



**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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/22/1671**

**Re: Property at 16 Hawthorn Way, Cambuslang, G72 7AF (“the Property”)**

**Parties:**

**Mr Richard Russell, 34 2/4 Main Street, Cambuslang, Glasgow, G72 7ER (“the Applicant”)**

**Mr David Hutcheson, 16 Hawthorn Way, Cambuslang, G72 7AF (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)**

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

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

**Background**

1. By application submitted on 30 May 2022, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 12 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and a Rent Schedule showing the balance of rent arrears owing at the time of the application being made of £8,450.
2. The application was subsequently accepted by a Legal Member of the Tribunal acting with delegated powers from the Chamber President who issued a Notice

of Acceptance of Application in terms of Rule 9 of the Regulations on 14 June 2022. Notification of the application was made to the Respondent and the date, time and arrangements for a Case Management Discussion (“CMD”) were intimated to both parties, advising of the date by which any written representations should be lodged (13 August 2022). Said notification was served on the Respondent personally by Sheriff Officer on 26 July 2022. No written representations were lodged by the Respondent.

3. By email on 22 August 2022, the Applicant’s agent submitted an application to amend both this Application and the conjoined payment application (FTS/HPC/CV/22/1672) and lodging a Second Inventory of Productions which was applicable to both applications. The Tribunal Administration circulated this paperwork to the Respondent by post on 23 August 2022.

### **Case Management Discussion**

4. A Case Management Discussion (“CMD”) took place by telephone conference call on 29 August 2022 at 10am, attended by Ms Jennifer Grosvenor, Solicitor for the Applicant from Harper Macleod LLP. The commencement of the CMD was delayed for 5 minutes to allow an opportunity for the Respondent to join late but he did not do so.
5. After introductions and introductory remarks by the Legal Member, Ms Grosvenor was asked to address the Tribunal on the preliminary issue regarding the application for amendment. Ms Grosvenor considered that the aspects of the amendment which sought to amend their written representations in terms of this Application and the lodging of their Second Inventory of Productions only required 7 days’ notice prior to today’s CMD in terms of the Regulations and requested that the Tribunal allow those, which the Tribunal did.
6. Ms Grosvenor was then asked to address the Application and she also answered some questions from the Tribunal Members. She stated that the eviction was sought on the basis of Ground 12, that the tenant has been in rent arrears for in excess of three consecutive months, the last payment of rent having been made on 23 December 2021. The Notice to Leave had been served by email on 18 April 2022 in terms of the lease which stipulated email communication. The Notice allowed for the statutory presumption of 48 hours for email service, although the Respondent had in fact acknowledged receipt of the Notice on 18 April. The date stipulated in the Notice was correct, namely 19 May 2022, and the Tribunal application submitted after that date. She referred to the tenancy agreement and the rent schedule lodged. The rent in terms of the tenancy is £1,600 per month, payable 2-monthly in advance. Some payments made by the Respondent had been only part-payments and then no payments at all had been made towards rent since December 2021. There had been no explanation from the Respondent, nor proposals for resolving the situation, despite the Applicant’s attempts to discuss matters with him. The Applicant has confirmed that no further payments have been made to those shown on the rent schedule. The Respondent had made no direct contact with Ms Grosvenor’s firm. The Applicant had advised that he received an email

dated 10 July 2022 from the Respondent but that this made no mention of the rent arrears. It raised an issue concerning the washing machine and the Respondent also advised that the completion date for his new house was 8 August 2022. As far as they are aware, the Respondent is still resident at the Property. As regards reasonableness, Ms Grosvenor submitted that it was reasonable for an eviction order to be granted today. She confirmed that the arrears outstanding when this Application was submitted were significant, amounting to £8,450 and are continuing to accrue, currently amounting to £14,850. The Respondent had not made any payments since 23 December 2021 and showed no willingness to bring the rent account up to date. The Applicant had attempted to assist the Respondent by making contact with him and suggesting meeting with him but to no avail. Ms Grosvenor also referred to the pre-action protocols which they had carried out on behalf of the Applicant, as detailed in the two letters from her firm produced as part of their Second Inventory of Productions. Ms Grosvenor invited the Tribunal to find that Ground 12 was satisfied and also that it was reasonable in all the circumstances for an order for eviction to be granted. In response to a question by the Legal Member, Ms Grosvenor advised that she was not sure if the Applicant still has a mortgage over the Property but that there could be no doubt that the significant rent arrears outstanding would be having a financial impact on the Applicant who has also incurred legal costs in connection with these proceedings.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 13 February 2021.
3. The rent due in respect of the tenancy is £1,600 per month, payable two-monthly in advance.
4. The rent was initially paid regularly but then payments made in August and November 2021 were both short.
5. The last payment towards rent was £1,600 made in December 2021 and no payments have been made since.
6. The Applicant contacted the Respondent about the arrears but was not given any explanation, nor any proposals for paying the arrears.
7. A Notice to Leave in proper form and giving the requisite period of notice of 28 days was sent to the Respondent by email (in accordance with the tenancy agreement) on 18 April 2022, at which point the rent had been in arrears for more than 3 consecutive months.
8. The date specified in the Notice to Leave as the first date proceedings could be brought was 19 May 2022.

9. The Tribunal Application was submitted on 30 May 2022 by which time the arrears amounted to £8,450.
10. Apart from the attempts made by the Applicant himself to make contact with the Respondent to try and resolve the rent arrears, the Applicant's agents also issued letters to the Respondent, satisfying pre-action requirements.
11. The Respondent has been called upon to make payment of the rental arrears but has failed to do so.
12. The Respondent remains in occupation of the Property.
13. The Respondent has not submitted any written representations in respect of this application and did not attend the CMD.

### **Reasons for Decision**

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, and the oral evidence given at the CMD on behalf of the Applicant.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy and the relevant provisions of the 2016 Act.
3. The Tribunal found that the ground of eviction that the tenant has been in rent arrears for three or more consecutive months (Ground 12 of Schedule 3 to the 2016 Act, as amended) was satisfied and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The rent account had been in arrears for a significant period of time and arrears amount to a significant sum which the Tribunal was satisfied would be impacting significantly on the Applicant's finances. There was no information before the Tribunal to indicate that any of the rent arrears were a consequence of a delay or failure in the payment of a relevant benefit. The Tribunal was satisfied that the Applicant had complied with pre-action requirements and had attempted to make contact directly with the Respondent on several occasions and through letters issued by his representatives on his behalf to try and resolve matters.
4. The Tribunal noted the written representations on behalf of the Applicant concerning the Respondent's personal and family circumstances and the Applicant's belief that the Respondent has financial means to meet the rent and address the arrears. It was also noted that the Respondent had informed the Applicant that he was in the process of building a new home for himself, had denied that he was in any financial difficulty and had not offered any explanation for the arrears. The Tribunal was satisfied that the respondent had not engaged with the Applicant nor his representatives. He did not submit any written representations to the Tribunal, nor attend the CMD of which he had been

properly and timeously notified. The Tribunal did not therefore have any material before it to contradict the Applicant's position on these matters.

5. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

### **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.**



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**Legal Member/Chair**

**29 August 2022**  
**Date**