

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/20/1774

Re: Property at 115 Cardross Street, 0/2, Glasgow, G31 2DL (“the Property”)

Parties:

Mr Md Shamsedur Rahman, Mrs Sadia Ahmed, 17 The Paddock, Busby, Glasgow, East Renfrewshire, G76 8SL (“the Applicant”)

Miss Monica Melero Sobrino, Miss Anastacia Papaioannou, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

- **Background**

1. This was a case management discussion to consider an application for eviction in terms of Ground 10 of the 2016 Act namely that the tenants are not living in the Property. The CMD was scheduled for 23rd November 2020 at 10am along with a hearing for case number HPC/CV/20/1480 which was a claim for rent arrears by the same Applicants from the same Respondents and relating to the same Property. The Applicants have raised this action when they were made aware by the Respondents response to the rent arrears action that they were not living in the Property and appeared not to intend to return to it.
2. The following documents were lodged with the application:-
 - a. Notice to Leave dated 2nd September 2020
 - b. E-mail from the Applicants to the Respondents enclosing the Notice to Leave dated 8th September.
 - c. Rent statement showing arrears of rent of £5650

- d. Private Rented tenancy Agreement
 - e. Section 11 Notice and evidence it has been sent to the local authority
3. The Applicant then lodged in response to a request for further information from the Tribunal, an e-mail from the Respondents of 13th September to the Tribunal in the connected civil case CV/1480 and a series of photographs of the internal state of the Property taken on 19th September after a visit by the Applicant.
 4. The Application was accepted but the Applicants were advised they would have to address the Tribunal on issues relating to the Notice period of the Notice to Leave and the fact the application has been raised before the Notice Period has elapsed.
 5. The legal member who accepted the application then sent a Direction dated 13th October asking
 - a. the Applicants to make representations as to why they consider the Tribunal should allow the application to proceed although it was made prior to the notice period expiring and why the Notice to Leave is valid
 - b. the Respondent to provide written representations on the validity of the application; whether they consider the tenancy ongoing or not and if not how the tenancy has been terminated, inviting them to produce any documentation evidencing the termination of the tenancy agreement.
 6. The application was then served on the Respondents by sending it to the e-mail address they had given the Tribunal in the civil case and asked to be used for correspondence.

The Case Management Discussion

7. The case was scheduled for Monday 23rd November at 10am. On 20th November, the previous working day, the Second Named Respondent, Ms Papaioannou wrote to the Tribunal asking for a postponement of this CMD. She had advised that she was unwell and would not be able to attend but did not enclose any medical certificate. The Tribunal administration wrote back advising that without a medical certificate the Hearing and CMD for both cases (this one and the civil case no CV/1480) would proceed. Ms Papaioannou indicated she was only aware of the eviction case and not the civil case but was then reminded of both by the case worker.
8. On the morning of the CMD the Tribunal was sent by the administrative team of the Housing and Property Tribunal, a copy of an e-mail sent by Ms Papaioannou at 2.40 am asking for a postponement of the CMD and hearing. Along with the Respondent's e-mail of 23rd November asking for a postponement in respect of both cases, was a letter from her GP dated 20th November 2020 advising that the Respondent had been prescribed 2 medications for a medical condition. There was no statement or certification in the letter that the Respondent was not able or well enough to attend the CMD which was being conducted by teleconference. There was no indication that the first named respondent was unwell or would not be able to attend the Hearing. The Tribunal considered this but rejected the application for a postponement on the grounds that there was no indication in the GP's letter (which was addressed to whom it may concern) that the second named

respondent was unable to attend on a teleconference, that this was a very late request and it would be unfair to the Applicant, in the absence of a specific medical certificate indicating the Respondent was unable to attend or take part to postpone the CMD and that there was no indication that the first named respondent was unable to take part. The Legal Member instructed that a response be sent to the Respondents advising them that the Hearing would proceed and the reasons for the rejection of the very late postponement request.

9. The Legal Member opened the CMD by making introductions and advising on the purpose of the CMD and how the proceedings would be conducted especially considering they were being conducted by teleconference. The Tribunal had considered the civil application first and made certain findings in fact and concluded that the rent arrears sought by the Applicants up to 30th August 2020 were due and owing as the lease was continuing at that date. The CMD for this application took place directly afterwards.
10. The Applicant Mr Rahman was in attendance on his own but representing both Applicants. Neither of the Respondents attended and considering they were made aware of the CMD by e-mail addressed to the e-mail address they had instructed the Tribunal to communicate with them, the Tribunal felt it was fair and just to proceed in their absence. The Tribunal also noted this application for eviction had obviously been received as the Respondent had asked for a postponement of it using the reference for this case.
11. Mr Rahman advised that the Respondents moved in to the Property on 31st October 2019. He advised that he now believes the Respondents are not living in the flat. He advised that at the end of March 2020 the Respondents advised him they were leaving the flat temporarily. They had been self - isolating, but then decided to leave to go, he thought to a friend's flat. He referred to an e-mail from both Respondents addressed to both Applicants dated Tuesday 31st March 2020 sent at 7.35 pm which advised that the tenants were going to leave the accommodation "until this property can be fixed to liveable standards". They went on to say they were leaving for three months and since they were not living in the Property they would not be paying rent and would only take the belongings they needed. He advised that they had made it clear he was to tell them if he was sending any workers to the Property and that they were not terminating the tenancy. The Applicant believes the tenants had moved into a friend's house which was vacant and which he thinks they may have stayed in when the friend did not return after 3 months as expected.
12. The Applicant confirmed he has not received any notice from the either Respondent terminating the tenancy, nor have the keys ever been returned.
13. He was advised by a neighbour that someone was in the flat in July of this year and when he visited there was a lady there but she said she was there to clean and clearly knew the tenants. He has lodged a copy of the e-mail he sent to the Respondents dated 19th July advising of his visit to the Property and of finding a lady there who confirmed she was in contact with the Respondents. He also lodged an e-mail from the Respondents claiming they moved out because of a breach of the Agreement by him, that they were asking for an abatement of rent in the Property and could not stay there because of the state of it.

14. The Applicant responded to the Direction sent by the Tribunal asking for written representations as to why they consider the Tribunal should allow the application to proceed although made prior to the notice period expiring in terms of S54 and 52(4) of the 2016 Act and also for representations to address the Tribunal on the validity of the Notice to Leave. He wrote on 26th October confirming that he had sent a text to the Respondents on 29th August asking permission to visit the Property and they replied stating that they were living elsewhere, and Ms Papaioannou indicated that the Applicants knew she was not there and had not been for 7 months and that she was expecting a refund for overpayment of rent and the security deposit, claiming that Mr Rahman had never had time to do this or had cancelled. Mr Rahman replied advising that he had last visited the Property on 19th July and someone was occupying the Property that he had sent an e-mail to the Respondents on the 19th July advising of this and there had been no reply.
15. The Respondents have lodged no written representations in response to the Direction.
16. The Applicant was and is worried about the state of the Property and went to visit in September after noting the Respondents reply to the Tribunal of 13th September indicating that the tenants were not living there and he found it to be in an abandoned state with a plates and glasses in the sink and food lying rotting in the kitchen and other possessions and rubbish left lying around. He has lodged photographs of the state of the Property. He advised that because of the tenants' response to his text of 29th August saying they were no longer there he served a notice to leave asking them to vacate by 30th September failing which he would raise an eviction action.
17. The Applicant had confirmed in his evidence for the civil case and the decision in that case is referred to for its terms, that he had sent a plumber and an electrician to the Property to fix any issues and at no time had either Respondent sent him confirmation they were terminating the tenancy or handed over the keys.
18. Mr Rahman also confirmed that he has not seen any keys left at the Property and that he does not have a fob for the main door as he gave both copies to the tenants and they have not returned them. He also referred to the written response from the Respondents to the civil action which is an e-mail of 13th September. In that e-mail they allege there are issues with the Property but do not give any details. They also advised they have not been in the Property since the end of March 2020 but do not confirm or submit that they gave notice of termination just that they are no longer there and should not have to pay rent.
19. The legal member then asked Mr Rahman about how he had gone about filling out the Notice to Leave as there is an error in the date he has inserted and this had been pointed out to him when the case was accepted and noted that he would have to address this at the CMD. Mr Rahman explained that he did not seek legal advice but read the guidance notes on line for how to terminate a tenancy and thought he had given the required 28 days' notice to bring the tenancy to an end under Ground 10. He advised that he realised after the Tribunal pointed out that his notice gave a date of 30th September before which he should not bring any proceedings, that he had applied earlier than that, but wished the Tribunal to consider it today because the Respondents have confirmed they are not in the Property, he has not had the

keys returned and has not been able to carry out proper checks on the Property for several months. He is worried his insurance will not be valid and he is paying the mortgage on this with no income coming in.

- **Findings in Fact**

1. The parties entered into a lease of the Property which commenced on 31st October 2019 and continues until terminated by either Party in terms of clause 23 of the lease.
2. The Rent due in terms of the lease is £1,050 every calendar month payable in advance
3. The Respondents left the Property temporarily on 31st March 2020 after Lockdown began and alleging there were issues with the Property...
4. The Respondents have not given written notice of their intention to terminate the tenancy and in fact specifically said in their e-mail of 31st March they were not terminating the Tenancy.
5. The Respondents have not handed back the keys to the Applicants and have not left them in the Property.
6. The Respondents are not residing in the Property.
7. The Property is empty.
8. The Applicant has served a Notice to Leave on both Respondents relying on Ground 10 of the Schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 that the tenant is not occupying the let Property. The Notice to Leave calls on the Respondents to leave by 30th September 2020.
9. The Notice to leave was sent by e-mail to the Respondents on 8th September 2020.
10. A Section 11 notice has been sent to Glasgow City Council.
11. The Applicant has submitted an application for eviction of the Respondents to the First Tier Tribunal for Scotland Housing and Property Tribunal on 8th September 2020 relying on Ground 10 and accompanied by a Notice to Leave.

- **Reasons for Decision**

12. The parties entered into a lease where the Respondents leased the Property from the Applicant from 31st October 2019 and agreed to pay £1,050 every calendar month in rent.
13. It appears the Respondents left the Property at the end of March 2020 but only temporarily. The Respondents have confirmed this in an e-mail of 31st March addressed to the Applicant and specifically state that:-
“we are temporary moving to this accommodation until this Property can be fixed to liveable standards. We understand it might be difficult to get workers during this time so we are leaving for a short period of three months, I was advised that if we are not living in the Property to cease paying rent and to ask that you reimburse us for the temporary housing cost as this is due to no fault of our own. I was advised to take the belongings that we need and since we aren't moving out only take the items that we cannot live without. We are in no way ending our tenancy.”

14. The Respondents have made no appearance at the CMD or this hearing and made no further written response or provided a response to the Direction given.
15. The Tribunal accepted the written evidence and verbal statements made by the Applicant Mr Rahman, who the Tribunal found convincing and credible in his evidence that the Respondents had left the Property on 31st March 2020 but had kept control of it, did not at any point return the keys and, until their response to a text message in August 2020 and their response to the Tribunal of 13th September 2020, had previously indicated by their e-mail and actions that they were still controlling the Property. The Respondents have not served any written notice terminating the tenancy nor indicated they wished it to end until possibly the end of August in response to a text from Mr Rahman. Mr Rahman has pointed out to the Respondents in an e-mail of 22nd June that he was not evicting them (at that point) and if they wished to end the tenancy they should give him 28 days' notice.
16. The Respondents' appear to have allowed a lady who claimed to be a cleaner to be in the Property with their knowledge in July 2020. The Applicant also confirmed that he has been back to the Property in September, after seeing the Respondents' written response saying they are not in the Property, and confirming they have other accommodation, and he confirmed that there were no keys left there. He also advised he had to ask a neighbour to let him in the main door as he has no fob to use to access the main door although he retained a key for the flat door.
17. The Tribunal finds that the Applicant has ended the tenancy by serving a Notice to leave dated 2nd September which he e-mailed to the Respondents at the address set out in the lease on 8th September advising them to leave by 30th September. In terms of clause 23 of the lease that brings the tenancy to an end at either the later date of the date specified in the Notice to Leave or the date the tenants leave the Property.
18. The Tenants are not living in the Property but the photographs and statement made by the Applicant confirm that they left the Property without clearing it entirely or returning the keys. They have effectively abandoned it.
19. In terms of S52 of the 2016 Act an application for eviction must be accompanied by a Notice to Leave which has given to the tenant.
20. The Tribunal was satisfied that the Respondents had been served with a Notice to Leave under S52 (3) of the 2016 Act specifying Ground 10 of Schedule 3 of the Act as the relevant ground of eviction.
21. The Notice to Leave was also accompanied by evidence of how the ground was met namely confirmation of the e-mails from the Respondents confirming they are not living there.
22. The Notice also set out a notice period which expired on 30th September 2020. The Notice period has not been correctly calculated as the Applicants have given only 28 days from the date of the Notice which was dated 2nd September.

S 62 of the Act sets out the requirement of the notice to leave and stated eviction ground namely:

“References in this Part to a notice to leave are to a notice which

- a. *Is in writing*
- b. *Specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction to the First Tier Tribunal*
- c. *States the eviction ground or grounds on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph b*
- d. *Fulfils any other requirements prescribed by Scottish Ministers in regulations*

S62(4) states:- “the day to be specified in accordance with subsection (1) (b) is the day falling after the day on which the notice period defined in section 54(2) will expire”

S62(5) specifies that for the purpose of subsection 4 it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Section 54(2) (as amended by the Coronavirus (Scotland) Act 2020) sets out the current required notice period which states

“The relevant period in relation to the notice to leave

- a. *Begins on the day the tenant receives the notice to leave from the landlord and*
- b. *In the case of a notice served before 3 October 2020 expires on the day following*
 - i. *28 days after it begins if subsection (3) applies*
 - ii. *Three months after it begins if subsection 3A applies*
 - iii. *Six months after it begins if neither subsection (3) or 3A applies*

S54 (3) says “this subsection applies if the only eviction ground stated in the Notice to Leave is that the tenant is not occupying the let property as the Tenant’s home (Ground 10).

23. The Applicant has tried to fulfil the terms of the legislation but has failed to meet the precise requirements. He has not allowed for 48 hours for the service of the Notice to Leave nor added the extra day when calculating the period of notice as required by s 62(4) and 62(5). Given that the Notice to Leave was only sent on 8th September by e-mail then the notice period which should have been inserted in the Notice to Leave is 9th October 2020, 2 days plus 28 days plus one day. In addition in terms of S 54 (1) of the 2016 Act the Landlord should not make an application to the First Tier Tribunal for an eviction order against a tenant using a copy of the Notice to leave until the expiry of the relevant period in relation to that notice.
24. If this action had been raised before the Coronavirus Scotland Act 2020 (the 2020 Act) then the Notice to Leave would not be valid and the application would have been incompetent. However the 2020 Act contains a provision in paragraph 10 of schedule 1 to the 2020 Act which allows the Tribunal to consider a Notice to Leave that contains an error in the date of when proceedings may be raised.
25. *Paragraph 10 states:-*
 - i. *Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1 to 9—*

- (a) *the notice is not invalid by reason of that error, but*
- (b) *it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been correctly completed.*

(2) Where sub-paragraph (1) applies, the period for which the notice remains in force for the purpose of seeking an order for possession (however described) is to be calculated by reference to the period which would have applied had the notice been correctly completed.

(3) This paragraph applies to—

(a) a notice to leave within the meaning of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 served on a tenant,

(b) a notice served on a tenant under section 14(2)(a) or 36(2)(a) of the Housing (Scotland) Act 2001,

(c) a notice served on a tenant under section 19 or 33(1)(d) of the Housing (Scotland) Act 1988,

(d) a notice served on a tenant in accordance with section 112(1) of the Rent (Scotland) Act 1984,

while this paragraph is in force.

26. The Notice to Leave is therefore not invalid merely because it does not contain the correct period of notice however the notice should not be relied upon until after the correct period of notice has elapsed, this would mean that the Applicants cannot rely on the Notice to Leave as allowing them to raise an action until after 9th October. However S52 (4) does allow a Tribunal to entertain an application made in breach of section 54 **if the Tribunal considers it reasonable to do so**. In this case therefore the Tribunal has to consider whether it is reasonable to entertain the application before the expiry of the period that should have been inserted in the Notice to Leave.
27. The Tribunal accepted the verbal averments and written statement that the Respondents are not living in the Property. The Applicant was credible in his evidence of the Respondent having left temporarily but having kept control of the Property and having never given written notice of termination of the tenancy.
28. The submission from the Respondents in their e-mail to the Tribunal dated 13th September in the civil action confirms they are not living in the Property and have moved elsewhere. The Respondents do not appear to have any intention of returning to the Property they have advised the Applicant and the Tribunal of this at the end of August and middle of September respectively. The Applicant has been very early in raising his action namely the same day as he served the Notice to Leave but having

taken account of the unusual circumstances of this case where both parties are alleging the Tenants are not living in the Property and the Tenants do not intend to return there it appears reasonable for the Tribunal to consider the application as it does not prejudice the Respondents and the Applicants are very concerned about the continuing accrual of rent arrears, the condition of the Property and the validity of their insurance if it remains empty.

29. The Tribunal having determined that it is reasonable to entertain the application in accordance with S54 (2) then had to consider whether the Grounds were met for the granting of the eviction order.
30. The Tribunal can only grant an eviction order if it finds that one of the grounds mentioned in Schedule 3 are met and the Applicant is relying on

Ground 10 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 specified by sub paragraph (1) applies if

(a) the let property is not being occupied as the only or principal home of the Tenant

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted and

b) the property not being occupied is not attributable to a breach of the landlord’s duties under Chapter 4 of the Housing Scotland Act 2006.”

c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

31. The 2020 Act amendments have changed the nature of this ground from a mandatory one to a discretionary one and the Tribunal has to consider firstly if the ground is met and then secondly if it is reasonable to grant the order. The Tribunal has found from the evidence described above that the Property is not occupied by the Respondents as their main residence. The Respondents have confirmed this and the photographs lodged by the Applicant confirm that no-one else is living there. In particular there is no evidence that the lady who was present in July is currently living there and there has been no sub tenancy granted. The Respondents have not provided any evidence to support their tentative claim that the Property was not in a fit state to live in. Although they left in March they have had control of the Property by retaining the keys, controlling who attends the Property and have not shown any evidence of having terminated the lease despite being invited to do so in a Direction by the Tribunal.
32. It is noted that despite the Applicants stating that they don’t live at the Property and haven’t done so for 7 months, the address specified in the letter from the Second Respondents GP dated 20th November 2020 which she lodged with her request to postpone the CMD, is “0-2 115 Cardross Street, Glasgow” the Property address.
33. The Tribunal then has to consider whether or not it is reasonable for the order to be granted. Mr Rahman advised he is very anxious to regain legal possession of the Property. The Applicants have not received rent for the

Property since March and the arrears to August 2020 amount to £5250. The Respondents have retained the keys to the Property and there appear to be some possessions of the Respondents left in the Property as it has not been cleared and a lot of rubbish needs to be removed. The Tribunal felt that in these circumstances it would be in the best interests of both parties to grant the eviction order, allow the Applicants to regain possession of the Property and to confirm the tenancy was at an end.

34. There being no written response or other representation from the Respondents, the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 10, is met, and that it is in the interests of both parties that the application is granted so that the Applicants can repossess the Property and remove any remaining belongings of the Respondents. The Respondents appear not to wish to return to the Property and this brings their liability for payment of rent to an end. The Tribunal therefore determined that the order for eviction sought by the Applicant should be granted and that as it is in the interests of the overriding objective to deal with matters efficiently, this decision could and should be made at the CMD.

- Decision

An order for eviction is granted.

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.

Jan Todd
Legal Member/Chair

25 November 2020
Date