



Statement of Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/EV/19/1502

Re: Property at 72 Brownsdale Road, Rutherglen, Glasgow, G73 2RQ (“the Property”)

Parties: Mr James Burns, 17 Birch Grove, Cambuslang, Glasgow, G72 7LW (“the Applicant”)

Miss Alexandra Mizzanyin and Mr Lazar Giani Alin Kardos, 72 Brownsdale Road, Rutherglen, Glasgow, G73 2RQ (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland grants an order against the Respondents for possession of the Property under section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 11 May 2019 the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for recovery of possession of the Property.

2. On 29 May 2019 the Tribunal wrote to the Applicant seeking a copy of the prescribed form of the Notice to Leave under the Private Residential Tenancies (Prescribed Notices and Forms)(Scotland) Regulations 2017 together with proof of service. The Applicant forwarded a Notice to Leave, Recoded Delivery slip and proof of delivery, together with an updated rent statement and a letter from Linda Burns as joint owner that the application should run in the sole name of the Applicant. The Applicant also requested that the Application be put on hold until the expiry period of the relevant period in the Notice to Leave being 30 June 2019.
3. On 11 July 2019, the Tribunal accepted the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").
4. On 29 July 2019, the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 16 August 2019. The Tribunal advised parties on 29 July 2019 that a Case Management Discussion under Rule 17 of the Regulations would proceed on 6 September 2019. This paperwork was served on the Respondents by David Forbes, Sheriff Officer, Glasgow on 30 July 2019 and the certificate of execution of service was received by the Tribunal administration.
5. The Respondents did not make any written representations by 16 August 2019.

Case Management Discussion

6. The Tribunal proceeded with the Case Management Discussion on 6 September 2019. The Applicant was personally present. He was accompanied by his father Mr Burns, Senior as his supporter. The Respondents did not appear and were not represented.
7. The Tribunal had before it a Private Residential Tenancy Agreement between the Applicant and the Respondents signed and dated 7 January 2019, a rent statement, a Summary of Landlord and Tenant Contact, a Notice to Leave dated 30 May 2019, a Recoded Delivery slip dated 30 May 2019 and proof of delivery dated 1 June 2019 and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to the South Lanarkshire Council dated 11 May 2019.

8. The Applicant moved the Tribunal to grant an order for eviction under Section 51(1) of the Private Housing (Scotland) Act 2016 ("the 2016 Act").
9. The Tribunal referred the Applicant to the Summary of Contact. The Applicant explained to the Tribunal that the Applicant and the Respondent entered into a Private Residential Tenancy with a start date 7 January 2019 in relation to the Property. In terms of Clause 7 of the Private Residential Tenancy Agreement, the Respondents agreed to pay monthly rent of £420. With reference to the rent statement, the Applicant explained the Respondents had paid the first month's rent late on 22 January 2019. That was the only payment they had made. Arrears in terms of the rent statement to June 2019 were £2100. Arrears had increased to £3320 being 8 months arrears.
10. The Applicant explained that when he leased the Property to the Respondents Mr Kardos advised that he was working. Shortly after, they told him they would be applying for Universal Credit. The Applicant advised them that he would still require rent to be paid. On each month when rent was not paid he contacted the Respondents. On each occasion, they told him they were waiting confirmation that they would be in receipt of Universal Credit and that all arrears would be paid then. On 7 April 2019, he met with the Respondents at the Property looking for the outstanding rent to be paid. At that meeting, the Respondents advised the Applicant that they could not pay the rent as their application for Universal Credit had been refused. They showed him an email dated 27 March 2019 from the Department of Works and Pensions to that effect on their phone.
11. The Applicant went onto explain that during the course of that meeting two other adults came into the Property whom he had never met before. The Police were called. One of the persons confirmed they also lived in the Property. The Applicant asked them to leave immediately. They refused to do so. The Police explained that as this was a civil matter they could not get involved. The Tribunal noted that under Clause 11 of the tenancy agreement there was a prohibition on subletting, taking in a lodger and assignation except with the prior written consent of the Applicant. The Applicant advised the Tribunal he had given no such consent.
12. The Tribunal noted the Notice to Leave under Section 50(1) and Grounds 11 and 12 of Schedule 3 of the 2016 Act dated 30 May 2019 addressed to the Respondents and served on the Respondents by Recorded Delivery post on 30 May and received on 1 June 2019.
13. To the best of the Applicant's knowledge they still lived at the Property. He had not visited the Property since about May 2019 as they had refused to give him access for the monthly inspections and had started to accuse him of

harassment. The requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 had been served on the South Lanarkshire Council on 11 May 2019. The Applicant moved for an order for eviction under Ground 11 and Ground 12 of Schedule 3 of the 2016 Act on the basis the Respondents had been breached the terms of their tenancy agreement by allowing others to reside in the Property with them without the prior written consent of the Applicant as Landlord and on the basis of being in rent arrears.

Findings in Fact

14. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement starting on 7 January 2019 in relation to the Property. In terms of Clause 7 of that tenancy agreement, the Respondents agreed to pay the Applicant a calendar monthly rent of £420 due on 7th of each month. In terms of Clause 11, the Respondents agreed not to sublet, assign or take in a lodger without the prior written consent of the Applicant.
15. The Respondents paid rent of £420 due on 7 January 2019 late on 22 January 2019. They have paid no rent since then. The arrears are £3320 being 8 months in arrears. The Respondents are in breach of Clause 7 of the tenancy agreement.
16. The Respondents are not entitled to Universal Credit. The arrears are not caused by a delay or failure to pay Universal Credit.
17. The Respondents have allowed two other adults to live in the Property without the prior written consent of the Applicant. The Applicant has asked them to leave the property. The two adults have refused to do so. The Respondents have allowed these adults to live with them despite not having the Applicant's consent. The Respondents are in breach of Clause 11 of the tenancy agreement.
18. On 30 May 2019, the Applicant served a Notice to Leave on the Respondents by way of Recorded Delivery post on 30 May 2019 requesting that they remove from the Property by 30 June 2019. This was received and signed for by the Respondents on 1 June 2019.
19. The Respondents are still resident in the Property.
20. A Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 was served on South Lanarkshire Council on 11 May 2019.

Reasons for Decision

21. The Applicant provided evidence of non-payment of rent in the form of the rent statement. The Tribunal was satisfied on the basis of the rent statement

and the supporting oral submissions made on behalf of the Applicant that the Respondents have been in arrears of rent for over three consecutive months and are in excess of over a month's arrears. The Tribunal was satisfied on the basis of the Applicant's oral submissions that the Respondents were not entitled to Universal Credit and that the arrears had not accrued due to a delay or failure in payment of any benefit. Further, the Tribunal was satisfied on the basis of the Applicant's oral submissions that the Respondents had taken in lodgers or sub-let part of the tenancy to two adults without his consent or knowledge. The Respondents were accordingly in breach of Clauses 7 and 11 of the tenancy agreement. In the circumstances, the Notice to Leave having been served, the Applicant is entitled to repossess the Property.

Decision

22. The Tribunal granted the order for repossession.

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.

Shriley Evans

**Shriley Evans
Legal Member/Chair**

**6 September 2019
Date**