

**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 the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/18/1385**

**Re: Property at Flat 2/2, 44 Thornwood Avenue, Glasgow, G11 7PQ ("the Property")**

**Parties:**

**Mrs Alison Burns, 14 Stanley Drive, Brookfield, Johnstone, PA5 8UG ("the Applicant")**

**Mr John Kane, Flat 2/2, 44 Thornwood Avenue, Glasgow, G11 7PQ ("the Respondent")**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that**

**BACKGROUND**

1. By agreement dated 1 March 2018 the Applicant let the Property to the Respondent;
2. The period of let was from 1<sup>st</sup> March 2018 until 31<sup>st</sup> August 2018;
3. The rent due was £515 per month, payable in advance;
4. A deposit of £770 was also required;
5. The deposit and the first month's rent were both paid by the Respondent, the deposit subsequently being lodged in a tenancy deposit scheme;
6. The lease took the form of a short assured tenancy lease under the Housing (Scotland) Act 1988, being for a period of 6 months and, indeed, a notice in terms of section 32 of that Act was also served on the Respondent;

7. The tenancy having been created after 1<sup>st</sup> December 2017, however, was a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act");
8. The Applicant made an application to the Tribunal for an eviction order under section 51 of the 2016 Act on the basis of grounds 11, 12 and 14 of Schedule 3 to the 2016 Act;
9. A Notice to Leave had been served on the Respondent. This was initially sent by recorded delivery but it is not clear when it was received. It is clear, however, that the notice was received as it is subsequently referred to in an exchange of electronic correspondence between the Applicant, the Respondent and an organisation called "Living Rent" who acted on behalf of the Respondent;
10. A notice in terms of section 11 of the Homelessness etc. (Scotland) Act 2003 had been intimated to the local authority;
11. The application to the tribunal was received on 5<sup>th</sup> June 2018. The proceedings were intimated to the Respondent by sheriff officers on 19 July 2018;

## **THE CASE MANAGEMENT DISCUSSION**

12. Both parties attended the Case Management Discussion. Neither party was represented. Neither party had a supporter;
13. The Legal Member introduced himself, the Clerk of the Tribunal and the Venue Assistant. He explained the purpose of the Case Management Discussion and made it clear that at the Case Management Discussion a final order may be made;
14. The Respondent quickly stated that he had only received the papers yesterday (16<sup>th</sup> August 2018) and wished to know also how to "counterclaim". The Tribunal pointed out that the proceedings and case papers had been lawfully served, by sheriff officers, on 19 July 2018, more than 4 weeks previously. The Applicant advised that he had not been living at the Property during that time;
15. The Respondent was advised that the Tribunal could not deal with a "counterclaim" and that if the Respondent felt he had any grounds to make any claim against the applicant he was entitled to make separate application to the Tribunal;
16. The Applicant was clearly aware of the basis of the proceedings in any event. He had previously been involved in an exchange of correspondence with the Applicant and had sought the assistance of an organisation called "Living Rent" to act as "intermediaries" in the dispute. The case papers were obviously known to him also as they consisted of the lease, which he accepted he signed, the notice to leave and an exchange of electronic correspondence between the Parties. On that basis the Legal Member advised that he was minded to proceed with the Case Management Discussion;
17. The Respondent advised that he wished to appeal to "a higher court". The Legal Member pointed out that there was, at that precise point in time, no decision he could appeal. He was advised that if a decision was made he would have a right of appeal thereafter. The Case Management Discussion then proceeded;

18. The Tribunal first made enquiry of the Applicant in relation to Ground 11 of Schedule 3 to the 2016 Act. The application stated that the Respondent would not allow access for inspection or for repairs and that he had been smoking within the property in breach of the agreement. She accepted that the agreement which had been signed (which in fact consisted of two separate but connected agreements) did not prohibit smoking within the premises;
19. Enquiry was then made in relation to ground 14, anti-social behaviour. This was on the basis that the Applicant had been smoking and leaving debris in the common close. The Applicant accepted there was nothing in the agreement between the parties relating to this, but indicated she was making application on the basis that she was permitted to in terms of section 51 of the 2016 Act and the ground itself;
20. Enquiry was then made in relation to Ground 12, non payment of rent. The Applicant stated that, apart from the first month's rent, no further rent payments had been made;
21. Enquiry was then made of the Respondent. He was asked if he accepted that rent had not been paid. He did accept that, apart from the first month's payment he had paid nothing else and had "no intention of giving her money again". On that basis, it was accepted that the rental payments for April until August had not been paid;
22. He was asked why he had not paid rent. After an initial pause, he stated that he had been harassed by the Applicant and had not been allowed what he considered to be peaceful occupation of the property. He then went on to state that in his view the lease was not valid as "a new lease came in last year". He also stated that the lease was not witnessed and was, therefore "void";
23. The Legal Member advised that while a tenancy is often in writing it need not be (see section 3 of the 2016 Act) and that the absence of a witness signature did not render an agreement "void". The Respondent was asked if he accepted that he had signed the agreement and he confirmed that he had, indeed, signed both parts of it, but maintained that it was void, despite that Tribunal suggesting that, as a matter of law, that was not correct;
24. The tribunal enquired if he had any legal basis for withholding rent. He stated that he did not understand the question. It was explained that he had signed a lease, had agreed to pay rent, accepted that he had not done so, and the Tribunal wished to know if there were any circumstances in which he was claiming he was legally entitled not to pay rent. He restated the reasons previously given
25. The Legal Member again spoke to the Respondent at which time he stated he intended leaving the Case Management Discussion. The Legal Member advised him that the Tribunal could continue in his absence. The Respondent maintained his position and left the Case Management Discussion. The Legal Member adjourned the Case Management Discussion to allow the Respondent an opportunity to reflect on his decision and return. It was confirmed, however, that the Respondent had left the building and, in those circumstances, the Tribunal continued in his absence.
26. The Applicant confirmed she wished to proceed in the absence of the Respondent and wished an order to be made.

## **FINDINGS IN FACT**

27. The Tribunal made the following findings in fact:-

- i. By agreement dated 1<sup>st</sup> March 2018 the Respondent agreed to lease the Property from the Applicant;
- ii. The rent to be paid by the Respondent was £515 per month;
- iii. The Respondent paid the rent due on 1<sup>st</sup> March 2018;
- iv. The Respondent had not paid rent due on the first days of April, May, June, July and August 2018;
- v. As at the date the Tribunal was considering the merits of the case, the Respondent was in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy and has been in arrears of rent for a continuous period of three or more consecutive months;
- vi. The arrears of rent were neither wholly nor partly a consequence of a delay nor failure in the payment of a relevant benefit.

## **REASONS FOR DECISION**

28. The Tribunal was not satisfied that the basis of an order for eviction on Grounds 11 and 14 of Schedule 3 to the 2016 Act were made out;

29. The Tribunal had no hesitation in concluding that the requirements of Ground 12, rent arrears, were met;

30. While there was no request to amend the application, on the basis of information provided by the Respondent himself, he has not been occupying the Property and, therefore the requirements of Ground 10 were also met. The Tribunal, however, was not asked to consider this ground and it forms no part of the decision of the Tribunal, but is mentioned given that the information relating to it was provided by the Respondent himself;

## **DECISION**

31. The Tribunal decided that an order ejecting the Respondent from the Property be granted in terms of Ground 12 of Schedule 3 to the 2016 Act.

## **NOTE**

32. The hearing of the Case Management Discussion was not straight forward due to the conduct of the Respondent;

33. Upon entering the Tribunal room he took some time to remove his case papers from his bag to enable the Tribunal to proceed. He was, of course, allowed time to do so;

34. He immediately advised that he had only received notification of the Case Management Discussion the day before. When it was pointed out that the Tribunal had a sheriff officers execution of service confirming the case papers were served at the Property on 19<sup>th</sup> July 2018 he then advised he had not been living there;

35. He advised that he wished to counterclaim and was unhappy at being advised that the Tribunal could not deal with any counterclaim at today's proceedings. He questioned the Legal Member on that;
36. He advised that he wished to appeal to a "higher court" before any other discussion had taken place. He did not appear willing to accept what was said by the Legal Member about his ability to appeal at that particular point;
37. The Respondent interrupted the Legal Member on various occasions and had to be asked not to;
38. It appeared clear that the Respondent was wishing to delay the proceedings if at all possible;
39. On the basis that this was a Case Management Discussion and that the Tribunal may, depending on what was said before it, continue the Case Management Discussion or fix a hearing, the Tribunal determined that the matter should proceed;
40. Before the discussion progressed, the Respondent collected his papers and placed them in his bag. It appeared that he was preparing to leave, but he did not do so at that stage;
41. While the Applicant was addressing the Tribunal the Respondent interrupted her. He was asked not to. At one point when the Applicant was advising the Tribunal that she believed the Respondent was no longer occupying the Property he again interrupted and began laughing loudly. He required to be admonished in relation to his behaviour, reminded that he was appearing in legal proceedings and was required to show respect to the Tribunal and other persons within the hearing room. The Respondent stated that he found what was being said to be amusing and did not consider his behaviour to be inappropriate;
42. Shortly afterwards, he again interrupted the Applicant who had stated that there was a collection of mail at the Property, reinforcing her view that he was not residing there. The Applicant retrieved a bundle of mail from his bag, waved it before the Tribunal and suggested his possession of it contradicted what the Applicant was saying. While the Legal Member did not address that particular point further, if he was suggesting that he has not been absent from the Property that contradicts his earlier statement that he had not been there since before 19<sup>th</sup> July 2018. His mail could of course, have been collected by him on 16<sup>th</sup> August 2018, the date on which he claims he first became aware of the proceedings;
43. When the Respondent was being asked to address the Tribunal in relation to his refusal to pay rent, he was not willing to accept legal matters being stated by the Legal Member. It was at that point he decided to leave;
44. It appeared clear that the Respondent was intent on disrupting and delaying the proceedings, while continuing in the tenancy, despite stating that he had not been living at the Property and despite clearly stating that he had no intention of paying rent. In the circumstances, by the time the Respondent removed himself from the proceedings he had made his position clear in relation to the matters the Tribunal required to consider.

## 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.

Virgil Crawford

17 August 2018

Legal Member/Chair

Date