



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/21/0897

Re: Property at 134A Albion Street, Coatbridge, ML3 3SB (“the Property”)

Parties:

Mr Deodat Chataroo, 50 Old Monkland Road, Coatbridge, ML5 5EB (“the Applicant”)

Mr Robert John Restrick, 134A Albion Street, Coatbridge, ML3 3SB (“the Respondent”)

Tribunal Members:

Jan Todd (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 application should be refused.

- Background
- 1. This was a hearing to consider the application dated 12th April 2021 by the Applicant against the Respondent for an order for eviction of the Respondent from the Property.
- 2. The Applicant is the owner and landlord of the Property and the following was lodged with the application:-
 - a. Lease between the Applicant and Respondent with a commencement date of 21st December 2021, but dated 21st February 2021 by the Respondent
 - b. Notice to Leave dated 8th April 2021
 - c. Proof of posting dated 2nd March 2021
 - d. Copy letter to Respondent dated 1st March 2021 requesting access
 - e. S11 notice

3. Subsequently the Tribunal received a S11 notice and confirmation that North Lanarkshire Council had received it. The Applicant also confirmed he was seeking to recover possession on Ground 10 tenant not occupying the Property and submitted a further certificate of posting of the Notice to Leave dated 8th March 2021. The Tribunal also asked for a track and trace receipt and any further evidence that the Respondent was not living in the Property.
4. A CMD proceeded took place on 28th June and the Applicant attended in person. The Respondent did not attend and was not represented. He had been served with a copy of the application and papers by service by Sheriff Officer on 24th May 2021 at the Property. The note of the CMD is referred to for its terms.
5. The Tribunal unanimously agreed after the CMD that a hearing to consider any evidence of the tenant's non-occupation will require to be held. The Tribunal noted that the tenant has not been in contact nor has he responded to this action but the landlord is still obtaining some monies via universal credit which may indicate that the tenant is not claiming universal credit for another property.
6. The Tribunal confirmed at the CMD that it required further evidence to determine whether or not the Respondent is in occupation of the Property. The Tribunal directed the Applicant to provide a list of any witnesses who can speak to the occupation of the Property or whether there is evidence of no occupation. If the Applicant gained entry to the Property, any evidence of the condition of the Property or evidence of any occupation or personal belongings or whether belongings have been removed and any other evidence that the landlord wishes to submit including any evidence of recent attempts to contact the Respondent or any communication with the Respondent.
7. The Tribunal advised that evidence may take the form of documents; e-mails or other communications as well as signed statements from witnesses and verbal evidence from witnesses themselves.
8. The Applicant lodged further information on 2nd August 2021 which comprised 2 statements of rent paid on 12th May and June 2021, copies of hand written letters by the Applicant to the Respondent dated 5th July 2021, 1st March 2021, Letter from the Bank of Scotland dated 1st February 2021 and council tax bill from North Lanarkshire Council dated 31st May 2021.
9. The hearing took place by teleconference on 6th August 2021 at 10am. The Tribunal waited 10 minutes to see if the Respondent joined but there was no appearance by the Respondent. The legal member made introductions and explained the purpose and order of proceedings and asked the Applicant if he had brought any witnesses that he wished to lead. He advised that he had no witnesses. He advised that he had spoken again to a neighbour but they had advised they did not want to be involved although they advised they had not seen his tenant at the Property.
10. The Applicant then provided his evidence. He advised that the tenant, Mr Restrict, had taken possession in December 2020 and he had made contact with him offering to meet if the tenant wished to do so and saying he was available if the tenant had any issues. The Applicant then confirmed that the

Tenant had not paid the rent which was due on 21st January and when contacted by phone the tenant was abusive and questioned why the landlord was phoning. The Applicant advised that rent was not paid on February either and again the Respondent was abusive when contacted by phone. The Respondent also raised an issue about the fridge and freezer which the Applicant told him they could look at straight away but the tenant did not get in contact and has not been in contact since.

11. The Applicant further advised that he then tried to obtain the rent direct from Universal Credit but as the Respondent had advised Universal Credit the landlord was Independent Mortgage and Property Services which is the letting agent who arranged the paperwork the payment is now going to the letting agent who transfer it to the Landlord. Mr Chateroo confirmed he has received £360 in April and May from Universal Credit but in June only received £245. He referred to two statements which he had submitted which show those payments and the Tribunal agreed they could see the statements.
12. He also advised the Police visited the property at his request in March 2021 when the Respondent was not contacting them and they were concerned. Mr Chateroo advised the police told him that there were a lot of bags blocking the kitchen and toilet and a lot of mail unopened, and that it was impossible for someone to be living there. He confirmed that neighbours had reported to him that the tenant was no longer there either but again confirmed that he had no statements or witnesses to confirm this. When asked if he himself had tried to visit the Property or knock on the door he confirmed that he had not done that as he did not think he had the right to do that. The Applicant advised he would have to give 48 hours' notice to the tenant and he has not wanted to approach the tenant because he is in his 70s and would be apprehensive of meeting the tenant. The Applicant advised under questions from the Tribunal that no, he had not tried to look through the letter box and again mentioned that the blinds were all down at the windows. He did put the handwritten letter of 5th July which asks Mr Restrict to give access to the property as soon as possible and also asks him to confirm if he is still living there as a matter of urgency through the letterbox and said his son was with him.
13. The Applicant mentioned at the CMD and again today that he had applied for right of entry through the Tribunal but on the day he attended the Property with his tradesmen no-one met them there and they did not proceed to get access. The Tribunal asked if the Applicant had reverted to the Tribunal about getting access but he said he had not and was disappointed that no-one had met him that day as he thought that was the procedure. The Applicant stated that he was a law abiding person and would not want to do anything illegal and therefore has not and would not want to enter the property without permission.
14. The Applicant clarified what the remaining productions he had lodged were explaining that the statement from council tax was to show that the tenant had not paid Council tax and that the Council had then looked for him the landlord to pay it. He confirmed however that this has now been sorted out as he has advised the Council the tenant is still liable and the Council have stopped sending the Applicant bills.
15. The letter from the Bank of Scotland is to show that he has incurred a lot of money in renting out this property that this is seriously detrimental to himself and his family and that rent continues to be unpaid. He said he just wants to

sell the property now and he can't do this until the order is granted. He confirmed that there has been no payment towards the rent in July and he phoned Universal Credit to enquire about this and was advised that the Respondent is working too many hours and no longer qualifies for Universal Credit.

16. During the evidence from the Applicant another voice was heard in the background and the Applicant advised his son was now in the room and asked if his son could speak to the Tribunal. The Legal Member asked if that would be as a witness and the Applicant confirmed that it would.
17. The Applicant's son confirmed his name is Sanjay Chateroo, and that he lives with his father at the Applicant's address. He confirmed that he was at the Property with his father and could confirm the letters were put through the door. He confirmed that the notice sent to the Respondent by recorded delivery has not been picked up when he has checked the Royal Mail track and trace and the Respondent has just not been communicating with them and this is financially crippling them. Mr Chateroo junior then stated he was really annoyed that nobody from the Tribunal had been at the Property when they tried to get access through their right of entry application and was unhappy at this Tribunal's previous comment that the Applicant could go back to the Tribunal to establish what happened on that day or to ask for a further right to get access. He also confirmed that they had not sought legal advice and questioned was that not what this process was for. The legal member advised that the Tribunal was a judicial body and could not give legal advice but was here today to consider and weigh up the evidence to enable a decision to be made on the application. The Tribunal asked if there was any further evidence to be submitted showing the applicant is not living in the Property as his home. Neither the Applicant nor Mr Sanjay Chateroo had any further evidence to provide. The Applicant advised he felt he had done everything he could and felt that should be enough that there was ample evidence the Respondent was not living there especially from the report he received from the Police.

18. Findings in Fact

19. The Applicant is the owner and landlord of the Property.
20. The Respondent entered into a lease of the Property from the landlord which started on 21st December 2020.
21. The Respondent took possession of the Property and has paid some rent.
22. The rent due is £400 per month. The last payment of rent was 12th June 2021 from Universal Credit.
23. The Notice to leave for this application was served on the Respondent by Recorded delivery on 8th March 2021 and relies on Ground 10 and Ground 14, but only ground 10 is relied on in this application.
24. The Notice to Leave has not been returned to the Applicant by the Post office.

25. The police attended the Property around March 2021 and advised the Applicant that the Property had a lot of belongings in it and may not have been liveable.
26. Service of this application was made by Sheriff Officers at the Property on 24th May 2021.
27. The Applicant has tried to contact the Respondent by leaving letters through the letterbox but has had no response.
28. The Applicant has been advised that the Respondent is no longer entitled to Universal Credit towards his rent.

29. Reasons for Decision

30. This is an application for an order for eviction based on Ground 10 which is that the tenant is not occupying the Property as his only or principal home or has abandoned the let Property. The Applicant needs to establish on the balance of probabilities that this ground is met. The Applicant has stated and the Tribunal accepts that the Respondent has not responded to requests to confirm he is living there. The Applicant states a neighbour advised that the tenant was no longer there but there is no statement or verbal evidence available to the Tribunal from the neighbour who the landlord advised did not think it was her business and did not want to give any statement.
31. The Applicant has shown that rent payments have been made as recently as May and June. These payments were made by Universal Credit and when the Applicant phoned them to see why there was not payment in July 2021 they advised the Respondent is now working extra hours and is not entitled to Universal Credit. They have not advised that the claimant is living elsewhere in this case although it may be their practice not to divulge personal information there is no confirmation that the Respondent is not there. It would appear to be more likely than not that he was there at least in May and June as rent has been paid on his behalf.
32. The Applicant has not had response to his letters to the tenant but a tenant not being responsive is not an indication or admission that he is not living there especially as he appears to be in arrears of his rent. The Applicant had applied to try and get entry to the Property via the Tribunal but unfortunately for whatever reason this did not go ahead as the Applicant expected and he has not sought an explanation from the Tribunal. Nor has he sought to exercise any right of access under clause 20 of the lease so there is no information available to the Applicant or the Tribunal about the current state of the Property or whether the Respondent and his belongings are there. The Applicant admitted when he visited the Property he cannot see into it and has not tried to look through the letter box or even knock on the door to see if there is a response.

33. The papers for this application were served by Sheriff Officer Malcolm Boyd on 24th May 2021 by letterbox service. Sheriff officers generally make enquiries before leaving papers at a Property address and the tribunal has a certificate from the Sheriff officers stating they have made service on the Respondent “into his place of residence at 134A Albion Street, Coatbridge as after giving six audible knocks on the door as is usual and after due enquiry by me I was unable to find the said Mr Robert John Restrack himself personally or any person therein to accept service on his behalf.” As is usual this was done in front of a witness Ms Michelle Palmer. This is confirmation that the Sheriff officer was satisfied the Respondent lived there.
34. The Tribunal found the Applicant to be an honest and credible witness and they accepted the Applicant is finding the lack of contact and lack of payment of rent to be very distressing, which the Tribunal has sympathy for. The overriding objective of the Tribunal is to act justly and given the absence of any evidence that the Respondent is not currently living in the Property as his principal home, and given that the verbal report of the police visit dates from March and that the Tribunal has to consider whether on the balance of probabilities the Respondent is currently living in the Property the Tribunal is not satisfied that the ground of eviction is met. Even if the Respondent was not present in or around March, he was still claiming universal credit and paying this towards rent for this Property up to June 2021. People can live in properties where there is a lot of paper and other belongings and the Tribunal cannot on this evidence alone find that the Respondent is no longer living there. There is no current credible evidence to show the Respondent is not living in the Property. The Applicant has not been into the Property and so has not been able to present any evidence showing that the Property has been abandoned or is not lived in and there are no statements or evidence from neighbours to support the Applicant’s view and so for this reason the application must be refused
35. The Tribunal did suggest to the Applicant that he may wish to take legal advice and it is open to the Applicant to apply again should he wish to do so for an order for eviction on this or another ground with evidence of the ground in question.

- **Decision**

The Application is refused.

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.

J. Todd

Legal Member/Chair:

Date: 6th August 2021