



**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**

Chamber Ref: FTS/HPC/EV/23/1711

Re: Property at 98 Buccleuch Street, (Flat 12), Glasgow, G3 6NS (“the Property”)

Parties:

Taylor Properties (Glasgow) Ltd, 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)

Mr Tomas Robertson, 98 Buccleuch Street, (Flat 12), Glasgow, G3 6NS (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 98 Buccleuch Street, (Flat 12), Glasgow, G3 6N under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 26 May 2023, the Applicant’s letting agent applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for an order for repossession under Rule 109 of the First-tier

Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 3 March 2023, a Notice to Leave dated 18 April 2023 an email dated 1 May 2023 from the Respondent to the Applicant’s Letting Agents, excerpts from Air B’N’B 13 February 2023 Glasgow City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 dated 26 May 2023.
3. On 26 June 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 8 August 2023, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 8 September 2023. The Respondent required to lodge written submissions by 29 August 2023. This paperwork was served on the Respondent at the Property by Stuart Sinclair, Sheriff Officer, Aberdeen on 10 August 2023 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with a CMD on 8 September 2023 by way of teleconference. Ms McKendrick from Tay Lettings appeared for the Applicant. There was no appearance by or on behalf of either Respondent despite the teleconference starting 5 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. Ms McKendrick moved the Tribunal to grant an Order for eviction. She referred to clause 12 of the tenancy agreement which prohibited subletting without the prior written permission of the Landlord. She advised the Property was being advertised on Air B’n’B. This had come to their attention after the first inspection of the Property on 14 April 2023. The tenancy had started on 3 March 2023. She explained that they would always carry out a first inspection after the start of the tenancy. On 14 April 2023 during the inspection, the inspection clerk noticed that the furniture was completely different from what was shown in the check in inspection at the start of the tenancy. Ms McKendrick had forwarded copies of the two reports to the Tribunal for their consideration. After the inspection on 14 April 2023, they did a bit of research and found the Property being advertised on Air B’n’B. They then served the Notice to Leave on 18 April 2023. The Respondent emailed on 1 May 2023 to advise he would vacate the Property on 30 September 2023. They have had no further contact with the Respondent. Ms McKendrick confirmed the Property was still advertised on Air B’n B.

Reasons for Decision

7. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the Private Housing (Tenancies) (Scotland) Act 2016.
8. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 11 (breach of tenancy).
9. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
10. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 11 is 28 days.
11. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondent he is in breach of the tenancy by subletting the Property on Air B'n'B. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 19 May 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 18 April 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
12. The Tribunal considered the issues set out in the application together with the documents lodged in support, including the tenancy agreement, the screen shots from Air B'n'B, the two inspection reports, the Notice to Leave, the Respondent's email of 1 May 2023 and the notice in terms of the Homelessness etc (Scotland) Act 2023 served on Glasgow City Council on 26 May 2023. Further the Tribunal considered the submissions made by Ms McKendrick.
13. The Tribunal noted that the Respondent had not disputed the application. It appeared to the Tribunal that the Respondent was in breach of Clause 12 of his tenancy agreement. He was not using the Property as his only or principal home and was advertising it for let on Air B'n'B. In the circumstances the Tribunal considered it was reasonable to evict.

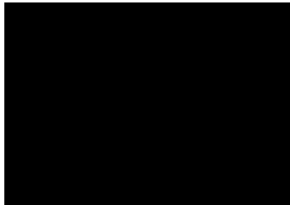
14. In the circumstances the Tribunal considered Ground 11 of Schedule 3 of the 2016 Act had been established and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

15. The Tribunal granted an order for repossession. The decision of the Tribunal was 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.



8 September 2023

Legal Member

Date