



**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/20/2568

Property at 115 Wellington Street, Flat 3/2, Greenock, PA15 4DX (“the Property”)

Parties:

Mr Hugh O'Hagan, 78a Berwick Road, Greenock, PA16 0HL (“the Applicant”)

Mr Mark McFarlane, Address Unknown (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Elizabeth Williams (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 10 December 2020, the Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A copy tenancy agreement, Notice to Leave, Section 11 Notice and redacted emails were lodged in support of the application. The application form and Notice to Leave stated that eviction was sought on grounds 10, 11, 14 and 15 of schedule 3 to the 2016 Act. The Applicant subsequently advised the Tribunal that they wished the application to proceed on grounds 14 and 15 only, as the Respondent appeared to be in occupation of the property when the Notice to leave was served and they had not given the required 6 months' notice for ground 11, before lodging the application.
2. The Tribunal attempted to serve a copy of the amended application and supporting documents on the Respondent by Sheriff Officer on 9 February

2021. However, the Sheriff Officers were unable to effect service as their enquires had established that the property was unoccupied and that the Respondent had not been seen at the property since December 2020. The Tribunal arranged to serve the application by advertisement on the Tribunal website between 5 March 2021 and 12 April 2021. The parties were advised that a Case Management Discussion (“CMD”) would take place on 12 April 2021 by telephone conference call.

3. The CMD took place on 12 April 2021. The Applicant was represented by Ms McGugan. The Respondent did not participate and was not represented.

Case Management Discussion on 12 April 2021

4. Ms McGugan advised the Tribunal that there had been no contact from the Respondent. Following a report from a neighbour in February 2021 that the windows at the property had been left open during bad weather, the letting agent and landlord attended at the property. There was no answer at the door and a large pile of mail was lying in front of the door. The landlord attempted to access the property but was unable to do so as the locks had been changed. A neighbour confirmed on the morning of the CMD that the Respondent has not been seen at the property, but it appears that someone has been there and the large pile of mail which was in front of the door of the property had been removed. Ms McGugan advised that the Applicant was not sure whether the Respondent was currently in occupation of the property or not. Rent by way of direct universal credit payments were still being received.
5. The Tribunal noted that although a Notice to leave had been submitted with the application, no evidence of service of the notice had been provided. Ms McGugan referred the Tribunal to an emailed letter from the LSA which indicated that they had been instructed by the Respondent in connection with the Notice to Leave which had been served. However, the Tribunal noted that this letter did not confirm how and when the Notice had been served. A photograph had also been submitted of a person at the door of the property, but no details of the identity of the person, the date and time of the visit, or confirmation that the photograph related to service of the Notice had been provided. Ms McGugan advised the Tribunal that the photograph was of a member of the letting agency staff delivering the Notice to Leave in October 2020. There had been reports from neighbours that he was not living there, but when the Notice was delivered it was evident that the Respondent was within the property. The Tribunal was also advised that the Notice had also been sent electronically and by recorded delivery post. Ms McGugan advised that she could submit evidence of the electronic service of the Notice and ask the staff member who hand delivered the Notice to verify the date and time that this took place.
6. The Tribunal proceeded to discuss the evidence submitted with the application in support of the eviction grounds. This comprises 3 redacted emails from October 2020 which provide some information about incidents of antisocial behaviour at the property. The sender is not identified, but they are clearly from a third-party, reporting complaints from unidentified residents. The Tribunal

advised Ms McGugan that the three emails did not provide sufficient evidence to establish the eviction grounds. Ms McGugan advised that the property is in a block of eight flats. One other property is managed by her company. Most of the residents have been unwilling to report issues because of fear of repercussions. However, some incidents have been reported to the police and the local authority. Some residents have moved out of the block due to the behaviour and uncertainty about the Respondent's continued occupation. Ms McGugan confirmed that she could make further enquiries with a view to providing additional evidence.

7. The Tribunal determined that the application should proceed to a further CMD.

Case Management Discussion on 26 May 2021

8. A further CMD took place on 26 May 2021, by telephone conference call. Ms McGugan participated on behalf of the Applicant. The Respondent did not participate. Prior to the CMD, Ms McGugan lodged written submissions together with an email from the Police with brief details of 6 incidents related to the property. Only one was a complaint regarding antisocial behaviour about the occupants of the property. This was a complaint of loud music on 26 September 2020, with no mention of any names provided. Ms McGugan also lodged undated photographs of the inside of a property, a photograph of a person standing at a door with an envelope which has been signed and dated 9 October 2020 and a DocuSign screenshot dated 8 October 2020.
9. McGugan advised the Tribunal that she contacted the local authority who had no information about antisocial behaviour at the property. A neighbour has confirmed that all had been quiet at the property, and it appeared that it had been unoccupied again since February 2021. The Landlord attempted to get access in February but was unable to do so as the locks had been changed. There has been no further antisocial behaviour for several months, due to the property being empty, and neighbours remained unwilling to provide statements about the previous issues.
10. The Tribunal noted that the Notice to leave lodged with the application included grounds 10 and 11. Prior to the application being served, the Applicant amended it to remove these grounds. This was partly because the Respondent appeared to be in the property on the day that the notice was delivered. However, prior to this date, and subsequently, the information available suggested that the Respondent was not living there and the Sheriff Officers who attempted to serve the application on behalf of the Tribunal on 9 February 2021, reported that they had been unable to do so because the property appeared to be unoccupied, and neighbours had confirmed that the Respondent had not been seen since before Christmas 2020.
11. Following discussion, the Tribunal advised Ms McGugan that there did not appear to be sufficient information and evidence to support eviction grounds 14 and 15. Ms McGugan asked the Tribunal to allow the application to be amended to re-introduce grounds 10 and 11. The Tribunal noted that the Notice to leave

submitted with the application had included these grounds and confirmed that the application could be amended in terms of Rule 14 of the Procedure Rules. Thereafter the Tribunal determined that the application should proceed to a further CMD for service of the amended application on the Tribunal website and for the Applicant to lodge further evidence in support of the eviction grounds.

Case Management Discussion on 3 August 2021

12. A further CMD took place on 3 August 2021. The Applicant was again represented by Ms McGugan. The Respondent did not participate and was not represented. Prior to the CMD Ms McGugan lodged further documents including photographs of the door of the property with a pile of mail sitting in front of the door, emails from a neighbour of the Respondent dated 7 and 28 June 2021, text messages, an email to the Respondent and an email from a member of staff at the letting agency confirming that she had taken the photographs
13. Ms McGugan referred the Tribunal to the documents submitted and confirmed and an eviction order was sought on ground 10 of the 2016 Act. She advised that her colleague has attended at the property on a weekly basis for a number of weeks and taken the photographs which were lodged. These show the damaged door and mail lying in front of the door. She explained that the letter box has been sealed up from the inside and cannot be used to deposit mail. It is understood that the damage to the door occurred when the police forced entry to the property. She believes that they changed the locks to secure the property. The Applicant does not have a set of keys for the new lock. These might still be in the possession of the police.
14. Ms McGugan advised the Tribunal that she attempted to speak to all of the residents within the block of flats. Only one resident was willing to provide information. She referred to the two emails dated 7 and 28 June 2021 from that resident, confirming that the Respondent has not been seen at the property. She further advised that she received a telephone call from the Respondent's mother at the beginning of July 2021. The Respondent was with his mother but did not participate in the call. His mother demanded to know why the Applicant was continuing to collect rent for the property, when the Respondent was no longer living there. The caller became verbally abusive, and the call had to be terminated but she had stated that the Respondent was no longer living at the property prior to the call ending. After the call, Ms McGugan emailed the Respondent and asked him to confirm that he had moved out. He did not respond. She also sent text messages to his mother asking for a response to the email. This was also unsuccessful.
15. Ms McGugan advised the Tribunal that there are no rent arrears as the Universal Credit payments are still being received. She believes that the Respondent is single and was supposed to occupy the property on his own.

While he was in occupation, there were complaints of antisocial behaviour by him and his visitors.

Findings in Fact

16. The Applicant is the owner and landlord of the property.
17. The Respondent is the tenant of the property in terms of a private residential tenancy agreement dated 31 May 2018.
18. A notice to leave was given to the Respondent on 9 October 2021.
19. The Respondent is not occupying the property as his only or principal home.

Reasons for Decision

20. The application was submitted with a Notice to Leave together with a photograph of an envelope being placed through an open door. The photograph is signed and witnessed and states that the Notice was delivered to the property on 9 October 2020. Ms McGugan advised the Tribunal that the Notice was hand delivered on that date by a staff member who was accompanied by a colleague. The Notice states that an application to the Tribunal is to be made on four grounds, one of which is 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 13 November 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.
21. 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."

22. The Tribunal is satisfied, from the documents submitted by the Applicant, and the information provided by the Applicant's representative at the CMDs, that the Respondent has been absent from the property since December 2020. Prior to this date, he had not occupied the property as his only or principal home for a number of months, although was within the property when the Notice to Leave was delivered on 9 October 2020. The Tribunal notes that a local resident has confirmed that he is not currently living at the property and that the Applicant's representative was contacted by telephone by the Respondent's mother who confirmed that he no longer resides there. Regular visits to the property in the weeks prior to the third CMD appear to show the property as having been abandoned with unopened mail accumulating in front of the door. The rent account is not in arrears, but payments are being made by Universal Credit and not by the Respondent himself. The Sheriff officers who were instructed to serve the application on the Respondent in February 2021 were unable to do so as their enquiries established that he had not occupied the property since Christmas 2020. The Tribunal also notes that the locks at the property have been changed, possibly by the police after a forced entry. The Tribunal is satisfied that the Respondent is not currently occupying the property as his 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.
23. 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 at least eight months and that prior to December 2020, did not live full time at the property. The only contact from the Respondent since the Notice to leave was served has been a telephone call made on behalf of the Respondent which confirmed that he no longer resided at the property. The Respondent has provided no explanation for his failure to occupy the property, to the Applicant or the Tribunal. He has also been the subject of complaints of antisocial behaviour at the property when he previously resided there. The Tribunal is satisfied that it is reasonable that an eviction order be issued.
24. 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

25. The Tribunal determines that an eviction order should be granted against the Respondent.
26. 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.



Josephine Bonnar, Legal Member

3 August 2021

Date