



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/22/0484

Re: Property at 11 Bank Lane, Lerwick, Shetland, ZE1 0DT (“the Property”)

Parties:

**Mr Magnus David Jamieson, Mrs Christina Jamieson, Belvedere, Burravoe, Yell
Shetland, ZE2 9AY (“the Applicant”)**

**Miss Jemma Lauren Grace Irvine, 11 Bank Lane, Lerwick, Shetland, ZE1 0DT (“the
Respondent”)**

Tribunal Members:

Lesley-Anne Mulholland (Legal Member) and Gerard Darroch (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 eviction against the Respondent and in
favour of the Applicant in terms of Ground 14 of Schedule 3 of the Private Housing
(Tenancies) (Scotland) Act 2016 should be made, having found that the Respondent
and her boyfriend/partner have engaged in relevant anti-social behaviour towards
other persons, that an application for an eviction order was made within 12 months
of the anti-social behaviour occurring and that it is reasonable to grant the order.**

Background

1. The Applicants are the landlords and owners of the property at 11 Bank Lane, Lerwick, Shetland ZE2 9AY. The Respondent is the tenant. On 14 September 2020, the parties entered into a Private Residential Tenancy Agreement.
2. On 8 March 2022 a Legal Member of the First-tier Tribunal with delegated powers of the Chamber President, considered the application paperwork and accepted the application as validly made.
3. The Applicants seek an Order to evict the Respondent from the property under Schedule 3, Grounds 14 and 15 of the Private Housing (Tenancies) (Scotland) Act 2016.
4. A Case Management Discussion took place remotely on the 22 April 2022. The Applicants were represented by Mr Brown of Harper McLeod LLP. The Respondent failed to appear without excuse and has failed to engage with the application in any way. We were satisfied that the Respondent was properly notified of the Case Management Discussion and that a decision could be taken. Having regard to the overriding objective, we decided to hear the application and make a decision.
5. The Applicants attended the hearing and provided additional information in support of the application. There were no apparent difficulties with sound or connectivity issues. We were grateful to the Applicants and their Representative for allowing the hearing to proceed remotely. We were satisfied that those taking part in the discussion had a reasonable opportunity to put their points across and that the discussion was fair. No complaint about the lack of effective participation caused by the remote hearing was brought to our attention.
6. We are satisfied that the notice to leave was properly served on 11 January 2022 and that at least 28 days' notice has been given. The Private Residential Tenancy terminated on 9 February 2022. Prior to raising the proceedings, notice was properly given to the local authority as required by law.
7. Mr Brown relies on the paper apart, form E which sets out the reasons for the application.

THE LAW

GROUND 14

'Anti-social behaviour

14(1) It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if –

(a) the tenant has behaved in an anti-social manner in relation to another person,

(b) the anti-social behaviour is relevant anti-social behaviour, and

(c) either –

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3) For the purposes of this paragraph, 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,

(b) pursuing in relation to the other person a course of conduct which –

(i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or

(ii) amounts to harassment of the other person.

(4) In sub-paragraph (3) –

- “conduct” includes speech,
- “course of conduct” means conduct on two or more occasions,
- “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.

(5) Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) 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.

(6) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

GROUND 15

15(1) It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if –

(a) a person who falls within sub-paragraph (4) –

(i) has received a relevant conviction as defined by paragraph 13(3), or

(ii) has engaged in relevant anti-social behaviour,

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and

(c) either –

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the conviction or (as the case may be) the occurrence of the anti-social behaviour, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3) In sub-paragraph (2)(a)(ii), “relevant anti-social behaviour” means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.

(4) A person falls within this sub-paragraph if the person –

(a) resides or lodges in the let property,

(b) has sub-let the let property (or part of it) from the tenant, or

(c) has been admitted to the let property by the tenant on more than one occasion.

8. The behaviour complained of is as follows:-

- i. On 31 December 2021 the police attended at the property following upon a disturbance there. At least nine persons were removed from the premises and as a party had been taking place despite Covid restrictions. An ambulance was called and someone was removed on a stretcher. Neighbours had reported noise disturbance to the police .

- ii. In or around 21 February 2022 a neighbour reported to Mrs Jamieson that the police had been called because of a disturbance when there was a party going on at the property. The Respondent's boyfriend/partner threw a woman out of the property. She continued to bang the door and he threw her down on her face. An ambulance was called as she had been assaulted to her injury.
- iii. A neighbour had reported anonymously that she suspected that drug dealing was taking place at the property.
- iv. Neighbours have reported to Mrs Jamieson that the Respondent's boyfriend/partner shouts and spits at them and they feel intimidated and unable to report matters to the police for fear of repercussions.
- v. We heard from Mrs Jamieson who stated that the Respondent had informed her that she had in fact taken drugs at the property and that her boyfriend/partner who stays with her frequently, was smoking cannabis there. Mrs Jamieson reported this matter to the police on 29 November 2021 to PC Allan Patrick.
- vi. The Respondent's boyfriend/partner is known locally to deal in the supply of drugs and or other illegal substances and they suspect that he is actively selling drugs from the property. These matters have been reported to the police. An incident report has not been produced. Mrs Jamieson explained that the police would not provide an incident report at this juncture as a police investigation is ongoing.
- vii. The Respondent's father informed Mrs Jamieson that the Respondent's partner/boyfriend had challenged him when he removed his daughter from the property and he was frightened.
- viii. Neighbours have witnessed on several occasions, shouting and disturbances emanating from the property which has caused fear and alarm.
- ix. On or around the 5 March 2022 Mrs Jamieson required Police Scotland to attend at the property because of the behaviour displayed towards her by the Respondent. Mrs Jamieson informed us that she had seen the Respondent and had spoken to her about rent arrears. The Respondent shouted and swore at her and lifted her arm up in a threatening manner.

Mrs Jamieson was placed into a state of fear and called the police. While Police Scotland were in attendance, one officer advised her to look at a local news website, Shetland News online identifying a matter they had been investigating: <https://www.shetnews.co.uk/2022/03/04/pair-arrested-after-drugs-find/>. This article relates to the arrest of 2 persons and Mrs Jamieson was led to believe that those arrested for possession of cannabis are the Respondent and her boyfriend/partner.

9. Having considered all of the information and evidence before us, we are satisfied that the Respondent has behaved in an anti-social manner towards Mrs Jamieson and her neighbours which has caused Mrs Jamieson to be placed into a state of fear, alarm and distress. We accept Mrs Jamieson's evidence as being credible and reliable and that she has reported the incidents to the police. Her evidence has not been challenged in any way. We accept that the Applicants could not obtain an incident report from the police because investigations are ongoing.
10. We find that the Respondent's boyfriend/partner has engaged in anti-social behaviour after being admitted to the property on more than one occasion. We find that on 31 December 2021 the police attended at the property following upon a disturbance, that an ambulance was called and someone was removed on a stretcher. We find that the neighbours reported noise disturbance to the police. We find that on or around 21 February 2022 the Respondent's boyfriend/partner threw a woman out of the property and injured her. We find that the Respondent's boyfriend/partner shouts and spits at neighbours who are intimidated by him and unable to report matters to the police for fear of repercussions. We find that the Respondent had informed Mrs Jamieson that she had in fact taken drugs at the property and that her boyfriend/partner who stays with her frequently, was smoking cannabis there. We find that on or around the 5 March 2022 that the Respondent threatened Mrs Jamieson who required Police Scotland to attend at the property

Decision

11. The Tribunal made an order for eviction against the Respondent and in favour of the Applicant in terms of Grounds 14 and 15 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 having found that the Respondent and her boyfriend/partner has engaged in relevant anti-social behaviour towards other persons, that an application for an eviction order was made within 12 months of the anti-social behaviour occurring and that it is 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.

L. M

Legal Member/Chair

22 April 2022

Date