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/19/3476

Re: Property at 3 St Margarets Court, Bellshill, ML4 1FE ("the Property")

Parties:

Adelphi Scott Limited, 19 Adelphi, Aberdeen, AB11 5BL ("the Applicant") represented by Core Citi Limited, 61 Rose Street, Glasgow G3 6SP

Kimberley Rushton, 3 St Margaret's Court, Bellshill, ML4 1FE ("the Respondent")

Tribunal Members:

David Bartos (Legal Member)

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

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refused the application.

Background

1. **The Applicant seeks recovery of possession of the Property and removal of the Respondent from it. Eviction is sought under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 on the basis of non-payment of rent and anti-social behaviour.**

2. **A case management discussion ("CMD") took place on 6 January 2020 at 14.00 hrs at the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Applicant's representative Elle Piaget, Manager of Core Citi Ltd appeared accompanied by Craig Paterson, Assistant Manager of Core Citi Ltd. Core Citi are the Landlord's letting agents. There was no appearance by or on behalf of the Respondent.**

3. **The Tribunal noted that notice of to-day's CMD had been given to the Respondent in a letter from the Tribunal to her dated 22 November 2019.**

The letter had been served on the Respondent by letter box delivery at the Property on 25 November 2019 by sheriff officer. Ms Piaget informed the Tribunal that no contact had been made as between the Respondent and Core Citi since the notice to leave had been given on 26 September 2019. Core Citi had required to enter the Property shortly before Christmas 2019 because of a complaint of flooding from the flat below. This visit had indicated that the Respondent and a Ms McAlroy were still resident at that time at the Property as their possessions were still present. Ms Piaget requested that there be no delay in the CMD.

4. The Tribunal proceeded with the CMD. It took the view that in all the circumstances it was not unfair to the Respondent to proceed and it would be unfair to the Applicant for there to be delay. No written representations had been received by the Tribunal from the Respondent. The Tribunal checked that no contact had been made of any kind by the Respondent with the Tribunal on the day of the CMD.

5. The CMD also followed a direction from the Tribunal addressed to the Applicant which was dated 6 December 2019.

Findings in Fact

6. Having considered all of the evidence, including that given at the CMD, the Tribunal found the following facts to be established:-

   (a) On 25 June 2019 the Applicant granted a private residential tenancy to the Respondent over the Property. The Property is a first floor flat. The Applicant was and remains the owner of the Property;

   (b) The date of entry under the tenancy was 25 June 2019. The rent was £375 per month payable on the 25th day of each month in advance. The instalments of rent due on 25 July, 25 August, 25 September and 25 October all 2019 have not been paid;

   (c) On or shortly before 18 July 2019 the Respondent placed or allowed to be placed a large brown leather sofa on its side leaning against the wall of the ground floor area of the common stairwell. The sofa obstructed the access of the ground floor residents to their flats. It was in danger of falling onto those residents. Those ground floor residents complained to the Applicant's representatives about the sofa;

   (d) By letters to the Respondent dated 18 July and 23 July 2019 the Applicant's representatives noted that the sofa was a health and safety hazard and in the letter of 23 July noted that leaving it was in breach of clause 21 of the tenancy agreement (anti-social behaviour). They demanded its immediate removal;

(e) Mc McAlroy spoke with the Applicant's representatives' Craig Paterson. She accepted that the sofa had been placed there for the Respondent. Mr Paterson was told by the Ms McAlroy that the Council had been telephoned with a request to remove it but that the Council had indicated that a charge of £28 would be made. The sofa was not removed;

(f) In or about August 2019 Mr Paterson and a colleague removed the sofa from its leaning position and placed it in a seating position by the rear back door of the building. The ground floor resident restated their complaints;

(g) By letter dated 2 September 2019 from the Applicant's representatives the Respondent was required to remove the sofa from the stairwell on the basis that it remained a health and safety hazard and was a breach of cl.21 of the tenancy. The letter also informed her that if it was not removed by 5 September the Applicant would remove it and would charge her for storage and removal fees up to a possible disposal by the Applicant. It did not inform her that her tenancy might be terminated and a notice to leave served if the sofa was not removed;ssss

(h) The sofa not having been removed, on 5 September 2019 the Applicant's representatives removed the sofa on that day and placed it into storage

(i) The Respondent and Ms McAlroy remain in occupation of the Property;

(j) On 28 October 2019 the Applicant's representatives notified North Lanarkshire Council under section 11 of the Homelessness (Scotland) Act 2003 of its intention to make this application to the Tribunal;

(k) On 30 October 2019 the Applicant made this application to the Tribunal.

Reasons for Decision

7. This application was made on the basis of two grounds of eviction, namely grounds 12 and 11 of schedule 3 to the 2016 Act. There was no dispute that either ground had to be satisfied as at the date that the notice to leave was given to the Respondent. That date was 26 September 2019.

8. Ground 12 requires there to have been rent 'arrears for three or more consecutive months'. Ms Piaget submitted that failure to pay the rent

due on 25 July, August and September respectively meant that this ground had been satisfied. She submitted that it was sufficient for ground 12 that three months' worth of rent was in arrears. In effect she maintained that the position was no different to that for the old assured tenancies under ground 8 of schedule 5 to the Housing (Scotland) Act 1988.

9. The Tribunal was unable to accept this interpretation of ground 12. The wording of ground 12 was clear. It required there to be arrears (of any amount) over a consecutive period of 3 months. This was quite different to the assured tenancy position under the Housing (Scotland) Act 1988. The two schemes for eviction for non-payment of rent were different.

10. On that basis the Tribunal found that as at the giving of the notice to leave the arrears had extended over only 2 months and one day. Ground 12 was not satisfied. It followed that the copy notice to leave produced by the Applicant was fundamentally invalid and that section 52(2) of the 2016 Act prevented the Tribunal from considering the application at all in relation to this ground.

11. Turning to ground 11, this required the Applicant to satisfy the Tribunal that (1) the Tenant had been in breach of clause 21; and (2) if she had, that it was reasonable to order eviction in consequence of such breach.

12. Clause 21 required that the tenant have engaged in antisocial behaviour towards any person. Both the 'antisocial behaviour' and the 'person' are defined in clause 21. The behaviour included causing a nuisance and persons could include neighbours.

13. The Tribunal found that in leaving the sofa in a dangerous position leaning on its side against the wall in the stairwell where it might fall on the ground floor residents and obstructed their access to their flats the Respondent had engaged in antisocial behaviour against them within the scope of the prohibitions in clause 21. There was therefore breach of clause 21 by no later than 23 July 2019.

14. The question was whether it was reasonable for the Respondent to be evicted as a result of said breach. The Tribunal considered that it was not reasonable for her to be evicted in the current situation. This was for a number of reasons.

15. Firstly, Core Citi's Mr Paterson and his colleague had removed the sofa from its dangerous position whereby it formed a nuisance to the ground floor residents. The essence of the danger had been removed. Secondly, the Respondent had not been warned that failure to remove it could result in a notice to leave and her eviction. Thirdly, there was no suggestion that this was a part of a pattern of leaving rubbish or other discarded items in communal areas by the Respondent. Finally as the

CMD date, the sofa had been removed from the stairwell altogether. Ground 11 had not been satisfied.

16. In these circumstances the application had to be refused.

Date of Expected Application to Evict in Notice to Leave

17. The direction and discussion at the CMD dealt also with the date of expected entitlement to seek eviction as it was written in the notice to leave. The notice had been delivered by sheriff officers and no evidence of sending had been supplied to the Tribunal. Including the date of delivery in the 28 days and adding a day led to a date of 24 October 2019. However the notice gave as a date 26 October 2019.

18. The date of 26 October 2019 had been given on the basis that the notice had been 'sent' to the Respondent when in fact the evidence given was of delivery of the notice by sheriff officers. In that instance the 48 hour allowance given in section 62(4) for receipt of a sent notice did not apply.

19. The Tribunal rejected Ms Piaget's submission that the correct date had been entered in the notice. Applying the statutory provisions in section 62 of the Act, the correct date was 24 October 2019.

20. Ms Piaget submitted that in any event the error (if such it was) did not invalidate the notice as it did not materially affect the effect of the notice. The error did no more than to give the Respondent two further days to leave before the Applicant gained entitlement to seek eviction.

21. The Tribunal applied section 71 of the 2016 Act to decide that had it found that the notice was valid on the basis of grounds 12 or 11 it would have found the error not to have invalidated the notice.

Right of Appeal

22. **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.**

David Bartos

_____ 6th January 2020

Legal Member/Chair **Date**