



**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/20/0711**

**Re: Property at 106 Main Street, Fauldhouse, EH47 9BW (“the Property”)**

**Parties:**

**Mrs Loraine Hamilton, 4 River View, Lanark, ML11 8TJ (“the Applicant”)**

**Miss Ann Timmins and Mr David Gunn, 106 Main Street, Fauldhouse, EH47 9BW (“the Respondents”)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)**

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

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

At the Case Management Discussion (“CMD”) the Applicant was not in attendance but was represented by Ms Welsh of Lothian Homes 4 Let. Ms Watson of Lothian Homes 4 Let attended the CMD as an observer. The Respondents were neither present nor represented.

**Background**

- The Applicant is the heritable proprietor of the Property.
- The Respondents are the tenants of the Property in terms of a Tenancy Agreement signed on 20 February 2019 (“the Tenancy Agreement”).
- The start date of the tenancy is stated in the Tenancy Agreement to be 20 February 2019.
- The Tenancy Agreement is a Private Residential Tenancy Agreement under the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”).
- In terms of the Tenancy Agreement, Section 3 Clause 4, the parties agreed that all communications which must or be made under the Act and in relation

to the Tenancy Agreement will be made in writing using the email addresses set out in the Tenancy Agreement.

- In terms of the Tenancy Agreement the rent payable by the Respondent was stated to be £600 per month payable in advance on the 20<sup>th</sup> day of each month.
- The Applicant per her agents, Lothian Homes 4 Let, purported to serve on the Respondents a Notice to Leave dated 23 August 2019. The end of the notice period in terms of the Notice to Leave was stated to be 23 September 2019.
- The Respondents remain in occupation of the Property.
- As at the date of the Application to the Tribunal the rent arrears accrued were £1,597.26.

## **The Case Management Discussion**

### **Submissions for the Applicant:-**

At the CMD the Applicant's Representative stated:-

- That the total rent outstanding as at the date of the CMD was £2,883.37 which took into account a payment of Universal Credit received on 12 August 2020.
- That around 4 months ago an application had been made for Universal Credit to be paid to the Applicant's Representative directly. This was done with the consent of the Respondents. The Respondents had then withdrawn their consent and a fresh application had required to be made.
- That the Second Respondent had previously stopped working due to COVID19 but had resumed working in around May 2020. The Applicant's Representative did not have details of the Second Respondent's employment.
- That the Respondents had completely failed to communicate for around two months.
- That the Notice to Leave was hand delivered by Diane Grant of Lothian Homes 4 Let into the hands of the First Respondent at the Property.
- That the Notice to Leave was also intimated to the Respondents by email dated 26 August 2019.
- That the Applicant seeks an order for the eviction of the Respondent.

### **Reasons for Decision**

- There exists between the parties a Private Residential Tenancy.
- The Respondents are in arrears of rent in a sum of £1,597.26 as at the date of the Application.
- The Respondents have had due intimation of this Application in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
- The Notice to Leave is not valid for the following reasons:-
  - (i) The Tenancy Agreement provides that all communications which must or be made under the Act and in relation to the Tenancy Agreement will be made in writing using the email addresses set out in the Tenancy Agreement. Accordingly, personal service of the Notice to Leave is not in accordance with the Tenancy Agreement. (As an aside the Tribunal had no evidence of the date upon which personal service took place

only undated photographs on envelopes addressed to each of the Respondents.)

- (ii) In terms of section 62(5) of the Act, it is to be assumed that a tenant will receive a Notice to Leave 48 hours after it was sent. Accordingly, whilst the Tribunal had no evidence of the Notice to Leave being sent by email, assuming that happened on 26 August 2019 as submitted by the Applicant's Representative, it would therefore be assumed to have been received by the Respondents on 28 August 2019. In terms of section 54(3)(b) of the Act 28 days notice was required. The end of the notice period in terms of the Notice to Leave was stated to be 23 September 2019 which does not allow the requisite 28 day notice period required by the Act.

The Notice to Leave is therefore invalid and on that basis an eviction order cannot be granted.

### **Decision**

The Application is dismissed.

### **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.**

**Gillian Buchanan**

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Legal Member/Chair

— 13 August 2020