



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/0114

Re: Property at Flat G0/2, 120 Neilston Road, Paisley, PA2 6EP (“the Property”)

Parties:

Adelphi Scott Limited, 19 Adelphi, Aberdeen, AB11 5BL (“the Applicant”)

Ms Natalie McGregor, Flat 5 Weavers Court, 105 Seedhill Road, Paisley, PA1 1QU (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Lori Charles (Ordinary Member)**

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. By application received on 15 January 2021, the Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, copy Notice to Leave with Sheriff Officer certificate of service and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, with copy email to Renfrewshire Council. The application is based on ground 10 of schedule 3, the tenant is not occupying the let property.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 5 February 2021. Both parties were notified

that a case management discussion (“CMD”) would take place by telephone conference call on 8 March 2021 at 2pm and that they were required to participate.

3. The application called for a CMD on 8 March 2021 at 2pm. The Applicant was represented by Ms Piaget. The Respondent did not participate and was not represented.

Case Management Discussion

4. The Tribunal noted that several documents have been submitted by the Applicant as evidence. These include a trace report from Nationwide Tracing Services dated 24 September 2020 which states that the tracing agent had “established that Ms McGregor, once of Flat G/02 120 Neilston Road, Paisley, PA2 6EP is currently resident at Flat 5, Weavers Court, 105 Seedhill Road, Paisley”. A copy of a letter from the DWP dated 2 July 2020 has also been lodged. This states that the DWP was unable to pay money to the Applicant in relation to the Respondent’s rent arrears because the tenancy address is not her current address. The Applicant also lodged a Sheriff Officer certificate of service of service for the Notice to Leave. This confirms that the Sheriff Officers served the Notice at the address provided by the tracing agent (“the new address”) on 23 November 2020. The certificate states that the Notice was deposited through the letterbox when the officer had established that she resided there. The Tribunal also noted that the application was served on behalf of the Tribunal at the new address. A certificate of service was issued by the Sheriff Officer confirming that they had deposited the copy application through the letterbox, having established that the Respondent resided there.
5. Ms Piaget advised the Tribunal that the Notice to Leave was sent to the tenancy subjects by ordinary post but had been served at the new address by Sheriff Officer. She stated that the Respondent is understood to have vacated the property in November 2019. The agency’s maintenance manager has visited the property on a weekly basis since that date, to make sure that it is secure. His last visit was on Wednesday of last week. Following that visit he confirmed that there has been no change at the property, and it is still unoccupied. The property is a ground floor flat. The maintenance manager noted a large pile of mail underneath the letterbox. He has spoken to a neighbour who stated that they had not seen the Respondent in over a year. He has looked through the bedroom window at the property. There are no personal possessions visible, and the mattress has been removed from the bed and placed against the wall. It has been in this position at every visit. Ms Piaget advised the Tribunal that there has been no contact with the Respondent since she moved out. She did not notify the agency that she was doing so or provide an explanation. She did not give notice or return the keys. A letter was sent to her at the new address asking her to do this, but no response was received. No rent has been paid since November 2019, although the Respondent was not in arrears prior to this date. The current arrears are over £4000. Ms Piaget advised the Tribunal that

the Respondent did not report any repairs issues prior to her departure or complain that there had been a failure to comply with the repairing standard.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a private residential tenancy agreement dated 11 July 2019.
8. The Respondent vacated the property in November 2019 and is not occupying the property as her only or principal home.

Reasons for Decision

9. The application was submitted with a Notice to Leave dated 23 November 2020, together with a Sheriff Officer certificate of service which establishes that the Notice was given to the Respondent on 23 November 2020. The Notice states that an application to the Tribunal is to be made on ground 10, the tenant is no longer occupying the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 22 December 2020. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
10. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 10 of Schedule 3 (as amended by Schedule 1 of the Coronavirus (Scotland) Act 2020 states "(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home. (2) The First-tier Tribunal may find that the ground named in sub- paragraph (1) applies if – (a) the let property is not being occupied as the only or principal home of - (i) the tenant, or (ii) a person to whom a sub-tenancy of the let property has been lawfully granted, and (b) the property's not being so occupied is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."
11. The Tribunal is satisfied, from the documents submitted with the application and the information provided by the Applicant's representative at the CMD, that the Respondent vacated the property in November 2019, without giving formal notice or returning the keys. She has not occupied the property since that time and is not currently occupying it as her only or principal home. The Tribunal is

also satisfied that the Respondent's failure to occupy the property is not attributable to a breach of the landlord's duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

12. The Tribunal then considered whether it would be reasonable to grant the eviction order. It noted that the Respondent has been absent from the property for a period of 16 months. She has not contacted the Applicant or their agents since that time. She has not responded to correspondence or the service of the Notice to leave. She has failed to pay rent for 16 months. She has provided no explanation for her failure to occupy the property, to the Applicant or the Tribunal. The Tribunal is satisfied that it is reasonable that an eviction order be issued.

13. The Tribunal is satisfied that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established and that it is reasonable that an order for eviction should be granted.

Decision

14. The Tribunal determines that an eviction order should be granted against the Respondent.

15. The decision is 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.

8 March 2021

Josephine Bonnar, Legal Member