

Housing and Property Chamber
First-tier Tribunal for Scotland



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/23/3876

Property : Flat 3, 58 Timber Bush, Edinburgh EH6 6QH (“Property”)

Parties:

KAAS Properties Ltd, 60 Consitution Street, Edinburgh EH66RR (“Applicant”)

Lindsays Solicitors, Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE (“Applicant’s Representative”)

Peter Falconer, Flat 3, 58 Timber Bush, Edinburgh EH6 6QH (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 17 and 22 May 2018 which commenced on 22 May 2018; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 16 August 2023 ("Notice to Leave"); copy email to the Respondent dated 16 August 2023 attaching the Notice to Leave; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 2 November 2023; screenshots of listings for the Property on Big Cottages, Planet Hotels and Booking.com; screenshots of reviews for the Property on Air BnB and sheriff officer's execution of service certifying service of the Application on 9 January 2024. On 19 February 2024 the Applicant's Representative lodged a written submission and further productions which were photographs of the mail box for the Property, the front door of the Property and the power meter for the Property.

Case Management Discussion

A case management discussion ("CMD") took place before the Tribunal on 26 February 2024 by teleconference. Alan Inglis of the Applicant was in attendance as was the Respondent. The Applicant was represented by Adam Gardiner of the Applicant's Representative.

The Respondent told the Tribunal that at the date of service of the Notice to Leave the Property was not being sub-let. He said that he is employed as an IT contractor. He said that during covid he fell into rent arrears. At that time he took on a contract in Liverpool. The Respondent said that he sub-let the Property to try to clear the arrears. He said he listed the Property to rent from around November 2022 to March 2023. He said that letting out the Property did not work for him and he had to cancel a number of bookings. He said Mr Inglis of the Applicant contacted him and referred to the sub-letting of the Property. He said that Mr Inglis made him feel pressured about paying the rent arrears. The Respondent told the Tribunal that the Property is his permanent address but he works away from Edinburgh in Liverpool and pays for accommodation there. He said that when he is in Edinburgh at weekends he does not live in the Property. He said that he does not feel he can continue to live in the Property. He told the Tribunal that he is happy to leave the Property but he wants to come to an arrangement with the Applicant regarding the rent arrears.

Mr Gardiner referred the Tribunal to the photographs lodged on 19 February which suggested that the Respondent is not occupying the Property. He sought permission from the Tribunal for ground 10 to be included in the application as a ground for eviction in terms of section 52(5) of the Act. Mr Gardiner said that the online reviews from third parties who sub-let the Property indicate it was sub-let as late as June 2023. As regards the rent arrears, Mr Gardiner said that the rent had not been paid since August 2023 and the current arrears were £8750. He noted that £6000 of the arrears had accumulated since service of the Notice to Leave. Mr Gardiner submitted that by refusing to give up the keys for the Property until an agreement was reached regarding the rent arrears the Respondent was effectively holding the Property to ransom. As regards the question of reasonableness Mr Gardiner referred to the housing crisis and invited the Tribunal to allow ground 10 to be included in the application and grant the order for eviction.

In response to the submission by Mr Gardiner the Respondent said he felt in a very vulnerable position. He said he had not paid the rent since August 2023 as he was paying for accommodation in Liverpool. He said he was happy to give up the keys for the Property but submitted that the Notice to Leave was invalid as the Property was not sub-let at the date of service of the Notice to Leave. The Tribunal asked the Respondent about the question of reasonableness. He said that an order for eviction was not necessary as he was happy to leave the Property.

Mr Gardiner told the Tribunal that the allegations of intimidation by the Applicant were denied.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement for the Property dated 17 and 22 May 2018 which commenced on 22 May 2018
2. A Notice to Leave was served on the Respondent by email on 16 August 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 16 September 2023.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 2 November 2023.
4. Clause 12 of the Tenancy Agreement states that the Respondent is prohibited from sub-letting the Property without the written permission of the Applicant.
5. The Respondent sub-let the Property to third parties between at least November 2022 and March 2023.
6. The Respondent has failed to comply with an obligation under the tenancy.
7. The Respondent has ceased to occupy the Property.

Reasons for the Decision

The Tribunal determined to allow ground 10 to be included in the application as a ground for eviction in terms of section 52(5) of the Act. The Tribunal also determined to grant an order for eviction.

The purpose of a CMD is, inter alia, to identify the issues to be resolved. In this case it was not in dispute that the Respondent had sub-let the Property or that he no longer occupies the Property as his only or principal home. The Tribunal may do anything at a CMD which it may do at a hearing including making a decision. The Tribunal considered that it had sufficient information to allow it to proceed to make a decision.

In terms of section 51 of the Act, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the application the Applicant stated that they sought recovery of possession of the Property on the basis set out in ground 11, which is that the tenant has failed to comply with an obligation under the tenancy. Clause 12 of the Tenancy Agreement states that

the Respondent is prohibited from sub-letting the Property without the written permission of the Applicant.

The evidence lodged with the application regarding failure to comply with an obligation of the tenancy was screenshots of listings for the Property on Big Cottages, Planet Hotels and Booking.com and screenshots of reviews for the Property on Air BnB. The Respondent admitted the breach and said that he had listed the Property for sub-let between November 2022 and March 2023. The Tribunal did not consider that the Notice to Leave was rendered invalid if the Property was not sub-let at the date of service of the Notice to Leave.

The Applicant also sought to rely on ground 10 which is that the tenant is not occupying the let property as the tenant's only or principal home. The Respondent told the Tribunal that he pays for accommodation when he is working in Liverpool. He also told the Tribunal that when he is in Edinburgh at weekends he does not live in the Property. He said that he does not feel he can continue to live in the Property and that he is happy to leave the Property but he wants to come to an arrangement with the Applicant regarding the rent arrears.

The Respondent admitted that he had sub-let the Property. He also admitted that he is no longer living in the Property. The Tribunal determined that the grounds for eviction had been established.

As regards the question of reasonableness, the Respondent submitted that an eviction order was not necessary. The Respondent had told the Tribunal that he wished to come to an arrangement with the Applicant regarding the arrears. He admitted that the rent had not been paid since service of the Notice to Leave in August 2023. The Applicant's Representative submission regarding reasonableness was that the order should be granted to allow the Property to be placed on the market for rent. The Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal determined to grant an order for possession of the Property.

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.

**Joan Devine
Legal Member**

Date : 26 February 2024