



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/3513

Re: Property at 145 Bradan Avenue, Glasgow, Lanarkshire, G13 4JF (“the Property”)

Parties:

Levenvale Properties Limited, 121 Yoker Mill Road, Glasgow, Lanarkshire, G13 4HL (“the Applicant”)

Ms Lynsey Shankly, 145 Bradan Avenue, Glasgow, Lanarkshire, G13 4JF (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

By application, received by the Tribunal on 1 November 2019, the Applicant sought an Order for Possession of the Property under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 15 of Schedule 5 to the 1988 Act.

The application was accompanied by copies of a *pro forma* Short Assured Tenancy Agreement, two pages of the Short Assured Tenancy Agreement between the Parties, showing that it was signed by the Parties on 6 August 2016, a Form AT5 Notice dated 6 August 2016, a Notice to Quit, and a form AT6 Notice given under Section 19 of the 1988 Act. The Notice to Quit was dated 17 September 2019 and required the Respondent to vacate the Property by 30 October 2019. The Form AT6 Notice advised the Respondent that the Applicant intended to raise proceedings for possession of the Property on Ground 15 of Schedule 5 to the 1988 Act and that such proceedings would not be raised before 30 October 2019. The Applicant also provided proof of posting by

next day guaranteed delivery in respect of the Notice to Quit and the Form AT6 Notice, with proof of delivery on 19 September 2019.

In the application, the Applicant contended that the police had been called to the Property on more than one occasion, the last time being 29 June 2019 and that these visits were because of a disturbance caused by the Respondent and her boyfriend fighting and the Respondent's children screaming.

On 10 February 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 2 March 2020.

On 2 March 2020, the Tribunal received written representations made on behalf of the Respondent by Legal Services Agency, Glasgow. They stated that it was accepted that there had been police attendance on 29 June 2019, when the Respondent had been involved in an argument with her ex-partner who was visiting, but the officers attending were satisfied there had been nothing of a criminal nature within the Property and no charges had been preferred against the Respondent or her ex-partner. They argued that in all the circumstances, it would not be reasonable to grant an Order for Possession. As of recently, the Respondent had arranged for the children to be dropped off at the house of their father (her ex-partner) to avoid risk of further incidents. If evicted, the Respondent and her children would become homeless.

A Case Management Discussion was held on 12 March 2020. The Applicant requested, and was granted, a continuation to allow time for a written response to a request to Police Scotland for details of the dates that the police had been called to the Property. The Respondent's representative had no objection to a continuation.

The continued Case Management Discussion scheduled for 20 April 2020 was postponed due to the COVID-19 lockdown restrictions.

On 22 June 2020, the Applicant provided the Tribunal with a copy of the response from Police Scotland. This indicated that there had been 8 STORM incident reports relating to the Property between 7 April 2017 and 4 April 2020. The dates and times and Incident Numbers allocated to these reports were provided. The Applicant also provided the Tribunal with copies of text messages from the Respondent in which she stated that she was no longer living in the Property but was staying with her mother. The information provided by the Applicant was copied to the Respondent's solicitors on 22 June 2020.

Case Management Discussion

A Case Management Discussion was held by telephone conference call on the afternoon of 21 July 2020. The Applicant participated in the conference call. The Respondent did not participate but was represented at the initial stages by Ms Kasia Prochalska of Legal Services Agency, Glasgow. She told the Tribunal that she had not been in contact with the Respondent for some time and did not have any instructions from her, but she pointed out that the list of Incident Numbers gave no indication as to the nature of the incidents and that in her view, the Tribunal should only have regard to instances which occurred prior to service by the Applicant of the Form AT6 Notice and the Notice to Quit. She understood that proper notice of the Case Management Discussion had been sent to the Respondent by the Tribunal and intimated that she was withdrawing from acting. Ms Prochalska then left the conference call.

The Applicant asked the Tribunal to make an Order for Possession without a Hearing. The calls to the police which had resulted in the STORM incident reports had been made by neighbours, alarmed at fights between the Respondent and her ex-partner and the screaming of their children. There had been numerous occasions when the

police had been called by anxious and worried neighbours. The Respondent had also told the Applicant by email that she was no longer living at the Property and that she was living with her mother. She owed £4,715 in unpaid rent and had dumped her unwanted furniture in the garden.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required and that it could determine the application without a Hearing.

Section 18 of the 1988 Act states that the Tribunal shall not make an Order for Possession of a house let on an assured tenancy except on one or more of the Grounds set out in Schedule 5 to the Act and, if the Tribunal is satisfied that any of the Grounds in Part II of Schedule 5 to the Act is established, it shall not make an Order for Possession unless it considers it reasonable to do so.

Ground 15 of Part II of Schedule 5 to the 1988 Act applies, inter alia, where the Tenant, a person lodging with the Tenant or a person visiting the house has acted in an antisocial manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality or pursued a course of antisocial conduct to such a person. Anti-social behaviour is an action or a course of conduct causing or likely to cause alarm, distress, nuisance or annoyance and a course of anti-social conduct. A course of conduct means conduct on more than one occasion.

The contention of the Applicant was that the Respondent's arguments at the Property with her ex-partner, which had resulted in the police being called, meant that Ground 15 had been established. The view of the Respondent's solicitor in her written submissions was that, even if it had been established, it would not be reasonable to make an Order for possession, due to the impact it would have on the Respondent and her two young children.

The Tribunal noted that the Applicant had provided evidence of the police being called to the Property on 8 separate occasions, two of which had occurred prior to the date of the application, with a further six between the date of the application and 4 April 2020. The view of the Tribunal was that the conduct complained of had caused alarm, distress, nuisance and annoyance to neighbours and others in the locality, as was evidenced by the fact that they had called the police on so many occasions, and the Tribunal was satisfied that a course of anti-social conduct had been established and the test of Ground 15 met. Even if the police visits after the date of service of the Form AT6 and Notice to Quit were not taken into account, the Tribunal was satisfied, on the balance of probabilities, that the Respondent and her ex-partner had acted in an anti-social manner on the occasions which led to the first two police visits, neighbours being so alarmed and distressed that they felt they had to call Police Scotland. The issue for the Tribunal was, therefore, whether it was reasonable to grant the Order for Possession.

The Tribunal considered the comment made in the written representations on behalf of the Respondent that the Respondent would be homeless if the Order were granted, but it appeared to the Tribunal, from the evidence before it, namely the Respondent's text message of 22 June 2020 to the Applicant, that the Respondent was no longer living at the Property and was living with her mother, so would not be rendered homeless if the Tribunal made an Order for Possession. Accordingly, and having

considered all the evidence before it, the Tribunal determined that it would be reasonable to make an Order for Possession of the Property.

Decision

The Tribunal determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

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.

George Clark

21/07/2020

Legal Member/Chair

Date