

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“2016 Act”)

Chamber Ref: FTS/HPC/EV/24/2271

Re: Room 2, 5 Bentinck Street, Glasgow, G3 7TT (“the Property”)

Parties:

McMillan & Co Residential Ltd, a company incorporated under the Companies Acts with registered number SC425376, having its registered office at 1 Cambuslang Court, Glasgow, G32 8FH, and a contact address at 15 Hillhead Street, Glasgow, G12 8PU (“the Applicant”)

Mr El Hadji Niang, Room 2, 5 Bentinck Street, Glasgow, G3 7TT (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Elizabeth Dickson (Ordinary Member)

Present:

The case management discussion took place at 2pm on Thursday 14 November 2024 by teleconference call (“**the CMD**”). The Applicant was not present and was not represented. The Respondent was present. The clerk to the Tribunal was Patricia Berlouis.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted under ground 11 of schedule 3 to the 2016 Act against the Respondent.

BACKGROUND

1. An application had been made to the Tribunal under section 51(1) of the 2016 Act and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017, as amended. More specifically, the application was made in terms of rule 109 (*Application for an eviction order in relation to a private residential tenancy*) of the HPC Rules.

2. The order sought from the Tribunal was an eviction order against the Respondent in respect of the Property on the basis of ground 11 (breach of tenancy agreement).
3. Ground 11 of schedule 3 to the 2016 Act provides that:
 - “(1) *It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
 - (a) *the tenant has failed to comply with a term of the tenancy, and*
 - (b) *the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*
 - (3) *The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”*
4. The application form was dated 17 May 2024 and copies of various documents were provided, including:
 - a. the tenancy agreement between the Applicant and the Respondent dated 28 July 2021 (“**Tenancy Agreement**”).
 - b. a notice to leave dated 6 March 2024 addressed to the Respondent at the Property (“**Notice to Leave**”), which stated that an application would not be submitted to the Tribunal for an eviction order before 6 April 2024 and that the eviction ground was “You have breached a term(s) of your tenancy agreement” (ground 11) on the basis of the following:

*“Notice to leave due to section 11. SUBLETTING AND ASSIGNATION
“unless the tenant has received prior written permission from the Landlord, the tenant must not take in 'a lodger. '
Section 12. Notifications about other residents - The tenant will be the only overnight occupant of their rooms within the Let Property. These premises are registered with Glasgow City Council as an HMO and the maximum occupancy must not be exceeded.
Section 13. Overcrowding - The Let property has an HMO licence and may only be occupied by those named on the tenancy agreement. The tenant must not allow the property to become overcrowded. If the property does become overcrowded, the Landlord can take action to evict the tenant as the tenant has breached the terms of this agreement.”*

- c. covering e-mail to the Respondent (using the e-mail address for the Respondent given in the Tenancy Agreement) dated 6 March 2024 attaching the Notice to Leave.
- d. a notice under section 11(3) of the Homelessness etc. (Scotland) Act 2003, together with the covering e-mail sending it to the local authority on 17 May 2024.
- e. letter from Glasgow City Council to the Applicant dated 26 April 2024, which narrated (amongst other things) that a Senior Investigation & Enforcement Officer of Glasgow City Council had attended the building of which the Property forms part on 23 April 2024 and that:

“Specifically, the tenant of Bedroom 2 (Mr El Hadji Niang) was spoken to at length. He admitted that he had permitted his wife (who at the time was pregnant) to also occupy his bedroom without either seeking or obtaining your permission to do so. Her child has now been born (DOB 14 January 2024) and the child is also living within the property. Mr Niang stated that his wife had been occupying the accommodation since November 2023 but this was disputed by another tenant who stated that she had lived there since October 2023.”

“Mr Niang has refused to comply with the terms of his lease by removing the persons not permitted to occupy the accommodation. Furthermore, he has rejected an offer of alternative accommodation made to him by you.”

“As a consequence you have issued Mr Niang with a Notice to Leave (NTL) dated 06 March 2024 citing the ground of failing to comply with the terms of his lease. The period of notice given as such is 28 days. Despite having received the NTL he has refused to leave the accommodation by the stipulated date.”

“As you are aware it is a condition of your HMO license that the maximum number of persons permitted to occupy the licensed property should not exceed the number stated on the license. In this case that is 9 persons. Currently, there are 11 persons (10 adults plus a child) living in the property. The actions that you have taken thus far to seek to try and address this situation and thus comply with the conditions of your HMO license are noted, however.”

“Given the actions taken thus far by you and the stated intention to proceed to seek to recover possession of the property (Bedroom 2) in an attempt to comply with the conditions of your HMO license I would confirm that no action will be taken by the Council at this time.”

- 5. A notice of acceptance of the application was issued dated 3 July 2024 under rule 9 of the HPC Rules, confirming that the application paperwork had been received between 17 May and 4 June 2024.

6. The Respondent was sent notice of the CMD by letter dated 8 October 2024, which was confirmed (in the certificate of intimation from Andrew McLean of Walker Love, sheriff officers) as having been served on the Respondent by leaving it in the Property *“in the hands of Sokha Daokhna (wife) a resident therein”* on 9 October 2024.
7. The Respondent had not provided written representations in advance of the CMD but was present at the CMD.
8. This decision arises out of the CMD.

PROCEEDINGS, NAMELY THE CMD

9. The Respondent confirmed that he continued to live in the Property and that he now lived there with his wife and their baby. He confirmed that he knew that his Tenancy Agreement said that only he was permitted to live there (unless he received prior permission from his landlord, i.e. the Applicant, to have anyone else live there).
10. The Respondent explained that he wanted to leave the Property. He noted that he did not like living in the Property with his wife and baby and did not think it was good for them living in one room. He indicated that there had been some problems with neighbours and the use of the shared facilities, in particular the kitchen.
11. The Respondent explained that they wanted to leave and that they had tried to find another property but had not yet found anything. He stated that he had submitted an application to a housing association. He confirmed that he wanted to move and had tried to get help to do so.
12. The Respondent confirmed that he was working and had paid his rent.

FINDING IN FACT

13. The Tenancy Agreement stated that:
 - a. the start date was 28 July 2021;
 - b. rent was payable at a rate of £595 per month, on or before the 1st of the month;
 - c. a rent deposit of £475 was to be paid;
 - d. the “let property” was the Property and the kitchen, showers, WCs and hallway were “shared facilities” (with other let rooms in the building of which the Property formed part).
14. Clause 11 of the Tenancy Agreement stated:

“Unless the tenant has received prior written permission form the Landlord, the Tenant must not:

 - *Sublet the Let Property (or any part of it),*
 - *Take in a lodger*

- *Assign the Tenant's interest in the Let Property (or any part of it), or*
- *Otherwise part with, or give up to another person, possession of the Let Property (or any part of it)."*

15. Clause 12 of the Tenancy Agreement stated:

"The tenants will be the only overnight occupants of their rooms within the Let Property. These premises are registered with Glasgow city Council as an HMO (House in Multiple Occupancy) and the maximum occupancy must not be exceeded."

16. Clause 13 of the Tenancy Agreement stated:

"The Let Property has an HMO (House in Multiple Occupancy) licence and may only be occupied by those named on the tenancy agreement.

The Tenant must not allow the property to become overcrowded. If the property does become overcrowded, the Landlord can take action to evict the Tenant as the Tenant has breached this term of this agreement."

17. Clause 36. f) (additional tenancy terms) of the Tenancy Agreement stated:

"The Tenant shall not keep any children or pets within the Let Property without the written permission of the Landlord."

18. The Tribunal was satisfied, on the balance of probabilities, that:

- a. The tenancy met the requirements of sections 1 and 2 of the 2016 Act and was a private residential tenancy, to which the 2016 Act applied;
- b. the Notice to Leave was valid and had been validly served; and
- c. the section 11 notice was valid and had been validly served.

19. The Tribunal noted that the Applicant was the registered landlord of the Property.

20. The Tribunal also noted that the Applicant was the registered proprietor of the Property (title number GLA202657).

21. The Tribunal was satisfied, on the balance of probabilities, that the Respondent was in breach of clauses 11, 12, 13 and 36.f as a result of his wife and baby living with him in the Property.

REASON FOR DECISION

22. Section 1(1) of the 2016 Act provides that:

"A tenancy is a private residential tenancy where—

- (a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*
- (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*
- (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.”*

23. Section 2(3) of the 2016 Act provides that:

“A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.”

24. Section 2(4) of the 2016 Act provides that:

“A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—

- (a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and*
- (b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.”*

25. The “let property”, together with the “shared facilities”, as described in the Tenancy Agreement, allowed the Property to be considered a “separate dwelling” for the purposes of the 2016 Act. The Tribunal was satisfied, on the balance of probabilities, that the Property was the Respondent’s only or principal home.

26. The Tenant confirmed to the Tribunal that his wife and their baby lived in the Property with him and that he knew that the Tenancy Agreement stated that only he was permitted to live there (without first obtaining permission from the Applicant to any other occupant, which permission had not been granted).

27. The Tribunal was satisfied, on the balance of probabilities, that:

- a. The requisite notices were valid and had been validly served (and received by the Respondent);
- b. The Respondent was in breach of the Tenancy Agreement in that he was not the only person living in the Property and he did not have permission from the Applicant for his wife and baby to live there with him;
- c. It was reasonable to grant an eviction order in the circumstances of this case. This was on the basis that:
 - i. The Property was one of a number of properties which comprised a house of multiple occupation (“HMO”), for which the Applicant had a licence from the local authority;

- ii. The Applicant was in breach of the conditions of his HMO licence given that the maximum number of people allowed in the building of which the Property forms part had been exceeded and so he was at risk of losing that licence as a result of the Property being occupied by the Respondent's wife and baby, in addition to the Respondent;
- iii. The loss of the HMO licence would have an impact not only on the Applicant but also potentially on all other tenants of the building of which the Property formed a part;
- iv. The Respondent did not want to stay in the Property and was actively wanting to move to another (yet unknown) property; and
- v. The Respondent did not consider that the Property was good for all three of him, his wife and his baby to live in.

28. Accordingly, the Tribunal found that ground 11 (breach of tenancy agreement) of schedule 3 to the 2016 Act applied.

DECISION

29. The Tribunal granted the application under section 51(1) of the 2016 Act for an eviction order on the basis of ground 11 (breach of tenancy agreement).

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P. Woodman

14 November 2024

Chair

Date