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/19/2789

Re: Property at 1 Staffin Drive, Flat 2/2, Glasgow, G23 5HH ("the Property")

Parties:

Mr Stephen Devaney, 4 Rothes Drive, Flat 2/1, Glasgow, G23 5PY ("the Applicant")

Mr Greig Stevenson, 1 Staffin Drive, Flat 2/2, Glasgow, G23 5HH ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy ("PRT") in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"). The PRT in question was by the Applicant to the Respondent commencing on 1 December 2018 ("the Tenancy").

2. The application was dated 3 September 2019 and lodged with the Tribunal on 6 September 2019.

3. The application relied upon a Notice to Leave dated 29 July 2019 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice referred to Grounds 4 and 12 of Schedule 3 Part 1 of the 2016 Act, being that the landlord intended to live at the property and that "the tenant has been in

rent arrears for three or more consecutive months" respectively. The body of the notice referred to arrears of £556.44 said to arise from a shortfall in Housing Benefit but the period of the arrears was not made clear. The Notice did refer to "copies of the letters sent to" the Respondent but it was not clear which letters these were. (Various letters were lodged with the application.) The rent due under the PRT is £550 per month due in advance on the 10th of each month. The Notice intimated that an application to the Tribunal would not be made before 29 August 2019.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council on or around 3 September 2019 was provided with the application.

The Hearing

5. On 6 December 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at the Glasgow Tribunals Centre I was addressed by the Applicant and by the Respondent's agent, Samuel Thomas, Housing Adviser of Shelter Scotland. The Respondent was also in attendance with a supporter.

6. Prior to the CMD, the Applicant had been asked for further information on the papers submitted, in particular the manner of service of the Notice to Leave. The Respondent's representative had provided material submissions challenging the competency of the Notice to Leave and whether it had ever been served on the Respondent.

7. I sought clarification on the service of the Notice to Leave. At first the Applicant said it had been hand-delivered on 29 July 2019 with Donna Richardson as his witness. He explained that Ms Richardson had assisted him with preparing all the documentation. On further discussion, the Applicant said that he believed what had been hand-delivered on 29 July 2019 was a letter headed "NOTICE TO LEAVE". This letter was not a Notice to Leave in the statutory form. The Respondent accepted that he had received hand-delivery of the said letter on 29 July 2019. The Applicant said that the Notice to Leave was emailed to the Respondent on 29 July 2019 in an email date stamped that day at 21:10. The Respondent stated that he had received the said email from the Applicant but that it had contained the said letter and not the Notice to Leave. The Respondent's representative had included the 29 July 2019 and attachments with the submissions and these were examined on the Clerk's laptop. The email indeed attached the said letter (and a copy of the Tenancy agreement) and not the Notice to Leave. The Applicant then conceded that the said email of 29 July 2019 at 21:10 did not attach the Notice to Leave but sought a continuation to check his emails for any other email that day that may have sent out the Notice to Leave as well as discuss matters further with Ms Richardson.

8. The Respondent's representative opposed a continuation on these grounds on the basis that he did not believe the Notice to Leave had ever been sent. I noted that the Tenancy agreement contained no email address for the Respondent so no consent by the Respondent to received notices under the

Tenancy agreement was evidenced. The Applicant did not provide any submissions on any other manner in which the Respondent had consented to receipt of a notice to leave by email.

9. Further, I sought clarification as to the terms of the Notice to Leave. The Respondent's representative submitted that any notice under Ground 4 required 84 days notice as the Tenancy had been in place longer than 6 months. The Applicant made no submissions to contradict that.

10. In regard to Ground 12, the Applicant had lodged a rent statement up to 1 November 2019 showing rent arrears of £1,302.54. He submitted that these were the arrears due as at today's date. The statement was clearly in some error as it showed rent applying on the 1st of each month, rather than the 10th. That correction, however, made no difference to the arithmetic. The statement started at 1 June 2019 (presumably meant to be 10 June 2019) with a balance of arrears of £448.94. It did not show whether rent arrears had been in existence since 29 April 2019 (that is, for the three consecutive months prior to the Notice to Leave). The statement showed rent arrears on 27 July 2019 as £240.38 yet the Notice to Leave of 29 July 2019 stated they were £556.44. The Applicant did not have an explanation for this discrepancy.

11. The Respondent's representative conceded that arrears had been in existence for three months as at 29 July 2019 but he did not have any alternative calculation on the figures. He did not however expressly accept the arrears as per the statement.

12. The Respondent's representative and the Respondent further addressed me on his benefits position. The Respondent stated that he had been awarded Personal Independence Payment the day before and expected a back-dated payment of that to 3 June 2019. With that money, and the PIP going forward, he expected to clear the arrears and be able to pay rent in full going forward (that is, make up the shortfall between the rent due and the four-weekly Housing Benefit payments that the Applicant received direct). The Respondent also said that he was seeking to be rehoused. The Applicant stated that he had been promised full payment of the arrears on three previous occasions and he was clearly cynical about the Respondent's submission that the rent arrears would now be cleared in full.

Findings in Fact

13. On 1 December 2018, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on 1 December 2018 ("the Tenancy").

14. In terms of clause 3 of the Tenancy agreement, the parties agreed that email would be required for communication of notices in terms of the Tenancy but no email addresses for either party were specified in the Tenancy agreement.

15. On 29 July 2019, the Applicant's agent drafted a letter headed "NOTICE TO LEAVE" addressed to the Respondent and emailed and hand-delivered same to the Respondent.

16. The said letter of 29 July 2019 did not conform with the statutory form for a notice to leave under section 50 of the 2016 Act, in terms of the *Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017/297*.

17. As at 29 July 2019, the Respondent had been in arrears of rent to the Applicant under the Tenancy for three consecutive months.

Reasons for Decision

18. The application was in terms of rule 109, being an order for eviction of a PRT. I was not satisfied on the basis of the application and supporting papers that a validly completed Notice to Leave had been correctly served upon the Respondent with sufficient notice. In terms of section 54(3) of the 2016 Act I held the objection to the Notice to Leave in regard to Ground 4 (landlord intending to occupy) was well-founded as 84 days notice was required.

19. The Respondent sought a continuation to consider his emails further and consult with the person who had assisted him in drafting the Tenancy agreement and the Notice to Leave so as to provide evidence that a valid Notice to Leave in regard to Ground 12 had been drafted and competently served. Even if he had been able to locate a further email to the Respondent on 29 July 2019 sending the Notice to Leave:
    a. the Tenancy agreement did not permit email intimation and no other basis for arguing it had been agreed was offered; and
    b. the Notice to Leave referred to a figure of arrears which the Respondent was not conceding and the Applicant's supporting papers contradicted.

20. Section 52(3) of the 2016 Act requires that the Tribunal must not grant an order for eviction unless it is accompanied by "a notice to leave which has been given to the tenant". That provision must be read in terms of regulation 6 of the 2017 Regulations which states that a "notice to leave given by the landlord to the tenant under section 50(1)(a)... must be in the form set out in" the schedule to those Regulations. Any document that is not in that form is not therefore a notice to leave. Those Regulations require at Part 3 of the Notice to Leave for the landlord to state the amount of arrears that has built up. The arrears stated in the Notice to Leave lodged by the Applicant are contradictory to those in his other documentation. On the information currently before me, the Notice to Leave lodged is not a valid notice.

21. I was thus not satisfied that a continuation for further information would result in the application being supported by a prima facie valid Notice to Leave. Further the service of which Notice would still be disputed and though I reserve my position on whether the Notice to Leave was ever issued to the Respondent, all the papers provided in the application and by the Respondent were consistent that it had not been, and were not consistent with it being sent separately in an

email that was yet to be located. In any case, the application having been in progress since early September 2019, and the Applicant having been asked around one month ago to provide evidence of service of the Notice to Leave (and he responded by relying on the email of 29 July 2019 at 21:10 which he now accepted had not sent out the Notice to Leave, but instead the letter of 29 July 2019), I was not satisfied with incurring yet further delay in the progress of the application in regard to rule 2 of the Procedure Rules (the "over-riding objective").

22. In all the circumstances, I refused the Applicant's motion for a continuation and refused the application in full under section 52(3) of the 2016 Act on the grounds that it was not accompanied by "a notice to leave which has been given to the tenant". As I say, I reserve my position on whether the Notice to Leave was given to the Respondent, but I am satisfied that the application as before me is unsupported by a notice to leave for which evidence has been provided of it having been "given to" the Respondent validly (that is, not emailed, given that the Tenancy agreement did not specify an agreed email address). Further, the application is unsupported by a valid notice to leave (that is, one in terms that clearly directed the Respondent as to what arrears required to be paid to cure the default).

23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, I am thus satisfied to refuse the application in full at this time.

Decision

24. I refuse the application for eviction under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Joel Conn

Legal Member/Chair

6 December 2019

Date