



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/2101

Property at Flat 3 Hillhead House, Shandon, G84 8NP (“the Property”)

Parties:

Ms Claire Weller, 12 Elvin Place, Forres, Moray, IV36 3YD (“the Applicant”)

Mr Samuel McBrearty, Flat 3 Hillhead House, Shandon, G84 8NP (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a Tenancy agreement, Notice to Leave, Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 and a photograph of a kitchen. The application is based on ground 11 of schedule 3 of the 2016 Act, breach of tenancy agreement.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 15 December 2022, and they were required to participate.

3. The CMD took place on 15 December 2022 at 2pm. The Applicant was represented by Ms Anderson of Lomond Letting Ltd. The Respondent did not participate.

Case Management Discussion on 15 December 2022

4. Ms Anderson told the Tribunal that the Respondent was still in occupation of the property. The Tribunal noted that the application had been lodged with a Notice to leave, post office certificate of posting and track and trace report. However, the track and trace did not establish that the notice was delivered to the Respondent. Ms Anderson said that the Respondent had not acknowledged receipt of the Notice. However, she did not think that it had been returned to them by the post office. In any event it was also sent by ordinary post and email and stated that it should be possible to provide evidence of the latter.
5. The Tribunal noted that the only evidence in support of the eviction ground was a photograph which shows part of a kitchen. The photograph is out of focus. Ms Anderson told the Tribunal that the photograph was taken on 17 June 2022 through the glass windowpane in the kitchen door. It shows the kitchen to be dirty and untidy. There is a bottle on a worktop which might be liquid fuel of some kind, although they can't be sure. Ms Anderson said that the Respondent does not allow access to the property. In November 2020 they lodged a right of entry application with the Tribunal. However, after he was notified of the application he provided access for the gas safety check, and they withdrew the application. Since then, there have been various arrangements made for access, but not then allowed by the Respondent. In May 2022 her colleague attended at the property. The Respondent answered the door but would not let him in. He was in a state of distress and said that his mother had recently died, and he had lost his job. Her colleague noted the poor condition of the property and returned in June to take the photograph. They have made no further attempts to inspect the property as the Respondent is clearly vulnerable and they are concerned about aggravating possible mental health issues. As a result, they do not have up to date information or evidence about the condition of the property, although this is the basis of the application for an eviction order. Ms Anderson also advised the Tribunal that there are now substantial arrears of rent.
6. Following further discussion, the Tribunal determined that the application should be continued to a further CMD so that further information and evidence can be provided regarding the following: -
 - (a) Service of the Notice to leave by email.
 - (b) The current condition of the property.
 - (c) The refusal to provide access to the property.
 - (d) The rent arrears.
 - (e) If available, the Respondents personal circumstances and health issues.

7. The parties were notified that a further CMD would take place by telephone conference call on 15 March 2023 at 10am. On 13 January 2023, the Applicant's representative lodged further documents. The CMD took place on 15 March 2023. Neither party participated. The Tribunal noted that the Respondent had not participated in the previous CMD and had not lodged written representations. The Applicant had lodged further representations and documents, but these were lodged two months before the CMD. Furthermore, the Applicant did not contact the Tribunal to advise that they did not intend to participate or provide a further update. As the Tribunal was unable to discuss the application with the Applicant, or establish whether the eviction order is still sought, the Tribunal determined that the CMD should be further continued but that a further CMD should not be scheduled until the Applicant has confirmed that they wish the application to proceed.
8. The Tribunal issued a direction which required the Applicant to submit further documents and confirm if the application was to proceed. The Applicant's representative notified the Tribunal that the application was to proceed. She advised that she had failed to participate because of oversight.
9. The parties were notified that a further CMD would take place by telephone conference call on the 27 June 2023 at 10am. Prior to the CMD the Applicant submitted photographs of the property and a letter from the Tribunal in connection with the Right of Entry case.
10. The CMD took place on 27 June 2023. The Applicant was represented by Ms Anderson. The Respondent did not participate.

Summary of discussion

11. The Tribunal noted that the Applicant had lodged computer records which relate to an email sent to the Respondent on 16 May 2022, with the Notice to leave. Although the tenancy agreement indicates that communications are to be in hard copy, there is an email address for the Respondent. Ms Anderson told the Tribunal that most communications with the Respondent have been by email, including his application for the property, although recently they have also issued letters by post as a backup.
12. Ms Anderson told the Tribunal that her colleague attended at the property on 12 June 2023 with the Sheriff Officers instructed by the Tribunal, the Tribunal Member who dealt with the right of entry case and the gas engineer. The Sheriff Officers persuaded the Respondent to allow them into the property. The gas safety check was carried out and no issues were noted. Her colleague took a number of photographs which she has lodged. These showed the property to be in very poor condition. The Respondent sat with his head in his hands during the visit and only said that he did not know what to do. This has been the only contact with him since the last CMD. All attempts at getting access to the property had been unsuccessful.

13. In response to questions from the Tribunal Ms Anderson said that the rent arrears are now £2000. They are now receiving payments direct from Universal Credit - £375 and £45.83 – per month. There is still a shortfall as the rent is £450. The Respondent has made no additional payments, so the arrears are continuing to increase. Ms Anderson advised the Tribunal that she does not know whether the Respondent has approached the Council about his situation or if Social Work or other agencies are involved. They made a referral to SSAFA as he is ex-military, but he has not engaged with them. She stated that she has no further information about his mental health. Her colleague found him to be in a similar condition to the last time that they met. She does not think that he is working. The property is in a small hamlet, with no shops or services nearby. However, there is a bus service and shops are only a ten-minute journey from the property.
14. Ms Anderson said that there is concern about the condition of the property. She said that a delay in enforcement of the order would not necessarily be in the Respondent's best interests as the Council are unlikely to offer him accommodation until he is due to be evicted.

Findings in Fact

15. The Applicant is the owner and landlord of the property.
16. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
17. The Applicant has incurred rent arrears of £2000. These are increasing as there is a shortfall between the benefit payments and the rent charge.
18. The Applicant has failed to take reasonable care of the property. It is very dirty and cluttered.
19. The Applicant has failed to allow the Applicant access to the property. The Applicant was only able to get access for inspection and essential safety checks when assisted to do so by the Tribunal.

Reasons for Decision

20. The tenancy started on 27 February 2019. The application to the Tribunal was submitted with a Notice to Leave dated 16 May 2022 together with a post office certificate of service. The Royal Mail track and trace report submitted with the Notice only indicates that the Royal Mail had received the item but not that it was delivered or collected. The Applicant also submitted evidence that the Notice was also sent by email on 16 May 2023 to the email address specified in the tenancy agreement. The Notice to leave states that an application to the

Tribunal is to be made on ground 11, breach of tenancy agreement. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 16 June 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

21. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 11 of Schedule 3 (as amended by section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy. (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if – (a) the tenant has failed to comply with a term of the tenancy, and (b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact. (3) The reference in subparagraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”
22. At the CMD which took place in December 2022, the Tribunal noted that the Applicant had not provided evidence of the breach of tenancy. One photograph, taken in June 2022, had been provided. However, this did not establish the condition of the property as a whole and no up to date evidence was available as neither the Applicant nor the letting agent had been inside the property for some time. Prior to the CMD on 27 June 2023, the Applicant provided a series of photographs taken on 12 June 2023. These had been taken during a visit to the property arranged by the Tribunal in connection with a right of entry application under the Housing (Scotland) Act 2006. Due to a failure by the Respondent to cooperate, a warrant had been granted so that forced entry could be made, if required. The Tribunal is therefore satisfied that the Respondent previously refused or failed to provide the Applicant with access to the property. The photographs lodged show the bathroom, living room and kitchen at the property. The rooms are very cluttered and extremely dirty. The overall condition of the property is very poor and neglected.
23. Clause 17 of the tenancy agreement requires the Respondent to take reasonable care of the let property and to ensure that it is kept clean. Clause 20 requires the Respondent to allow reasonable access for inspection and repair and other authorised purposes. The Tribunal is satisfied that the Respondent has breached both sections and that this part of the ground is established.
24. The Tribunal then considered whether it would be reasonable to grant the order and had regard to the following:
 - (a) The Respondent has failed to engage with the letting agent in relation to the rent arrears, the condition of the property and access.

- (b) The letting agent has made efforts to assist the Respondent including make a referral to a charity who could assist him and refunding money to him when he was left without funds after making a payment, although the account was in arrears.
 - (c) There are rent arrears of £2000 and these are increasing.
 - (d) The continuing neglect of the property is to the detriment of the Applicant.
 - (e) There is no evidence of mental health issues as the Respondent has failed to engage with the Applicant or the Tribunal.
 - (f) The Respondent was served with the Notice to leave in May 2022 and has been aware of the application for eviction for over 12 months. He has also been aware of the grounds and has taken no steps to address the breach of tenancy during this time.
25. Having regard to the information available, the Tribunal is satisfied that it would be reasonable to grant the eviction order.
26. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would be reasonable to grant the eviction order. The Tribunal is also satisfied that a short delay in execution of the order should be granted in terms of Rule 16A(d) of the Procedure Rules. The order is not to be executed until 25 August 2023.

Decision

27. The Tribunal determines that an eviction order should be granted against the Respondent.

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.



Legal Member

27 June 2023