



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/22/4218

Re: Property at 28 Mayfield Street, Glasgow, G20 9LR (“the Property”)

Parties:

Ms Brenna Tollin, 11/61 Hughes Avenue, Edithvale, VIC 3196, Australia (“the Applicant”)

Mr Clarence Sodiemye Ojewuyi, Miss Osakponmwen Precious Osayamwen, 28 Mayfield Street, Glasgow, G20 9LR; 28 Mayfield Street, Glasgow, G20 9LR (“the Respondents”)

Tribunal Member:

Neil Kinnear (Legal Member) and Melanie Booth (Ordinary Member)

Decision

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

Background

[1] This was an application for an eviction order dated 21st November 2022 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant sought an eviction order in relation to the Property against the Respondents, and provided with her application copies of the private residential tenancy agreement, notice to leave with proof of service, section 11 notice with proof of service, and various supporting documents.

[3] All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, the *Coronavirus (Scotland) Act 2020*, and the *Cost of Living (Tenant Protection) (Scotland) Act 2022* (hereinafter referred to as “the 2022 Act”), and the procedures set out in those Acts appeared to have been correctly followed and applied.

[4] The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 22nd February 2023, and the Tribunal was provided with the executions of service.

[5] The Respondents submitted written representations in advance of the Case Management Discussion, in which they outlined their personal circumstances and explained the nature of their breach of the tenancy agreement in connection with the reasonableness of the Tribunal granting the order sought.

[6] A Case Management Discussion was held at 10:00 on 30th March 2023 by Tele-Conference. The Applicant did not participate, but was represented by Miss Pavo, letting agent. The Respondents participated, and were not represented.

[7] The Respondents confirmed that they took no issue with the legal procedures followed by the Applicant. They accepted that all the paperwork had been correctly prepared. However, the Respondents’ position was that it was not reasonable for the Tribunal to grant the order sought due to their circumstances as more fully set out in their written representations.

[8] Put short, they accepted that they breached a provision of the lease agreement by letting out a room in the Property on Airbnb without the landlord’s consent. However, they did so largely as a result of one of the Respondents losing their job, in order to generate additional income. On realising their breach, they had ceased letting out any rooms, and were willing to undertake that they would not do so again.

[9] They also referred to their personal family circumstances, and the effect that eviction would have upon them and their family.

[10] Miss Pavo advised the Tribunal that the Applicant resides in Australia. However, she was now intending to return to Scotland to live in the Property due to financial hardship. She would most likely shortly be bringing a further application for an eviction order on those grounds in the near future. She did not seek to amend this application.

[11] The only issue between the parties was as to the reasonableness or otherwise of the Tribunal granting the order sought. That was a question left to the discretion of the Tribunal, which the Tribunal would require to hear evidence upon in order for it to resolve.

[12] In particular, the Tribunal would need to hear from the Applicant regarding her circumstances and reasons for wishing to end the tenancy, and the consequences for her if the Tribunal did not grant the order sought. The Tribunal would also need to hear from the Respondents in more detail regarding their circumstances and the impact upon them and their family if the Tribunal granted the order sought.

[13] For those reasons the Tribunal set a Hearing, and advised the parties about the procedures involved in that. The parties and the Tribunal agreed that a face to face in person hearing should take place, but that the Applicant participate in that by way of telephone due to her being currently resident in Australia.

Hearing

[14] A Hearing was held at 10:00 on 21st 2023 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant participated by telephone, and was represented by Miss Pavo, letting agent. The Respondents participated, and were not represented.

[15] The Tribunal heard evidence from the Applicant and from both Respondents. That was in relatively short compass, and concerned only the question of the reasonableness of granting the order sought.

Findings in fact

[16] Evidence was led by both parties, all of which was essentially uncontested and accepted by both parties. After hearing that evidence, the Tribunal found in fact:

- 1) That the Respondents rented a property in the same street as the Property commencing 2013.
- 2) That the Respondents moved to the Property on 1st May 2019, which was located a few doors away from their previous property.
- 3) That the First Respondent was the main income source for the family. He lost his employment two months after moving in to the Property.
- 4) That as a result of the loss of the First Respondent's income, and in order to have sufficient money to pay the rent, the Respondents rented out a bedroom in the Property on AirBnB on short term bases (a night or two). They did so after learning from friends and relatives that this was an opportunity to generate income to assist with paying their rent.
- 5) That the Applicant became aware that the Respondents were letting out a room on AirBnB in or around October 2022.
- 6) That the Applicant was extremely upset to learn that the Respondents were generating income from the Property by letting out a room on AirBnB.
- 7) That the Applicant's representative notified the Respondents that letting out any part of the Property was a breach of the tenancy agreement after the Applicant became aware of the Respondents doing so.
- 8) That the Respondents were unaware that what they were doing was a breach of clause 12 of the tenancy agreement without receiving the prior written permission of the Applicant.
- 9) That the Respondents immediately apologised for sub-letting a room in the Property when they became aware that this was not allowed in terms of the tenancy agreement, removed themselves from AirBnB, and did not thereafter sub-let any part of the Property.
- 10) That the Second Respondent is a mental health support worker. She walks to work from the Property each day.

- 11) That the Respondents are settled in the street where the Property is located. They have lived in that street for ten years.
- 12) That the Respondents' eldest daughter is commencing primary school at the local primary school in August 2023. She will lose her place at the school if the Respondents have to leave the catchment area.
- 13) That the Respondents' younger daughter is settled in a local nursery less than 5 minutes' walk from the Property.
- 14) That the Respondents have made thorough enquiries to see what other property they might rent in the area without success. They have been unable to find any alternative accommodation in a similar price range for rent in the area, and have found no public sector accommodation available in the vicinity.
- 15) That the Respondents have apologised to the Applicant (including at the Hearing), and explained that they did not realise that their actions were a breach of the tenancy agreement. They have also offered to agree to an increase in the rent paid, standing their long-term intention to remain in the Property and to reflect the value they place in remaining there.
- 16) That the First Respondent has obtained new employment from the start of July 2023, which will generate sufficient income to maintain payment of the rent of the Property and any agreed increase to that rent between the parties.
- 17) That other than her distress and irritation at the Respondents' sub-letting of the Property, the Applicant has suffered no financial or other prejudice in consequence of the Respondents' actions. The Respondents have otherwise been good tenants and complied with the tenancy agreement.

Submissions

[18] Miss Pavo submitted that was reasonable in all the circumstances for the Tribunal to grant the order sought.

[19] The Respondents submitted that it was not reasonable in all the circumstances for the Tribunal to grant the order sought.

Statement of Reasons

[20] In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act") as amended by the *Coronavirus (Scotland) Act 2020*, the 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.

[21] Para 11 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has failed to comply with an obligation under the tenancy. The Tribunal may find that this ground applies if (1) the tenant has failed to comply with a term of the tenancy, and (2) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

[22] The Tribunal was satisfied that ground 11 had been established. The tenant failed to comply with Clause 12 of the tenancy agreement by subletting the Property, taking in a lodger, or allowing another person to start living in the Property without seeking the permission of the Applicant.

[23] The Tribunal accepted both parties as entirely credible and reliable. There was no real dispute between the parties regarding the facts of the case.

[24] The Tribunal would note that the relevant legislation is entirely silent concerning what factors it should consider in assessing whether it is reasonable to grant an order for possession, and it is not aware of any decisions of the Upper Tribunal as yet providing guidance on this issue.

[25] In the absence of any such guidance, it appeared to the Tribunal that it required to consider all of the circumstances including the potential effects of granting or refusing the order sought on the parties, and carrying out a balancing exercise in reaching its decision.

[26] In all the circumstances, the Tribunal was persuaded having regard to the competing interests and circumstances of the parties, that it was not reasonable for the Tribunal to issue an order for possession.

[27] The Applicant has suffered no real prejudice as a result of the Respondents' admitted breach of clause 12 of the lease agreement other than distress and irritation.

[28] By contrast, the Respondents unknowingly breached the agreement with the intention of supplementing their income in order to pay the rent after the First Respondent lost his employment. Upon being advised that this was a breach of the agreement, the Respondents immediately apologised and ceased sub-letting the Property.

[29] The Respondents have otherwise been excellent tenants of the Property. If the Tribunal were to grant the order sought, it would result in the Respondents losing a cherished home for them and their children, the loss of their friends and neighbours in the area, the loss of a primary school placement for their elder child, the loss of a nursery place for their younger child, and the loss of a short commute for the Second Respondent to her place of work.

Decision

[30] In these circumstances, the Tribunal refused to make an order for possession of the house let on the tenancy as sought in this application, upon the basis that it was not reasonable in all the circumstances to do so.

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.

N. C. Kinnear

21st of July 2023

Legal Member/Chair

Date