



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 (Act)

Chamber Ref: FTS/HPC/EV/23/1287

Re: Property at 17 East Bridge Street, Falkirk, FK1 1YD (“the Property”)

Parties:

G W Smith - G. Linton-Smith, G W Smith - A. Linton-Smith, 9B East Bridge Street, Falkirk, FK1 1YD (“the Applicant”)

Mr Sohail Sheikh, Mrs Sumaria Sohail, 17 East Bridge Street, Falkirk, FK1 1YD (“the Respondent”)

Tribunal Members:

Alan Strain (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction and recovery of possession be granted subject to the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Background

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to refurbish the Property and for eviction and recovery of possession on Ground 3 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 13 November 2023;
2. Private Residential Tenancy Agreement (**PRTA**) commencing 11 June 2019;
3. Notice to Leave dated 7 December 2022 and served by email on that date;

4. Section 11 Notice to Local Authority;
5. Sheriff Officer Certificate of Service of CMD Notification on 5 October 2023;
6. Written Representations with enclosures from the Applicant dated 4 November 2023.

Case Management Discussion (CMD)

The case called for a CMD by conference call on 13 November 2023. The Applicant did not participate but was represented by its Letting Agent. The Respondents did not participate and were not represented.

The Tribunal delayed the start of the CMD to see if the Respondents would participate but they did not.

The Tribunal were satisfied that the Respondents had received notification of the Case Management Discussion and that the Tribunal could determine the matter if it considered it had sufficient information to do so and the procedure was fair. The notification also advised the Respondents that they should attend and the Tribunal could determine the matter in absence if they did not.

The Applicant's Representative confirmed the refurbishment of the Property was required by the Applicant under reference to the documentary evidence produced. It also appeared the Respondents were sub-letting the Property without the Applicant's consent. No rent had been paid since November 2022.

The Tribunal had regard to the terms of Ground 3:

Landlord intends to refurbish

3(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2) The First-tier Tribunal may find that the eviction ground named by sub-paragraph (1) applies if—

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

The Tribunal then considered the documentary and oral evidence it had received from the Applicant and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 11 June 2019;

2. The Applicant intends to refurbish the Property and it would be impracticable for the Respondents to continue to occupy the Property given the nature of the refurbishment intended;
3. Notice to Leave had been served on the Respondents by email on 7 December 2022;
4. Section 11 notification had been served on the local authority;
5. The Respondents have been sub-letting the Property without consent and have not paid rent since November 2022.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought.

The Tribunal considered that it was reasonable in all of the circumstances to grant the order sought.

The Tribunal was satisfied that Ground 3 had been established and accordingly granted the application for eviction and recovery of possession.

The Tribunal considered the terms of the **Cost of Living (Tenant Protection) (Scotland) Act 2022** which clearly applied to the application by virtue of the application being received after the commencement date of the Act.

The Tribunal granted the order with the suspensive condition that it was not to be executed prior to 12 noon on the earlier of (a) the day following the end of a period of 6 months beginning with the day on which the order was granted, or (b) the expiry or suspension of Paragraph 1 of Schedule 2 of the **Cost of Living (Tenant Protection) (Scotland) Act 2022**.

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.

A. Strain

13 November 2023

Legal Member/Chair

Date