



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/23/3861

Re: Property at 1 (3F) RANDOLPH PLACE, EDINBURGH, EH3 7TQ (“the Property”)

Parties:

Mr Dominic Cole-Morgan, Mr Alastair Wilkinson, Flat 2, Brandon House, 10 Hilary Mews, London, SE1 1AP; Flat 2 Brandon House, 10 Hilary Mews, London, SE1 1AP (“the Applicants”)

Mr James Nichol, 1 (3F) RANDOLPH PLACE, EDINBURGH, EH3 7TQ (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicants submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 13 February 2024 informing both parties that a CMD had been assigned for 25 March 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 5 March 2024. No written representations were received by the Tribunal.

The case management discussion

4. The CMD took place by conference call. The Applicants were represented by Mr Raphael Bar. The Respondent did not join the conference call and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD. The Applicants' representative explained that since the rent statement was lodged, the Respondent has made 2 payments towards the rent account totalling £3,000. However, rent arrears have continued to accrue and the sum now due is £16,586. The Respondent has made promises to pay rent but has not made any arrangement to pay ongoing rent or the arrears. The Respondent advised the Applicant's representative that he was looking for work. It is believed that the Respondent does not have any dependents. The Applicants discovered that the Respondent has advertised the property on Airbnb.co.uk and other people have been staying at the property. This contravenes clause 12 of the tenancy agreement. The Applicants' position was that grounds 11 and 12 have been established and that it is reasonable to grant an order for eviction.

Findings in Fact

5. The parties entered into a private residential tenancy which commenced 19 August 2020.
6. The Applicants served Notice to Leave on the Respondent by email on 26 September 2023.
7. The Respondent has breached clause 12 of the tenancy agreement.
8. The Respondent has incurred rent arrears amounting to £16,586.

Reason for Decision

9. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Applicants relied upon grounds 11 and 12 of the Private Housing (Tenancies) (Scotland) Act 2016. The Respondent failed to participate in the CMD and failed to lodge any written representations. The rent statement produced demonstrates that the Respondent has been consistently in arrears of rent since May 2022. The information before the Tribunal was that the Respondent has failed to engage with the Applicants in relation to a payment arrangement for ongoing rent and rent arrears. The Tribunal was satisfied that ground 12 was established. In relation to ground 11, the Applicants produced documentary evidence indicating that the property has been advertised on Airbnb.co.uk. There were reviews of the property recorded

on that website from July 2022 to August 2023. The Tribunal accepted the submissions on behalf of the Applicants that the Respondent did not have consent of the Applicants to advertise the property or to let others stay there. Clause 12 of the tenancy agreement states: “Unless the Tenant has received prior written permission from the Landlord, the Tenant must not: sublet the Let Property (or any part of it), take in a lodger, assign the Tenant’s interest in the Let Property (or any part of it), or otherwise part with, or give up to another person, possession of the Let Property (or any part of it).” The Tribunal was satisfied from the documentary evidence produced that the Respondent had breached clause 12 and that therefore ground 11 was established.

10. The Tribunal was satisfied that it was reasonable to grant an order evicting the Respondent from the property. Given the significant period of time the Respondent has been in rent arrears, the Tribunal concluded that this is a tenancy which is not sustainable by the Respondent. In addition, the Respondent has been letting the property out to guests through Airbnb.co.uk and has presumably received an income from doing so. Not only did the Respondent fail to obtain the required consent from the Applicants, but he did not disclose this activity to the Applicants.

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.

Nicola Irvine

Legal Member

25 March 2024

Date