



**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/22/2902**

**Re: Property at 22 Lawhead Road West, St Andrews, Fife, KY16 9NE (“the Property”)**

**Parties:**

**Mr Thomas Johnathan Heald, Mrs Anne Heald, 91 Duncan Drive, Elgin, Moray, IV30 4NH (“the Applicant”)**

**Mr Kirill Dimitriev, 22 Lawhead Road West, St Andrews, Fife, KY16 9NE (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**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**

1. By application dated 9 August 2022, the applicant sought an order under section 51 of (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. On 12 September 2022, the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 18 November 2022 and appropriate intimation of that hearing was given to the parties

## **The Case Management Discussion**

3. The Case Management Discussion (CMD) took place on 18 November 2022 via telephone case conference. The applicants attended and took part personally in the telephone case conference. The Respondent was also present personally and took part in the telephone case conference call.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties with regard to the application and the grounds for eviction contained within it.
6. The applicants confirmed that they wished the order for eviction to be granted based on ground 11 as set out within schedule 3 of the Act.

## **Findings in Fact**

7. The applicants and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which commenced on 1 January 2022.
8. The tenancy was a private residential tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016. ("the Act")
9. The agreed monthly rental was £900.
10. On 24 June 2022 the applicant served upon the tenant a Notice to Leave as required by the Act. The Notice was served upon the respondent and became effective on 25 July 2022.
11. The notice informed the respondent that the landlords wished to seek recovery of possession using the provisions of the Act.
12. The notice was correctly drafted and gave appropriate periods of notice as required by law.
13. The notice set out a ground contained within schedule 3 of the Act, namely ground 11 that the tenant had breached an obligation of the tenancy.
14. The tenant had breached the tenancy by subletting the property by agreeing a sublet of the property in the period from 18 June 2022 to 3 September 2022 via Airbnb for a total rental of £5226.64. This was a direct breach of clause 14.0 of the tenancy agreement.
15. The basis for the order for possession on ground 11 was thus established.

## **Discussions at the CMD**

16. The tribunal heard from both the applicants Mr and Mrs Heald and also from the respondent, Mr Dimitriev.
17. The applicant's position was that the respondent had significantly breached the tenancy agreement by agreeing a long-term holiday lease of the property. The property has been advertised on Airbnb and an agreement had been reached that it would be leased to a couple for a period of almost 3 months. The amount being charged by the respondent, namely £5226.04, was significantly in excess of the rental being paid by him to the applicant which was £900 per month.
18. The applicant's position was that the respondent had on a number of previous occasions also agreed similar short-term holiday lets of the property. He had been the tenant for a number of years. Their position was that they had discussed this matter with him in the latter part of 2021 and had agreed a new tenancy agreement commencing in January 2022 on the basis that he would desist from this conduct
19. The respondent's position was that he accepted that he had agreed the sublet for the period from June to September 2022. However it was his position that he has not received the total sum shown on the invoice produced by the applicant. He indicated that the person who had agreed the let had left early because of the intervention of the applicants.
20. The respondent explained that he was a senior lecturer at St. Andrews University and that he occasionally returned to his home country to carry out research. He denied having previously agreed other short-term lets and indicated that it had simply been his friends and families who had occupied, although he conceded these occupants had paid to stay . He could not explain why various reviews had been found online relating to his previous short-term lets. He indicated he was now actively seeking alternative accommodation either by purchasing a property or seeking another rental.

## **Reasons for Decision**

21. The tribunal carefully considered the evidence presented by both parties at the hearings and also the documents which have been produced.
22. The tribunal has no hesitation in accepting the applicants' position that the respondent had agreed to sublet the property to other persons for the purposes of holidays. The tribunal accepted this was a clear breach of the tenancy agreement.
23. The tribunal did not accept the respondent's evidence that the previous short-term lets had been to family and friends only. The tribunal took the view that such an explanation was lacking in credibility. The tribunal found that the

respondent was at times evasive in his answers to questions from the tribunal. The short-term let created in 2022 was a clear breach of the tenancy.

24. The tribunal found that the ground for eviction was established.
25. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
26. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
27. The tribunal required to balance the relative positions of the parties. In doing so the tribunal took the view that this was a serious and significant breach of the tenancy agreement. The applicant did not wish to have the property leased to various short-term residents. They wanted a single long-term tenant. They would not have given permission to the respondent to utilise the property as a temporary holiday let as and when he saw fit. They regarded his actions in allowing the short term let in June 2022 as a significant breach of their trust having previously expressed their disapproval of this conduct and having agreed to new tenancy from January 2022. The respondent was well aware of the applicants' position given the discussions which had taken place before the creation of the new tenancy which commenced in January 2022.
28. The tribunal decided, in balancing the various rights of both parties, that the balance fell in favour of the landlords and that the order for recovery should be granted. In recognising the impact the order will have on the respondent, the tribunal has decided the order should not be enforceable immediately but should be delayed for period of time
29. The tribunal have recognised that the applicant may have difficulty in finding other accommodation within St Andrews. The tribunal acknowledges that obtaining alternative accommodation within that area may take some time. On that basis, the tribunal, while agreeing to grant the order, will suspend execution of the order until 28 February 2023 which will hopefully allow the respondent sufficient time to find alternative accommodation
30. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

## **Decision**

The order for recovery of possession is granted but will not be enforceable before 28 February 2023

## **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.**

Jim Bauld

22/12/2022

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**Legal Member/Chair**

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**Date**