



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

Chamber Ref: FTS/HPC/EV/23/3393

Re: Property at Flat 1/1, 329 Golfhill Drive, Glasgow, G31 2NZ (“the Property”)

Parties:

Mr Colin McNaught and Mrs Jean Brown, 9510 Palmetto Drive, Apt 4409, Isle Palms, South Carolina, 29451, United States (“the Applicantss”)

Mr Andrew Mackay, Flat 1/1, 329 Golfhill Drive, Glasgow, G31 2NZ (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 1/1, 329 Golfhill Drive, Glasgow, G31 2NZ under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicants 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 Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 26 September 2023, the Applicants’ agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017 (“the Regulations”). The action is based on the Respondent’s rent arrears and damage to the Property.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 13 April 2019, a Notice to Leave dated 25 August 2023 with email to the Respondent, a rent statement, emails dated from 2- 31 October 2022 and 2 February 2023, letters dated 29 August 2022, 3 October 2022, 12 October 2022 and 2 February 2023 to the Respondent, various photographs, an inspection report dated 27 February 2023 and an email dated 26 September 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003.
3. On 3 November 2023, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 1 December 2023 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 22 December 2023. The Tribunal advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 30 January 2024. This paperwork was served on the Respondent by Chelsea Murray, Sheriff Officer, Glasgow on 5 December 2023 and the Execution of Service was received by the Tribunal administration.
5. The Respondent did not lodge any written representations by 22 December 2023.

Case Management Discussion

6. The Tribunal proceeded with a CMD on 30 January 2024 by way of teleconference. Lynn Blackwood from Looking to Rent, Letting Agents appeared on behalf of the Applicants. There was no appearance by or on behalf of the Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 13 April 2019, the Notice to Leave dated 25 August 2023 with email to the Respondent, the rent statement, emails dated from 2- 31 October 2022 and 2 February 2023, letters dated 29 August 2022, 3 October 2022, 12 October 2022 and 2 February 2023 to the Respondent, various photographs, an inspection report dated 27 February 2023 and the email dated 26 September 2023 addressed to Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003. The Tribunal noted the Notice to Leave proceeded on Grounds 11(breach of terms of tenancy agreement) and 12 (three months’ rent arrears) of Schedule 3 of the 2016 Act and that in terms of Clause 4 of the tenancy agreement service of the Notice to Leave can be by email. Further the Tribunal noted that in

terms of Clause 8 of the tenancy agreement the rent was £595 per month. Further in terms of Clause 17 the Respondent agreed to take reasonable care of the Property. The Tribunal noted the other documents lodged.

8. Ms Blackwood moved the Tribunal to grant an order of eviction. She advised that arrears started to arise in 2022 when she believed the Respondent quit his job. By October 2022 the arrears were £940. The Respondent then made an arrangement to pay £670, being rent and a sum towards the arrears. Ms Blackwood explained that the Respondent kept to that arrangement for two months and then defaulted in December 2022 when he only paid £250. Things got worse with arrears increasing. Since February 2023 the Respondent has had Housing Benefit of £160 per month which has been paid towards the rent. He has made some payments of £350. The Tribunal noted the rent statement lodged and the payments made and the emails and letters to the Respondent regarding the arrears. Ms Blackwood explained arrears had increased to £2228.46.
9. She went onto explain that the last time she spoke to the Respondent on 8 January 2024 which was the day before an inspection of the Property had been arranged for 9 January 2024. He wanted some time to clear up the Property. Ms Blackwood explained she understood the Respondent had moved back in with his mother. The condition of the Property was poor in February 2023 when they inspected the Property as shown in the inspection report and photographs lodged. She understood the Respondent's partner lived with him at the start of the tenancy but had to go home which she believed was abroad. When she left, the issues with the Property started. They had given permission for the Respondent to keep 2 kittens during lockdown. At some stage he had a rabbit too. The animals have destroyed the carpets and the laminate flooring. There was also damage caused by flooding. The Tribunal noted the terms of the inspection report and the photographs of the Property showing the unclean state and damage. She explained the Respondent had handed in his notice on a few occasions but did not leave. She understood there were no issues with benefits. She understood the Respondent may have Aspergers.

Findings In Fact

10. The Applicants and the Respondent agreed by way of Clause 8 of a Private Residential Tenancy Agreement dated 13 April 2019 in relation to the Property that the Respondent would pay the Applicants a monthly rent for the Property of £595.
11. The Respondent has fallen into arrears of rent and is in breach of Clause 8 of the tenancy agreement.
12. The Applicants' agent contacted the Respondent about his rent arrears by email and letter. It was agreed the Respondent would make monthly

payments of £670 from October 2022. The Respondent defaulted on that arrangement.

13. The Respondent has kept the Property in an unclean state and has caused damage to the Property. He is in breach of Clause 17 of the tenancy agreement to take reasonable care of the Property.
14. On 25 August 2023 Applicants' agent served a Notice to Leave on the Respondent by email. The said Notice requested that the Respondent remove from the Property by 25 September 2023.
15. The Notice to Leave proceeded on Grounds 11 and 12 of Schedule 3 of the 2016 Act on the basis that the Respondent has breached the terms of his tenancy by not taking reasonable care of the Property and is in arrears of rent.
16. The arrears as of 30 January 2024 are £2228.36. The arrears have accrued for over three consecutive months and amount to more than one month's rent.
17. There are no outstanding benefits issues that will have any impact on the arrears.
18. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Glasgow City Council on 26 September 2023.

Reasons for Decision

19. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
 - Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
 - The Cost of Living (Tenant Protection) (Scotland) Act 2022.
20. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 11 (breach of tenancy) and Ground 12 (three months rent arrears).
21. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

22. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Grounds 11 and 12 of Schedule 3 is 28 days.
23. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Property has been kept in a poor condition and damage caused and that the Respondent is in rent arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicants as landlord expect to become entitled to make an application for an eviction order namely 25 September 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 25 August 2023. In the circumstances the Tribunal is satisfied the Respondent has been given more than sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
24. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Blackwood. The Tribunal considered that the Respondent had not disputed the basis for the application. The Tribunal considered the Respondent's poor payment history since October 2022 and that the Applicants had been willing to enter into a repayment arrangement to assist the Respondent in clearing the arrears. Unfortunately, the Respondent did not adhere to the arrangement and arrears have increased to £2228.36. There are no outstanding benefits issues. The Tribunal was satisfied on the basis of the inspection report and photographs of the Property that the Respondent had not taken reasonable care of the Property. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Blackwood that the factual basis of the application had been established. A case under Grounds 11 and 12 of Schedule 3 of the 2016 Act was accordingly met. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Glasgow City Council had been served.
25. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the relevant circumstances of the case. In this case the Tribunal was satisfied on the basis of the submissions of Ms Blackwood that the Respondent had accrued arrears. The Applicants' agent had complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and had regularly contacted the Respondent since arrears started in an attempt to get him to engage. It would not be reasonable to expect the Applicants to continue to bear that level of arrears with the Respondent not making sufficient payments to cover the rent. There are no outstanding benefits issues. The arrears were increasing by the month and had reached such a level that there was very little choice but for the Tribunal to grant the order. The photographs showed damage to the Property. The Tribunal considered the Respondent appeared now to live with his mother. The Respondent had also not engaged with the

Tribunal process. The balance of reasonableness in this case weighted towards the Applicants.

26. In the circumstances the Tribunal considered that in terms of Ground 11 of Schedule 3 the Respondent has breached the terms of the tenancy agreement, that in terms of Ground 12 he had been in rent arrears for over three months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

27. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

30 January 2024

Legal Member

Date