



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/21/0011

Re: Property at 20 Croftbank Gate, Bothwell, Glasgow, G71 8AN (“the Property”)

Parties:

Ms Nancy Galloway, C/o Harper MacLeod LLP, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Applicant”)

Mr Robert Kirkwood, HMP Barlinnie, 81 Lee Avenue, Glasgow, G33 2QX (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.

Background

1. By application dated 29 December 2020 the Applicant’s representative Harper McLeod, Solicitors, Edinburgh applied to the Tribunal for an order under Ground 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) seeking the eviction of the Respondent from the property. The Applicant’s representatives submitted a copy of the tenancy agreement, copy Notice to Leave, Copy Section 11 Notice and the Title Sheet for the property in support of the application.
2. By Notice of Acceptance dated 26 January 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.

3. Intimation of the Case Management Discussion was given to the Applicant's representatives by post on 5 February 2021 and to the Respondent by Sheriff Officers on 8 February 2021.
4. The Applicant's representatives submitted further written representations by email on 8 March 2021. The Respondent did not submit any written representations.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 10 March 2021. The Applicant attended in person and was represented by Mr Alastair Johnston from the Applicant's representatives. The Respondent did not attend and was not represented. The Tribunal on being satisfied that the Respondent had been given proper intimation of the Case Management Discussion determined to proceed in his absence.
6. The Tribunal ascertained from Mr Johnston that there had been no communication from the co-tenant Ms Barton and that as she had not responded to an email sent to her which had indicated that no response would be deemed to be confirmation that the tenancy had been terminated as far as it applied to her it was to be assumed that was her position. Mr Johnston also pointed out that the application had only been raised against the Respondent and not Ms Barton.
7. The Applicant confirmed to the Tribunal that she had entered into a Private Residential Tenancy agreement with the Respondent and Ms Barton that had commenced on 25 September 2019 at a monthly rent of £2950.00. She went on to say that following an incident in September 2020 that had resulted in the Respondent being arrested she had served a Notice to Leave on the Respondent under Ground 14 of Schedule 3 of the 2016 Act. The Notice to Leave had been sent by Recorded Delivery post to the Respondent at H.M.Prison Barlinnie on 13 October 2020 and signed for on 15 October 2020.
8. The Applicant went on to say that she had been advised by D.I. Alan Macdonald of the Domestic Abuse Unit, Police Scotland, that the Respondent had been arrested following an incident at the property on 21 September 2020. She said she had been told he was facing charges of domestic abuse but in addition he was facing other new charges of a serious nature and had also been returned to prison to serve the remainder of a sentence having previously been released on licence. He had about six months of that sentence still to serve. The Applicant advised the Tribunal that the domestic abuse incident had been given the police reference 09/04 of 21/09/20.
9. The Applicant advised the Tribunal that following the Respondent's arrest friends of the Respondent had changed the locks at the property and sometime in December 2020 the Respondent's brother had attended at the property and removed all of the Respondent's belongings. The Applicant said that the Respondent's brother had apparently told the Applicant's letting agents,

Property Angels that he would hand back the keys to the property but had never done so. The Applicant also advised the Tribunal that the police had attended at the property and forced open the door to allow Ms Barton to remove her belongings from the property and had caused damage to the door of the property.

10. The Applicant advised the Tribunal that she had been contacted by the neighbours at number 14 on a couple of occasions as they had been severely affected by the incident and had suffered from panic attacks as a result.
11. The Applicant said that she had been told by another police officer that it was unlikely that the Respondent would be released from prison in the near future as he was apparently facing some 20 charges of a serious nature. The Applicant also advised the Tribunal that the Respondent was currently due rent for the period from August 2020 amounting to £20600.00
12. Mr Johnston submitted to the Tribunal that the terms of Ground 14 of Schedule 3 having been met in that it had been established that the Respondent had behaved in an anti-social manner the order should be granted.

Findings in Fact

13. The parties and Ms Kelly Barton entered into a Private Residential Tenancy Agreement that commenced on 25 September 2019 at a rent of £2950.00 per calendar month.
14. Police were called to an incident of domestic abuse involving the Respondent and Ms Barton on 21 September 2020 following which the Respondent was arrested. An incident number 09/04/21/09/20 has been assigned to the incident.
15. The Applicant has been advised by Police Scotland that the Respondent is facing charges of domestic abuse as well as other serious charges.
16. The Respondent is currently an inmate in H.M. Prison Barlinnie. His date of release is unknown.
17. Ms Barton has removed herself and her belongings from the property.
18. The Respondent's brother attended at the property and removed the Respondent's personal belongings.
19. A Notice to Leave was sent to the Respondent by Recorded Delivery post on 13 October 2020.
20. A Section 11 Notice was intimated to South Lanarkshire Council by email on 24 December 2020.

Reasons for Decision

21. The Tribunal noted that despite having been given an opportunity to submit written representations and to attend the Case Management Discussion the Respondent had not done so. The Tribunal also noted the information provided by the Applicant that the Respondent's brother had attended at the property in December 2020 and removed all of the Respondent's personal belongings and had indicated that the keys to the property were to be returned to the letting agents. Although the keys had not been returned it did appear to the Tribunal that the Respondent's actions and those acting on his behalf were consistent with there being no opposition on the part of the Respondent to the application. The Tribunal also noted that the Respondent was no longer paying rent for the property.
22. The Tribunal was satisfied from the written submissions that there was a Private Residential Tenancy agreement in place between the parties and Ms Barton and that it had commenced on 25 September 2019 at a monthly rent of £2950.00. The Tribunal was also satisfied from the documents produced and the oral submissions that a valid Notice to Leave had been served on the Respondent and proper intimation of the proceedings had been given to South Lanarkshire Council.
23. The Tribunal was satisfied it had been provided with sufficient information to allow it to make a decision without a hearing. The Tribunal was also satisfied from the oral submissions of the Applicant and her representative and the written submissions on her behalf that the Respondent had behaved in an anti-social manner as a result of the incident on 21 September 2020. The Tribunal was further satisfied that after taking into account all of the surrounding circumstances and balancing the interests of both parties and in light of the amendment to the 2016 Act imposed by the Coronavirus (Scotland) Act 2020 that it was reasonable that the order sought should be granted.

Decision

24 The Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

Graham Harding

Graham Harding
Legal Member/Chair

10 March 2021
Date