



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

Chamber Ref: FTS/HPC/EV/24/0443

Re: Property at Flat 1, The Stables, Station Road, Evanton, IV16 9YW (“the Property”)

Parties:

Mr Scott Murdoch, Parklands, Invergordon, IV18 0LJ (“the Applicant”)

Mr Kyle Johnson and Miss Leah Robb, both Flat 1, The Stables, Station Road, Evanton, IV16 9YW (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. By application, dated 26 January 2024, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Grounds relied on were Grounds 11, 12 and 14 of Schedule 3 to the 2016 Act, namely that the Respondents have failed to comply with an obligation under the tenancy (Ground 11), that the Respondents have been in rent arrears for three or more consecutive months (Ground 12) and that the Respondents have engaged in relevant anti-social behaviour (Ground 14).
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 15 May 2022 at a monthly rent of £535, and a Notice to Leave, dated 19 December 2023, advising the Respondent that the Applicant was seeking an Eviction Order under Grounds 11, 12 and 14 of Schedule 3 to the 2016 Act and that an application to the

Tribunal would not be made before 19 January 2024. The application also included a Rent Statement showing arrears at the date of application of £4,213. The Rent Statement indicated that no rent had been paid since 2 August 2023.

3. In the application, the Applicant stated that the Respondents have failed to take reasonable care of the Property. There was a crack down a newly-fitted window, damage to the garage door, household rubbish left outside, a destroyed car in the garden, door runners had been removed from fittings, there was dirt and staining on the carpet, mirrored wardrobe doors had been removed from their runners, there were oil spill stains on doors and carpets, and radiators had been removed from the walls. The Applicant provided photographic evidence of these matters. This all related to Ground 11.
4. Under Ground 12, the evidence provided was the Rent Statement referred to in Paragraph 2 above.
5. In relation to Ground 14 and also in relation to Ground 11, the Applicant stated that the Respondents had failed to control a pet dog, by leaving it alone in the Property for lengthy periods during which it barked continuously, had allowed cats to urinate indoors, had parked in unauthorised areas despite being requested by neighbours to move their car, had made excessive noise from their car and used aggressive speech toward neighbours. The Applicants provided copies of correspondence from neighbours in support of these issues which, they stated, were all failures to comply with the tenants' obligations under the tenancy agreement and, with regards to the conduct towards neighbours, relevant anti-social behaviour.
6. On 21 March 2024, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 11 April 2024. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

7. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 1 May 2024. The Applicant was represented by Sara Di Carlo of Harper Macleod LLP, solicitors, Elgin. The Respondents were not present or represented.
8. The Applicant's representative told the Tribunal that no payments of rent had been received since the date of the application and that the arrears now stand at £5,818.00. The Applicants had received further correspondence from neighbours regarding the Respondents' conduct, but this had arrived at too short notice for the Case Management Discussion. Her understanding was that the Respondents have no children or dependants living with them and that they are working. She was not aware of the Respondents having any health conditions, disabilities or vulnerabilities. A pre-action letter had been sent to them on 24 October 2023.

Reasons for Decision

9. 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 to enable it to decide the application without a Hearing.
10. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.
11. Ground 11 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy and the Tribunal may find the Ground applies if the tenant has failed to comply with a term of the tenancy and the Tribunal considers it to be reasonable to issue an Eviction Order on account of that fact.
12. The Tribunal was satisfied from the evidence before it that the Respondents had failed to comply with Clause 17 of the tenancy agreement, which requires them to take reasonable care of the Property. They appear to have caused damage to the windows, carpets, doors and radiator fittings. They have failed to comply with Clause 21 of the tenancy agreement by making excessive noise in their car, failing to control their pet dog and leaving rubbish in unauthorised places. The extent of the failures was significant, and the Tribunal decided that it would be reasonable to issue an Eviction Order on account of that fact.
13. Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.
14. The Tribunal was satisfied that the Respondent has been in rent arrears for three or more consecutive months and that the current arrears exceed one month's rent. No evidence had been presented to indicate that the Respondents' being in arrears might be wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
15. The Tribunal noted that the Respondents had made no representations for the Tribunal to take into consideration in deciding whether it would be reasonable

to issue an Eviction Order and that they had not engaged with the Tribunal process. They had chosen not to attend or be represented at the Case Management Discussion. They owe more than 10 months' rent and have offered no explanation regarding their personal circumstances which they would ask the Tribunal to consider. They are responsible for significant damage to the Property and have failed to comply with a number of their obligations under the tenancy agreement. Accordingly, having considered all the information before it, the Tribunal decided that it would be reasonable to issue an Eviction Order under both Grounds 11 and 12 of Schedule 3 to the 2016 Act.

16. Ground 14 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour, namely behaving in an anti-social manner in relation to another person, by doing something or pursuing a course of conduct which causes or is likely to cause the other person alarm, distress, nuisance or annoyance. As the Tribunal had determined that the requirements of Grounds 11 and 12 had been met, it was not necessary to determine from the evidence available, namely messages from a neighbour, whether the conduct towards him met the test of "relevant anti-social behaviour".

17. The Tribunal's Decision was unanimous.

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

Legal Member/Chair

1 May 2024
Date