 1<sup>st</sup> July 2023 but that it had not amended the amount as the July rent charge had been applied to the account. There has been no communication from the Respondent and no offer to pay the arrears. It is believed that the Respondent works away from his home. There are no known vulnerabilities. Mr Campbell did not know of any issues regarding reasonableness. The Tribunal was satisfied that the Respondent was aware of the CMD but had elected not to attend. The Tribunal was satisfied that it was reasonable to grant an order for eviction.

### Findings and reason for decision

15. A Private Rented Tenancy Agreement commenced 1<sup>st</sup> March 2021.
16. The Respondent persistently failed to pay his rent charge of £425 per month. The rent payments are due to be paid on 1<sup>st</sup> day of each month.
17. Arrears accrued to more than one months rent payment at the date of application and was more than three months rent payments at the date of the CMD.
18. The arrears have arisen to £8714 which is higher than the amount in the payment application indicating that the arrears have continue to accrue throughout the Tribunal process.

19. There were no issues of reasonableness to prevent an order for eviction being granted.

### Decision

20. The Tribunal found that ground 12 has been established and granted an order for eviction.

### **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.**

**Gabrielle Miller**

13 July 2023

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**Legal Member/Chair**

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**Date**