



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/23/1422**

**Re: Property at Flat 8/2 175 Finnieston Street, Glasgow, G3 8HD (“the Property”)**

**Parties:**

**Mr David Findlay, Mrs Elizabeth Findlay, 3 Kings Point, Shandon, Helensburgh, G84 8BT (“the Applicant”)**

**Miss Brooke Hamilton, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for eviction and recovery of possession be granted.**

**Background**

This is an application under Rule 109 and section 51(1) of the Act for eviction and recovery of possession on Ground 10 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 3 May 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 28 August 2020;
3. Notice to Leave dated 24 February 2023 and served by email on the same date;
4. Section 11 Notice to the local authority with email serving;
5. Rent Statement as at 28 March 2023;
6. Email exchanges with tenant and inspection reports from the Letting Agents dated from 7 February 2022 to 23 February 2023;
8. Updated rent statement as at 28 July 2023;
9. Certificate of Service of CMD Notification by Advertisement.

## Case Management Discussion (CMD)

The case called for a CMD by conference call on 25 August 2023. The Applicants did not participate and were represented by their Solicitor. The Respondent did not participate and was not represented.

The Tribunal delayed the start of the CMD to see if the Respondent would participate but she did not.

The Tribunal were satisfied that the Respondent had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondent that she should attend and the Tribunal could determine the matter in absence if she did not.

The Applicants' Representative confirmed that the amount of arrears had increased to £7,700 as at 28 July 2023.

The Tribunal explained that it would still have to be satisfied that it was reasonable to grant the order sought.

The Applicants' Representative then addressed the Tribunal on the issue of reasonableness. She did not know much of the Respondent's personal circumstances. It appeared that she had not lived in the Property since October 2021. The rent arrears were increasing and no rent was being paid.

The Tribunal then considered the documentary and oral evidence it had received from the Applicants and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 28 August 2020;
2. The monthly rent was £1,100;
3. Notice to Leave had been served on the Respondent on 24 February 2023;
4. As at the date of the Hearing the Respondent was in arrears of rent in the sum of £7,700;
5. Section 11 notification had been served on the local authority;
6. The Respondent does not appear to be living in the Property and hasn't lived there for some time;
7. The fact that the Respondent does not live in the Property is not attributable to any breach of the Applicants' duties under the Housing (Scotland) Act 2006;
8. The Respondent's current whereabouts are unknown.

The Tribunal had regard to Ground 10 of Schedule 3 to the Act which provides:

10(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is not being occupied as the only or principal home of—

(i) the tenant, or

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and

(b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

(3) In sub-paragraph (2), the reference to a sub-tenancy being lawfully granted is to be construed in accordance with section 46(3).

The Tribunal was satisfied that Ground 10 had been established and it was reasonable to grant the application for eviction and recovery of possession given the significant rent arrears which continued to increase.

### **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.**

# Alan Strain

**25 August 2023**

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**Legal Member/Chair**

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**Date**