



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/19/3500

Re: Property at Flat 52, 50 Royal Mile Mansions, Old Town, Edinburgh, EH1 1QN (“the Property”)

Parties:

Mrs Frances Sharp, 47 Roxwell Road, Chelmsford, CM1 2LY (“the Applicant”)

Mr Robert Lee Gavin, Flat 52, 50 Royal Mile Mansions, Old Town, Edinburgh, EH1 1QN (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 10 and 11 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- **Background**
- 1. **An application dated 31 October 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of two grounds: the respondent is not occupying the let property as their principal home, being ground 10; and the Respondent having breached a term of a private residential tenancy, being Ground 11, both Grounds under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).**

- Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 14 January 2020. The Applicant was represented by Mr Moffat of Anderson Strathern, Solicitors. The Respondent was personally present. The Respondent indicated that he intended to defend the application on the basis that he was occupying the property as his principal home. He admitted that he had previously sub-let the property via Air B&B but had stopped doing so when he found out he was not permitted to do so under his lease. He occupied the property himself and had access to his children on a regular basis. The CMD was adjourned and a Hearing fixed for evidence to be led. The issues to be resolved at the Hearing were noted as being:

- (a) Does Ground 10 of Schedule 3 of the Act apply or is the property the sole or principal residence of the Respondent;
- (b) Although the Respondent admitted that the property had been sublet at times and this was technically in breach of the tenancy conditions, would it be reasonable to grant an order for eviction under Ground 11 in all the circumstances.

3. The following facts were agreed at the CMD:

- (a) It was not disputed that the parties entered into a tenancy agreement for a Private Residential Tenancy for the property commencing on 11 June 2019;
- (b) It was not disputed that there were incidents when he sublet the property on Air B&B;
- (c) The Respondent admitted that doing so may constitute a breach of the tenancy agreement with regard to the clause of sub-letting the property.

4. The Hearing took place on 9 March 2020. The Applicant was personally present and represented by Mr Moffat of Anderson Strathern. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the date and time of the Hearing had been intimated on the Respondent via letter and email sent to the email address from which the Respondent had been corresponding with the Tribunal. Further, the Respondent had emailed further with the Tribunal following notification of the hearing date being given, and suggested that he intended to lodge documents to evidence his position. No such documents were received by the Tribunal. The Tribunal was satisfied that the Hearing could proceed in the absence of the Respondent.

5. The Tribunal heard evidence from the Applicant. She submitted that since the CMD she had instructed a Private Investigator who had tracked the Respondent down to having leased another property elsewhere in Edinburgh, believed to be in Brunswick Street. She had been made aware that the Respondent had been leasing numerous properties and subletting them without consent to do so, with

a number of landlords. A photo was produced of the Respondent's car being parked in the private car park of the property elsewhere in Edinburgh at Brunswick Street where he was now believed to be living. When the Respondent had entered into the lease with the Applicant, she had been represented by Rettie & Co as her managing agent. They told the Applicant afterwards that the Respondent had also entered into a lease for another property with them on the same day, The Applicant was unhappy with this but Retties didn't seem concerned. She searched on Google against the Respondent's name and discovered an article which stated that he had unlawfully sublet properties in England.

6. The lease commenced 11 June 2019. Over the following weekend the concierge based in the building of which the property forms part, reported to her that there had been a very noise party involving over 30 people. The Applicant was shocked as the property was only one and a half bedrooms. She told Retties immediately to serve Notice to Leave on the Respondent as she did not want the neighbours being disturbed by the Applicant. He failed to remove from the property following service of the Notice to Leave. The concierge then reported to her that the property was still being used as an Air B&B rental.
7. Productions were referred to which showed adverts on Air B&B and Booking.com for the property, suggesting it could accommodate 12 people and that discounts would be available from longer stays. After a number of attempts to contact Air B&B and have the property removed, this was eventually achieved in or around October 2019. There were still people coming and going from the property after that as reported by the concierge.
8. The Applicant submitted that she had been given no access to carry out any maintenance and was very concerned about the state of the property. The Respondent had refused to allow Retties access. They gained access once just prior to expiry of the Notice to Leave but the Respondent accused them of theft. Retties thereafter refused to re-enter the property to inspect. The Respondent had suggested that a window was faulty but the Applicant had been unable to inspect and she was concerned if there was problem, as the property is on the 5th floor and the window could fall onto the street below.
9. No rent had been paid since September 2019 and there were arrears of rent of £8000 due to the Applicant.
10. The Tribunal heard evidence from Sandip Anjula, a concierge employed by the building management company. His role involved looking after communal areas, checking fire exits and reviewing CCTV. He had been employed in the role for around 6 years. He knew all of the residents in the building, of which there are 55 properties.
11. He became aware of issues in the Property on the weekend of 21 and 22 June 2019. He came into work for his Saturday morning shift and was aware of lots of people in the common areas of the building, who did not live there. He spoke

to a number of them who advised that they had been at a party held in the Property, which had been let via Air B&B. He checked CCTV records and didn't recognise any for the people going in and out of the property over the weekend.

12. Mr Anjula reported the issue to Retties and the Applicant. He continued to monitor the situation over the next few months. People attending at the property having booked online would often press the buzzer for the concierge service, thinking that was how they would collect their keys. People were often horrified to hear that the Property was being let unlawfully. The concierge reported that he hardly ever saw the Respondent at the property. On occasion they would see the Respondent's partner, believed to be called Matthew, but only for short periods at a time. The property was let out completely through the summer, and right through until October. Often there could be large groups of people, and far more than should be staying in a 1 and a half bedroom apartment. Often the concierge would have to give access through the front door to cleaners who had been employed to go to the Property and clean between lets. The cleaners had not been given a fob for main front door, only a flat door key.

13. Mr Anjula reported that the neighbour of the Property had stated to him last week that he hadn't heard any movement in the property for a few months, and didn't think anyone was occupying it at all. The last time Matthew was seen at the property was on 2 February 2020 when he appeared to drop something off at the property and left around 20 minutes later. The Respondent had not been seen since December 2019. Some of the people coming to stay at the flat reported being charged up to £500 per night to stay there, and had been left very disappointed.

- Findings in Fact

14. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced on 11 June 2019;
- (ii) In terms of the Agreement the Respondent was due to pay rent to the Applicant in the sum of £1200 per calendar month;
- (iii) In terms of Clause 7 of the Agreement the Respondent agreed to occupy the Property as his home and must obtain the Landlord's permission before carrying out any trade, business or profession there;
- (iv) In terms of Clause 12 of the Agreement, the Tenant agreed that unless they had received prior written permission from the Landlord they must not sublet the property or any part of it;
- (v) The Applicant has served a Notice to Leave on the Respondent on the basis of Grounds 10 and 11 of Schedule 3 to the 2016 Act, and which was served on 4 July 2019;
- (vi) The Respondent has failed to occupy the Property as his principal home;
- (vii) The Respondent has sublet the Property without consent of the Landlord.

- Reasons for Decision

15. The Tribunal accepted the evidence of both the Applicant and Mr Anjura. The Tribunal was satisfied that the terms of Ground 10 of Schedule 3 to the 2016 Act had been met, namely that the Respondent is not occupying the let property as his principal home. The Tribunal was satisfied that the Respondent has not occupied the Property as his principal home since the Agreement began and still failed to do so. Said ground is a mandatory ground.

16. Notwithstanding the finding in ground 10, the Tribunal was also satisfied that the terms of Ground 11 of Schedule 3 to the 2016 Act had been met, in that he has sublet the Property without consent as required in Clause 12 of the Agreement. The Tribunal was satisfied that he has sub-let the Property regularly between June 2019 and November 2019. ground 11 is a discretionary ground upon which the Tribunal must be satisfied that it is reasonable to grant the order. The Tribunal is satisfied that it is reasonable to grant the order, taking into account the disturbances caused to the other residents in the building, the rent arrears accrued by the Respondent and the Respondent's failure to allow access for inspection.

17. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified those grounds, in accordance with the requirements of section 52 of the 2016 Act.

- Decision

18. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 11 and 11 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Mrs F Watson

9 March 2020

Legal Member/Chair

Date