



**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**

**Chamber Ref: FTS/HPC/EV/19/2275**

**Re: Property at 65 Gogarloch Syke, Edinburgh, EH12 9JD (“the Property”)**

**Parties:**

**Mrs Elaine McDougall, 131/20 Fountainbridge, Edinburgh, EH3 9QG (“the Applicant”)**

**Ms Yvette Arlow, 65 Gogarloch Syke, Edinburgh, EH12 9JD (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) grants an order against the Respondent for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 10 July 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an

order for recovery of possession of the Property in terms of Section 51 of the Private Housing (tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. On 19 August 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
3. On 30 August 2019, the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 20 September 2019. The Tribunal advised parties on 30 August 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 9 October 2019. This paperwork was served on the Respondent by David Buchan, Sheriff Officer, Edinburgh on 2 September 2019 and the certificate of execution of service was received by the Tribunal administration.
4. The Respondent did not make any written representations by 20 September 2019.

#### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 9 October 2019. The Applicant was represented by Mr McIntosh from Mattac Legal as local agents for Henderson Boyd Jackson, Solicitors. The Respondent did not appear and was not represented.
6. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondent signed and dated 3 October 2018, a rent statement, a Notice to Leave dated 18 June 2019 with Sheriff Officer’s Execution of Service dated 19 June 2019, email correspondence from Hartington Property Services to the Respondent dated 11 and 13 June 2019 and from 18 June 2019 – 15 July 2019, a letter dated 4 June 2019 from Hartington Property Services to the Respondent, and Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Edinburgh City Council dated 22 July 2019.
7. The Applicant’s solicitor moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 (“the 2016 Act”). He explained the rent statement to 1 August 2019 showed arrears at £4800. He had been advised that arrears continued to accrue and that as of 1 October 2019 they stood at £7200. He further explained that he had been advised that benefits were not an issue. Mr Murphy was the guarantor under the agreement and the Applicant had understood rent would be paid by him.

The Tribunal had noted that in terms of the email dated 13 June 2019 sent from Hartington Property Services to the Respondent and Mr Murphy that the Respondent was starting a new job.

8. The Tribunal noted the Notice to Leave under Section 50(1) and Ground 12 of Schedule 3 of the 2016 Act dated 18 June 2019 addressed to the Respondent and served on the Respondent by Sheriff Officers on 19 June 2019. The Tribunal also noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the Edinburgh City Council on 22 July 2019.

### **Findings in Fact**

9. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 3 October 2018 starting on 1 November 2018 in relation to the Property. In terms of Clause 8 of that tenancy agreement, the Respondent agreed to pay the Applicant a calendar monthly rent of £1200 due on 1st of each month.
10. In terms of the rent statement the Respondent had accrued arrears to 1 August of £4800. She had paid £1200 on 31 December 2018, £1200 on 4 February 2019, £600 on 1 March 2019, £600 on 1 April 2019 and £1200 on 1 May 2019. The Respondent has paid no rent since then. The Respondent is in breach of Clause 8 of the tenancy agreement.
11. The arrears are not caused by a delay or failure to pay Universal Credit or any other benefit.
12. On 19 June 2019, the Applicant served a Notice to Leave on the Respondent by way of Sheriff Officers requesting that she remove from the Property by 19 July 2019.
13. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on Edinburgh City Council on 22 July 2019.

### **Reasons for Decision**

14. The Applicant provided evidence of non-payment of rent in the form of the rent statement. The Tribunal was satisfied on the basis of the rent statement and the supporting oral submissions made on behalf of the Applicant that the Respondent has been in arrears of rent for over three consecutive months and is in excess of over a month's arrears. The Tribunal was satisfied on the basis of the Applicant's oral submissions and on the basis of the correspondence before it that the arrears had not accrued due to a delay or

failure in payment of any benefit. The Respondent was accordingly in breach of Clause 8 of the tenancy agreement. In the circumstances, the Notice to Leave having been served, the Applicant is entitled to repossess the Property.

**Decision**

15. The Tribunal granted the order for repossession.

**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.

Shirley Evans

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Legal Member/Chair

9 October 2019.  
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Date