



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/0067

Re: Property at 15 Brierfield Terrace, Aberdeen, AB16 5XT (“the Property”)

Parties:

Mr Geeon Tsang, Shandwick, Midmill, Kintore, Inverurie, Aberdeenshire, AB51 OXA (“the Applicant”)

Ms Mimi Mirela Hrisca, UNKNOWN UNKNOWN (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it is reasonable to make an eviction order in relation to the property in terms of Ground 10 of Schedule 3 of the 2016 Act (the tenant is not occupying the let property as the tenant’s home).

Background

1. This application is for an eviction order in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application was first lodged with the Tribunal on 11 January 2021. The application was accepted by the tribunal on 22 January 2021. The Application was lodged along with a related Application for civil proceedings (HPC.CV.21.0068).

Case Management Discussion

2. A Case management discussion was fixed for 9 April 2021 at 10 am for both applications. At the case management discussion the Applicant did not attend but was represented by Mr McKellar of Jackson Boyd Solicitors. There was no appearance by

or on behalf of the Respondent. Mr McKellar moved the Tribunal to proceed in her absence. The Tribunal noted that this application and the related civil application had been the subject of service by advertisement in terms of Rule 6A of the Tribunal Rules of procedure. Attempts by Sheriff officers to serve the Applications and Tribunal papers on the Respondent at the property had been unsuccessful, Sheriff Officers reporting that neighbours had never heard of the Respondent and had reported that a young foreign male had lived at the property until a short time before their visit in February 2021. In these circumstances the Tribunal was satisfied that appropriate notice of the case management discussion had been given by advertisement and was prepared to proceed in the absence of the Respondent.

3. At the case management discussion the Tribunal had sight of the application, a paper apart, a tenancy agreement, a Notice to Leave, a track and trace document in respect of the Notice to Leave, a Notice in terms of section 11 of the Homelessness et cetera Scotland Act 2003, an email to Aberdeen City Council intimating the section 11 Notice, a written statement of the Applicant, a number of photographs, a written statement of a neighbour and an email sent by the letting agent dealing with the property to the Applicant dated 30 July 2020. The Tribunal also had sight of an email from Sheriff officers dated 5 February 2021 indicating what they found when they attempted to serve the application and associated papers from the Tribunal at the property. The Tribunal also had sight of an email forwarded by the Applicant's solicitor dated 21 January 2021 which appeared to be from contractors carrying out works on the property and indicating that there was damage to the property.

4. Mr McKellar advised the Tribunal that the Applicant had entered into a private residential tenancy with the Respondent at the property with effect from 23 April 2019 and a letting agent had dealt with the letting and management of the property on behalf of the Applicant. In the course of dealing with rent arrears which started to accrue at the property in December 2019, the letting agent received emails from someone who claimed to be the Respondent's son indicating that the Respondent was not living at the property and had moved abroad. The Applicant had himself attended at the property in October 2019 to facilitate entry to the property of a gas engineer to carry out a gas inspection. Whilst he was there he met with a lady whom he described to be in her fifties or sixties who did not speak English but he assumed was his tenant.

5. E mail correspondence sent by the letting agent was answered from the email address given by the tenant in the tenancy agreement but it was not always clear who was engaging with the letting agents, the tenant or her son or someone claiming to be her son.

6. The Applicant next visited the property in August 2020 and found that there was no one present and the beds had not been slept in. Although there was food in the fridge the electricity had been switched off at the mains and there was damage to the property noted at that time. Although there were items of property at the address, some

of these were boxed up, and the Applicant had formed the view that the property was not being occupied on a full-time basis.

7. The Applicant spoke with a neighbour whose position was that she had only once seen a female at the property between April and October 2019. She advised the Applicant there appeared to be two males living at the property, one of whom had moved in sometime early in 2020. The neighbour advised the Applicant that whoever was living in the property, they did not answer the door to deliveries and she frequently took in parcels for them. This neighbour also indicated that those living at the property would come and collect the parcels from her shortly after the deliveries had been made. This neighbour had formed the view that at least one of the males was moving out of the property in August 2020 as one had approached her for removal boxes which were outside her door.

8. From the emails received by the letting agent the Applicant formed the view that whoever was living at the property it was not the tenant. The Applicant does not know if the woman he saw the property in October 2019 was the tenant as the management of the agreement had been dealt with by letting agents on his behalf. It was not known if one of the young males living at the property was the Respondent's son but Mr McKellar advised the Tribunal that at no time had any written permission been given for additional persons to live at the property nor had any sub lease been authorised by either the letting agent or the Applicant landlord.

9. Mr McKellar also advised the Tribunal that the Applicant had discovered dry rot at the property having been notified of this towards the end of 2020 by an agent acting on behalf of a neighbour. This appeared to have arisen as a result of a leak at the property and the kitchen and bathroom floors required repair. This issue was never raised at any time by the tenant or any other person staying at the property.

10. At some stage early in 2021 police were called to the property due to concern from a neighbour that windows at the property had been left open during bad weather and there was no sign of movement within. Police attended, forced entry to the property and found no one within it. Police secured the property with a padlock and left a note that the key to the padlock could be collected from police. Somebody did collect the key although it is not known who that was.

11. Early in March 2021 a neighbour saw property being loaded into a van and on 9th March 2021 items of property were left on the landing and then removed at the let property. One of the young men living in the property had told neighbours that he would be leaving in the week of 8th March 2021. At this time the Applicant could not access the property as he did not have a key for the padlock which had been used to secure the property by police. The Applicant was advised by one of the neighbours at the property that the padlock and latch had been removed from the property door on 18 March 2021. As the property was insecure the Applicant attended at the property. He entered the property to see if anyone was in residence and took

photographs which were produced to the Tribunal. These showed that all belongings had apparently been removed other than some items with little value such as DVDs books and paperwork. The Tribunal also had sight of a photograph taken by a neighbour showing property on the landing in early March 2021 prior to its being removed.

12. The Tribunal questioned whether an eviction order was necessary since the Applicant appeared to have possession of the property. Mr McKellar pointed to the fact that the tenant appeared to have ceased to occupy the property at least a year before, had allowed a male, possibly her son, to occupy the property, another male whose identity was unknown had also later occupied the property, none of which had been done with the landlord Applicant's permission. Given the disappearance of the tenant and the fact that her current whereabouts were unknown he submitted that it was perfectly possible that she could reappear as the tenancy agreement was ongoing and seek to occupy the property again. He submitted on this basis that the order was necessary.

13. The Notice to Leave served by recorded delivery post at the property in August 2020 was also the subject of discussion at the Tribunal. In particular the Tribunal considered the date given in part 4 of the notice as the earliest date when application to the Tribunal could be made after expiry of the notice. That day was noted as 14 September 2020. As the Notice to Leave was served by recorded delivery post, section 62 (5) of the 2016 Act provides that for the purposes of stating the date on the notice to leave in Part 4, it is to be assumed that the tenant will receive the notice 48 hours after it is posted. Accordingly in terms of this application the application is deemed to have been received by the tenant on 14 August 2020. The 28 day notice period required for Ground 10 expired on 11 September 2020 and accordingly the earliest date at which an application could be made to the Tribunal would have been 12 September 2020. In this application the date given was some two days later ie 14th September 2020. The question arose as to whether this incorrect date which allowed two further days' notice of the earliest date when an application could be made was fatal to the validity of the Notice to Leave. After discussion, the Tribunal took the view that this error in the date did not affect the validity of the notice and the reasons for this are discussed below.

14. The Tribunal was satisfied having heard all of the information presented by Mr McKellar in support of the application that the tenant had not occupied the property as her home for a considerable period of time and Clause 12 of the tenancy agreement specifically prohibited subletting the let property or any part of it, taking in lodgers or assigning the tenant's interest or giving up to another person possession of the let property in any part of it without prior written permission from the landlord. The property was not being occupied by any person to whom a sub tenancy had been lawfully granted. There was no information before the Tribunal to suggest that either the

landlord or the letting agent his behalf had received intimation of any requirement for repairs to the property at any time during the tenancy which might suggest that the landlord was in breach of his obligations in terms of the Housing (Scotland) Act 2006 and the requirement that the property meets the repairing standard at all times during a tenancy. The appropriate notices required to be served for the Tribunal to consider an Eviction order had been properly and timeously served for this application.

15. The Tribunal came to the view having considered all of the circumstances before it that the eviction ground had been made out and that it was reasonable to grant an eviction order at the let property.

Findings in Fact

16. The applicant and the Respondent entered into a private residential tenancy at the property with effect from 23rd April 2019.

17. A letting agent dealt with the tenancy at the property and the tenant, the Respondent signed the tenancy agreement on 19 April 2019.

18. When arrears of rent started to accrue at the property late in 2019 the letting agent instructed by the Applicant was advised that the tenant, the Respondent had ceased to occupy the property, had moved abroad and that a young man who may have been her son was living there.

19. A neighbour living near to the property advised the Applicant that since the start of the tenancy in April 2019 the property had been occupied by at least one young male and subsequently two such males. This neighbour had seen a woman at the property only once between April and October 2019.

20. From August 2020 until March 2021 all reports of occupation at the property suggested two young men were living there.

21. In early March 2021 the occupants of the property appeared to move out leaving the property empty except for a few items of low value.

22. The Respondent, the tenant in terms of the tenancy agreement has not occupied the property at all at least since October 2019.

23. When the Letting agent became aware that the Respondent had ceased to occupy the property a Notice to Leave was served in August 2020 at the last known address for her which was the property address.

24. Neither the Applicant nor the letting agent authorised to act for him granted written permission for a sub tenant or sub tenants or for any additional persons to live at the property or to take occupation of it during the period of the tenancy.

25. At no time during the tenancy and up to the date of the case management discussion was the Applicant or his letting agent ever advised of the need for repair which might have suggested that the Applicant was in breach of his duties regarding the repairing standard.

26. Dry rot at the property, found late in 2020 requires repair but the Applicant was never made aware of this by the Respondent or any occupant of the property and it appears to have been the result of a leak which was not reported to the Applicant or the letting agent acting on his behalf.

27.As at the date of the case management discussion the let property is not occupied by the tenant or any lawful sub tenant as their only or main home.

28.A valid Notice to Leave was properly and timeously served at the Respondent's last known address.

29.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to the local authority in respect of this application.

Reasons for Decision

30.The Tribunal was satisfied on the balance of the information before it that the eviction ground was established here. All the information suggested that the tenant had moved away from the property early on in the tenancy and allowed another person, possibly her son to move into the property without permission of any kind. The let property is not being occupied by the tenant as her only or principal home nor is it being occupied by anyone to whom a sub tenancy has been lawfully granted. Nothing in the information before the Tribunal suggested that the failure to occupy the property as the only or main home of the Respondent was in any way attributable to a breach of the landlord's duties in terms of the repairing standard under the Housing (Scotland) Act 2006.

31.The Tribunal considered the Notice to Leave submitted along with the application. It considered that the date entered in part 4 of the Notice to Leave, being the earliest date on which the Applicant can apply to the tribunal for an eviction order after the expiry of the notice period, was incorrect being some two days after the correct date. The Tribunal considered whether this was an error that affected the validity of the document. The Tribunal considered the terms of section 73 of the 2016 Act which allows for minor errors which don't "affect the effect of" the form. In the case of a Notice to Leave with a date in part 4 that is a date later than is required by statute then it appears that the tenant has been given more than the relevant statutory period to decide whether here she wants to leave the property. The Tribunal was therefore of the view that the notice to leave was validly formed in this application and the error in the date in part 4 was a minor error as referred to in section 73 of the Act.

32.In considering its decision as to whether it is reasonable to grant the order the Tribunal took account of all of the circumstances before it, the approach set out in ***Barclay v Hannah 1947 SC 245***. In this application all the information before the Tribunal suggested that the tenant had ceased to occupy the property very early on in the tenancy and had allowed some others simply to use the property for their own purposes. Any others who had taken occupation of the property had not been given permission to take on any sub - tenancy of the property or any kind of occupation of it. There was no suggestion that the landlord had breached the repairing obligation rendering the property not fit to be occupied as the tenants only or principal home. The Tribunal was therefore satisfied that the terms of Ground10(2)(a) and (b) were satisfied and in terms of Ground 10(2) (c) it is reasonable to grant an order on the basis of these facts.

Decision

The Tribunal determined that it is appropriate to make an eviction order against the Respondent and in favour of the Applicant in relation to the property in terms of Ground 10 of Schedule 3 of the 2016 Act (the tenant is not occupying the let property as the tenant's home).

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.

Valerie Bremner

Legal Member/Chair

Date

9.4.21