

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51 of Private Housing  
(Tenancies) (Scotland) Act 2016 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/19/3921**

**Re: Property at 126 Main Street, Coaltown of Wemyss, Fife, KY1 4NW (“the  
Property”)**

**Parties:**

**Miss Jane Mitchell, 20 School Wynd, East Wemyss, Fife, KY1 4RN (“the  
Applicant”)**

**Ms Fiona Kruger, 126 Main Street, Coaltown of Wemyss, Fife, KY1 4NW (“the  
Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application for the order for possession should  
be granted**

**Background**

By application dated 10 December 2019, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 15 January 2020 the application was accepted by the tribunal and referred for determination by the tribunal.

A Case Management Discussion was set to take place on 10 March 2020 and appropriate intimation of that hearing was given to both the landlord and the tenant

## **The Case Management Discussion**

The Case Management Discussion (CMD) took place on 10 March 2020 by conference call. The applicant was represented by her letting agent, Mrs Frieda Duffy of Easy Move Everytime Limited 16 Nicol Street Kirkcaldy KY1 1NY. The Respondent did not attend nor take part by conference call.

The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters

The tribunal asked various questions of the landlord's representative with regard to the application and the grounds for eviction contained within it.

The agent confirmed that she wished the order sought to be granted

## **Findings in Fact**

The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property on 4 January 2019.

The tenancy was a private residential tenancy in terms of the Act. The monthly rent was £400

On 9 September 2019 the applicant served upon the tenant a notice to leave as required by the Act. The Notice became effective on 4 December 2019.

The notices informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.

The notice was correctly drafted and gave more than the required period of notice as required by law.

The notice set out a ground contained within schedule 3 of the Act, namely ground 12 that the tenant was in rent arrears

The tenant has been in rent arrears since 4 February 2019

The rent arrears at 4 February 2020 amounted to £3,200

The basis for the order for possession was accordingly established

## **Reasons for Decision**

The order for possession was sought by the landlord based on a ground specified in the Act and properly narrated in the notice served upon the tenant. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground and the relevant terms of the tenancy agreement which had been lodged with the application

The period of notice given to the tenant under the Notice to Leave far exceeded the required period of 28 days as set out in terms of the Act. The agent explained that she believed the tenant was entitled to 84 days' notice rather than 28 days. The tribunal noted the requirements in the 2016 Act (with particular reference to sections 54, 62 and 73 of the Act). If that error had the effect of rendering the notice invalid based on these provisions then the tribunal took the view that this error did not materially affect the effect of the Notice and accordingly treated the error in the Notice as a minor error in the document in terms of section 73.

### **Decision**

The order for recovery of possession is granted

### **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.

Mr J Bauld

Legal Member/Chair

*12 March 2022*  
Date