

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/19/0540**

**Re: Property at Flat 12 359 Main Street, Bellshill, North Lanarkshire, ML4 1AW ("the Property")**

**Parties:**

**Mr Alan Crawford, 85 Fotheringay Road, Pollokshields, Glasgow, G42 4LQ ("the Applicant")**

**Mr Mark Tracy, Flat 12 359 Main Street, Bellshill, North Lanarkshire, ML4 1AW ("the Respondent")**

**Tribunal Members:**

**Lesley Ward (Legal Member)**

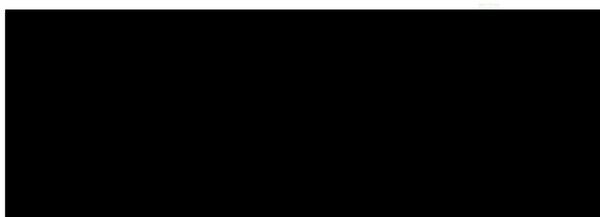
**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") dismissed the application made in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

This is a case management discussion 'CMD' in connection with an application for eviction in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, 'the rules' and s51 of the Private Housing (Tenancies ) (Scotland) Act 2016, 'the Act'.

The tribunal had before it the following copy documents:

1. Application dated 19 February 2019 and received by the tribunal on 19 February 2019.
2. Undated notice to leave.
3. Rent statement.



4. Notice to leave dated 15 January 2019.
5. Sheriff Officer's execution of notice to leave dated 16 January 2019.
6. Rent statement.
7. Letter to respondent dated 21 June 2018.
8. Land certificate relating to flat 12 355 Main Street Bellshill.
9. Letter to applicant's agents from tribunal dated 4 March 2019 and 27 March 2019.
10. Letter from applicant's agents dated 18 March 2019.

Ms Stephanie Carr solicitor attended the CMD on behalf of the applicant. Her firm Blackadders have acquired the assets of the applicant's previous agents Morisons and are now instructed in this matter.

The respondent did not attend and was represented. The tribunal understood that the papers were served on the respondent try sheriff officer's on the 17 April 2019 but no execution of service was available.

The tribunal had a preliminary hearing in connection with the application as it was not clear that a private residential tenancy has been constituted. .

Ms Carr advised the tribunal that the applicant's letting agents had endeavoured to have a written PRT signed by the respondent but he had not attended at their office to do so. She was unable to give any further information regarding any tenancy agreement that the respondent has with the previous owner.

The tribunal considered the terms of the Act in connection with the constitution of a PRT. Schedule 1 of the Act sets out the tenancies which cannot be PRT's. Item 21 provides:

*A tenancy cannot be a private residential tenancy if it is –*

- (a) A protected tenancy within the meaning of the Rent (Scotland) Act 1984
- (b) (b) a tenancy to which Part VI of that Act applies.
- (c) A Part VII contract under that Act,
- (d) An assured tenancy including a statutory assured tenancy within the meaning of the Housing (Scotland) Act 1988.

Ms Carr was unable to give any further information regarding any tenancy with the respondent had with any previous owner.

The tribunal also had regard to the provision of the Act in s 3 and 10 regarding the whether a PRT requires to be in writing. The provisions are not clear but further assistance is given in s4 which gives and extended meaning of a tenancy in the Act and provides:

*For the purposes of this Act-*

*(a) If an agreement would give rise to a tenancy but for the fact that it does not specify an ish, it is to be regarded as giving risk to a tenancy....*

This section makes it clear that to constitute a PRT there requires to be an agreement. Based on the information before the tribunal today, there appears to be a unilateral decision taken by the applicant regarding the property, but on agreement between the parties, whether oral or in writing.

Further and perhaps more fundamentally, the tribunal considered the terms of the Leases Act 1449 referred to in "Residential Tenancies Private and Social Renting in Scotland" by Robson and others at page 86 which provides:

*It is provided for the safety and favour of the poor people that work the land that they, and all others that have leased or shall lease property in future from any landlord, and have time to run on their lease, that if the landlord or disposes of that property, the tenants shall continue in their leases until their dates of termination, on the same terms and conditions.*

Taking all of the forgoing in to account the tribunal is not satisfied that a PRT has been constituted or can even be validly constituted if the respondent has a pre-existing tenancy which has not been brought to an end

Accordingly the tribunal dismissed 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.**



9 May 2019

Lesley A Ward Legal Member

Date