



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/22/3976

Re: Property at 3 Station House, 54 Market Street, Forfar, DD8 3EW (“the Property”)

Parties:

Mrs Elaine Ruth Strang, Balcalk Farm, Tealing, Dundee, DD4 0RG (“the Applicant”)

Mr Trevor James Clarke, 3 Station House, 54 Market Street, Forfar, DD8 3EW (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 11 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Respondent has failed to comply with a term of the tenancy and it is reasonable to issue an eviction order on account of that fact.

Background

1.This application for an eviction order was first lodged with the Tribunal on 31st October 2022 and accepted by the Tribunal on 23rd December 2022.A case management discussion was fixed for 17th March 2023 at 2pm.

Case Management Discussions

2.The case management discussion on 17th March 2023 was attended by the Respondent Mr Clarke who represented himself. There was no appearance by or on behalf of the Applicant and the Tribunal made contact with Mr Kevin Webster from the

Letting Agent's firm representing the Applicant, but he was unable to access the call with the dial in codes given and the Tribunal and the case management discussion was adjourned to allow him to attend.

3.A further case management discussion was fixed for 24th May at 10am and was attended by Mr Kevin Webster from Vista Properties and Development Ltd for the Applicant and the Respondent Mr Clarke who again represented himself.

4.The Tribunal had sight of the application, a tenancy agreement, a Notice to Leave and email sending this to the Respondent on 29th September 2022, a notice in terms of s11 of the Homelessness etc (Scotland) Act 2003, , an email sending this to Angus Council, a series of emails between the Letting Agents and the Respondent and a mandate authorising Letting Agents to act for the Applicant and a copy of the marriage certificate showing a change of name by the landlord.

5.The Tribunal Legal Member confirmed that the Tribunal had the correct papers and that the Respondent had seen all of the paperwork lodged by the Applicant.

6.The Tribunal Legal member confirmed that the Application was affected by the Cost of Living (Tenant Protection)(Scotland) Act 2022 and what this meant for them if an eviction order was granted by the Tribunal.

7.Mr Webster for the Applicant confirmed that the Applicant and respondent had entered into a private residential tenancy agreement at the property with effect from 21st April 2021. Around September 2022 neighbours in the block of flats had advised the Letting Agents that there was a dog being kept at the rented property, a ground floor flat in the block which was built in 2008.Clause 35 of the private residential tenancy agreement indicated that no animals or pets re to be kept at the rented property without the landlord's written consent and this had not been given. The Respondent Mr Clarke had asked for permission to keep the dog at the property, but this had been refused. Mr Webster explained that his firm owned some of the properties in the development and managed others and acted as property factor for the block of flats in which the property was situated. They did not manage all the properties, and some were dealt with by Angus Housing. The policy of the firm was not to allow pets in the properties they managed and since October 2022 there was a problem with dog fouling in the communal grass area at the block, to the extent that the gardener who used to cut the grass was refusing to do that now. As installation of CCTV was not feasible Mr Webster indicated that they were intending to remove the grass and replace it with gravel to deal with the grass cutting issue. Mr Webster believed that there were up to three dogs in the block and explained that some properties were owner occupied. A notice had been put up in the block regarding dog fouling and emails had been sent to all, including the self-contained properties. Mr Webster indicated that he had no evidence as to which dog was fouling the grass area and was not seeking to suggest it was the dog kept by Mr Clarke the Respondent that was necessarily responsible. He was asked of there were rent arrears at the rented property and confirmed that to his knowledge there were not.

8.The Respondent Mr Clarke advised that initially he had moved his partner into the property to assist with his financial situation as he had been put on short time working

and was concerned as he was also facing possible redundancy at that time. His partner had brought her dog to stay at the property. This had gone on for two and a half months, but it turned out that the redundancy issue did not affect him. His partner had stayed at the property with the dog after that time. He confirmed that the dog was still kept at the property and had been there since around September 2022. He said he knew the rules concerning the keeping of pets without permission and understood he did not have permission to keep the dog there. He had applied to the local council around the time he was advised that keeping the dog was a breach of the tenancy agreement to see if he and his partner could be housed by them. He and his partner wanted to stay together, and their circumstances had now changed in that his partner is seven months' pregnant and they had been given a mortgage in principle offer to allow them to buy a home. He said they were waiting to buy a property. He confirmed he did not oppose an eviction order being granted and did not want to suggest that this would not be reasonable in the circumstances. He did not want to have to leave the property until he had another property to go to and he was intending to view a property a few days after the case management discussion and was hopeful about it. He worked as a fabricator/welder and he and his partner had kept the council informed as to her pregnancy in the event that they did not secure a property to purchase.

9. Mr Clarke felt that the dog fouling was being blamed on the dog kept at his rented property. He said there were at least four other dogs in the block, and he was certain that the fouling was not being caused by his dog. He had suggested that CCTV be installed to find out which dog was causing the fouling. He explained that the baby was due on 25th August 2023 and he wanted their situation to be sorted before then. He had been trying to move out, he was not trying to stay to be "annoying". He had not taken advice and said that he could not afford to take legal advice. When asked if he wished to take advice from a law centre or housing charity, he said he did not.

10. The Tribunal had sight of e-mails between Mr Webster and Mr Clarke in September 2022 in which the issue of the dog was raised, the breach of the tenancy agreement pointed out and ultimately Mr Clarke was advised that the landlord had instructed that notice to leave be given on the grounds of the breach of the agreement. At that time Mr Clarke had indicated that the dog was "basically a family member" and that they were not prepared to give it away.

11. The Tribunal had sight of a Notice to Leave sent to the Respondent by email on 29th September 2022 giving notice that an application would not be made to the Tribunal for eviction before 30th October 2022. The Tribunal also had sight of a Notice in terms of S11 of the Homelessness etc (Scotland) Act 2003 emailed to Angus Council in respect of the Application.

12. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

13.The Applicant and Respondent entered into a private residential tenancy agreement at the property with effect from 21st April 2021.

14.In the tenancy agreement clause 35 stipulates that no animals or pets could be kept in the let property without prior written consent of the landlord.

15.The Respondent asked permission from the landlord to keep a dog at the property before 26th September 2022 and this was refused.

16.The Respondent has kept a dog at the property since around September 2022 when his partner came to stay at the property with a dog.

17.The Respondent was aware of the rules in the tenancy regarding the keeping of pets when the dog was first permitted to stay at the property and when the rules were pointed out to him, he indicated that he and his partner were not willing to give up the dog.

18.There has been a problem with dog fouling at the communal grass area at the block of flats where the rented property is situated.

19.This dog fouling problem is such that the grass is to be replaced by gravel.

20.It is not known which dog or dogs are responsible for the fouling and there are a number of dogs kept in the block of flats, not all of which are rented out.

21.The Respondent has been and continues to be in breach of clause 35 of the tenancy agreement at the rented property in that he has kept a dog at the property since September 2022.

22.The Respondent and his partner are expecting a baby and seeking to live elsewhere and are planning to buy a property as soon as they can.

23.A Notice to Leave in proper terms giving appropriate notice of proceedings was intimated to the Respondent in this application.

24.A Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent to Angus Council in relation to this application.

Reasons for Decision

25.The Tribunal was satisfied that the Eviction ground was made out in this application and that a Notice to Leave in proper form and giving appropriate notice of proceedings had been given to the Respondent and that the appropriate notice had been given to the local authority.

26.There was no dispute in this application that the Respondent was in breach of the tenancy agreement and has kept a dog at the property since September 2022 despite having been refused permission to do this by the landlord. The Respondent was not

prepared to give up the dog when the tenancy terms were brought to this attention. He and his partner seek to live elsewhere and intend to buy a property as soon as they can. He did not oppose the order nor did he suggest it would be unreasonable to grant it. The Tribunal noted that the tenancy term was clear and that permission had not been given and the Respondent kept the dog at the property anyway when his partner had moved into assist him with what was initially his uncertain financial position at the time which improved within a few months. The tribunal took the view that a Landlord is entitled to insist on such a term in a tenancy agreement and the Respondent wishes to keep the dog at the property, which is a clear breach of a clause in the tenancy, since permission to keep the dog was refused as soon as it was requested. The type of problem which can be avoided by having such a clause is exactly the type of problem, which was set out in this application, i.e., the issue of dog fouling, albeit there is no evidence as to which dog has caused the problem here. In all of the circumstances before it, the Tribunal took the view that it is reasonable to grant the order in this application.

Decision

The Tribunal determined that an eviction order be granted in terms of Ground 11 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 in that the Respondent has failed to comply with a term of the tenancy and it is reasonable to issue an eviction order on account of that fact.

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.

Valerie Bremner

Legal Member/Chair

24.5.23

Date