



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/21/0903

Re: Property at Flat 2/2 46 Corlaich Avenue, Glasgow, G42 0DS (“the Property”)

Parties:

Mr Stephen Fox, Mrs Angela Fox, 56 Monteith Drive, Clarkston, Glasgow, G76 8NY (“the Applicants”)

Mr Steven Lyons, Ms Nicola O'Hagan, Flat 2/2 46 Corlaich Avenue, Glasgow, G42 0DS (“the Respondents”)

Tribunal Members:

Joel Conn (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicants 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 Applicants to the Respondents commencing on 1 June 2018.
2. The application was dated 9 April 2021 and lodged with the Tribunal on or around 14 April 2021.
3. The application relied upon a Notice to Leave dated 20 August 2020 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondents by Recorded Delivery (“Signed For”) post on 21 August 2020 in accordance with the provisions of the PRT. The Notice relied upon Grounds 11 and 12 of Schedule 3 Part 1 of the 2016 Act, being that “the tenant

has failed to comply with an obligation under the tenancy” and “the tenant has been in rent arrears for three or more consecutive months” respectively. In regard to Ground 11, the body of the notice referred to “unauthorised changes” made “including removal of a fireplace and removal of carpets”. In regard to Ground 12, the body of the notice referred to arrears of £4,950 being unpaid rent of nine months from 1 December 2019 to 1 August 2020. The rent due under the PRT is £550 per month due in advance on the 1st of each month. The Notice intimated that an application to the Tribunal would not be made before 24 February 2021.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Glasgow City Council on 6 April 2021 was provided with the application. Evidence of the Applicants providing pre-action protocol information to the Respondents by text and by email on 4 December 2020 was further provided in the application papers.

The Hearing

5. On 15 June 2021 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicants’ agent, Hamaad Khalid, Solicitor, of Lyons Davidson, solicitors.
6. There was no appearance for the Respondents. We were informed that no contact had been received from the Respondents for some time. The last contact was prior to January 2020 and attempts by the Applicants and their agents to make contact, in particular to arrange a gas safety inspection, had not been responded to since. We considered the evidence of intimation of the CMD and, having not commenced the CMD until around 10:10, we were satisfied to consider the application in the Respondents’ absence.
7. The Applicants’ agent confirmed that the application for eviction was still insisted upon. He stated that arrears had continued to accumulate and by 1 June 2021 stood at £10,450. (We note that this is 19 months’ rent in total.)
8. The Applicants’ agent was unaware of any application by the Respondents for benefits and did not believe there to have been any. He knew of no dependents living with the Respondents, nor any special adaptations of the Property for their use. He believed they remained in occupation (which was confirmed by the information we held on intimation of the CMD on 18 May 2021).
9. In regard to Ground 11, the Applicants’ agent had sparse information. He believed that one of the Applicants had attended at the Property some time prior to January 2020 and had noted the missing carpets and fireplace in the living room but there were no photographs of this. Neither of the Applicants had dialled into the CMD so no further information was available from them for our consideration.
10. No motion was made for expenses.

Findings in Fact

11. On 1 June 2018, the Applicants let the Property to the Respondents under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
12. In terms of clause 4 of the Tenancy Agreement, the parties agreed that hard copy by personal service or recorded delivery, or by email, could be used for communication of notices in terms of the Tenancy.
13. On 20 August 2020, the Applicants’ agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that they were in rent arrears for a period in excess of three consecutive months and detailing arrears at that date of £4,950.
14. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 24 February 2021.
15. The Applicants’ agent served a copy of the Notice to Leave on the Respondents by recorded delivery on 21 August 2020.
16. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 12 of Schedule 3 Part 1 of the 2016 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Glasgow City Council on the Applicants’ behalf.
18. The Applicants’ agent provided the Respondents with suitable pre-action protocol information by email and text on 4 December 2020.
19. As of 15 June 2021, the Respondents remained in arrears of rent in the amount of £10,450 which is the equivalent of 19 months’ of rent.
20. The Respondents do not claim to have paid any amount of the arrears remaining as at 15 June 2021.
21. The sum of arrears remaining as of 15 June 2021 is neither wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
22. On 18 May 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondents, providing the Respondents with sufficient notice of the CMD of 15 June 2021 and the details for dialling into the conference call.

Reasons for Decision

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondents.

24. Ground 12 of Schedule 3 to the 2016 Act (as temporarily amended) applies if:

(1) ...the tenant has been in rent arrears for three or more consecutive months. ...

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

25. The arrears information provided at the CMD clearly showed that Ground 12 was satisfied in regard to the length of arrears and amount outstanding. We require, in terms of the Act as temporarily amended, to consider the reasonableness of the application even in regard to such substantial arrears. We were satisfied that the Applicants' reasons for seeking eviction were reasonable given the increased amount and duration of the arrears. We had no information before us to suggest that it was unreasonable to evict the Respondents. The Respondent has provided no response or denial to the Applicants or Tribunal on these arrears. Further, given the lack of material communication by the Respondents with the Applicants, their letting or legal agents, or the Tribunal, there was no information available to us to suggest that the sum of arrears remaining as of 15 June 2021 was in any way a consequence of a delay or failure in the payment of a relevant benefit. We were satisfied to hold that there was no such relevant issue with benefits. In all the circumstances before us, we were satisfied that Ground 12 was well founded by the Applicants and reasonable to grant.

26. We were not yet satisfied, on the information provided, that Ground 11 was well-founded. Had we not found Ground 12 well-founded, we would have allowed a Hearing so as to have evidence from the Applicants as to the alleged unauthorised alternations. In the circumstances, it was not necessary for us to do so and we make no further comment as to whether or not unauthorised alternations have occurred at the Property or whether a breach of the Tenancy has occurred on this basis.

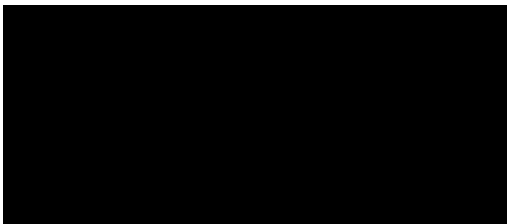
27. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

Decision

28. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 in normal terms further to ground 12 of Schedule 3 of that Act.

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.



Legal Member/Chair

15 June 2021

Date