



**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/23/0454**

**Re: Property at 2 Dundonald Crescent, Newton Mearns, G77 5TJ (“the Property”)**

**Parties:**

**Mrs Elizabeth Latter, Mr Ian Latter, 11 Gleneagles Drive, Newton Mearns, G77 5UA (“the Applicant”)**

**Mr Mark Shields, 2 Dundonald Crescent, Newton Mearns, G77 5TJ (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Frances Wood (Ordinary Member)**

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

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

**Background**

1. An application was received by the Housing and Property Chamber dated 13<sup>th</sup> March 2023. The application was submitted under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Applicant wishing to sell the Property.
2. On 5<sup>th</sup> April 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 11<sup>th</sup> May 2023 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 26<sup>th</sup> April 2023.

3. On 6<sup>th</sup> April 2023, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent personally. This was evidenced by Certificate of Intimation dated 6<sup>th</sup> April 2023.
4. On 24<sup>th</sup> April 2023, the Applicant's solicitor emailed the Housing and Property Chamber to increase the amount sought to £4565 and attaching a rent account for the period 1<sup>st</sup> August 2022 to 12<sup>th</sup> April 2023.
5. On 26<sup>th</sup> April 2023, the Respondent emailed the Housing and Property Chamber requesting that the CMD be postponed as he was working on site and unable to attend the CMD.
6. On 4<sup>th</sup> May 2023, the Applicant's solicitor emailed opposing the granting of a postponement. The Applicant's solicitor noted that there was no specific reason why the postponement request was required.
7. On 5<sup>th</sup> May 2023, the Applicant's solicitor emailed amending the terms of the reasonableness test.
8. On 9<sup>th</sup> May 2023, all parties were emailed to the address that they had been corresponding with the Housing and Property Chamber to inform of CMD of 11<sup>th</sup> May 2023 being postponed. A request was made that all parties advise of their availability for the next two months in order that the CMD does not need to be postponed again.
9. On 25<sup>th</sup> May 2023, the Applicant's solicitor emailed the Housing and Property Chamber to ask if a date had been set for the next CMD.
10. On 13<sup>th</sup> July 2023, all parties were emailed to the address that they had been corresponding with the Housing and Property Chamber to inform of the new date of the CMD of 17<sup>th</sup> August 2023 at 10am by teleconferencing.
11. On 27<sup>th</sup> July 2023, the Applicant's solicitor emailed the Housing and Property Chamber requesting that the amount sought be increased to £4801.85 for the conjoined case. A rent account was attached for the period 1<sup>st</sup> August 2022 to 12<sup>th</sup> July 2023. A copy of a letter to the Respondent indicating the increase sought was attached. This letter to the Respondent had been intimated by first class post and recorded delivery. This letter included the date and the time of the CMD.
12. On 8<sup>th</sup> August 2023, the Respondent emailed the Housing and Property Chamber stating that he had left a voicemail the previous week regarding the letter from the Applicant's solicitor. It stated that he had not had notification regarding the date of the CMD and that the current ban on evictions had been extended to March 2024. This was from a different email address that the Respondent had used previously to email the Housing and Property Chamber.

13. On 14<sup>th</sup> August 2023, the Respondent emailed again with the reference number for the case.
14. On 15<sup>th</sup> August 2023, the Housing and Property Chamber emailed the Respondent asking which email address he preferred to be emailed at going forward.
15. On 15<sup>th</sup> August 2023, the Respondent emailed the Housing and Property Chamber stating that he was following up on this case.
16. On 16<sup>th</sup> August 2023, the Housing and Property Chamber emailed the Respondent to ask the Respondent to clarify why he was not able to attend the CMD. He was also asked to clarify when he stopped using the first email address and why he did not inform the Housing and Property Chamber that he had changed his email address. It was noted that the Tribunal would be very reluctant to postpone again without good reason.
17. On 17<sup>th</sup> August 2023 at 00.16am the Respondent emailed the Housing and Property Chamber stating that he could not attend the CMD (referred to by the Respondent as “the meeting”) due to commitments with his job and was unable to reschedule due to the lack of notice. He said that he could not attend without being prepared noting that he had only known for “a week or so”. He also noted that he had not stopped using his previous email address and has had all his emails forwarded from that email address to his current email address. He stated that he did not have an email with notification of the date from the Housing and Property Chamber in his email inbox.
18. This case is conjoined with case reference FTS/HPC/CV/23/0451.

### The Case Management Discussion

19. A CMD was held on 17<sup>th</sup> August 2023 at 10am by teleconferencing. The Applicant was represented by Ms Kirstie Donnelly, solicitor, TC Young solicitors. Ms Simone Callaghan, paralegal, TC Young Solicitors was present as an observer. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
20. Ms Donnelly said that she objected to any postponement of the proceedings. She noted that the same reason had been given as before but that this judicial process was very accessible given that the CMD was by teleconferencing and parties could dial in from anywhere. These were court proceedings and the Respondent had had many months notice of the application and opportunity to make representations and/or to get representation. Ms Donnelly considered that the Respondent had a duty to take steps to enquire about a CMD date if he had not heard as he had asked for the earlier postponement. Regardless he had known about the CMD from at least 27<sup>th</sup> July 2023 when her firm had written to him regarding the amendment of the sum sought. She considered this plenty of time to prepare for the case and/or instruct a legal or lay representative.

21. Ms Donnelly said that there has been no communication from the Respondent. The Respondent has not been addressing his ongoing rent charge which has caused the arrears to accrue. Although some recent payments had been made, they were for the previous rent charge which had increased in July. The increase of the rent charge was a 3% increase which is in line with current legislation. He was notified of the rent increase by an email sent by the letting agent on 7<sup>th</sup> April 2023. Ms Donnelly noted that the Respondent had not been communicating last year. The Applicant applied to the Housing and Property Chamber to gain entry to the Property. The Property was found to be somewhat untidy and unkempt but not in a poor condition. The state of the garden had continued to be an issue until relatively recently, when it had been noted by the applicant on driving by the property that the tenant had taken steps to clean it up and carry out required maintenance.
22. Ms Donnelly said that the Respondent is around 37 years old and lives in the Property with his wife and two children. He is in employment. Ms Donnelly said that the Applicants have two adult daughters who are looking to buy their own properties in Edinburgh and Aberdeen as they have undertaken employment in those cities. The Applicants had bought the Property with the intention to sell it after a few years for deposits for their daughters. When they had purchased the Property the ground 1 applications were mandatory. They had let out the Property on this basis. Since then the law has changed so that it is discretionary. The Respondent remaining in the Property limits the Applicants' daughters' ability to proceed with their purchases.
23. It was noted by the Tribunal that this case is subject to the Cost of Living (Tenant Protection)(Scotland) Act 2022 which means that an order cannot be enforced for the eviction of the Respondent for 6 months. Ms Donnelly was aware of this and understood the implications of the Cost of Living (Tenant Protection)(Scotland) Act 2022.

#### Findings and reason for decision

24. A Private Rented Tenancy Agreement commenced 11<sup>th</sup> August 2020.
25. The Respondent persistently failed to pay his rent charge of £1436.85 per month. The rent payments are due to be paid on 11<sup>th</sup> day of each month. The charge was increased by 3% from £1395. The first payment of the increased rent was due to be paid on 11<sup>th</sup> July 2023. The Respondent was telephoned in advance by his letting agent and email with the notification of this rent increase on 7<sup>th</sup> April 2023. The arrears sought total £4801.85. The Respondent has not paid the new increased rent amount in his August payment. The payment was due on 11<sup>th</sup> August but the Respondent paid the previous amount of £1395. This has meant that the arrears have risen to £4843.70. This amount has not been intimated upon the Respondent so could not be increased for the purposes of the Tribunal granting an order for the conjoined case. There has been no contact from the Respondent with regard to paying the arrears. Though this case is not an eviction case for rent arrears this demonstrates the Respondents lack of communication and lack of adhering to rent payments. It

demonstrates that it would not be reasonable to the Applicant to refuse the granting of an order.

26. The Respondent was notified of the first CMD on 5<sup>th</sup> April 2023. It was stated in that letter that any representations were to be made by 26<sup>th</sup> April 2023. The Respondent has not lodged any representations regarding his position for either this case or the conjoined case, nor has he made the Tribunal aware of any steps taken to get representation. The Tribunal granted an adjournment of the CMD for 11<sup>th</sup> May 2023. The Respondent was notified of this postponement by email. The Respondent was notified of this CMD on 13<sup>th</sup> July 2023 to the same email address. He emailed the Housing and Property Chamber stating that he had not been aware of this CMD. The Tribunal has no evidence before it that the email failed to be delivered. It is reasonable to presume that the Respondent has a responsibility to ensure that he is aware of any date. When he was written to it stated that he would need to inform of his availability. He failed to do this. It had the inference that the CMD would be in the next two months. The Applicant's solicitor had contacted two weeks after the postponement to query about a new date. It is not unreasonable that the Respondent could have done this at any point if he had thought that he had not been notified knowing that he had been asked of his availability within a two month period. It was reasonable for the Tribunal to presume that the Respondent received the email failing which that he should have contacted sooner to find out the date. The Respondent noted that he was aware on or around 27<sup>th</sup> July 2023 as that is when he received the Applicant's solicitor's letter. This was three weeks before the CMD. He did not email the Housing and Property Chamber until 8<sup>th</sup> August 2023. There was nothing substantially further in the papers save for the rent account which he received from the Applicant's solicitor. There was no explanation as to why he would not be able to prepare in that time as he had received the papers on 6<sup>th</sup> April 2023. Reference was made to the Respondent working. This was the same as had been the reason for the previous postponement. However, the Respondent was asked to specify exactly why he could not attend. He said that it was not possible to rearrange work commitments. This did not explain to the Tribunal what exactly were his commitments that he could not involve himself in the CMD given the importance of the CMD. The Tribunal has remitted powers from the Sheriff Court to deal with the matters in this Chamber. The Tribunal considered that all parties must consider the gravity of these judicial proceedings. The CMD was conducted by teleconference which allows greater access to those attending. He did not explain why, even with the teleconferencing, that he would not be able to attend the CMD to address his view for this and the conjoined case. The Tribunal were not satisfied that adequate reasons were given to grant a postponement and that it would not have been reasonable to the Applicant to grant a further postponement noting that the Notice to Leave was issued on 15<sup>th</sup> November 2022.
27. There were no issues of reasonableness to prevent an order being granted.

## Decision

28. The Tribunal found that ground 1 had been established and that there were no issues of reasonableness to prevent an order from being granted. The Tribunal granted the Order as sought in 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.**

# G Miller

17<sup>th</sup> August 2023

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Legal Member/Chair

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Date