



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/22/2912

Re: Property at 190 Piper Drive, Glenrothes, Fife, KY7 6TG (“the Property”)

Parties:

John R Graham Ltd, Raecruick Farm, Dunshalt, Fife, KY14 7ER (“the Applicants”)

Mr Bruno Terelecki and Ms Hanna Blaszczyk, both 190 Piper Drive, Glenrothes, Fife, KY7 6TG (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The Tribunal decided to determine the application without a Hearing and issued an Eviction Order against the Respondents.

Background

By application, received by the Tribunal on 15 August 2022, the Applicants sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 11 and 12 of Schedule 3 to the 2016 Act, namely that the Respondents had breached a term or terms of the tenancy agreement (Ground 11) and that the Respondents were in arrears of rent over three consecutive months (Ground 12).

The application was accompanied by a copy of a Private Rented Tenancy Agreement between the Parties commencing on 9 February 2021 at a monthly rent of £600, and a Notice to Leave, dated 6 July 2022, advising the Respondents that the Applicants were seeking an Eviction Order under Grounds 11 and 12 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 6 August 2022, together with a Rent Statement showing arrears as at 9 September of £1,810. The Applicants also provided the Tribunal with a copy of an email from Fife Council Building Standards and Public Safety Team dated 1 July 2022 in which they asked the Applicants to advise them further concerning the

Applicants' intentions for the currently unlawful House in Multiple Occupation that they had identified on a visit to the Property on 30 June 2022. The Council also advised the Applicants that they had noted on the visit that the fire detection heads in the Property had been removed and would require to be reinstated for the safety of the tenants.

On 20 October 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 10 November 2022. The Respondents did not make any written representations to the Tribunal. On 18 November 2022, the Applicants provided an updated Rent Statement showing arrears of £2,080. £290 had been paid on 9 September, £330 on 3 October and £300 on 26 October. The Applicants also provided a screenshot of an on-line advertisement of "Double Bedroom to Rent £250" which included a photograph of the kitchen taken from the living area. The "Seller" was stated to be Bruno Terelecki.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 30 November 2022. The Applicants were represented by Miss Robyn Graham. The Respondent Mr Terelecki was also present. The Respondent, Ms Blaszczyk was not present or represented.

Mr Terelecki requested an adjournment of proceedings to enable him to submit to the Tribunal various documents relating to his medical and other personal circumstances which explained the rent arrears. He also stated that there had been a Payment Plan entered into between the Parties in or around August 2021. In relation to Ground 11, he contended that he had SMS or WhatsApp messages in which the Applicant had agreed to one other person living in the Property with him. He advised that he is in receipt of Universal Credit of £690 per month. He confirmed that other people had lived in the Property with him to help pay bills, but stated that nobody had stayed for more than one month and that presently one person was staying with him.

Miss Graham told the Tribunal that she had inspected the Property on 5 July 2022, after receiving the email from Fife Council. Two people were living there at the time, neither of whom was either of the Respondents. The Respondent M Terelecki had been advertising a room for rent more than two months later, on 22 September 2022. She denied that the Applicants had in any messages consented to anyone else apart from the Respondents living in the Property. On 1 November 2022, she had heard from the Respondent Ms Blaszczyk, who had given 28 days' notice. This was the first time that she had been advised that Ms Blaszczyk had left the Property.

The Tribunal was unable to determine the application on the basis of the information before it, as there were conflicting accounts in relation to the sub-letting. It appeared that the Respondent Mr Terelecki had not fully understood the requirement to make written representations in advance of the Case Management Discussion. The documentation to which he referred might have a bearing on whether the Grounds set out in the application had been established and, if so, whether it was reasonable for the Tribunal to issue an Eviction Order

The Tribunal adjourned the case to a further Case Management Discussion, the date and time of which would be intimated to the Parties in due course. The Tribunal also issued Directions to the Parties.

In terms of its Directions, the Applicants were required to provide, not later than 14 days prior to the continued Case Management Discussion:

1. An updated Rent Statement and
2. Confirmation as to whether the Applicant wishes to withdraw the application insofar as it relates to the Respondent Ms Blaszczyk.
3. Screenshots of any SMS, WhatsApp or other social media messages between the Parties in relation to a second person being permitted by the Applicant to live with the Respondent Mr Terelecki in the Property.
4. A copy of any Payment Plan or agreement made with the Respondent Mr Terelecki and

The Respondent Mr Terelecki was required to provide, by 30 December 2022:

1. Screenshots of any SMS, WhatsApp or other social media messages on which he intends to rely in relation to a second person being permitted by the Applicant to live with him in the Property.
2. Copies (translated into English as necessary) of any medical records or other documents which he wishes the Tribunal to consider in relation to his medical or other personal circumstances.

On 9 February 2023, the Applicants' solicitors, TC Young LLP, Glasgow responded to the Direction. They stated that the Applicants did not intend to withdraw proceedings in respect of the second Respondent, Ms Blaszczyk. The tenancy is a joint private residential tenancy which can only be terminated upon receipt of valid notice from all joint tenants, in accordance with Sections 48 and 49 of the 2016 Act. In terms of Section 78(3) of the Act, "*in a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.*" Accordingly, notice to leave was required from both the first and second Respondents to validly terminate the private residential tenancy agreement. The Applicants advised the first Respondent accordingly via WhatsApp on 13 April 2022. The emails from the second Respondent dated 20 April 2022 and 2 November 2022 were therefore insufficient to terminate her interest in the tenancy agreement.

The Applicants' solicitors provided with their written representations a copy of an email from the Applicants to the Respondents of 2 July 2022, in which they raised the issue of unauthorised sub-letting, following contact from Fife Council. They referred the Respondents to Clauses 11, 12 and 13 of the tenancy agreement, which prohibited the Respondents from taking in a lodger, subletting, assigning or otherwise parting with possession of any part of the Property without any written consent. They stated that no such consent had been requested or given and they insisted that the Respondents ensure that all residents other than those named on the tenancy agreement vacate the Property as a matter of urgency. They also stated their intention to carry out an inspection of the Property on 5 July 2022.

The Applicants' solicitors also provided screenshots of an advertisement posted by the Respondent Mr Terelecki on Facebook Marketplace on 22 September 2022, advertising a double bedroom to rent, WhatsApp correspondence from 26 October to 11 November 2022 between the Applicants and the Respondent Mr Terelecki regarding unauthorised subletting and rent arrears, a WhatsApp message from Mr Terelecki of 11 April 2022, asking that the Respondent Ms Blaszczyk be taken off the tenancy and a response from Miss Graham of 13 April 2022 in which she stated that to end the joint tenancy, both Respondents would need to email her and give 28 days' notice and then, for Mr Terelecki to carry on as sole tenant, a new lease would be required.

A further email from the Applicants to the Respondent Mr Terelecki of 23 January, reiterating the fact that no consent to subletting had been requested or given and repeating the requirement to ensure all residents other than those named on the tenancy agreement vacate the Property as a matter of urgency was also provided, with a request for an update regarding the rent arrears, the last payment having been made on 26 October 2022 and the arrears now being £3,280.

On 28 February 2023, the Applicants' solicitors provided the Tribunal with an updated Rent Statement showing arrears as at that date of £3,150.53. In February 2023, £429.47 had been received from DWP and a further £300 from the Respondents. The DWP payment comprised £375 towards the rent and £54.47 towards arrears. They also provided screenshots of a property advert posted by the Respondent Mr Telecki on Spareroom.com website as accessed on 22, 23 and 27 February 2023. It advertised a houseshare, with Mr Telecki named as the current flatmate.

The Respondents did not comply with the time limit stated in the Direction, but made written representations on 28 February and 3 March 2023, in which Mr Terelecki provided medical evidence of his having been treated in hospital in Warsaw from 15-21 June 2022 and a certificate for the purposes of social security and statutory sick pay from his medical practice in Edinburgh, to the effect that he was unfit for work and that this would probably be the case for two months. In the email of 23 February, he stated that he would pay £300 weekly, starting that day. In the email of 3 March, he said that he would pay off the debt within 3 months and would not let anyone else have a room in the Property. He confirmed that he was living in the Property with his partner and admitted that he had rented a room to other people in the past. He assured the Tribunal, however, that he had not rented a room to third parties for a half year. He asked the Tribunal to allow him to stay for a six-month probationary period. He stated that the posts on Facebook and Spareroom.com were old adverts that, for some reason, had not been deactivated. He also asked that the Respondent Ms Blaszczyk be removed from the case, as she had moved out over a year and a half ago. He said that the Applicants knew about this and agreed to let another person live with him. He attached a copy of a letter from Ms Graham which, he said, stated the fact that he was the only person responsible for paying the rent for the Property.

On 28 February 2023, the Respondent Ms Blaszczyk emailed the Tribunal to ask what the case was about. She had not lived at the Property for a year and a half. The Tribunal emailed a set of case papers to her later that day and, in the evening, she provided proof that she was not living at the Property, namely a Driving Licence, a bank statement, a V5 document in respect of a car, a motor insurance policy schedule

and a Sky bill, all giving her address as a property in Auchterarder.

Continued Case Management Discussion

The continued Case Management Discussion took place by means of a telephone conference call on the morning of 8 March 2023. The Applicants were represented by Miss Kirstie Donnelly of TC Young LLP, Glasgow and Miss Robyn Graham was also present. Both Respondents also participated in the conference call.

Miss Donnelly first addressed the Tribunal on the question of whether Ms Blaszczyk should be removed as a Respondent. She referred to the written submissions of 9 February 2023 and stated her view that it was not competent for the Applicants to grant a new lease in the sole name of Mr Terelecki unless both Respondents gave the relevant period of notice to terminate the present tenancy agreement. The Respondents accepted that Ms Blaszczyk was no longer living in the Property, but the legal position was clear. Miss Graham referred to the letter from her which Mr Terelecki had offered as proof that the Applicants regarded him as a sole tenant. Miss Graham advised the Tribunal that this letter had been provided to assist Mr Terelecki's application for Universal Credit. Miss Donnelly emphasised that all obligations under the tenancy agreement were joint and several. Ms Blaszczyk said that she had to move out of the Property in July 2021 to take up a new job. She had no knowledge of the present proceedings until 28 February 2023, and it had become very stressful for her. She admitted that, when the tenancy began, the Respondents had told the Applicants that they were a couple and that had not in fact been the case. Miss Graham told the Tribunal that she had no knowledge of Ms Blaszczyk having moved out until she received a text message in April 2022.

Miss Donnelly told the Tribunal that a check earlier that morning had confirmed that the adverts were still on Facebook and Sparrerroom.com. Ground 11 was established and had been admitted, and the Applicants had no faith that the Respondent, Mr Terelecki, would not repeat his breaches of the tenancy agreement. Miss Graham added that, on 15 December 2022, so after the original Case Management Discussion, a neighbour had reported to her that a Spanish couple were living in the Property and, earlier this year, Fife Council had contacted her again about a suspected unregistered House in Multiple Occupation. She also pointed out that Mr Terelecki had told the Tribunal that his partner was now living with him in the Property, but he had not sought the Applicants' permission for this, as required by the tenancy agreement. Miss Donnelly referred the Tribunal to the screenshots of the Sparrerroom.com advertisement taken on 22, 23 and 27 February contained information showing that they had been active as recently as one hour before the screenshots were taken.

Mr Terelecki referred the Tribunal to the medical evidence he had submitted. He admitted that in 2022 he had sublet the Property and knew that was wrong, but he had done it to help him pay off debts. He said that the advertisements on Facebook and Sparrerroom.com were very old and that he did not use them anymore.

Miss Donnelly confirmed that the current rent arrears remain at £3,150.53. Ground 12 had been admitted and was established. Miss Graham added that, at the original Case Management Discussion, Mr Terelecki had promised a payment of £1,000, but had paid nothing until 21 February 2023. The Applicants have a mortgage over the

Property, and, with increasing interest rates, the rent arrears were causing the Applicants financial difficulty, so they had had no alternative but to apply for direct payment of the housing element of Mr Terelecki's Universal Credit, as he had been receiving this but had not been passing it on. Mr Terelecki confirmed that he was in receipt of Universal Credit and admitted that, as he is not presently working, he does not know how he is going to make up the shortfall between the housing element of his Universal Credit payments and the contractual rent. He told the Tribunal that he had been unable to meet his rent as he had run into debt which he had paid off. Miss Donnelly told the Tribunal that several payment arrangements had been broken by Mr Terelecki, who had prioritised paying off other debt, and the Applicants had no faith that he would fulfil any promises of payment.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing and that it appeared that the Parties had provided all the information and documentation they wished the Tribunal to consider in arriving at its Decision.

The Tribunal was satisfied that the Applicant had complied with The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

The Tribunal considered first the question of whether the Respondent Ms Blaszczyk should be removed as a Respondent. The Tribunal noted that this is a joint tenancy. Ms Balszczyk had said at the Case Management Discussion that the Respondents had told the Applicants at the outset that they were a couple. This was, she said, incorrect, but the consequence was that the agreement was between the Applicants and both of the Respondents, as opposed to each of them having a separate tenancy agreement.

Section 48 of the Private Housing (Tenancies) (Scotland) Act 2016 sets out the mechanism by which tenant can bring a Private Residential Tenancy to an end. This involves giving the landlord a notice which fulfils a number of requirements. The definition of "tenant" in Section 2(5) of the Act includes joint tenants. Accordingly, the Tribunal agreed with the Applicants that any notice to terminate the tenancy would have to have been given by both Respondents and any notice given by one of them alone would be ineffective and, in order to recover possession by means of an Eviction Order, proceedings had to be taken against both Respondents and both were jointly and severally liable to fulfil the tenants' obligations under the tenancy agreement, including the liability to pay rent. In addition, if Mr Terelecki breached any of the terms of the tenancy agreement, any application to the Tribunal for an Eviction Order had to be against both Respondents. The Tribunal accepted that the letter from Miss Graham which he had copied to the Tribunal had been written to assist him in his application for Universal Credit, so referred to him alone, but that did not alter the legal position, namely that both Respondents were liable to fulfil the tenants' obligations under the tenancy agreement.

The Tribunal sympathised with the position in which Ms Balszczyk finds herself, particularly as the rent was not in arrears when she moved out and the unauthorised subletting began after that, but she had vacated the Property without telling the Applicants. At the point at which she left, the rental account was not in arrears and it might have been possible to obtain the Applicants' agreement to terminate the tenancy agreement and negotiate a new lease at that time in the name of Mr Terelecki alone. The Tribunal noted that she had asked what the case was about when she emailed the Tribunal on 28 February 2023, but the documents before the Tribunal showed that all emails sent by the Applicants prior to the date of the application, regarding rent arrears and alleged subletting, and the Notice to Leave had been sent to both Respondents. It appeared that, despite receiving these emails, she had still not contacted the Applicants until April 2022 to say she was no longer living in the Property. The view of the Tribunal was that the Applicants had consistently stated the correct legal position, namely that in order to create a new tenancy in the sole name of Mr Terelecki, both Respondents had to give Notice to Leave and, even then, there would have been no obligation on the Applicants to grant a new tenancy agreement.

Section 48 of the Act does not state that a Private Residential Tenancy Agreement can be brought to an end simply by agreement. The Tribunal accepted that, where parties agree that a tenancy should end, it might seem illogical that this can only be achieved by the service of formal notices. There is a common law entitlement for parties to agree to vary the terms of any contract. The view of the Tribunal was, however, that in the present case there was no such agreement. At the point in April 2022 at which Ms Balszczyk advised the Applicants that she had left the Property some months before and, in November 2022, when she purported to serve notice, the rent was in arrears, and it was reasonable and understandable that the Applicants told the Respondents that they would only consider granting a new tenancy to Mr Terelecki if both Respondents served Notice to Leave and the rent arrears, due by both Respondents on a joint and several basis, were paid off. The Respondents had no power to vary the tenancy agreement unilaterally and it would have been for the Applicants to decide whether, and if so on what terms, they were prepared to accept a request by the Respondents to vary the existing tenancy agreement or to enter into a new one.

Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.

Ground 11 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy and that the Tribunal may find that Ground 11 applies if the tenant has failed to comply with a term of the tenancy, other than the requirement to pay rent, and the Tribunal considers it to be reasonable to issue an Eviction Order on account of that fact. Mr Terelecki did not contest the allegation that he had allowed others to live in the Property without the Applicants' prior written permission, in breach of Clause 11 of the tenancy agreement. Accordingly, the remaining matter for the Tribunal was to consider whether it would be reasonable to issue an Eviction Ground on account of the admitted breach.

Mr Terelecki had stated in his written representations of 28 February 2023 that he had not sublet the Property "for a half year", but the Tribunal noted that the Certificate of

Intimation from the sheriff officers who served the case papers on 25 October 2022 stated that they had been left with a Mr Antonio Lloret, “a resident”, and the Applicants provided evidence which suggested that he was still advertising a double bedroom in the Property as a flatshare as at the date of the continued Case Management Discussion. He said that these were old adverts and that he no longer uses them, but the screenshots showed that there had been activity within one hour prior to them being taken and the Tribunal noted that Mr Terelecki did not appear to have taken any steps to take down the advertisements. The Applicants had also told the Tribunal that a Spanish couple were living in the Property in December 2022 and the view of the Tribunal was that Mr Terelecki’s statement that he had not sub-let for a half year was incorrect. The Tribunal also noted that he had stated at the original Case Management Discussion that he had SMS or WhatsApp messages in which the Applicants had agreed to one other person living in the Property with him. The Tribunal had directed him to produce these messages in evidence, but he had failed to do so.

Having considered carefully the evidence, written and oral, before it, the Tribunal decided that the requirements of Ground 11 had been met and that it was reasonable on account of that fact to issue an Eviction Order.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is 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 on that day, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that the Tribunal is satisfied that the tenant’s being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month’s rent. No evidence had been presented to indicate that the Respondent’s being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. Accordingly, the only matter for the Tribunal to determine was whether it was reasonable to issue an Eviction Order.

The Tribunal noted that previous arrangements to clear the arrears had been broken by Mr Terelecki and, most recently, he had stated in his written submissions that he would pay £300 per week, starting on 23 February, but had failed to make the second of these promised payments. The housing element of his Universal Credit payments is being paid directly to the Applicants, but this is only £375 against a monthly rent of £600. The DWP had, on 9 February 2023 added a further £54.47 towards the arrears, but that would have been by means of a deduction of that amount from the balance of Universal Credit being paid to Mr Terelecki, further compromising his ability to further reduce the arrears himself. The arrears had increased by over £1,000 since the date of the original Case Management Discussion. The view of the Tribunal was that Mr Terelecki had not provided a persuasive argument that he had the ability to meet the

difference between the housing element of his Universal Credit and the monthly rent, let alone pay off the arrears over a reasonable period of time.

Having considered carefully the evidence, written and oral, before it, the Tribunal decided that the requirements of Ground 12 had also been met and that it was reasonable on account of that fact to issue an Eviction Order.

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.

George Clark

Legal Member/Chair

8 March 2023
Date