



**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 Act')**

**Chamber Ref: FTS/HPC/EV/19/3430**

**Re: Property at Flat G/2, 25 Crummock Street, Beith, KA15 2BD ("the Property")**

**Parties:**

**Mr Stephen Leslie, 8 Ballochyle Place, Gourock, PA19 1BG ("the Applicant")**

**Miss Sharon Haaney, Flat G/2, Crummock Street, Beith, KA15 2BD ("the Respondent")**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Elizabeth Dickson (Ordinary Member)**

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

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

**Background**

1. The Application was received by the Tribunal on 24 October 2019.
2. The Notice of Acceptance of the Application by the Tribunal, is dated 21 November 2019.
3. The application type is stated as being made under **Rule 109** of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('the Rules').
4. A Case Management Discussion (CMD) was assigned for 15 January 2020 in Room 107, Glasgow Tribunal Centre, 20 York Street, Glasgow G2 8GT.
5. Written representations were to be lodged by the Respondent by 1 January 2020. None were submitted.

6. The Applicant's Representative lodged further letter on 9 January 2020 with letter of 7 January 2020. This was crossed over to the Respondent.
7. Intimation of the date and service of the CMD and of the supporting papers was sent to the Respondent by letter dated 11 December 2019. It was served by Sheriff Officers on 12 December 2019 by letterbox

### **The Case Management Discussion**

8. The Applicant was represented by Mrs Duncan. The Respondent did not attend and was not represented.
9. I was satisfied that the Respondent had received proper intimation of the date, time and venue and supporting papers. I proceeded in her absence.
10. The application made is specific to Rule 109 of the Rules of procedure of the Tribunal.
11. It was noted as follows
  - The copy tenancy agreement produced is for a different address and Landlord, has a different amount of monthly rent to that in the Application and has a different start date to that relied on by the Applicant
  - The Landlord had a letting agent, now out of business, who never remitted any payments to the Applicant
  - The copy tenancy agreement produced is in any event not in the correct format for a PRT
  - The Notice to Leave, whilst appearing to have been correct in its terms and served timeously does not accord with the address in the tenancy agreement produced.
  - No Section 11 notice is lodged nor evidence of the service on the Local Authority is with my papers
  - The issues are whether the Parties entered into a PRT, the terms of it, the rent, whether any rent has been paid and whether the Applicant is entitled to the Order he seeks. No Section 11 notice is lodged nor evidence of the service on the Local Authority is with my papers
12. I determined that a Hearing is required with oral evidence from the Landlord and a Direction issued to assist the Tribunal for the Hearing.
13. A Hearing was fixed for 4 March 2020 at 2pm at Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.
14. On 7 February 2020 the Applicant sought to amend the rent arrears Ground details to a new sum sought of £5121.58, being 13 monthly payments of £375 monthly rental and a start date of the tenancy to 14 January 2019. This was crossed over to the Respondent. In addition, two bundles of documents which comprised evidence for the Hearing were lodged by the Applicant for the Hearing and again crossed over to the Respondent.
15. No communication was made by the Respondent and no written information lodged.

### **The Hearing**

16. The Hearing took place on 4 March 2020 at 2pm at Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.
17. The Applicant was personally present and was represented by Mrs Duncan.

18. Intimation of the date place and time of the Hearing was served on the Respondent by Sheriff Officers on 20 January 2020 by letterbox after Sheriff Officers had spoken to a neighbour who confirmed the Respondent's residence.
19. The Tribunal was satisfied proper intimation of the Hearing had been made on the Respondent and proceeded in her absence.
20. The Applicant gave oral evidence to the Tribunal.
21. He relied upon a Notice to Leave dated 3 September 2019 which had been served on the Respondent by Sheriff Officer letterbox service on 4 September 2019 having established that the Respondent lived at the Property. It stated an Application for eviction would not be made before 4 October 2019.
22. The Tribunal observed that the Notice to Leave was flawed in that it referred to the tenancy rent as £400 per month and a different start date than that now being relied on.
23. He spoke of Sheriff Officers having been instructed on his behalf via his solicitor subsequently to make further checks. That was done on 17 February 2020 when the same Sheriff Officers attended at the Property and confirmed the Property to be empty and unoccupied. Further the Officer spoke with a neighbour who confirmed that the Property had been empty for some time. He viewed through the letterbox where it was clearly unoccupied, and a vast amount of mail was behind the door. Pictures were taken and produced along with the Sheriff Officer Report. He also viewed in the front window and determined the Property was completely unfurnished.
24. The Applicant explained that he had secured the Respondent as a tenant through a Letting Agent who was no longer operating. He was told by the Letting Agent that the tenant's name was Sharon Hainey and had been provided with a signed tenancy agreement which was not in the standard model tenancy format. Throughout he had been kept in the dark and the Letting Agent had not provided him it could be said with a good service. Certain essential aspects of service were lacking in connection with communications, no rent had ever been received by him. However, they had provided him with a copy of the flawed tenancy agreement which related to his Property albeit had a typographical error in the address. It stated that the rent due was £375 per calendar month, payments being due on 3<sup>rd</sup> of every month and a start date of 14 January 2019 albeit they had verbally told him the start date was 1 December 2018.
25. As a Preliminary point, the Applicant was then asked of his view as to whether he required an Order of eviction from the Tribunal at all. His solicitor Representative considered the terms of Section 50 of the Act along with the Tribunal. His solicitor was content for the Tribunal to then consider whether Section 50 applied to the circumstances of the case and the available evidence which was not in dispute and principally centred around the Sheriff Officer Report of 17 February 2020. No further evidence was led in connection with this Application.

## Findings in Fact

- I. The Parties entered into a Private Residential Tenancy with a start date of 14 January 2019 at a rent of £375 per calendar month payable on the 3<sup>rd</sup> of every month.
26. The Applicant served on the Respondent a Notice to Leave dated 3 September 2019 which had been served on the Respondent by Sheriff Officer letterbox service on 4 September 2019 having established that the Respondent lived at the Property. It stated an Application for eviction would not be made before 4 October 2019.
27. On 17 February 2020 the same Sheriff Officers attended at the Property and confirmed the Property to be empty and unoccupied. Further the Officer spoke with a neighbour who confirmed that the Property had been empty for some time. He viewed through the letterbox where it was clearly unoccupied, and a vast amount of mail was behind the door. Pictures were taken and produced along with the Sheriff Officer Report. He also viewed in the front window and determined the Property was completely unfurnished.
- II. The Tribunal finds that the Respondent had vacated the Property by 17 February 2020.
- III. A Notice to Leave having been served and the Respondent having vacated the Property by 17 February 2020, the tenancy came to an end on that date. This date was the later of the two dates being the date specified in the Notice to leave and the date the Respondent had vacated the property by.
- IV. The tenancy between the Parties over the Property having come to an end by 17 February 2020, this Application for an Eviction Order is refused.

## Reasons for Decision & Decision

The Tribunal was satisfied that the parties had entered into a Private Residential Tenancy Agreement.

The Tribunal relied on the evidence in the form of three Sheriff Officers reports over the duration of the Application. On the first two occasions the Sheriff Officers had been satisfied that the Respondent occupied the Property and served papers. On the third occasion on 17 February 2020 they were satisfied she no longer occupied the Property and by their observations confirmed it was empty and unoccupied. The Tribunal accepted that evidence.

Having consider the evidence alongside the terms of Section 50 of the Act, it was clear the tenancy had come to an end by 17 February 2020. The Tribunal therefore did not have the power to grant an Eviction Order for a tenancy that was already at an end and refused the Application.

## **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.**

**Susan Christie**

**Legal Member/Chair**

**4 March 2020**

**Date**