

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/20/0677**

**Re: Property at 15/2 York Place, Edinburgh, EH1 3EB (“the Property”)**

**Parties:**

**Breezy Spring Ltd, 17 The Esplanade, St Helier, JE2 3QA (“the Applicant”)**

**Mr Abdalla Khalifa, 15/2 York Place, Edinburgh, EH1 3EB (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Tony Cain (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

This matter called for a Hearing by conference call at 10am on 4 November 2020. A previous Hearing had been postponed on account of uncertainty regarding whether the Respondent had been properly notified of the details of that Hearing.

The Tribunal had ordered that today’s Hearing should be served on the Respondent by Sheriff Officers to make certain that the Respondent was properly notified of the details of today’s Hearing and the arrangements for joining the conference call.

Sheriff Officers had thereafter intimated the new Hearing date on the Respondent at the Property on 14 October 2020 with the time of the Hearing and information about how to join the conference call. Since that date, the Tribunal had received no further communication from the Respondent.

### **The Hearing**

When the Hearing commenced by conference call, the Applicant was represented by Ms Iwona Wolinska, of Rettie and Co, Edinburgh. There was an observer, Ms Victoria Sanderson also on the call with Ms Wolinska but not taking part. There was no appearance by or on behalf of the Respondent.

The Tribunal decided that it was fair to proceed in the absence of the Respondent as the details of the Hearing had been properly intimated to him and there was no valid reason not to continue in his absence.

### **Preliminary Matters**

The Tribunal noted that the owner of the Property and the Applicant as per the Application should be properly designated as Breezy Spring Ltd, 17 The Esplanade, St Helier, JE2 3QA, rather than the point of contact at the Company who is Mr Graham Sommerville and who until now has been listed as the Applicant rather than Breezy Spring Ltd in the previous Tribunal paperwork.

### **Basis of Application**

The Tribunal began by noting that the eviction grounds relied upon in respect of the Application were Grounds 11 (breach of the tenancy agreement) and Grounds 14 (anti-social behaviour) of Schedule 3 Part 1 of Private Housing (Tenancies) (Scotland) Act 2016.

These grounds are discretionary Grounds in that, if the Tribunal find them established, an Eviction Order may only be granted if the Tribunal consider it is reasonable to do so as per Grounds 11 (2) (b) and Grounds 14 (5) respectfully.

Accordingly, the Tribunal considered it necessary to hear evidence in order to make the appropriate findings in fact to allow the Tribunal to consider whether the Grounds were established and whether the making of any Eviction order was reasonable.

### **Conduct of the Hearing.**

Ms Wolinska confirmed she wished to give evidence in support of the Application and to speak to the various documents and photos that had been submitted along with the Application as evidence.

The Tribunal noted that there were three evidential issues to be addressed in respect of the Application. It was said that Grounds 11 was engaged on two counts in respect of two separate breaches of the tenancy agreement. These breaches were allegedly that the Respondent was not occupying the Property as his home and that he was not paying the rent timeously by the seventh of each month as demanded by the Tenancy. The third issue

was the allegation that Grounds 14 was engaged by the Respondent acting anti-socially or allowing others to act anti-socially at the Property.

It should be noted that The Application was not in terms of Grounds 10 “ *Not occupying let Property*” but instead was in terms of Grounds 11 on the basis of allegedly breaching the tenancy by not occupying the Property as his home as demanded by the tenancy. Grounds 11 requires a test of “reasonableness” whereas Grounds 10 does not.

The Tribunal decided to hear evidence regarding these three issues separately.

### **Evidence in support of the Grounds 11- not occupying Property as the Respondent’s home.**

1. Ms Walinska introduced herself as a Property Manager employed by Rettie & Co in Edinburgh. She had worked in this role for around 2 years and managed around 110 lettings for Rettie.
2. She had become the Property Manager for the Property itself on 12 March 2020. She had taken over management of the Property from a Dawn Pianosi at that time. As part of taking over responsibility for the Property she informed the Tribunal that she had discussed the case thoroughly with Ms Pianosi and comprehensively reviewed the relevant file. Ms Walinska described how she had carried out inspections of the Property.
3. On 2 October 2020, Ms Walinska inspected the Property and noted the Property was completely empty, all the beds were stripped, no food was in the cupboards or fridge, there were no personal belongings anywhere in the Property and there were no toiletries or any signs of the Property actively being lived in. The heating was however on “full blast” which seemed incongruous.
4. On 2 September 2020, Ms Walinska had also inspected the Property and noted that it was similarly empty of all personal belongings. There was no food, toiletries or anything to suggest the Property was being currently occupied. She did however discover three additional mattresses stored in the Property. There was also a mug of warm tea left seemingly abandoned on the dining table. This was odd as there was no other evidence of the Property being occupied.
5. Ms Walinska advised that she had emailed the Respondent requesting to inspect the Property again on 19 October 2020 but on 16 October 2020 received a quick reply by email from the Respondent stating “ *I cannot accept any inspection on 19 October.*”
6. Ms Walinska also stated that she considered it odd that in the entire time the Property had been let to the Respondent, there had not been any requests for maintenance by the Respondent. She gave evidence that this was completely unique within the 110 properties she managed and she managed no other properties were

there was not at least the odd request for maintenance issues of some description to be resolved.

7. Ms Walinska spoke to photographs contained within the Application which she advised had been taken by Dawn Pianosi and which showed the additional bedding stored in the Property.
8. Ms Walinska explained that when she visited the Property on 2 October 2020 there was also unwashed bedding placed in the washing machine which had the door open.
9. Ms Walinska also spoke to photographs showing bedding stored in downstairs cupboards and confirmed that Ms Pianosi had taken these photos. The bedding did not come with the Property which was let unfurnished.
10. Ms Walinska stated that she believed that the Respondent was not living in the Property and instead had set it up for multiple occupiers to use instead.
11. She also advised that there was no mail on the door mat although on one inspection she saw a letter had been received which appeared to relate to a TV Licence. Ms Walinska pointed out that there were no houseplants in the Property despite the Respondent having stated this in earlier correspondence with the Tribunal.
12. Ms Walinska could not confirm where she said the Respondent was actually living, but she did state that it was likely to be in the EH16 post code area. She said this was likely because the Respondent had always paid the rent by phoning up Retties and making payment by card. He was asked what the postcode was for the card and he had stated it was "EH16". Ms Walinska knew this because she had discussed it with colleagues in the office.
13. Ms Walinska also referred to complaints made to her by the factor to the Property who pointed out that a parcel addressed to the Respondent had been left by the stairwell for some time without being collected around the time of June 2019. Ms Walinska stated that the parcel ultimately was not collected for a period of between 6-8 weeks.

#### **Evidence in support of the Grounds 11- not timeously paying rent.**

1. Ms Walinska spoke to a rent statement submitted with the Application which appeared to show that the Respondent routinely paid his monthly rent between 14 and 21 days late every month. Ms Walinska also stated that the Respondent had fallen into rent arrears and ceased making monthly rent payments since making a payment on 14 February 2020.

2. The Respondent then made a rent payment of £3,000.00 on 11 August 2020. This payment did not clear the arrears due and no further payments have been made received since and the arrears as at today's date is £7,384.00.

### **Evidence in support of the Grounds 14- anti-social behaviour**

Ms Walinska gave evidence regarding allegations of anti-social behaviour at the Property.

1. She referred to photos which she had been sent by a neighbour who wanted to complain about the fact that there was an Irn Bru bottle left on a stairwell and tubs of ice cream left on a windowsill outside the Property. The ice cream then appeared to have fallen down creating a mess. There were photos of these incidents taken by a neighbour and similarly sent to Ms Walinska.
2. A neighbour had also complained to Ms Walinska that there had been a party at the Property on the weekend of 27-29 September 2019 which had created a disturbance. The neighbour had challenged the occupants the following evening and had reported to Ms Walinska that they told her they were just Air B'n'B guests.
3. Ms Walinska spoke to other complaints made by neighbours about groups of guests staying in the Property. She referred to receiving complaints from neighbours also of *"a mature couple coming and going from the Property"* on 3-4 October 2020 and 4 females leaving the Property on 27 October 2020.
4. The female guests had advised the neighbour who had complained to Retties that they had booked the Property on either Air B'n'B or Booking.com.
5. The Tribunal considered that these incidents were relevant to the issue of whether the Respondent was occupying the Property as his home as the evidence was that unauthorised third parties were being accommodated in the Property.

### **Assessment of the Evidence.**

1. The Tribunal considered Ms Walinska's evidence to be balanced and well informed. She clearly had a good knowledge of the issues involved and didn't appear to exaggerate or embellish her understanding of the facts. There was nothing to suggest she was being anything other than honest and forthcoming.
2. The Tribunal noted that the Respondent had previously submitted written evidence to the Tribunal denying the allegations. Although the Respondent was not present, the Tribunal did have a regard to his previous written representations.
3. The Tribunal preferred the evidence given by Ms Walinska. It was logical and coherent and she was asking the Tribunal to come to reasonable conclusions based on her evidence. By contrast, the Tribunal noted that in correspondence with the

Tribunal, the Respondent had at one point stated in an email to the Tribunal dated 4 August 2020:

*“ It is no wonder that an efficient, environmentally and health conscious professional like me will have no waste policy, and thus will only buy what I eat in-between my assignments “ I mainly eat outside. will not let food rotten at home. Will clean my home professionally and regularly. Will have at home only the articles I use and need. I admire my lifestyle and I encourage people to adopt it to minimise un-necessary waste.”*

4. The Tribunal considered this written representation by the Respondent to be disingenuous and almost impossible to believe in light of the evidence presented. The Tribunal concluded that the Respondent had not been candid in his representations with the Tribunal.
5. Having heard from Ms Walinska and considered the Application and representations, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. The parties entered into a Private Residential Tenancy Agreement in respect of the Property.
- II. The Applicant is the Landlord and the Respondent is the Tenant.
- III. The date of entry was 7 June 2018.
- IV. The monthly rent due was £1,295 to be paid by the 7<sup>th</sup> of each month.
- V. Condition 7 of the tenancy provides that

#### *7. OCCUPATION AND USE OF THE LET PROPERTY*

*The Tenant agrees to continue to occupy the Let Property as his or her home and must obtain the Landlord’s written permission before carrying out any trade, business or profession there.*

- VI. The Respondent has breached this term by not occupying the Property as his home.
- VII. The Respondent has no personal belongings in the property or any possessions consistent with day to day living including food, washing, or clothing.
- VIII. The only items housed in the Property is extensive additional bedding and other mattresses that were not supplied when the Property was let.

- IX. It is highly likely that the Respondent has been subletting the Property out to third parties on short term holiday lets.
- X. In June 2019, a package which was addressed to the Respondent lay uncollected on the common stairwell to the Property for around 6- 8 weeks.
- XI. The Respondent has informed Retties when making payment by bank card that he lives in a postcode commencing EH16, which is not consistent with the postcode attached to the Property.
- XII. It is likely that the Respondent lives elsewhere in a postcode beginning EH16.
- XIII. The Respondent has routinely been late paying rent and has never consistently paid the rent by the seventh of the month as demanded by the tenancy agreement.
- XIV. The Respondent then fail into rent arrears and ceased making monthly rent payments since making a payment on 14 February 2020.
- XV. The Respondent made a rent payment of £3,000.00 on 11 August 2020.
- XVI. This payment did not clear the arrears due and no further payments have been made received since and the arrears as at today's date is £7,384.00.
- XVII. Neighbours to the Property have complained to Retties about unknown individuals coming and going from the Property.
- XVIII. On certain occasions in September and October 2019 neighbours challenged the occupants as to what their connection was to the Property.
- XIX. The occupiers readily admitted to the neighbours that they had booked the Property on a short-term letting website.
- XX. The Respondent has accordingly allowed the Property to be used for short term holiday lets for third parties.
- XXI. No approval for these enterprises has been sought from the Applicant.
- XXII. The Respondent is likely to be leasing the Property in order to rent it out for short term holiday lets for financial gain.
- XXIII. On one occasion on the weekend of 27-29 September 2019, the unauthorised guests at the Property had a party and created a disturbance to neighbours by making excessive noise until around 2am in the morning.

XXIV. On other occasions neighbours have been subjected to minor irritations such as an Irn Bru bottle being left on the stairwell and ice cream tubs being left on a window sill and subsequently falling onto steps causing a small mess.

### **Application of Grounds**

1. Having made the above findings in fact, the Tribunal considered whether the Grounds of Eviction referred to in the Application were established and whether it was reasonable to grant an Eviction Order.
2. The Tribunal found that Grounds 11 is made out in that Condition 7 of the tenancy has been breached by the Respondent by him not living in the Property as his home.
3. The Tribunal then considered whether it was reasonable to grant an eviction order having made this finding. The Tribunal balanced up the severity of any breach against the consequences of granting the order. The Tribunal considered that as the Respondent is clearly not living in the Property the consequences of granting an Eviction order are much less far reaching than against a tenant who did actually occupy a property as his home. The breach of the condition was also significant as by not living in the Property and by appearing to let it out on holiday let websites the Respondent undermined the trust between the parties to the tenancy and also disturbed the atmosphere in the immediate vicinity. It was also dishonest and likely to be motivated by financial gain.
4. The Tribunal also concluded that the Respondent had breached the tenancy agreement by continually making payments between 14 and 21 days late and ultimately accruing substantial rent arrears.
5. However, the non-payment of rent is expressly excluded as a basis for the Application of Grounds 11 as per Grounds 11 (3). Accordingly, the Tribunal refused to make an Eviction order in respect of Grounds 11 on the basis of late payment and then non-payment of rent.
6. Similarly, the Tribunal did not consider that Grounds 14 was established. The Tribunal could not conclude that the Respondent had engaged in relevant anti-social behaviour. In considering the reasonableness of granting an order in respect of anti-social behaviour the Tribunal must consider the nature of the anti-social behaviour, who it was in relation to and where it occurred. This is as per the terms of Grounds 14 (5).
7. The Tribunal could not conclude that on the facts found established that it was reasonable to grant an Eviction Order on the basis of Grounds 14. The Tribunal considered that rather than setting out a compelling case for the Application of Grounds 14, the evidence in this regard was instead more relevant to the alleged breach of the tenancy by not occupying the Property as the Respondent's home.

### Decision

The Tribunal Granted an Eviction order on the basis of Grounds 11 in that the Respondent has breached the tenancy by not occupying the Property as his home and it is reasonable to grant an Eviction Order.

### 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.

Andrew McLaughlin

5<sup>th</sup> November 2020

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Legal Member/Chair

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Date