



**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/23/1582**

**Re: Property at 18 West Benhar Road, Harthill, ML7 5PB (“the Property”)**

**Parties:**

**Mrs Shyla Sathiya Kumar, 4 Etna Court, Armadale, West Lothian, EH48 2TD (“the Applicant”)**

**Alban Bartley-Jones, 18 West Benhar Road, Harthill, ML7 5PB (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

• **Background**

1. This was a hearing to consider the application made by the Applicant submitted on 15<sup>th</sup> May 2023 by the Applicant’s then representative Newman Properties for an order for possession of the Property in terms of Rule 109 of the Tribunal Rules. Two previous case management discussions had taken place by teleconference on 21<sup>st</sup> August and 26<sup>th</sup> October 2023 and a hearing was set down for today at 10am by teleconference as the parties were in dispute about whether the grounds were met and whether it would be reasonable to grant the order of eviction.
2. The Applicant is the owner of the Property in which a Tenancy was entered into by her husband Mr Jesmond Kumar as Landlord, with the Respondent as tenant which commenced on 12<sup>th</sup> November 2020.
3. The issues identified after both the CMDs were as follows:-
  - a. the Respondent wished to lodge an appeal against the decision in the separate civil action case number CV/22/0672 and take legal advice
  - b. that the Respondent wished to lodge a repairs application

- c. the Tribunal wished to see written evidence such as bank statement showing if and how much rent has been consigned.
  - d. That the Respondent was challenging the grounds of the eviction and 2 further cases are proceeding which may have an impact on the grounds so this case required to proceed to a hearing. The outcome of both other applications should be advised to the Tribunal.
  - e. That the Respondent indicated he may be leaving the Property and therefore the application may be resolved if this occurs. The Respondent is to advise if and when he leaves and the Applicant requires to advise if they wish to withdraw the application if the tenancy has ended.
4. The Respondent indicated to the Tribunal by email dated 8<sup>th</sup> December 2023 that an RESO had been granted in his application for repair case. He also indicated that he had moved out of the Property in October 2023 but retained the tenancy until 13.49 on 8<sup>th</sup> December to allow the inspection to be carried out as part of the repairs case. The Respondent indicated he had intended to return the keys at the repairs hearing but no-one attended for the Landlord so he returned them to the Sheridan's offices that day. The Respondent indicated he hoped the eviction was now at an end.
  5. On 4<sup>th</sup> December the Applicant's representative Mr Chris Sheridan wrote advising that further to the Tribunal's direction of 26<sup>th</sup> October "that they had not been given any information which would allow us to update the position at this stage as such the case management discussion is still required."
  6. On 17<sup>th</sup> January 2024 the Respondent wrote again asking if the case was still proceeding as he indicated Mr Sheridan had acknowledged he had left the house and the key was returned and that the Respondent had another case to attend in Falkirk and might not be able to attend. The Tribunal advised that unless the Applicant withdrew the application the case would continue.
  7. The Tribunal then received an email from Sheridan's solicitor on 18<sup>th</sup> January advising that "the Applicant was now in possession of the Property" and indicated that if the Tribunal is prepared to accept that the Respondent is no longer insisting on the tenancy they were for content for the action to be disposed of without a formal hearing on 23<sup>rd</sup> January. However they did indicate that they would wish an order confirming that the tenancy is at an end and confirming the tenant is liable for expenses up to 8<sup>th</sup> December 2023.
  8. The Tribunal did not receive the Applicant's email of 18<sup>th</sup> January nor a previous email of 12<sup>th</sup> December until it was resent by the Applicant on 22<sup>nd</sup> January as it appeared the email address for HPC Admin had been incorrect in the original 2 emails.

## **The Hearing**

9. The Hearing proceeded by teleconference at 10am on 23<sup>rd</sup> January 2024 and the Applicant's representative Mr Chris Sheridan of Sheridan Solicitors was in attendance on the call and the Respondent was also present.
10. The Tribunal started by asking Mr Sheridan for an update on his client's position. He advised that as per his most recent email that the Applicant is now

in possession of the Property and agreed that the tenant had left and had handed in a key. He advised that the Applicant had no issue now if the Tribunal wished to dismiss the case. Mr Sheridan under questions from the Tribunal confirmed that the Applicant was seeking expenses of the application in terms of the Respondent's behaviour which he claimed had been unreasonable. As an example of that Mr Sheridan indicated that the Respondent agreed he had left the Property in October but did not hand back the key until December. He advised that this was one example of unreasonable behaviour.

11. The Respondent confirmed that the tenancy is at an end that he handed back the sole key he had for the Property in December. He denied he should be liable for expenses and explained that due to the ongoing repairs case under RP/23/2841 he wished to maintain the tenancy and hold the key so that the repairing standards case could be continued.

### **Findings in Fact**

1. The parties had entered into a tenancy of the Property whereby the Respondent rented the Property from the Applicant's husband from 12<sup>th</sup> November 2020.
2. The Rent was £600 per month.
3. The Respondent has returned the sole key to the landlord's agent on 8<sup>th</sup> December 2023 and indicated he has vacated the Property.
4. The Applicant is now in possession of the Property.
5. The Tenancy is at an end.
6. No award of expenses is made in favour of either party.

### **Reasons for decision**

This is an application for eviction. The parties have both agreed shortly before and at this hearing that the Respondent who is the sole tenant of the Property has returned the key to the Property and indicated he has left the Property. The Applicant's solicitor has confirmed the Applicant has possession of the Property, but has not withdrawn the application and has asked for an order for expenses. Given the consensus that the tenant has left the Property indicated he has ended the tenancy and has returned the key, the Tribunal finds that the tenancy is at an end. It probably ended on 8<sup>th</sup> December but no finding in fact has been made as no evidence was led as to the precise date of termination or when the Applicant took possession however both parties have accepted the tenant has left and is not returning as the Applicant has possession. In this case the Tribunal accepts the tenancy has ended, it would therefore not be appropriate or reasonable to grant any order of eviction.

With regard to the claim for expenses the Tribunal can only award expenses in exceptional cases. Rule 40 states that " the First Tier Tribunal for Scotland may award expenses.... against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unreasonable or unnecessary expense." Mr Sheridan submitted that the Respondent had put the Applicant to unreasonable expense and suggested that not ending the tenancy in October when he vacated the Property was evidence of one element of unreasonable behaviour although he conceded he was aware expenses were a matter for the Tribunal to determine and would only be awarded in exceptional cases. The Tribunal was not satisfied they had

heard any evidence to show the Respondent had acted in the conduct of this case that was unreasonable or had put the Applicant to unnecessary expense. The Respondent is entitled to oppose an application for eviction. The Respondent has done so and has submitted reasons for doing so and at the time of the first and second CMDs he was challenging the order of the Tribunal in a civil case and had raised a repairing standard case. In those circumstances a hearing was set down. The Respondent indicated in December, immediately after the inspection in the repairs case that he had ended the tenancy and asked for the hearing to be cancelled. The Tribunal cannot unilaterally cancel a hearing without the Applicant withdrawing it and so this hearing has been necessary. The Tribunal is not satisfied that the criteria of granting expenses against the Respondent is met and so refuses to grant an award of expenses.

#### Decision

The Tribunal unanimously decided to refuse the application.

#### **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.**

23 January 2024

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**Legal Member/Chair**

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**Date**