



**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/21/1135**

**Re: Property at 54 Batson Street, Glasgow, G42 7HG (“the Property”)**

**Parties:**

**Mrs Farzana Tariq, 56 Batson Street, Glasgow, G42 7HG (“the Applicant”)**

**Mr Daniel Luke McDonnell, 54 Batson Street, Glasgow, G427HG (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted without a Hearing and issued an Eviction Order against the Respondent.**

**Background**

1. By application, received by the Tribunal on 10, 12 and 13 May 2021 and accepted by the Tribunal on 14 July 2021, the Applicant sought an Eviction Order against the Respondent in terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 6, 11, 12 and 14 of Schedule 3 to the 2016 Act.
2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 12 April 2020 at a rent of £530 per month, the tenancy agreement being signed on 12 July 2020. The Applicant also provided a copy of an unsigned version of a further Private Residential Tenancy Agreement between the Parties also commencing on 12 April 2020

(a copy of the signed Agreement was later provided), and a copy of a Rent Increase Notice dated 6 September 2020, increasing the rent to £625 per month from 9 December 2020, with a Certificate of Posting dated 7 September 2020, and a Notice to Leave, dated 29 October 2020, advising the Respondent that the application to the Tribunal for an Eviction Order would not be made before 28 November 2020. The Notice to Leave cited the Grounds set out in the application.

3. In relation to Ground 6, the Applicant stated her intention to change the use of the Property to self-catering holiday lets. She provided copies of a Valuation Notice from Glasgow City Council, setting a Rateable Value for the Property for use as a self-catering unit, effective from 15 June 2021 and copies of emails between her and the Council regarding the question of whether a planning application for change of use was required.
4. In relation to Ground 11, the Applicant contended that the Respondent had breached a number of terms of the tenancy agreement. He had allowed various other people to live with him at the Property without obtaining the consent of the Applicant. He had kept pets in the Property, contrary to the Tenancy Agreement and he had never kept the Property in good order, again contrary to the Tenancy Agreement. He had removed the curtain around the bath, causing water to damage the flooring, had allowed damage to be caused to the bedroom ceiling and had removed, or allowed to be removed by someone living with him, a pipe in the toilet cistern, causing flooding into the downstairs level of the Property. He had also damaged the furniture and fixtures, including the refrigerator and microwave and had broken a window in the Property. Photographs were provided showing the condition of the Property at the commencement of the tenancy, with later photographs showing various items, including the refrigerator and microwave, lying in the garden. The Respondent had also failed to maintain the garden, despite several requests to do so. The Applicant also stated that the Respondent had failed to observe the prohibition against smoking in the Property, contrary to the Tenancy Agreement.
5. In relation to Ground 12, the Applicant provided Rent Statements showing that no rent had been paid at all since July 2020 and arrears of £7,580 at the date of the application. She also submitted evidence of her having complied with the pre-action requirements set out in the Rent Arrears Pre-Action Requirements (Coronavirus) Regulations 2020, namely copies of letters to the Respondent of 19 and 27 February, 17 and 31 March 2021, all sent by Recorded Delivery. These letters signposted the Respondent to bodies which could provide housing advice and support, including Shelter Scotland and Citizens Advice Bureaux, websites which would provide information regarding possible entitlement to Universal Credit, Discretionary Housing Payments, and a reference to the Scottish Welfare Fund. They also include proposals for a Payment Plan that would be acceptable to the Applicant.
6. In relation to Ground 14, the Applicant referred to the fact that the Respondent was placing waste items in the garden, including a broken sofa, pieces of wood and a refrigerator. On 12 August 2021, following a call by the

Respondent to Scottish Fire Service, he had, contrary to their advice, switched the electricity back on for three hours, from 8-11pm, causing the fire alarm to go off continuously for that period. It had stopped when he switched the electricity off again.

7. In further written submissions of 25 May 2021, the Applicant referred to the fact that the Notice to Leave had stated that an application for an Eviction Order would not be made until 28 November 2020, which was the correct notice period for Ground 14, but not for Grounds 6, 11 and 12, where the Coronavirus (Scotland) Act 2020 had increased the notice period to six months. The Applicant said that she had generated the Notice to Leave using the hyperlinks on the Scottish Government website and that that link had automatically inserted 28 November 2020 as the date before which no application for an Eviction Order would be made. She added that the application had not been made until the expiry of the six-month period and that each of the four letters of 19 and 27 February and 17 and 31 March 2021 contained a statement that the Respondent would have six months' notice after the date the Notice to Leave was served on him before the Applicant could obtain an Order for Eviction.
8. On 14 July 2021, the Tribunal intimated that it had accepted the application and on 23 July, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 13 August 2021. The Applicant made further written representations on 10 and 23 August 2021. She provided an updated Rent Statement showing rent arrears as at 10 August of £9,455, nothing having been paid since the date of the application, and copies of letters of complaint from three neighbours about the Respondent's anti-social behaviour, including noise levels, blaring music and frequent Police visits to the Property, as well as complaints that the garden was strewn with rubbish, which a neighbour had reported to the Council as an environmental health issue. The Applicant included photographs of the garden taken in July 2021 and copies of emails between the Applicant and the Environmental Health department of Glasgow City Council. These emails began with a request from the Council to the Applicant, following complaints regarding the bags of waste and furniture in the front garden of the Property, that these items be removed, with a warning that failure to do so would result in the Applicant being issued with a statutory notice. The final email from the Council, dated 17 June 2021, advised the Applicant that the Council would be issuing a statutory notice on the Respondent. The representations of 23 August 2021 advised the Tribunal that on the previous day the Respondent had broken another window in the Property.
9. The Respondent did not make any written representations to the Tribunal. On 24 August 2021, the day before the Case Management Discussion, Govan Law Centre emailed the Tribunal to say that they had been contacted by the Respondent, but due to time constraints and the fact that they had not seen the case papers, the Respondent would be requesting a postponement to allow them to take proper instructions. They understood that the case would be defended. As the Respondent suffered from serious health problems and

would have a disability recognised under the Equalities Act, he should be afforded a further opportunity to obtain legal representation. The Applicant objected to the request for a continuation, contending that it was no more than a delaying tactic, as the Respondent had not made any contact with the Tribunal or made any written representations between April and the day prior to the Case Management Discussion.

### **First Case Management Discussion**

10. A Case Management Discussion was held by means of a telephone conference call on the morning of 25 August 2021. The Applicant was represented by Mr Tariq Nazir. The Respondent was present and was assisted by a support worker. Ms Gemma French.
11. The Chair of the Tribunal confirmed with the Respondent that he was seeking a postponement of proceedings to allow him to fully brief Govan Law Centre, who would be representing him. The Tribunal then confirmed that it had considered the email from Govan Law Centre, which raised concerns about the Respondent's mental health, and the objections made on behalf of the Applicant and had decided that, in the interests of justice, it would adjourn the Case Management Discussion to a later date, to enable the Respondent to obtain suitable legal advice. The Tribunal would, however, issue a Direction requiring the Respondent to lodge with the Tribunal, not later than 14 days prior to the continued Case Management Discussion, an outline of his defences and copies of any documents on which he proposed to rely. Consideration of the application was continued to a Case Management Discussion to be held by means of a telephone conference call on Tuesday 5 October 2021 at 10am. The Tribunal issued a Direction requiring the Respondent to lodge, not later than close of business on 21 September 2021, outline defences with copies of any documents on which he intended to rely.
12. On 20 September 2021, the Applicant provided further lengthy representations to the Tribunal. These included an updated Rent Statement showing rent arrears of £10,080, copies of correspondence with Police Scotland regarding the Respondent's refusal to allow entry to permit gas safety checks to be carried out and of letters to the Respondent requesting entry for that purpose. The Applicant stated that the Respondent had now been charged by Police Scotland in relation to vandalism of the Property and theft of items provided by the Applicant under the tenancy. He had also received a warning from the Police in relation to a false report by him that someone other than him had smashed the window in August. A further letter of complaint from a neighbour about the conduct of the Respondent was produced, along with a copy of a Petition signed by five neighbours, apart from the Applicant, regarding the conduct of the Respondent and the other person living with him in the Property.
13. The Applicant also stated that a lodger was still living in the Property, that there was still a cat in the Property and that the Respondent and his lodger

were continuously refusing the Applicant and her contractors access for necessary safety checks. The breaches of the Tenancy Agreement were, therefore, ongoing, including the issue of items dumped in the garden.

14. The Respondent did not make lodge any outline defences or documents in response to the Tribunal's Direction of 25 August 2021. On 4 October 2021, the day before the continued Case Management Discussion, the Respondent's mother advised the Tribunal that she had contracted COVID and requested a postponement of the Case Management Discussion scheduled for the following day. As she was not a Party to the present proceedings and did not have formal authority from the Respondent to represent him, the Tribunal could have refused the request, but the present case is one of two linked cases and, as the Respondent's mother is a Party in the linked case, the Tribunal decided that it was in the interests of justice to hear both cases together and agreed to a further postponement.

### **Second Case Management Discussion**

15. A second Case Management Discussion was held by means of a telephone conference call on the morning of 17 November 2021. The Applicant was again represented by Mr Tariq Nazir. The Respondent was not present or represented. Mr Nazir told the Tribunal that he had nothing to add to the written representations already made and confirmed that the rent was now a further two months in arrears. He advised the Tribunal that the apparent delay in signing the Tenancy Agreement on 17 July was explained by the fact that the previous Agreement had provided that it was for six months, so the commencement date of the later one was set to coincide with the notional expiry of the previous one.

### **Reasons for Decision**

16. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations") provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
17. The first matter for the Tribunal to consider was the Notice to Leave. It was dated 29 October 2020 and stated that an application for an Eviction Order would not be made before 28 November 2020. The 2016 Act provides notice periods of 84 days for Ground 6 of Schedule 3 to the Act and 28 days for Grounds 11, 12 and 14. The Coronavirus (Scotland) Act 2020 ("the 2020 Act"), however, amended these periods to six months for Grounds 6, 11 and 12 and three months for Ground 14 and a further amendment to those provisions now means that, for a Notice to Leave served after 2 October

2020, as was the case in the present application, the period is six months for Grounds 6, 11 and 12 and 28 days for Ground 14.

18. The Applicant accepted that the Notice to Leave did not comply with the latest periods of notice but stated that she had used the hyperlinks on the Scottish Government website to generate the Notice and that any error was unintentional.
19. Paragraph 10(1) of Schedule 1 to the 2020 Act states that where a Notice to Leave is completed without taking proper account of paragraphs 1-9, (a) the notice is not invalid by reason of the error, but (b) it may not be relied upon by the landlord for the purpose of seeking an order for possession (however described) until the date on which it could have been relied upon had it been properly completed. It is Paragraph 2 of Schedule 1 to the 2020 Act which extends the notice periods in respect of Private Residential Tenancies.
20. In terms of Rule 5(3) of the 2017 Regulations, an application to the Tribunal is held to be made on the date that the Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement. In the present case, the Tribunal sought further information from the Applicant on 25 May 2021 and 26 June 2021, and the last information was received on 29 June. Accordingly, the date of the application was 29 June 2021, more than six months after the date of service of the Notice to Leave.
21. The Tribunal was satisfied that the error fell within the provisions of Schedule 1, that the Notice to Leave was not invalid and that it had not been relied upon until 29 June 2021.
22. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy Agreement if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 to the Act applies.
23. Ground 6 of Schedule 3 to the 2016 Act ("Schedule 3"), as amended by the 2020 Act states that it is an Eviction Ground that the landlord intends to use the property let for purpose other than housing and that the Tribunal may find that Ground 6 applies if the landlord intends to use the let property for a purpose other than providing a person with a home and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order. The 2016 Act provides that evidence tending to show that the landlord has that intention includes (for example) any planning permission that would be required if the let property is to be used for the intended purpose. The Tribunal noted that the Applicant had stated that she wished to change the use of the Property to a self-contained holiday let and that she had gone through the process of enquiring whether planning consent was required and had taken the necessary steps to have the Property assessed for Rateable Value for the purpose of charging Business Rates rather than Council Tax. The view of the Tribunal was that the intended use, namely occasional holiday lets, would not provide a person with a home, and the Tribunal decided that

the requirements of Ground 6 had been met. The Tribunal also regarded it as reasonable to issue an Eviction Order under Ground 6.

24. Ground 11 of Schedule 3 states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy (other than the requirement to pay rent) and that the Tribunal may find that Ground 11 applies if the tenant has failed to comply with a term of the tenancy, and the Tribunal considers it reasonable to issue an Eviction Order on account of that fact.
25. The Tribunal had before it three tenancy agreements. The first one had been superseded by the one dated 17 July 2020, which commenced on 12 April 2020. The third, also stated to commence on 12 April 2020, followed the style of the Scottish Government's Model Private Residential Tenancy Agreement and was signed by the Parties on 18 and 19 August 2020. As it was the latest of the three tenancy agreements, the Tribunal determined that it was the Tenancy Agreement against which the actions of the Respondent fell to be judged.
26. The Tribunal noted that Clause 11 of the Tenancy Agreement states that the tenant must not take in a lodger unless he has received prior written permission from the landlord. The evidence before the Tribunal, none of which had been challenged by the Respondent, indicated that the Respondent had allowed various people to live with him in the Property and this evidence was supported by the Petition signed by neighbours. Accordingly, the Tribunal decided that the Respondent had breached Clause 11 of the Tenancy Agreement.
27. In terms of Clause 16 of the Tenancy Agreement, the tenant agrees to take reasonable care of the Property. Clause 31 requires the tenant to dispose of or recycle all rubbish in an appropriate manner and Clause 34 states that the tenant will not keep any animals or pets in the Property without the prior written consent of the landlord. Amongst the Additional Tenancy Terms in Clause 36 is a requirement to maintain the garden in a reasonable manner. Clause 19 provides that the tenant must allow reasonable access to the Property for an authorised purpose where the landlord has given at least 48 hours' notice. Authorised purposes are carrying out work which the landlord is required to do by law, which would include carrying out annual gas safety inspections.
28. The Tribunal was satisfied, on the balance of probabilities, that the Respondent has been in breach of all of Grounds 16, 19, 31 and 36 of the Tenancy Agreement. The Applicant had provided evidence, including photographs, backed up by letters and a Petition by neighbours, that the Respondent had broken two windows, had dumped rubbish and other items, including the refrigerator and microwave provided by the Applicant, in the garden, had kept a cat in the Property without the Applicant's permission, had failed to keep the garden in a reasonable manner and had refused to allow access for the annual gas safety check to be carried out. The Respondent had not contested any of this evidence and had not lodged any defences to

the application. The Tribunal decided that it was reasonable to issue an Eviction Order under Ground 11.

29. Ground 12 of Schedule 3 to the 2016 Act, as amended by the 2020 Act, provides that it is an Eviction Ground that the tenant has been in arrears for three or more consecutive months, and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order, the tenant is in arrears by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy, the tenant has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
30. The Tribunal was satisfied that no rent at all had been paid since 10 July 2020, so the requirements of Ground 12 had been met. Given the amount of the arrears, the steps that the Applicant had taken in writing repeatedly to the Respondent suggesting a payment plan and advising him of agencies that could provide him with advice and support and the fact that the Respondent had failed to engage with that process in any way, the view of the Tribunal was that it was reasonable to issue an Eviction Order under Ground 12.
31. Ground 14 of Schedule 3 states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour and that the Tribunal may find that the Ground applies if satisfied that the tenant has behaved in an anti-social manner in relation to another person, that it is relevant anti-social behaviour, and the application is made within 12 months of it occurring. A person is to be regarded as behaving in an anti-social manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance and is relevant anti-social behaviour if the Tribunal is satisfied that it is reasonable to issue an Eviction Order as a consequence of it, given the nature of the anti-social behaviour and who it was in relation to, or where it occurred.
32. The evidence of the alleged anti-social behaviour in the present case was that of the neighbours, at least four of whom had sent letters of complaint and had signed a Petition. They complained about loud noise and blaring music and of frequent visits by the Police to the Property and about the state of the garden, with rubbish, a refrigerator, a microwave, a chest of drawers and other waste items lying in the back garden, creating a health hazard for the neighbourhood. Some of the neighbours had contacted the Council, who had issued a statutory notice to the Respondent in relation to clear these items, but he had not complied with the notice.
33. The Tribunal decided, on the balance of probabilities, that the requirements of Ground 14 had been met and that the anti-social behaviour complained of was such that it would be reasonable to issue an Eviction Order on account of it.



34. 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.**

**G. C**

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**Legal Member/Chair**

**17 November 2021**  
**Date**