



Decision the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for assistance to exercise the Landlords' right of entry in terms of Rule 55 of the Procedure Rules.

Tribunal Reference:FTS/HPC/RE/19/1493

HOUSE AT Flat 2, 9 Custom House Place, Granton, Edinburgh, EH5 1RL

TENANT Ms Zoe McLeary

LANDLORDS Link Housing Association t/a Link2Let, Link House, 2C New Mart Road, Edinburgh, EH14 1RL

LANDLORDS' REPRESENTATIVE Keri Preece, Harper Macleod LLP, 45 Gordon Street, Glasgow, G1 3PE

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Landlords applied to the Tribunal for assistance to exercise the Landlords' Right of Entry under section 28(A)(1) of the Housing (Scotland) Act 2006, in terms of Rule 55 of the Procedure Rules. The application was dated 16th May 2019. The application stated:

'1.1 The applicant is the landlord of the tenanted property at Flat 2, 9 Custom House Place, Granton, Edinburgh, EH5 1RL. The tenant, Zoe McLeary, telephoned on or around 19 March 2019 to advise that she had vacated the property. She advised that she had had to vacate the property as a matter of urgency due to domestic violence concerns and was living in a safe house provided by Women's Aid. She was unable to provide a forwarding address given the nature of her situation in order to secure her safety. The tenant advised that she would email in to formally terminate her tenancy and would return the keys, however has not done so.

1.2 Our client has attempted to contact the tenant by email and telephone, however the details that they previously held for her are no longer working. Presumably, she is required to change her contact details for reasons of safety. The applicant has left a message for the tenant with a worker at Women's Aid, however has had no response.

1.3 In light of the above outlined difficulties in making contact with the tenant, no notice of the applicant's intention to gain access to the property can be issued. The applicant does not consider it reasonable to attempt to have a trace carried

out given the circumstances. The applicant therefore requests that the necessity to give notice is dispensed with.

1.4 Whilst the tenant's personal items appear to have been removed from the property, the applicant suspects that rubbish and potential organic matter remain within the property. There is a smell emanating from the property. This is causing a nuisance in the common stair and in neighbouring properties. Due to the recent warmer weather, flies are now beginning to gather around the property. The applicant is seeking an order for entry to the property to view the state and condition of the property and to carry out any work necessary in order to comply with the repairing standard duty to ensure that the property is fit for human habitation.

1.5 In addition to the above, the gas safety check is due and has not been carried out. If access is not provided prior to 12 June then the applicant will require to gain access to the property to check that the gas system is in proper working order, or to cap it. This is a high priority and affects the safety of the building as whole and other neighbouring properties.

1.6 The appropriate notices have been issued to bring about the end of the tenancy and a separate application will be submitted to the First-tier Tribunal in due course in relation to recovery of possession of the property. In the interim period, the works outlined above are necessary to ensure that the property meets the repairing standards.'

2. Documents lodged with the Tribunal were:-

2.1 Short Assured Tenancy between Link Housing Association Limited trading as Link2Let and Zoe McLeary dated 30th January 2015.

2.2 Emails from the Landlords' representative advising that her clients are acting as Link2Let and not as a social Landlord.

3. Hearing

This application called for an initial hearing at 10.30 am on 5th June 2019 at The Glasgow Tribunals Centre, 20 York Street, Glasgow, as the Landlords' Representative, Keri Preece, Solicitor with Harper Macleod LLP had asked for an opportunity to make representations to the Tribunal regarding the Tribunal's jurisdiction to accept the application.

The Landlords were not present but were represented by Keri Preece, Solicitor with Harper Macleod LLP.

The Tenant was not present and was not represented. The Tenant had not been served with details of the hearing or the application as the application has not yet been accepted by the Tribunal.

Representations made by the Landlords' Representative:

Keri Preece made representations as follows:

The whereabouts of the Tenant are unknown. It is understood that the Tenant had been a victim of domestic violence. The Landlords had been in touch with Women's Aid but the Tenant did not provide a forwarding address. The Tenant appears to have left the Property but has left belongings in the Property. The lease has still to be terminated but Notice to Quit has been issued and has been served by Sheriff

Officers on the Tenant at the Property address. The Landlords are concerned that the condition of the Property may be hazardous to health and also that the Gas Safety Certificate has lapsed. This is a matter of urgency.

In connection with the requirements of Section 28(A)(9) of the Housing (Scotland) Act 2006 she advised that although her client's overall body is a registered social landlord the Landlord of the Property is Link Housing Association Limited trading as Link2Let. Link2Let is the mid market trading name of Link Housing Association Limited which deals with mid market properties.

She referred to paragraph 2 of Annex D of the Scottish Government Guidance to Registered Social Landlords. She explained that this confirms the Registered Social Landlords or their subsidiaries may enter into private residential tenancies or the previous assured tenancies. She advised that if Link Housing Association are acting as a Registered Social Landlord they must enter into Scottish Secure Tenancies. However if they are acting as a mid market provider they must enter into a private residential tenancies or the previous assured / short assured tenancies.

She accepted that the registered proprietors of the Property are Link Group Limited in terms of Land Certificate title Number MID149774.

She also accepted that the registered Landlords for the Property are Link Housing Association Limited.

She emphasised that the Landlords under the lease are Link2Let which is the trading name of Link Housing Association Limited.

She referred to the Tribunal Guidance which states:

'What types of landlord are excluded from making right of entry applications?

An application cannot be accepted where the landlord is:- a local authority a registered social landlord (such as a Housing Association), or Scottish Water.

In what types of tenancy is the landlord excluded from making right of entry applications?

Properties which are held under an occupancy arrangement are excluded.

Tenancies excluded from the repairing standard are also excluded, such as:- a Scottish secure tenancy or a short Scottish secure tenancy. (These tenancies are different from a Short Assured Tenancy. If a tenant has a Short Assured Tenancy, then an application may be made); a tenancy of a house retained or purchased by a local authority for use as housing accommodation as an alternative to demolition; an agricultural tenancy definition: "a tenancy of a house which is— (i) on land comprised in a lease constituting— (A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)). (B) a short limited duration tenancy (within the meaning of that Act), or. (C) a limited duration tenancy (within the meaning of that Act), and. (ii) occupied by the tenant of the relevant lease" or a registered croft definition: "a tenancy of a house on a croft (within the meaning of the Crofters(Scotland) Act 1993 (c. 44))" a tenancy of a house on holdings to which the Small Landholders (Scotland) Acts 1886 to 1931 apply.'

She stated that this guidance states that if the lease is a short assured tenancy the Landlord can make a Right of Entry Application to the Tribunal.

She asked the Tribunal to accept the application in light of her representations.

4. Decision

4.1 The Tribunal make the following findings in fact:

4.1.1 The registered proprietors of the Property are Link Group Limited in terms of Land Certificate title Number MID149774.

4.1.2 The registered Landlords of the Property with Landlord Registration are Link Housing Association Limited.

4.1.3 Link Group Limited are registered social landlords under section 57 of the Housing (Scotland) Act 2001.

4.1.4 The Landlords of the Property in terms of the said short assured tenancy agreement between the parties are Link Housing Association Limited trading as Link2Let.

4.1.5 Link Group is the parent company for the group which includes Link Housing Association Limited, which was confirmed on company website <https://linkhousing.org.uk>.

The Tribunal determined that Link2Let is the trading name of Link Housing Association and as such Link2Let is not a separate legal entity. Consequently the Landlords of the Property are Link Housing Association Limited, in terms of the said short assured tenancy agreement and Link Group Limited as heritable proprietors of the Property.

As Link Group Limited are registered social landlords under section 57 of the Housing (Scotland) Act 2001 the Tribunal do not have jurisdiction to accept the application in terms of section 28A(9)(b) Housing (Scotland) Act 2006.

With reference to the Tribunal Guidance note referred to by the Landlords' Representative the Tribunal determines that it is simply a guidance note and it does not have statutory status. Whilst it is accepted that the Guidance states that Landlords of short assured tenancies may make application to the Tribunal for assistance to exercise their right of entry, the note also states that an application cannot be accepted where the landlord is a registered social landlord (such as a Housing Association).

Accordingly the Tribunal rejected the Application in terms of Tribunal Rule 8(c) as they have good reason to believe that it would not be appropriate to accept the application for the reasons stated.

J Taylor

5th June 2019

Legal Member'