



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/23/1726

Re: Property at 50 Cambusnethan Street, Wishaw, Lanarkshire, ML2 8NN (“the Property”)

Parties:

I.N.I Enterprises Limited, 3 Iona Quadrant, Wishaw, Lanarkshire, ML2 8XL (“the Applicant”)

Ms Natalie Lynch, 50 Cambusnethan Street, Wishaw, Lanarkshire, ML2 8NN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should not be granted.

Background

1. On 30th May 2023 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.
2. Lodged with the application were:
 - a. Short Assured Tenancy Agreement dated 2nd November 2017 and initially running from 4th November 2017 to 5th May 2018 and monthly thereafter;
 - b. AT5 Notice dated 2nd November 2017;
 - c. Notice to Quit dated 7th September 2022 for 5th December 2022
 - d. Section 33 Notice dated 7th September 2022 for 5th December 2022

- e. Sheriff Officer's Certificate of Service of c and d
 - f. Section 11 Notice;
3. The Application was served personally on the Respondent by Sheriff Officers on 23rd June 2023.

Case Management Discussion

- 4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was present and was represented by Mr Buttery of Whyte Fraser and Co, Solicitors. The Respondent represented herself.
- 5. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.
- 6. Mr Buttery moved for an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. He said that the tenancy was a short assured tenancy, an AT5 having been served before it commenced. He said that Notice to Quit and section 33 notices had been served, the notice period had expired, and the Respondent had not vacated.
- 7. The Chairperson asked the Respondent if she was opposed to the order being granted. She said that it was her home and she had nowhere else to go.
- 8. The Chairperson conferred with the Ordinary Member and they agreed that the ground of eviction had been established. The Chairperson explained to the Respondent that it now had to be established if it was reasonable to grant the eviction order.
- 9. The Chairperson asked Mr Buttery for his submissions on reasonableness. He said that there had been no contact with the Respondent on a personal level for a number of months. He said that some damage had been done to the property and that repairs and remedial works were required. He said that there had been a back up of sewage and that the property would require a new kitchen and bathroom. The works could not be completed while the Respondent continued to live there. He said that there had never been any issue with the Respondent paying her rent, and that given the moratorium on evictions she would have time to find somewhere else to live.
- 10. The Respondent said that the situation with sewage had been going on for months. She was always on time with her rent. She felt that she had been messed around with people not turning up to carry out the repairs when they said they would. She had experienced a bereavement. She has a child with autism, he is 9.

11. The Respondent said she had been given the keys to flat 44 Cambusnethan Street to use the facilities. She had been told she could move there, but she was then asked for the keys back.
12. The Respondent said that she would like to move but her situation is not straight forward and there are limits to what property she can accept.
13. As there was a dispute regarding reasonableness the Tribunal decided to continue the case to a hearing on that issue, the ground of eviction having already been established.
14. The Tribunal made it clear that they would like to hear evidence on the practicality of decanting the Respondent while any works took place.
15. The Respondent wished the hearing to take place by telephone rather than in person, and the Tribunal agreed.

Actions Subsequent to CMD

16. The Tribunal issued Directions to each party.
17. The Applicant was required to provide a List of Witnesses, an Inventory of Productions, evidence of the works which require to be carried out to the property, and a written submission on reasonableness.
18. The Respondent was required to provide a List of Witnesses, an Inventory of Productions, and a written submission on reasonableness.
19. On 29th October 2023 the Applicant's solicitor lodged a List of Documents, with accompanying documents and a written submission on reasonableness.
20. On 6th November 2023 the Applicant's solicitor lodged a List of Witnesses.
21. The Respondent did not lodge anything.

Hearing

22. On the morning of the Hearing each party sent an email to the Tribunal with additional submissions.
23. The Applicant's email contained an email from a professional confirming that he had been engaged to sell the Applicant's properties.
24. The Respondent's email was as follows:

"To whom it may concern, I've had unforeseen issues with my email account. I've been trying really hard to get back into my account for months. I was at the

*limit for how much emails could be stored. I've had no access to incoming or outgoing emails since the tail end of July going into August. I've finally gotten into my emails, as of Sunday just passed. Have a lot of ongoing reasons for the time it's taken/delay. One massive factor is health and mobility. Especially with regards to my hands. (all done via my phone, as no laptop to access) The other being my child. It's been an interesting start to P.5 for him. His autism support plan wasn't quite followed as intended, coupled with other reasons. Has taken up a large portion of time and energy. We've also had numerous times with him being off since school went back after summer, again that's taken up time for other things. For the above, I can only apologise. I tried to get everything into an email for yourself/landlords company since Sunday. It's not been doable. I do have all the hard copies I've been printing out since Sunday and being able to access my emails. I'm hoping I can send these in via recorded delivery. As my side of proof for the current situation, we find ourselves in. I'm aware this will be unorthodox/back to front. But I would really appreciate my side of the table/evidence to be recorded with the case. I've attached one picture, just to show I've gone to the time and effort to collate my evidence. Kind regards Miss Natalie Lynch
Again, I apologise for the timing of this at such a late stage in the day."*

25. The Hearing took place by teleconference. The Applicant was present and was represented by Mr Buttery of Whyte Fraser and Co, Solicitors. The Respondent represented herself.
26. The Chairperson explained the purposes of a Hearing in terms of Rule 24 of the Rules. The Chairperson explained that the Applicant had already established the ground of eviction, and now needed to establish that it was reasonable for the Tribunal to grant the order.
27. The Respondent asked for the Hearing to be postponed to allow her to lodge the documents she referred to in her email. She referred to the terms of her email and said that she had not had access to her emails for some months and could not compile the evidence required in terms of the Tribunal's Direction. She had not realised the documents could be submitted by post. She has issues with her hands and was trying to sort everything out on her phone as she does not have a laptop. She also has issues with her memory. Her home situation with her autistic nine year old is in turmoil, and social work support has been withdrawn. Her own mental and physical health issues mean that she does not have the capacity to lift the phone and speak to people. Her bundle of documents contains evidence to show that there has been an ongoing issue with sewage and that she has not been at fault. She feels that she is being attacked and accused of not being a good tenant and she disagrees with that.
28. The Applicant's solicitor confirmed that the Applicant was opposed to a postponement. He suggested it may just be a delaying tactic. He said that given there were ongoing issues with human waste the matter needed to be dealt with as soon as possible.
29. The Tribunal adjourned to consider the motion for a postponement. The Tribunal considered its overriding objective to act justly. The Tribunal balanced

the need to make sure that the parties were on an equal footing with the need to avoid delay. The Respondent had had a period of three months to compile the documentation. She had sought assistance from Shelter in the past, and could have done so again. No further Tribunal dates were available until February 2024. The Tribunal decided to reject the motion, considering that the need to avoid delay outweighed the other factors.

Evidence

Mrs Bashir

30. Mrs Bashir, Director of the Applicant, gave evidence. She confirmed the other director in the company was her husband. She said that the property was one in a block of five flats, all of which were owned by the Applicant. The Applicant employs a letting agent, Lanarkshire Lettings, to manage the property.
31. Mrs Bashir said that problems started with the flat away back. It had been flooded with sewage on three occasions. On the first two occasions the issue had been fixed, but they now need to get a contractor in to rip everything out and re-do it.
32. Mrs Bashir was referred to the report by Drain Doctor, dated 18th October 2018, which had been lodged on behalf of the Applicant. She said that this report was in relation to the second blockage. She said that the blockage had been caused by blue paper, wipes and sanitary products.
33. Mrs Bashir said that the most recent blockage had occurred towards the end of March 2023. She was referred to the report by ML1 Trades, dated 25th April 2023, which had been lodged on behalf of the Applicant. She said that that company was owned by her nephew and she had used his company for the last ten years for general maintenance for all the Applicant's rental properties. She said that after she was notified of the issue by the letting agent she instructed ML1 Trades to go out. They prepared the report after a visit. Mrs Bashir had not visited the property. She said that as she had a letting agent she tried to keep out of it. She understood that extensive work was needed. She said that the work will be partly funded by insurance, but is on hold until the Tribunal has made a decision in connection with the application. ML1 Trades will be doing the work, the bathroom and hall will be covered by insurance, the rest will be paid for by the Applicant.
34. Mrs Bashir said that the blockage had been cleared, but the Respondent had not given access to allow pipes to be connected. The Respondent was given keys to another flat in the block, number 44, to use the bathroom facilities. She still has the keys.
35. Mrs Bashir said that she had also instructed cleaners to clean the property, but they had not managed to gain access.

36. Mrs Bashir was referred to the report dated 20th June 2023 by Repair Solutions, which had been lodged on behalf of the Applicant. She said Repair Solutions was a sister company to ML1 Trades and carried out more extensive work. They had recently renovated Number 44. The Report did not say on what date the inspection had been carried out. It was unclear from Mrs Bashir's evidence if this report referred to a blockage subsequent to the one at the end of March 2023. The report said that a substantial amount of blue paper, wipes and sanitary products had been removed, and this was what had caused the blockage. The person who wrote the report was no longer with the company. It was unclear from the evidence why Repair Solutions had been involved at all, or when. There was no witness to speak directly to the report.
37. Mrs Bashir said that after the blockage in March 2023 ML1 Trades were given access by the Respondent to do some repair work, but had not been able to gain access to reconnect the outside pipes to the toilet. The reconnection needs to take place before the insurers will become involved.
38. Mrs Bashir was referred to the email trail regarding insurance which had been lodged on the applicant's behalf. She confirmed that RSA are the insurers, Kirkton are the brokers and Rainbow are the insurance company's contractors. She could not speak to the contents of the emails as she was not a party to them.
39. Mrs Bashir said that the Respondent had not allowed access to any contractors and that it was fair to assume that the property was in the same condition as it had been in when ML1 Trades attended in April 2023. She said that she understood that the whole property will need to be stripped out and be upgraded and updated. She said that her health is not great and it is her intention to sell her properties and pay off the loans. She wishes to sell the flats in one go. She said that if the Respondent was unhappy with both the landlord and the letting agent she could not understand why the Respondent wished to stay.
40. The Tribunal asked Mrs Bashir if a letter had been sent after the first blockage incident warning the Respondent about disposal of items in the toilet. She said that she did not know, that would have been down to the letting agent. She confirmed that the issue had not affected the property upstairs, and that she was not aware of any issue with blockages at number 44 since the Respondent had been given a key.
41. The Tribunal asked Mrs Bashir about Number 44. She confirmed that the property in question is a two bedroom flat, and that number 50 is also a two bedroom flat. Number 44 is empty because the Respondent has the key and is using the facilities. Number 44 had just been renovated prior to being put on the market. The Tribunal asked about the possibility of decanting the Respondent to number 44 to allow the work to be carried out. Mrs Bashir very quickly said that she has someone who wants to rent the flat. That person is preferable because they have no pets, whereas the Respondent has a cat. It is the Applicant's policy not to allow pets.

42. The Respondent was given the opportunity to cross examine. Mrs Bashir said, in response to questions, that Mr Asgar prepared the ML1 Trades Report. She did not know if he had attended the property personally. The Respondent made the point that Mr Asgar was a relative and therefore not independent.
43. The Respondent asked Mrs Bashir to confirm that there had been another incident of a blockage in 2020. She confirmed that there had and that she had attended personally. She was asked why the letting agent was not giving evidence, she said they were unavailable.
44. The Respondent pointed out that it was not clear from Mrs Bashir's evidence if she intended to sell or rent the flat. She replied that she wanted to sell and that the properties could be sold with tenants in them. She has been told that if they are renovated she will get better money for them. The Respondent asked why she could not be decanted in to number 44 if it is possible to sell with a sitting tenant. Mrs Bashir replied that it was because the Respondent had a cat, and no permission had been given for a cat. The Respondent disputed this, but Mrs Bashir maintained that she had never given permission. Mrs Bashir then told the Respondent that if she was not happy it would be better for her to move out. She told the Respondent that her failure to let contractors in was stopping the renovation going ahead.

Mr Ashgar

45. Naeem Ashgar gave evidence for the Applicant. He confirmed that he is a project manager in construction management and insurance work, and is self employed. His business is ML1 Trades. He said that he did work for the Applicant, mainly maintenance.
46. Mr Ashgar said that he was called out to the property by the letting agent, who reported difficulty with the wc. He had been working on refurbishments at numbers 44 and 48. He attended number 50 personally. An employee of his had gone in the day before he did. Mr Ashgar said that when he attended the property he saw evidence of human waste, and toilet roll in the bath. The toilet had overflowed and the whole property needed sanitised. He carried out investigations. He looked in the drain outside. The blockage was not caused by toilet roll, and it took a few hours to clear. He did not know what had caused the blockage, but that it had been caused by number 50, the line from number 48 was clear. He said that both lines were connected, but he knew it was not caused by number 48 as he had run the tap and it flowed freely. He said that there had been discussion about giving the toilet at number 50 its own run, but he never got the opportunity to finish the job. He said that he could not get access, He had made a few phone calls and spoke to the Respondent a few times. He had tried to get his part of the job one.
47. Mr Ashgar was asked about his report, dated 25th April 2023. He read the paragraph in which he said that it had been caused by a build up of sanitary pads and wipes. It was put to him that he had already said that he did not know

what had caused the blockage. He replied that he had seen wipes and blue paper, but could not comment on sanitary pads as he had not seen any. He refused to accept that his report said that he had seen them. He said that he has unblocked many drains and that blockages are usually caused by sanitary pads. His evidence was defensive and he accused the Tribunal of trying to trip him up.

48. Mr Ashgar said that human waste is toxic and it had done damage to the flat. He gave the Respondent the key to number 44 so that she had a welfare facility. The whole flat needed to be sanitised. The kitchen, bathroom and hallway were covered in human waste. All the work mentioned in his report needs to be done to put it in to a habitable condition. The respondent could not live in the property while the work was being done. The water would have to be turned off.
49. Mr Ashgar said that he had not been given access to the property. The last communication he had had was that the Respondent had suffered a bereavement. He had tried to call a few times after that.
50. The Respondent was given the opportunity to cross examine Mr Ashgar. She asked about the linkage of pipes. Mr Ashgar said that there were two separate manholes, one which accessed numbers 48 and 50, which are linked, and one which accessed numbers 44 and 46, which are linked. He said that the line for number 48 had been closed down and was not used for 10 months. The respondent challenged this on the basis that there had been workmen working in that flat. Mr Ashgar said that they had been working on it in February 2023.
51. The Respondent asked if the excrement was in the kitchen purely because it had been trailed there by the feet of the workmen. Mr Ashgar was adamant that it had come up the kitchen sink. He said that he had seen fouled, black water come up the sink. When asked he said that the pipes needed a full refit because the blockages kept happening. He was adamant that the blockages had been caused by number 50.

The Respondent

52. The Respondent was given the opportunity to put forward her own case. She said that she felt that she had been a good tenant, and kept her head down, and that she was being treated unfairly. She did not see why she could not be decanted to number 44, particularly given that Shelter had proposed this when they had been advising her. She said that the whole situation was toxic for her mental health.
53. The Respondent explained that she lived in the property with her nine year old son, who has a diagnosis of autism, he was diagnosed at age 4. He is in main stream school, in primary three. He is prone to meltdowns. He lacks social skills. He had to move school, and the school is not close to where they live. The Respondent's step father is a janitor at the school, and having that

familiarity has helped him to settle. The child is transported to and from school by family.

54. The Respondent has health issues. She has emotional unstable personality disorder, severe depression and severe anxiety. These have been massively exacerbated by the current situation. She had mental health support but it has been removed because of the situation with the house. She has also lost the self directed support budget agree for her and her son. She said she will be difficult to re-house as she needs a ground floor flat. She does not know where she would be on the housing list if an eviction order was granted. There are no guarantees. Number 44 is a ground floor flat and she could be decanted there while work is carried out on her flat. She said that due to the type of contraception she has used since her son was born she does not require sanitary towels.

55. The Tribunal asked the Respondent if she had refused access for repair works. She said that that was not a fair reflection of what had happened. She said workmen had come in. They had arranged on several occasions to come back, but then did not turn up at the times arranged. She allowed access to the cleaners in June 2023, although she was not impressed by the job that they did. Her grandmother died in June and she was finding it difficult to cope. She asked to be left in peace for a week to grieve. She has not chased it up as she is finding it exhausting. She does not have the emotional energy to deal with it. She said that she is using the bathroom at number 44, which is also a ground floor flat. It is not a desirable situation. She does not have the money to go and take a different property elsewhere, and it is very difficult in the current market to get another property. She said that if the previously agreed decant had happened the work would probably be done by now. She said that she has lived in the property for eight years and that the thought of an eviction order being granted is a very scary prospect. She has no idea what will happen after that.

56. On cross examination the Respondent said that she accepted that the bathroom and hall needed to have work done but she did not agree that the kitchen needed refurbished. She said that the sewage did not come up in to the kitchen. She said the kitchen was not modern, but it did function. She did accept that she would have to move out for the work to be done. She did not accept that the local authority would give her priority on the housing list. She said that her mother stays in Shotts and she has no family in the Motherwell/Cambusnethan area. The school situation is the best work around she can find. The Respondent said that there was only one request for access that she had not responded to, and that was on 27th June 2023.

Submissions

57. Mr Buttery made submissions on behalf of the Applicant. He asked the Tribunal to accept the evidence of Mrs Bashir in its entirety.

58. Mr Buttery said that there were two primary points to be considered: firstly the causing of the blockage and the failure to allow access, and secondly the need to vacate the property to allow the work to be carried out.

59. Mr Buttery dealt with Mr Ashgar's evidence. He said that in essence he carried out the inspection. Mr Buttery accepted that the report contained elements that Mr Ashgar could not confirm but he did say that he had seen wipes and he was clear that the blockage had been caused by number 50. He had also confirmed that access had been refused to allow the pipes to be connected. This had stopped the rest of the work from being done.
60. Mr Buttery considered that it was not credible that the Respondent had not made an application to the Tribunal in relation to the condition of the property and it was not credible that someone would be prepared to live in those conditions, or if it was credible it was strange.
61. Mr Buttery submitted that there would be merit in granting the order from the Respondent's point of view. There was no reason for her to continue living in the locality and it might be easier if she was closer to school and family. She may well be given priority on the housing list.
62. The Respondent summed up. She said that if the decant had gone ahead none of this would have been necessary. She does not have anywhere to go and this factors in to the decision making process. This is not a regular situation.
63. The Tribunal adjourned to consider its decision.

Findings In Fact

- a. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- b. The tenancy agreement was dated 2nd November 2017, with the initial term being from 4th November 2017 to 5th May 2017, and monthly thereafter;
- c. Notice To quit and Section 33 Notice were served timeously and correctly;
- d. The Application was served on the Respondent by Sheriff Officer on 23rd June 2023;
- e. The property is a two bedroomed flat in a block of five flats;
- f. The applicant owns all five properties;
- g. Mrs Bashir is a director of the Applicant;
- h. The Applicant intends to sell all five flats as tenanted properties;
- i. Throughout the tenancy there were numerous incidents of a blockage in the sewage pipe causing flooding in the property;
- j. A blockage occurred in the sewer pipe towards the end of March 2023;
- k. ML1 Trades were instructed on behalf of the Applicant to deal with the blockage;
- l. ML1 Trades is the business of Mr Ashgar;
- m. Mr Ashgar is Mrs Bashir's nephew;
- n. ML1 Trades cleared the blockage;
- o. Mr Ashgar gave the Respondents the keys to number 44 Cambusnethan Street, Wishaw so that she could use the bathroom facilities;
- p. The Respondent still has the keys and is still using the bathroom facilities;
- q. 44 Cambusnethan Street, Wishaw is not currently tenanted;
- r. On one occasion in June 2023 the Respondent did not reply to a request for access to the property;

- s. In June 2023 the Respondent's grandmother died and she asked for a week without contact to allow her to grieve;
- t. No request for access has been made since the end of June 2023;
- u. Following the flooding the property requires substantial repair work;
- v. The repair work cannot be carried out while the property is occupied;
- w. The Respondent has health issues including unstable personality disorder, severe anxiety and severe depression;
- x. The Respondent lives with her nine year old son who has autism;
- y. The child does not attend a school in Wishaw;
- z. The Respondent requires a ground floor property;
- aa. The current property suits the Respondent's needs;

Decisions and Reasons For Decision

64. The Tribunal were satisfied that the ground of eviction was established.

Section 44 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states:

Assured tenancies: discretionary eviction grounds

(1)The Housing (Scotland) Act 1988 is modified as follows.

(2)In section 18 (orders for possession)—

(a)subsections (3) and (3A) are repealed,

(b)in subsection (4), for "Part II" substitute "Part I or II",

(c)in subsection (6)(a), the words "or Ground 8" are repealed,

(d)in subsection (8), for "subsections (3A) and (4A)" substitute "subsection (4A)".

(3)In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4)In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a)in subsection (1), for "Subject to subsection (6) below, the" substitute "The",

(b)subsection (6) is repealed.

(5)In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a)in the opening words, for "shall" substitute "may",

(b)after paragraph (b), the word "and" is repealed,

(c)after paragraph (d) insert " , and

“(e)that it is reasonable to make an order for possession.”.

(6)In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a)in Part I, Ground 8 is repealed,

(b)the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c)the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

65. The Tribunal now has to decide if it is reasonable to grant the eviction order.

66. The Tribunal found Mrs Bashir to be a credible witness. She was forthright in her answers. She was clear that she, as a director of the Applicant, wished to sell the properties, and that she would do so with sitting tenants. She said that she had a tenant lined up for the empty property at number 44. It was also clear that she did not have patience for the Respondent, and wished her to vacate the property.

67. The Tribunal did not find Mr Ashgar to be credible. As soon as he was asked to clarify the contents of his Report, based on the evidence he had given orally, he became defensive and argumentative. There was no scope for exploring with him the situation in any depth. He was not willing to consider alternatives to his point of view. The Tribunal therefore did not consider that it had been established that the Respondent had done anything to cause the blockages.

68. The Tribunal found the Respondent to be credible and reliable, and she was able to put forward her case well, which boiled down to her asking why she had not been decanted to number 44 to allow the work to be carried out. The Tribunal had sympathy with this argument. The Respondent has had the keys of number 44 for at least eight months and has been using the facilities there. No evidence was given about attempts to contact the Respondent for access after the end of June and therefore the Tribunal assumes that no such attempts have been made. It was put to the Respondent that she had not pursued the Applicant for the work to be done. The Tribunal are of the view that it is a landlord’s responsibility to comply with the repairing standard and

the Applicant should have been making efforts to contact the Respondent, not the other way round. The Applicant seems to have been prepared to lose out on rental income for number 44 rather than deal with the issue, apparently based on the fact that a decant is not possible because the Respondent has a cat.

69. The Tribunal are aware that it is difficult in the current market to find a rental property. The Respondent has particular needs and the current property meets those needs.

70. Considering all of the foregoing The Tribunal has decided that it was not reasonable to grant the order.

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.

A. Kelly

Legal Member

Date: 23/11/2023