



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/21/1703

Re: Property at Flat 6, 12 Albion Terrace, Edinburgh, EH7 5QX (“the Property”)

Parties:

Mr David Russell Gibson, Mrs Victoria Jane Gibson, 9 Brunstane Mill Road, Edinburgh, EH15 2LY (“the Applicant”)

Ms Cataline Basarab, Ms Andra Toropleanu, unknown, unknown (“the Respondent”)

Tribunal Members:

Jan Todd (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 order for possession should be granted.

- **Background**

1. This was a case management discussion to consider an application for eviction in terms of Ground 10 of the 2016 Act namely that the tenants are not living in the Property. The CMD was scheduled originally for 27th October but was then cancelled as the sheriff officers reported they could not serve the papers on the second respondent as it appeared she had left the forwarding address in Leeds that she had been traced to.
2. The following documents were lodged with the application:-
 - a. Notice to Leave dated 14th June 2021
 - b. E-mail from the Applicants representative to the Respondents enclosing the Notice to Leave dated 14th June 2021.
 - c. Private Rented tenancy Agreement dated 18th September 2018
 - d. Section 11 Notice and evidence it has been sent to the local authority
 - e. E-mails between the Applicant’s representative and the Respondents regarding rent arrears and their whereabouts.

3. As there was no forwarding address found by Sheriff officers for the first respondent and sheriff officers reported that the Second respondent had been living at the address found in Leeds but was no longer there, the case was then accepted for service by advertisement.

The Case Management Discussion

4. The case was scheduled for Tuesday 23rd November at 10am. A Certificate of Advertisement confirms that the case has been advertised on the Tribunal's website for at least 15 days.
5. Mr Michael Erskine attended for the Applicants. Neither of the Respondents attended nor were they represented. The Legal Member opened the CMD by making introductions and advising on the purpose of the CMD and how the proceedings would be conducted especially considering they were being conducted by teleconference.
6. Mr Erskine advised that he was seeking an order for eviction on behalf of the Applicants who are the landlords and owners of the property on the basis that he and his clients do not believe the tenants are residing in the Property and have not been for several months. He advised that he had an e-mail confirmation from the first named Respondent Ms Basarab on 27th May advising that she was no longer living in the Property and was in fact in Romania. He confirmed that after visiting the property on 14th June 2021 and finding no evidence of either tenant in the property and evidence that they have not been there for some time with rubbish, and debris in the flat he served notice to leave by sending it to their agreed e-mail addresses. Details of his visit and his attempts at contacting the tenants are contained in the Notice to Leave in Part 3. Mr Erskine writes in Part 3 that he hand delivered a letter on 28th May to the Property chasing arrears and asking the tenants to get in touch with Cox and Co. He notes there was no answer when he knocked on the door and he followed this with a letter dated 8th June advising an inspection was being done on Monday 14th June 2021. He then describes his visit to carry out the inspection where he notes "no-one was present. Property was in poor condition and full of rubbish debris and mess.... Based on the mail piled at the door I would estimate no-one has been there since before 28th May as my hand delivered letter was present and seemingly undisturbed" He goes on to note there was evidence of smoking, drug use and other undesirable activities and evidence of damage to property but no evidence of personal clothing or belongings.
7. Mr Erskine confirmed that he has not heard from either tenant since serving the notice to leave. On being asked if he had returned to the house he advised that he has not been in it but he has spoken to some of the neighbours when he returned to the block on or around 29th June including neighbours from flat numbers 11,8 and 4 where the occupiers confirmed the tenants have not been seen back at the Property. Mr Erskine also referred to the sheriff officers report of 17th August, which he sought in order to establish if a forwarding address could be traced, and which he confirmed states that the sheriff officers are satisfied the tenants are not residing at the Property and they had indicated the second respondent may have been living in Leeds. A copy of that report from Walker Love is contained in the Tribunal's papers

and the Tribunal notes the Sheriff officers do confirm that they undertook a visit to the Property and found Flat 12 to be vacant. The Report also notes the Sheriff Officers spoke to neighbours and were advised the flat had probably been vacant for three months and before that may have been used as a brothel.

8. The Respondents have lodged no written representations in response to the this application..
9. The Applicant is worried about the state of the Property and Mr Erskine confirmed that not only are there substantial rent arrears as there were approximately three months outstanding at the time the notice to leave was served and there have been no payments since, he advised that due to the state of the flat he and his clients are very concerned about the state and condition of the Property and want to get possession to check it, clear it out and ensure it is cleaned and brought back to a condition where it could be let out or sold. He advised his clients have found this whole episode very disturbing and are not sure if they want to continue to rent it out.

- **Findings in Fact**

1. The parties entered into a lease of the Property which commenced on 1st October 2018 and continues until terminated by either Party in terms of clause 24 of the lease.
2. The Rent due in terms of the lease is £775 every calendar month payable in advance
3. The Respondents have left the Property on or before 28th May 2021.
4. The Respondents have not given written notice of their intention to terminate the tenancy
5. The Respondents have not handed back the keys to the Applicants
6. The Respondents are not residing in the Property.
7. The Property is empty.
8. The Applicant has served a Notice to Leave on both Respondents relying on Ground 10 of the Schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 that the tenant is not occupying the let Property. The Notice to Leave calls on the Respondents to leave by 15th July 2021
9. The Notice to leave was sent by e-mail to the Respondents on 14th June 2021
10. A Section 11 notice has been sent to Edinburgh City Council.
11. The Applicant has submitted an application for eviction of the Respondents to the First Tier Tribunal for Scotland Housing and Property Tribunal on 15th July 2021 relying on Ground 10 and accompanied by a Notice to Leave.

- **Reasons for Decision**

12. The parties entered into a lease where the Respondents leased the Property from the Applicant. The letting agent advised that in actual fact the tenants had occupied the property prior to that but the Applicant bought the property with the tenants in occupation and agreed with them to enter into a new Private Rented Tenancy from 1st October 2018. He advised the tenants accepted this as it gave them more protection than a

short assured tenancy. The Tribunal accepts that the parties had agreed to enter into a new Private Rented Tenancy and note it is signed by all 4 parties.

13. The Respondents appear to have fallen into arrears of rent during 2021 and Cox and co who are the letting agent made numerous attempts to contact them to discuss this which is evidenced by the e-mails lodged with the application.
14. On 27th May 2021 the first named Respondent Ms Catalina Basarab responded to Mr Erskine by e-mail saying "Hi Mike Sorry for that I am not in Scotland anymore I am in Romania. Andra she is there. I will tell her to contact you. Thank You."
15. The Respondents have made no appearance at this CMD and have not made any written response.
16. The Tribunal accepts the written evidence and verbal statements made by the Applicant's agent, Mr Erskine, who the Tribunal found convincing and credible in his evidence that the Respondents had left the Property on or before 28th May 2021 when he posted a letter to them through the door of the Property and it was still there untouched or disturbed 2 weeks later. He has spoken to neighbours who confirm the Respondent had left the Property and have not returned. He has also instructed sheriff officers and they have confirmed that on their own visit to the Property in August 2021 it appeared empty. In addition they traced the second respondent to an address in Leeds but when another Sheriff officer attending there to serve the papers relating to this action, they advised that a different tenant was living there who confirmed that various pieces of mail had been lying for the second named respondent. From this evidence the Tribunal accepts it is likely the second named respondent did move from the Property to Leeds but has now left there as well.
17. The Tribunal finds that the Applicant has served a Notice to leave dated 14th June 2021 which he e-mailed to the Respondents at the agreed e-mail addresses advising them to leave by 15th July. In terms of clause 24 of the lease that brings the tenancy to an end at either the later date of the date specified in the Notice to Leave or the date the tenants leave the Property.
18. In terms of S52 of the 2016 Act an application for eviction must be accompanied by a Notice to Leave which has given to the tenant.
19. The Tribunal was satisfied that the Respondents had been served with a Notice to Leave under S52 (3) of the 2016 Act specifying Ground 10 of Schedule 3 of the Act as the relevant ground of eviction.
20. The Notice to Leave was also accompanied by evidence of how the ground was met namely confirmation of the visit to the Property by the letting agent and lack of response to attempts to contact the Respondents.
21. The Tribunal has to consider whether the Grounds were met for the granting of the eviction order.
22. The Tribunal can only grant an eviction order if it finds that one of the grounds mentioned in Schedule 3 are met and the Applicant is relying on

Ground 10 states

"(1) It is an eviction ground that the tenant is not occupying the let property as the tenant's home

(2) The First Tier Tribunal may find that the ground specified by sub paragraph (1) applies if

(a) the let property is not being occupied as the only or principal home of the Tenant

(ii) a person to whom a sub-tenancy of the let property has been lawfully granted and

b) the property not being occupied is not attributable to a breach of the landlord's duties under Chapter 4 of the Housing Scotland Act 2006."

c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

23. The Coronavirus (Scotland) Act 2020 made amendments which have changed the nature of this ground from a mandatory one to a discretionary one and the Tribunal has to consider firstly if the ground is met and then secondly if it is reasonable to grant the order. The Tribunal has found from the evidence described above that the Property is not occupied by the Respondents as their main residence. The Tenants are not living in the Property They have effectively abandoned it.
24. The Tribunal then has to consider whether or not it is reasonable for the order to be granted. Mr Erskine explained how the Applicants are very anxious to regain legal possession of the Property, that they have lost out on rental income for several months now and there is a lot of rubbish, and debris in the Property as well as foodstuffs which will take a lot of time to clear and bring up to the standard to rent out or to sell. He confirmed this has been a very stressful time for the Applicants.
25. There being no written response or other representation from the Respondents, the Tribunal is satisfied in terms of S 51 (1) of the Act that one of the eviction grounds named in Schedule 3 of the Act, namely Ground 10, is met, and that it is in the interests of the Applicants that the application is granted so that the Applicants can repossess the Property, remove any remaining belongings, to clear and clean the flat and bring it up to a reasonable standard for further occupation. The Tribunal therefore determined that the order for eviction sought by the Applicant should be granted and that as it is in the interests of the overriding objective to deal with matters efficiently, this decision could and should be made at the CMD.

- Decision

An order for eviction is granted.

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: Jan A Todd

Date: 23rd November 2021