



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

Chamber Ref: FTS/HPC/EV/21/2869

Re: Property at 185 Sea Road, Methil, Leven, Fife, KY8 2EQ (“the Property”)

Parties:

Mrs Wilma Somerville Burns, 39 Cypress Lane, Leven, Fife, KY8 5PS (“the Applicant”)

Miss Claire Robertson, 185 Sea Road, Methil, Leven, Fife, KY8 2EQ (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined, following a Hearing, that the application should be granted and issued an Order for Possession of the Property.

Background

1. By application, dated 23 January 2022, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Residential Tenancies) (Scotland) Act 2016 (“the 2016 Act”). Following correspondence between the Applicant and the Tribunal, intended to clarify the Ground(s) on which the Applicant intended to rely, the Applicant confirmed that the sole Ground relied on was Ground 14 of Schedule 3 to the 2016 Act, namely that the tenant has engaged in relevant anti-social behaviour.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 16 April 2019, and a Notice to Leave dated 8 October 2021, with proof of delivery. The Notice to Leave advised the Respondent that the Ground being relied on was Ground 14 and

that an application for an Eviction Order would not be made before 16 November 2021.

3. The Applicant stated that she had had complaints from the adjacent neighbours about general hygiene and the state of rubbish and upkeep of the front and back gardens. Fife Safer Communities Team of Fife Council had left a note for her on 16 September 2021, asking her to contact them to discuss the Property. The Council had tried to contact the Respondent but had received no answer. The Applicant provided the Tribunal with a copy of the note from Fife Safer Communities Team. The Applicant had been unable to obtain access to the Property, as the Respondent would not answer her calls and any time she called at the Property it was locked and the curtains were closed. The Property had for months now been a health hazard and the next-door neighbours, who have young children, were extremely concerned, as was the Applicant herself.
4. On 1 March 2022, the Tribunal issued a Direction, requiring the Applicant to provide an explanation of how the alleged behaviour of the Respondent fell under the definition of antisocial behaviour as set out in Ground 14 and in particular to explain to whom the antisocial behaviour occurred. The Direction also required her to produce any documentation received from the Council regarding complaints about antisocial behaviour occurring at the Property and any written complaints received by her regarding such behaviour.
5. On 2 March 2022, the Applicant told the Tribunal in an email that her reason for stating that the Respondent's behaviour was anti-social was that the Property was deteriorating due to the state and condition of the premises and the common parts area around the Property. There was rubbish dumped at the front, back and side of the house. She had on many occasions requested entry to the Property as she was seriously worried about the condition of the interior, but the Respondent would not let her in and had changed the locks. The Respondent had also refused to let tradesmen in to install fire and heat detectors and carry out the necessary checks of the electrical installation. On 8 February 2022, a gas maintenance engineer could not get in to service the boiler, despite the Respondent having said that she would be there. He had returned on 18 February but was given abuse by two men who had come out of the Property. The engineer had called the Applicant to say that he was not willing to go back until he was guaranteed access and felt safe to do so. The Applicant stated that she had had no written complaints but had had a verbal discussion with Fife Safer Communities Team on 17 September 2021. They had received complaints from neighbours adjacent to the Property and had visited the Property on the previous day. They had not been prepared to provide to the Applicant the names of the complainers. In an email of 16 February 2022, the Applicant told the Tribunal that she had approached the next-door neighbour for information, but he had not wanted to become involved.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the morning of 10 May 2022. The Applicant had advised the Tribunal in

advance that she would be out of the country on that date so would not be able to participate in the call but that she was quite happy for the Case Management Discussion to go ahead, as she felt she had given sufficient information to the Tribunal to justify her case. The Respondent was not present or represented. The Tribunal considered all the written evidence provided by the Applicant.

7. Ground 14 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour and that the Tribunal may find that the Ground applies if the tenant has behaved in an anti-social manner in relation to another person. The Tribunal noted that the Applicant had not received any written complaints from neighbours and that the next-door neighbour had not wished to become involved, and accepted that the Fife Safer Communities Team would not disclose to her the identity of the person(s) whose complaint(s) had, presumably, led them to visit the Property on 16 September 2021, but in the absence of any information as to why they had visited the Property and of an actual complaint from a neighbour, the Tribunal was unable to hold that the Respondent had behaved in an anti-social manner "in relation to another person". The Tribunal also noted that the Applicant had stated that a gas engineer had been subjected to abuse when he called at the property to carry out a boiler inspection, but the Applicant had not provided any evidence of this.
8. The Tribunal accepted that the Applicant was representing herself and that it was possible that she had failed to understand the need to produce documentary evidence of the reason for the visit by Fife Safer Communities Team or the refusal of the gas engineer to call at the Property again until he was satisfied that it was safe to do so. The Tribunal also accepted that any evidence that the Applicant could obtain from Fife Safer Communities Group was unlikely to identify the person(s) who had complained to them, but it could, presumably, confirm that they had called at the Property following a complaint from a local resident, without naming that person. Accordingly, the Tribunal decided to hold a full evidential Hearing, at which it would consider any further evidence that the Applicant could provide to satisfy the Tribunal that the Respondent had behaved in an anti-social manner towards another person.
9. The Tribunal adjourned its consideration of the application to an evidential Hearing and issued a Direction to the Parties to provide copies of any documents not already submitted to the Tribunal on which they intended to rely at a Hearing, together with the names and addresses of any witnesses they intended to call to give evidence at the Hearing.
10. The Applicant provided further written representations on 2 June 2022. She stated that she had again telephoned Fife Council, but they would not give her the names of the complainers due to data protection issues. She provided contact details for the Council's Safer Communities Officer. She also stated that she had tried to obtain a formal written statement from the gas engineer and his apprentice, who had twice tried to enter the Property to carry out maintenance work, but who had been refused entry and given obscene hand gestures to leave. She attached an email from YourRepair, stating that they could not ask their contractors to get involved in legal disputes. They provided,

however, contact details for the engineers who had completed the inspection in 2021 and of the engineers who were denied access in 2022 and said that the Applicant was more than welcome to contact the engineers directly.

11. The Applicant added that she had no Electrical Installation Condition Report, no Portable Appliance Testing report, no up to date smoke alarms or heat detectors, no Energy Performance Certificate, no Legionella-free water certificate and now no Gas Safety Certificate. The situation had also resulted in a number of endorsements to her property insurance policy, including an exclusion for malicious damage. She referred to a comment made by the Tribunal in its Case Management Discussion Note of 10 May 2022 that she could consider making a Right of Entry application to the Tribunal and said that she would not pursue this as a separate application as she would have expected the Tribunal to endorse this basic right as part of her present application.
12. The Respondent did not make any written representations to the Tribunal.

The Hearing

13. A Hearing was held on the morning of 26 July 2022. The Applicant was present, along with her husband. The Respondent was not present or represented. The Tribunal reminded the Applicant that the reason for holding a full evidential Hearing was that, at the Case Management Discussion, the Tribunal had not been certain that she understood the requirement to establish that any anti-social behaviour by the Respondent had been in relation to another person.
14. The Applicant told the Tribunal that she had heard verbally that two more neighbours were intending to complain to the Council. She said that she had not contacted the contractors whose details had been given in the email from YourRepair, but repeated that YourRepair themselves had not wanted to become involved. She also confirmed that she had not spoken with the Respondent in recent months and that the Respondent did not answer telephone calls or text messages. The Applicant was now receiving direct payment of the housing element of the Respondent's benefits.
15. The Tribunal noted that the Applicant chose to make the application under one Ground only of Schedule 3 to the 2016 Act, namely Ground 14, and, whilst the facts, if established, might have been sufficient to meet one or more of the other Eviction Grounds in Schedule 3 to the Act, the Tribunal could only apply the facts to the Ground(s) set out in the application, and the Applicant had not sought leave of the Tribunal to amend her application to include other Grounds. Ground 14 states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour. The Tribunal may find that Ground 14 applies if the tenant has behaved in an anti-social manner in relation to another person, and the behaviour is relevant anti-social behaviour. A person is to be regarded as behaving in an anti-social manner in relation to another person by (a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or (b) pursuing in relation to the other person a course

of conduct which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or amounts to harassment of the other person. Anti-social behaviour is “relevant” anti-social behaviour if the Tribunal is satisfied that it is reasonable to issue an Eviction Order as a consequence of it, given the nature of the anti-social behaviour and (a) who it was in relation to, or (b) where it occurred.

16. The Tribunal had, in its Direction of 1 March 2022, required the Applicant to explain to whom the antisocial behaviour occurred and had clearly expressed its concerns on this point at the Case Management Discussion of 10 May 2022. The Tribunal accepted that neighbours might be reluctant to become personally involved in a dispute such as this and that Fife Council would not have disclosed to the Applicant the name or names of anyone who had complained to them, but in the absence of any such information whatsoever, it was not possible for the Tribunal to determine that any anti-social behaviour had been “in relation to another person”. The Tribunal had indicated at the Case Management Discussion that the Applicant might seek a letter from Fife Council which confirmed that their request for the Applicant to contact them had arisen following a complaint from another resident, without necessarily identifying the person who complained, but there was no evidence that the Applicant had sought a letter in such terms. YourRepair had given the Applicant the contact details of the engineers who had been refused entry, but she had not contacted them either. The Tribunal could not speculate on what their response might have been, but written confirmation that their (albeit unnamed) representatives had been refused entry to the Property by the Respondent might have placed the Applicant in a much stronger position. In the absence of such evidence, the Tribunal was unable to hold that the conduct of the Respondent, however unpleasant, met the test of Ground 14 of Schedule 3 to the 2016 Act by being “in relation to another person”.
17. The onus is on an Applicant to make his or her case before the Tribunal. The Tribunal itself has no investigative powers, so would not, under any circumstances, have sought directly any information from Fife Council or from the gas engineers who had apparently been refused entry to the Property. The Tribunal noted the difficulty that the Applicant had encountered in obtaining access to the Property but had no power under the present application to order or facilitate such access. The Applicant should note that it remains open to her to make an application to the Tribunal to exercise her Right of Entry.
18. The Tribunal’s view was that it had complied with its overriding objective to deal with the proceedings justly had been met in that, recognising that the Applicant was not legally represented, the Tribunal had assisted the Applicant (without advocating the course she should take) in directing her on two occasions to the difficulty the Tribunal was having in ascertaining whether any anti-social behaviour had been “in relation to another person”. The Tribunal had continued the case to a Hearing to give the Applicant the opportunity to address the Tribunal’s concerns.
19. Having considered all the evidence before it, the Tribunal decided that it was unable to hold that any anti-social behaviour by the Respondent met the

requirement of Ground 14 of Schedule 3 to the 2016 Act that it be “in relation to another person” and that, accordingly, the Tribunal must refuse the application.

Application for Review

20. On 27 July 2022, the Applicant forwarded to the Tribunal a document which had reached her too late to be before the Tribunal, but which she believed was extremely important to her case. It was a copy of an acknowledgment, dated 24 July 2022, by Fife Council, of receipt of an Anti-social Behaviour Report from a neighbour. The Report contained allegations regarding the state of the garden, vermin infestation, drug dealing from the Property, with packages being passed back and forward through the letterbox and cars coming and going at all hours. The neighbour stated that she had had people knocking on her bedroom window in the early hours of the morning and that this had been very scary.
21. On 8 September 2022, the Applicant provided the Tribunal with a copy of a letter she had received from Fife Council regarding inappropriate depositing of waste at the Property and the overgrown garden. She advised the Tribunal that Fife Safer Communities had now made three visits. The first was to ask the Respondent to tidy the garden, the second was to the Applicant. At that meeting the Applicant's husband had offered to start the clearing up himself, but this had been rejected by the Respondent when Fife Safer Communities made a further visit to the Property.
22. The Tribunal considered carefully the grounds for the Tenant's application for Review. The Tribunal's Decision to refuse the application had been based on the fact that the Applicant had chosen to seek an Eviction Order on one Ground only, namely anti-social behaviour, but that she had failed to identify any person or persons towards whom that behaviour was directed. The view of the Tribunal now was that, had the Applicant been in a position to produce at the Hearing the document of 24 July 2022, which identified a Party against whom anti-social behaviour was alleged to have taken place, the Tribunal might have reached a different conclusion. The Tribunal decided that it was in the interests of justice to Review its Decision, to allow the Applicant to lodge that document for consideration and to continue the Hearing to a later date.

Continued Hearing

23. The continued Hearing was held by means of a telephone conference call on the morning of 1 November 2022. The Applicant was present, along with her husband. The Respondent was not present or represented.
24. The Applicant told the Tribunal that, since the original Hearing, Fife Council had obtained a letter from the Respondent, permitting the Applicant to carry

out work to tidy the garden. He had deposited 92 bags of rubbish in a hired skip, as well as taking many more bags to the local civic amenity facility. He had not been allowed by the Respondent to enter the Property itself.

Reasons for Decision

25. The Tribunal was satisfied, from the additional evidence provided by the Applicant on 27 August 2022, that the requirements of Ground 14 had been met. The Anti-social Behaviour complaint to Fife Council identified a person in relation to whom anti-social behaviour had occurred and the Tribunal was satisfied that this behaviour would have caused the neighbour alarm, distress, nuisance or annoyance. The nature of the behaviour was such that the Tribunal, having considered all of the evidence before it, decided that it would be reasonable to issue an Eviction 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.

G Clark

George Clark
Legal Member/Chair

1 November 2022
Date