



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/23/1672

Re: Property at 2/4 Ferry Road Grove, Edinburgh, EH4 4BG (“the Property”)

Parties:

Mrs Sally Sydserff, Mr Robin Sydserff, 109 Meadowspot, Edinburgh, EH10 5UY (“the Applicant”)

Mr Rafal Majek, Mr Jacek Mawkowski, 2/4 Ferry Road Grove, Edinburgh, EH4 4BG, UNKNOWN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

1. On 24th May 2023 the Applicant lodged an Application with the Tribunal under Rule 109 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. The ground alleged was ground 11 of Schedule 3 of the Private Tenancies (Housing) (Scotland) Act 2016.
2. Lodged with the application were: -
 - a. Copy Private Residential Tenancy Agreement showing a commencement date of 24th May 2019 and a rent of £850 per month
 - b. Copy Notice to Leave dated 24th February 2023;
 - c. Copy email dated 24th February 2023 to the Respondents serving the Notice to Leave;
 - d. Section 11 Notice and proof of service;
 - e. Statement outlining the alleged breaches of the tenancy agreement;

- f. Copy of an email from Cullen Plumbing and Heating dated 18th July 2022 advising they attended for a gas safety check, neither of the tenants were there and another man was present, and that there was no credit in the gas meter;
 - g. Copy of an email from Owen Gibb & Sons, plumbing contractors, dated 3rd August 2022 saying they had struggled to get access to the property to arrange access to fix the toilet;
 - h. Email trail between the letting agent and the First Respondent in which the First Respondent says that the Second Respondent is in Poland and will not be returning and that a cousin was in residence in the month of July;
 - i. Email trail begun by the First Respondent dated 17th November 2022 in which he asks for the tenancy to be transferred to his sole name, the letting agent replies saying that all parties over the age of 18 residing in the property would need to be named as tenants and asks who else is in residence;
 - j. Inspection Report dated 14th February 2023 carried out by Alexandra McKinlay of the letting agent, in which she discovers multiple mattresses and possessions in the property along with unreported maintenance issues and occupants who are not the tenants
 - k. Email from the First Respondent dated 25th April 2023 asking for help to find a new flat and blaming the Second Respondent for the issues;
 - l. Email from Karen Drummond at Edinburgh Council advising that the First Respondent has approached them for assistance, they have advised him not to leave and have referred him to an agency for assistance.
3. The Application was served on the First named Respondent by Sheriff Officers on 29th August 2023. The Second Named Respondent could not be traced and service by Advertisement was allowed. A Certificate of Service by way of the Tribunal's website was issued on 5th October 2023.

Case Management Discussion

4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant was represented by Miss Pinosi of the letting agent, Cullen Property Ltd. There was no attendance by the Respondents or any representative on their behalf.
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 that it was reasonable for the Tribunal to grant the order.
6. Miss Pinosi sought an order for eviction in terms of ground 11 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. She said that her agency had first alerted the Applicant to potential breaches of the tenancy agreement in August 2022. The Applicant did not want to take action during the cost of living crisis and wanted to give the Respondents the chance to resolve matters. She said that the First Respondent asked to change the tenancy agreement to show him as the sole tenant, but when asked who was living there, did not respond. She said that an inspection was carried out in February 2023. Evidence of the flat being used as an unlicensed HMO, evidence of maintenance issues going unreported and damage to smoke alarms was

reported to the Applicant and she was advised of her duty of care to others living in the close. The Applicant authorised eviction proceedings.

7. Miss Pinosi said that she was of the view that Section 7 of the tenancy agreement, which dealt with occupation and use of the property, had been breached. There was at least one person living there who was not a tenant, and one of the tenants no longer lived there at all.
8. Miss Pinosi also thought that section 12, which dealt with Subletting and Assignment, had been breached. There was a key lockbox fixed to the front door frame. During the property inspection in February 2023 it was noted that one bedroom looked like a bedsit to the extent it had its own kettle and toaster, another bedroom had a secondary mattress on the floor and the third bedroom had possessions in it indicating that a separate person was occupying that room.
9. Miss Pinosi said that Section 13, which deals with Notification About Other Residents, had been breached. People other than the tenants had been observed living in the property and the First Respondent had not responded when asked who lived there.
10. Miss Pinosi thought that Section 14, dealing with Overcrowding, had been breached. The photographs taken during the inspection suggested there were more than two people living in the property.
11. Miss Pinosi referred to Section 18, which dealt with Repairs, and said it had been breached. The Respondents had not reported important repair issues, such as the broken smoke alarm.
12. Miss Pinosi referred to section 36, which dealt with Pets. She said it had been breached as no permission had been given for pets, but there were observed to be tanks in the property for unknown animals.
13. The final breach Miss Pinosi referred to was of Section 38, which deals with Electric Lights. She said that at the inspection it was noticed that the lights had been tampered with.
14. In relation to reasonableness Miss Pinosi said that the Applicant had been reluctant to take action in the beginning due to the cost of living crisis. The letting agency had tried to engage with the respondents to address the issues but had not had success. The Applicant decided to take action when the agent advised her of her duty of care to others in the close in relation to safety and maintenance.
15. Miss Pinosi said that the First Respondent was referred to a housing agency for help but although there had been initial contact it had not led anywhere, and there was no one present to represent the First Respondent today.

Findings in Fact

1. The parties entered into a Private Residential Tenancy Agreement in respect of the property;
2. The tenancy commenced on 24th May 2019;
3. A Notice To Leave, dated 24th April 2023, was served timeously and correctly;
4. The Second Respondent no longer lives in the property;
5. The First Respondent has failed to disclose who lives there;
6. There are persons occupying the property who are not the tenants;
7. Contractors have had difficulty gaining entry to carry out safety checks and repairs;
8. There is a lockbox at the front door;
9. There are additional mattresses in the property;
10. The smoke alarm was broken and not reported to the letting agent;
11. The letting agents on behalf of the Applicant have attempted to resolve issues with the Respondents to no avail;
12. The property is being used as an unlicensed HMO without the knowledge or consent of the Applicant;
13. There are legitimate concerns about the safety of other residents of the block.

Reasons for Decision

The Tribunal is of the view that from the Findings In Fact it can conclude that sections 7, 12, 13, 14 and 18 of the tenancy agreement have been breached. Ground 11 also requires the Tribunal to exercise its discretion in deciding if it is reasonable to grant the order. The Tribunal considers that the issues of safety in and of themselves make it 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.



Legal Member/Chair

5th September 2023

Date