



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/1235

Property at 48 Sunnyside, Kirriemuir, Angus, DD8 5DR (“the Property”)

Parties:

Miss Elinor Anne Rollo, 42A Fenwick Road, Kilmaurs, Ayrshire, KA3 2TD (“the Applicant”)

Mr James Brown, 48 Sunnyside, Kirriemuir, Angus, DD8 5DR (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant.

Background

- 1. The Applicant seeks an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to Leave, Section 11 Notice, newspaper article and information from a website were lodged with the application. The application is based on ground 13 of schedule 3 of the 2016 Act, namely that the tenant has a relevant conviction.**
- 2. Sheriff Officers served a copy of the application on the Respondent. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 21 August 2023 at 2pm and that they**

were required to participate.

3. The CMD took place on 21 August 2023. The Applicant participated and was represented by Mr Myles, solicitor. The Respondent participated and was supported by Ms Campbell, his Social Worker.
4. Mr Brown told the Tribunal that the application is opposed. Although he is seeking alternative accommodation, he is finding it difficult and therefore opposes the application. He stated that the application is unlawful because the Applicant does not have a relevant conviction to establish the ground. Mr Myles told the Tribunal that this is disputed. It is accepted that one of the offences took place before the tenancy started. However, the other related to the period June 2011 to January 2022. The tenancy started in 2019. The Tribunal noted that the evidence lodged regarding the conviction does not clearly establish the offence or offences and that an extract conviction should be obtained from the Sheriff Court to clarify the position.
5. The Tribunal advised the parties that, if the Applicant established that the eviction ground had been met, they would then have to consider whether would be reasonable to grant the eviction order. Mr Brown told the Tribunal that he had asked the letting agent if he could speak directly to the Applicant so that he could tell her about the tragic circumstances which led to the offences. They refused. He feels that the Applicant is trying to get him to leave by failing to attend to repairs. He has searched online for other properties. He lives at the property alone. He has suffered from mental health issues although he is not currently receiving treatment. He has managed to overcome a number of issues and is back in employment. He has not been approached by local residents about the conviction and does not know whether they know. He is hoping to arrange for legal representation.
6. Mr Myles told the Tribunal that the property is the Applicant's former family home, and she knows some of the neighbours. Local residents are aware of the conviction, and she is concerned that her property may be targeted. There has been social media activity. She tried to have the details of the conviction removed from the offender's website but was unable to do this. The Applicant has experienced anxiety due to the situation. In response to questions from the Tribunal about other tenancy related issues, Mr Myles said that there are rent arrears of £1300, which have accrued since the application was lodged, but these are not the driving force behind the application. The letting agent recently inspected the property and spoke to a person, Arran Young, who appeared to be living there.
7. Mr Brown told the Tribunal that Arran Young is his partner, but he does not live at the property. He stated that the property has not been targeted and he would contact the police if this happened. He has no issues with the neighbours.
8. Following a short adjournment, the Tribunal advised parties that the application would proceed to an evidential hearing. The issues to be determined at the hearing were identified as:-

- (a) Does the Respondent have a relevant conviction in terms of Ground 13 of Schedule 3 of the 2016 Act?
 - (b) If the Respondent has a relevant conviction, is it reasonable that an eviction order is granted?
9. The Tribunal noted that the parties were happy for the hearing to take place by conference call. They were advised that they could lodge documents prior to the hearing and call witnesses. The Tribunal issued a direction that required the Applicant to obtain an extract conviction.
10. The parties were notified that a hearing would take place by telephone conference call on 28 November 2023 at 10am. Prior to the hearing, both parties lodged documents. These included an extract conviction from Dundee Sheriff Court, which was submitted by the Applicant. The Respondent lodged a copy of the Crown Narration for the criminal proceedings. He also advised the Tribunal that he had consulted a solicitor who was not free to attend on 28 November. However, he was happy to proceed without the solicitor as he had arranged time off work.
11. The Hearing took place on 28 November 2023. The Applicant participated and was again represented by Mr Myles. The Respondent also participated.

The Hearing

12. As a preliminary matter, the Tribunal noted that an extract conviction had been submitted by the Applicant and asked Mr Brown whether it was now accepted that there is a relevant conviction in terms of Ground 13. Mr Myles confirmed that the Applicant only relies on the second charge since the first relates to the events between 2011 and 2018. As the tenancy did not start until 2019, this offence could not have taken place at the tenancy. However, the second charge relates to the period 2011 to 2021, both dates inclusive, and states that the Respondent had certain material in his possession between these dates. Mr Brown initially stated that the crown narration made it clear that he was not convicted of any offences that took place at the property. However, following further discussion, he indicated that the second charge (as stated on the extract conviction) might be relevant.

Ms Rollo's evidence

13. Ms Rollo told the Tribunal that she and her sister inherited the property, the former family home, in 2012. She purchased her sister's share from her. On 30 November 2022, she got a voicemail message from someone she knows. She phoned them back and was told about the conviction and that it had been reported in a local paper. She investigated and found the article. It had already been picked up by a website "Offenders.Org", which is run on a voluntary basis by vigilante types. She felt sick and much shaken. The article and the website had a photograph of the tenant, his age, his name and the street name. There are only 51 properties in the street and Kirriemuir is a small community. He and the property were identifiable. She was concerned for her own property and the neighbour's, as they are semi-detached. The website had full details of the

offences, which involved images of children and extreme material involving bestiality. When the police attended, Mr Brown told them that he had been deleting stuff so he must have been aware. Although not a relevant offence for the purposes of the Act, the first charge should be taken into account as background. In addition, the community might not distinguish between the two offences. Ms Rollo advised the Tribunal that she contacted the newspaper who confirmed that the Respondent had not challenged the conviction or asked for corrections to be made in relation to their account of it. She tried to contact the website to have the story removed but there was no way to do this. Police Scotland told her that the website is not affiliated with the police. She tried to obtain information from the police about the Respondent and the property but they refused to provide it.

14. Ms Rollo told the Tribunal that she consulted a Dr Millings, a Clinical Psychologist in 2015. She had been going through a stressful time which was linked to an episode in her teens when she was attacked and raped. She is now 52. This incident has coloured her view of the Respondent's convictions. Ms Rollo referred to a screenshot of a Facebook post. She said that when she became aware of this she went to Forfar Police station. They told her she should not go to Kirriemuir. They were aware of the position. She told them that she still had connections to Kirriemuir. She was concerned that people would see the post and talk about it. Ms Rollo referred to a letter from Vision Express. When she went for a routine eye test the optician noted symptoms of high blood pressure. She saw her practice nurse and had a meltdown. She was asked about stress and told the nurse about the case. Her blood pressure was very high. The situation regarding the property is causing great stress and anxiety. The nurse wanted her to see the GP but she declined. However, she agreed to see a mental health nurse. She referred the Tribunal to a letter, which she sent to that nurse. She said that her condition is described as being in "fight or flight" mode. It is her body's reaction to the stress she is under. Finding out about the conviction has had a huge effect on her - mentally, physically, emotionally and financially. As soon as she found out, she contacted the letting agent. The Respondent had not told them about the police raid or the conviction. They contacted the Association of Landlords who recommended that she delay starting eviction proceedings because of the holiday period. She used the delay to research the legislation and the process.
15. Ms Rollo advised the Tribunal that the rent account remains a month in arrears. The Respondent made an additional payment after the CMD but is still in arrears. She can't believe that she is financially supporting a sex offender.
16. In response to questions from the Tribunal Ms Rollo said that she has not lived in the property since the age of 18 but visited there often to see her parents. After their deaths, she let the property out but has always used a letting agent. She still has friends in Kirriemuir and visits from time to time. She also knows the neighbours, some of them since the 1970s. She has told the neighbours about the eviction action and believes some are concerned about the Respondent living there. Ms Rollo told the Tribunal that the letting agent inspected the property on 16 October 2023. The property was dirty and cluttered, the carpets needed cleaned and the garden was untidy. The letting

agent believes that there is someone living at the property with the Respondent.

17. Ms Rollo was asked about an incident in July 2023. She said that neighbours contacted her about a number of men at the property although the Respondent was away from home. Either they had a key or someone let them in. She was concerned and spoke to the police who told her that the people in the house had permission to be there.
18. In response to questions from Mr Brown Ms Rollo said that the police were only contacted about the incident following reflection. She assumed that his partner had let them in. When asked why she had not contacted him by phone to discuss the conviction, she said that he had failed to notify the letting agent and only asked to speak to her after she had served the Notice to leave. Furthermore, the Sheriff would have considered any mitigating circumstances.

Mr Brown's evidence

19. Mr Brown told the Tribunal that he understands how the Applicant feels as he has also experienced trauma. He said that he was sexually and mentally abused from the age of 13. Moving to Kirriemuir allowed him to get away from it. The person who abused him is now facing criminal proceedings. That person used other people's devices. If evicted, he might have to go back to Livingstone and does not want to do so. In relation to the incident in July 2023, Mr Brown said that he was away visiting his grandfather who was ill. He asked his partner Arran, to look after the house. Arran asked if the five men could visit. He meets up with these people. He is conscious about security. Arran has installed a ring doorbell. He tries his best to look after the property. It was cluttered at the inspection. He had just got back from Glasgow and had to go straight out to an appointment. He usually would have tidied it. He has a gardener now who has tidied the front garden although the back garden is in need of attention. He is working a lot of hours now and intends to get his rent up to date. He is keen to stay at the property. It is the first home he has had since he left his parents' house. He has tried to be respectful towards the neighbours and made sure that there is no excessive noise. One piece of gossip online should not change everything.
20. In response to questions from the Tribunal, Mr Brown said that he is 32 years of age and lived with his parents in Livingstone until 2019. He visits them occasionally. His partner does not live at the property but stays there a lot and has no permanent address of his own. He goes between the homes of his mum and dad. He stated that he used to speak to his next door neighbour and the people who lived across the road, although they moved away. He has not noticed any changes in his neighbours since the conviction although people don't say hi to him now. He usually avoids them anyway. There have been no threats and the house has not been targeted. When asked whether he had looked for alternative accommodation, Mr Brown said that there are not many properties available and he is low priority for Council housing although he is on the list. He believes that they are aware of his situation as his social worker works for that Council.

21. In response to questions from Mr Myles. Mr Brown denied that he told the police that he had been deleting material from his computer. He stated that he told them that he had been sorting out and deleting files and it might take them a while to go through the computer as there were lots of files. When referred to the Crown narration, which had lodged prior to the hearing, he again denied that he had said to the police "You will find stuff on the computer. I've been busy deleting it." He stated that he had intended to go to trial. However, it was taking a long time to get the forensic report and the Court was tired of waiting. His solicitor got him a deal although it was not the result he had wanted. He agreed to plead guilty to two offences and not guilty to a third. He was given the Crown narration before he was sentenced. His solicitor had agreed the terms of this. It was put to him that he must have known about the material on his computer in 2021, if he had been deleting it before the police arrived. He denied this and said that he didn't know. He accepted that images had been found on three devices.. He accepted that the offences are socially repugnant and agreed that he was downplaying them. He confirmed that he believes that the person who abused him as a child put the images on his devices. He said that his solicitor attempted to find the person but he has now been arrested and charged with abusing him. He said that he did not go to trial because his solicitor recommended that he take the deal.

Applicant's submissions

22. Mr Myles said that the ground is established by the second charge on the extract conviction, which is punishable on indictment by up to 3 years in prison. This offence was committed at the let property. The other conviction is not a relevant offence for the purposes of the ground but is relevant to the issue of reasonableness. Pre-COVID that would not have been a factor as the ground was mandatory. The Respondent has been convicted of a socially repugnant offence. Objectively, it is understandable that landlords don't want tenants in their properties who have been convicted of these offences. Subjectively, it has had a major impact on the Applicant. She has been proactive in pursuing the application because of the traumatic events in her past. In relation to the possibility that the Tribunal could order a delay in enforcement of an eviction order, Mr Myles said that the Applicant is anxious to have the property back as soon as possible and that the Respondent will not be a priority for Local Authority housing until an eviction order is granted.

Respondent's submissions

23. Mr Brown said that he has tried his best to be a respectful person. He did not notify the letting agent about the conviction because he did not know he was supposed to do so. He attempted to reach out to the Applicant so they could discuss matters civilly. Moving to the property gave him the chance to escape his abuser. The articles sensationalised the matter and did not tell the true story. If he is to be evicted, he would appreciate more time to find something else. He has engaged in harmful behaviour in the past – driving too fast and alcoholism. He is concerned that he might try to take his own life if he is evicted.

Findings in Fact

24. The Applicant is the owner and Landlord of the property.
25. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
26. The Respondent was convicted at Dundee Sheriff Court on 20 October 2022 of the following offences
 - (i) A contravention of Section 52(1)(a) of the Civic Government (Scotland) Act 1982, namely that between 25 June 2011 and 21 January 2018, at 48 Sunnyside, Kirriemuir and another address, he did take or permit to be taken or make indecent photographs or pseudo photographs of children ,and
 - (ii) A contravention of Section 51A(1) of the Civic Government (Scotland) Act 1982, namely that between 23 June 2011 and 29 January 2021, at 48 Sunnyside, Kirriemuir and another address, he had in his possession extreme pornographic images depicting in an explicit and realistic way of bestiality.
27. The Respondent was sentenced to a community payback order.
28. The tenancy started on 26 August 2019
29. Although the conviction under Section 52(1)(a) refers to the property, the tenancy did not start until 2019.
30. The Applicant has experienced distress and anxiety because of the Respondent's conviction and its association with the property, which is her former family home.
31. The Respondent has incurred rent arrears and has failed to care for the property.
32. The Respondent's partner resides at the property on a part time basis. The Respondent did not tell the Applicant about this and denied that he resided there.
33. The Respondent is in employment and has a car.
34. Although he pled guilty to the offences specified in the extract conviction, the Respondent now denies any wrongdoing and claims that another person was responsible for the material found on his devices and that he was unaware that it existed.
35. The Respondent was aware of the material which was found on his devices.

Reasons for Decision

36. The application to the Tribunal was submitted with a Notice to Leave dated 7 February 2023 together with a post office certificate of posting and track and trace report. These establish that the Notice was sent on the same date and delivered on 8 February 2023. The Notice to leave states that an application to the Tribunal is to be made on ground 13, the tenant has a relevant conviction. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 11 March 2023. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority by email. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
37. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.” Ground 13 states (1) it is an eviction ground that the tenant has a relevant conviction. (2) The First-tier tribunal may find that the ground named by sub-paragraph (1) applies if – (a) after the tenancy is granted, the tenant receives a relevant conviction, (b) either – (i) the application for an eviction order that is before the Tribunal was made within 12 months of the tenant’s conviction. Or (ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period, and (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts. (3) In sub-paragraph (2), a “relevant conviction” means a conviction for an offence – (a) which was committed by using, or allowing the use of the let property, for an immoral or illegal purpose, or (b) which – (i) was committed within or in the locality of the let property, and (ii) is punishable by imprisonment.”
38. The Applicant concedes that only the second charge on the extract conviction report gives rise to a relevant conviction for the purposes of the Act. Although the first charge states that the offence took place at the property, the dates of the offence (2011 to 2018) suggest that this is an error. The tenancy did not start until 2019 and the Respondent could not have committed the offence at the property. At the CMD, the Respondent stated that there was no relevant conviction for the purposes of ground 13. Following discussion at the start of the hearing, he appeared to accept that, a relevant conviction might exist. However, he referred to the Crown narration, which he had lodged. He confirmed that he had been provided with a copy of this before he was sentenced and that his solicitor had agreed the content. The Tribunal notes that, by comparison with the extract conviction issued by the Court, the

narration has more limited evidential value. In any event, his reliance on the narration is misconceived. The offence specified in the second charge is that the Respondent had certain material **in his possession** between two dates. The second of these (29 January 2021) is the date of the police raid when he was arrested and his devices inspected and confiscated due to the material found on them. The Tribunal is satisfied that the documents lodged establish that this offence took place at the property. Section 51A(8) of the 1982 Act states that where a person is convicted of this offence on indictment, a prison sentence of up to three years may be imposed. The Respondent was sentenced to a Community Payback Order, which is an alternative to custody. The Tribunal is therefore satisfied that the second charge is a relevant offence for the purposes of the Act. As the Applicant commenced eviction proceedings on 17 April 2023, she has also complied with Ground 13 (2)(b).

39. The Tribunal heard evidence from both parties. Although both referred to trauma in their early lives, neither provided evidence to support their claims, beyond their oral evidence. On the other hand, neither party disputed the information provided by the other. The Tribunal found the Applicant to be both credible and reliable. Her reaction to the discovery of the Respondent's conviction is understandable. Most landlords in a similar situation, especially when they have a strong connection to the let property and the location, are likely to have experienced shock and distress that their tenant had been convicted of this type of offence. The impact may have been exacerbated by traumatic events in her teens but even without such events, her reaction is a reasonable one. Although there was no evidence that the property has been targeted, her concern that this could occur is also reasonable. Her evidence established that the local community have some knowledge of the conviction and people are concerned. The Tribunal was less persuaded by the Respondent's evidence. Although he pled guilty to both offences, he stated during the hearing that he had done nothing wrong, that he was a victim and was not responsible for the material found on his devices. He attempted to downplay the offences and referred to the articles in the local press as "gossip". He claimed these had sensationalised the events. These statements clearly demonstrate that he has little perception of the severity of the crimes and apparently feels no remorse. He also lacked credibility when he gave evidence about what he said (or did not say) to the police when they raided the house. Although he had lodged the Crown narration in support of his defence, he then disputed the content of the document in relation to his response to the police when they read the search warrant. He initially said that he had not spoken to the police. He then denied telling the police that he had been deleting the illegal material, again claiming that he had no prior knowledge of the images. The Respondent has also been less than candid about whether his partner lives at the property. As he has no home address of his own, it seems likely that he lives at the property most of the time. Although this is not necessarily relevant to the matter before the Tribunal, it is evidence of his intention to mislead the Applicant and her letting agent about his use of the property.
40. Both parties gave evidence about an incident in July 2023. It is not clear what relevance this has to the matter before the Tribunal. There was no suggestion that the five visitors to the house had forced entry or caused any kind of

disturbance. In fact, the Applicant seemed to accept that they had been invited by the Respondent's partner, who had his permission. The Respondent is the lawful tenant of the property and is entitled to have visitors. In terms of the tenancy agreement, he ought to have informed the letting agent about his partner staying at the property but they would not have been entitled to interfere with this, unless there were valid reasons for doing so.

41. The Tribunal is satisfied that it would be reasonable to grant the application for the following reasons

- (a) The relevant conviction relates to a serious offence. The Respondent was prosecuted on indictment and could have been sentenced to up to three years in prison.
- (b) The Respondent was also convicted of another very serious offence committed at another property. This offence could result in the Respondent (and his home address) being targeted should he continue to reside there.
- (c) The Applicant has suffered stress and anxiety because of the conviction and the association with her former family home.
- (d) The Respondent is in employment and has a car. He has the resources to obtain alternative accommodation and transport, should this mean living further away from his place of employment.
- (e) The Respondent has incurred rent arrears and has failed to bring his rent account up to date although he indicated that he has been working more hours recently. He has also neglected the property.
- (f) Although he plead guilty to both offences, the Respondent denies any wrongdoing and appears to have little insight into the offences. He demonstrates no remorse.

42. Although the Respondent spoke of mental health issues at the CMD and of suicidal thoughts at the hearing, these statements were unsupported by any medical evidence. They were also at odds with the other evidence he gave regarding his circumstances. He indicated during the CMD and hearing that his life is going well. He is in employment and in a steady relationship. He is not currently receiving medical treatment and receives support from a social worker. He is in contact with his family. There also seemed to be no basis for the statement that he might have to return to live in Livingstone if he is evicted. However, even if he had to do so, he already visits family there so has not cut all ties with the town. Eviction is likely to cause some upheaval but the Tribunal is not persuaded that the Respondent will be unable to overcome this.

43. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act, that the eviction ground has been established, and that it would

be reasonable to grant the eviction order.

44. Given the proximity to the Christmas holiday period, which is likely to have an impact on a search for alternative accommodation, the Tribunal is satisfied that a delay in enforcement of the order until the 30 January 2024 should be granted.

Decision

45. The Tribunal determines that an eviction order should be granted against the Respondent.

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

28 November 2023