



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/24/0178

Re: Property at 31B Fullarton Street, Kilmarnock, KA1 2QX (“the Property”)

Parties:

Mr David Spence, 19 Rennie Street, Kilmarnock, KA1 3AR (“the Applicant”)

Mr Steven Gibb, 31B Fullarton Street, Kilmarnock, KA1 2QX (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under grounds 11 and 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -
 - a. the tenancy agreement,
 - b. two notices to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. check in report
 - e. interim report
 - f. letters and emails from local council about alleged anti-social behaviour
 - g. emails from the respondent to the letting agent
 - h. letter from former letting agent regarding anti-social behaviour.
3. A case management discussion took place on 10 September 2024. In attendance was the applicant's agent, Alan Lavelle from Ayr Estate & Letting Agents. Notice of the CMD had been made by sheriff officers on 9 August 2024. The respondent did not appear. The tribunal was prepared to proceed in their absence given they had notice of the case management discussion.

Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the grounds 11 and 14 (breach of tenancy condition and anti-social behaviour).

condition of tenancy

5. The applicant's agent advised that the first notice to leave dealing with the breach of tenancy condition had been served in May 2023. He advised that the letting agency had carried out an inspection of the property in April 2023 and they found it to be in a very poor state. There was quite a bit of damage to the property including the removal of flooring; damage to doors; and damage to and marks on walls. There was a previous check-in report and an interim report of April 2023; these reports were lodged with the application and showed the difference in condition over the property at entry in 2018 and in 2023.
6. In terms of the condition of the property the letting agent was unable to say what condition it had been in under the previous letting agent's care. From looking at the file it did not appear that the previous letting agent had attended at the property to carry out condition inspections. However, when he had

attended at the property to do a property inspection, he had found that all the walls were marked or damaged. Doors were removed and damaged. Floor coverings had been lifted and the living room floor covered in paint, as were window sills. He advised that there were issues of damage throughout the property. The property was also in a dirty condition. The letting agent had not been able to get into the bedroom due to it being full of different items and belongings.

7. The letting agent advised that after the first notice to leave had been served regarding the condition of the property, the respondent had responded that he was an artist, and he was expressing his art in relation to the condition of the property. The letting agent advised that he had removed doors and had used them "as his canvas".
8. The letting agent advised that he was unaware of the current condition of the property because he had been unable to obtain any access to the property since serving the notice to leave. The respondent had refused him entry. However, he understood that the police had expressed concerns regarding the condition of the property when they had attended there and entered the property in March /April 2024.
9. The agent advised that the property would need to be a fully refurbished once the respondent leaves the property.

anti-social behaviour

10. He advised that matters had escalated at the property in terms of the respondent's conduct. They were receiving a number of reports of anti-social behaviour at the tenancy caused by the respondent. This had culminated in the council writing to the letting agent about the conduct of the respondent; these letters were submitted with the application. The respondent's anti-social behaviour had led to the second notice to leave being served in February 2024.
11. The letting agent advised that the respondent had been a tenant for 6 1/2 years. The property had previously been managed by a different letting agency. They had taken over the business. From looking through the files there had been some anti-social behaviour in 2019, and the tenant had been written to at that time. The letting agent understood that there had been ongoing periods of anti-

social behaviour which spiked at times and then settled down for a while after that.

12. In terms of the anti-social behaviour the letting agent advised that he had been getting regular complaints about the conduct of the respondent. He had been liaising with the council about the conduct. The council email in January 2024 showed that the respondent would play music very loudly on a daily basis from early evening until 4/5am; and there was strong smell of cannabis from the property. The council had been receiving complaints about the conduct of the respondent. The council had served three warning letters on the respondent in around February 2024.
13. He advised that more recently the antisocial behaviour had appeared to have settled down a bit, however he had received a couple of reports from neighbours about the respondent's conduct, however these complaints had not been escalated to the anti-social behaviour team at the local council at the present time.

reasonableness

14. The respondent had been causing concern on a number of fronts and in addition to the breach of tenancy condition and anti-social behaviour he had also been sending numerous threatening emails to the letting agent.
15. The letting agent had been in discussion with the landlord and the landlord instructed him to proceed to seek an eviction order in relation to this property. The letting agent advised that after the second notice to leave had been served on the respondent, he had stopped paying his rent and that had required the letting agent to seek to have housing benefit paid direct to the landlord. There were now outstanding rent arrears of £1,362.72. In terms of ongoing rent arrears, he advised that the housing benefit pays £345.20 per month and there is a shortfall every month of £29.80.
16. The letting agent advised in relation to the rent arrears he had written to the tenant about the ongoing rent arrears, but he had not gone as far as sending pre-action letters as he was concerned that to do so may antagonise the respondent. He did not wish to escalate matters further.
17. The letting agent understood that the respondent has mental health issues. He understood that he had previously been in the armed forces and had PTSD.

18. The letting agent also understood that the respondent has had criminal issues in the past.
19. In relation to working with the respondent to address matters and gaining access to the property the letting agent advised that the respondent had been sending him numerous emails, up to 30 a day, which were threatening and abusive in tone and content. The emails were threatening towards staff and contained a number of sexualized references about what the respondent would do to staff members. Due to these threats, he was now not prepared to send members of staff to the property or to attend there himself. He considered there was a safety risk to him and staff in attending the property. He noted that the respondent had a criminal record and poor mental health. The content of the emails were distressing. The respondent will also copy in multiple other parties, including charities, support workers, and the council to the emails.
20. The agent advised that he had tried to resolve the matter with the respondent however, the volume of emails and the deplorable tone of the emails meant that resolution was not possible. The letting agent advised that the content of the emails had required him to contact the police. The police had attended at the letting agent's office to view the emails and then went and spoke to the respondent about their content. The police had had to force entry into the property in around March/April this year. The police had advised the letting agent to forward future emails to the police and that the agent should not engage with the respondent.
21. The agent advised that it was only the respondent himself living in the property. There are no dependents. He is a 54-year-old male.
22. The agent advised that he had been in touch with the local council and had spoken to them about supporting the respondent, as he believed that the respondent did need help. He was not sure what support the council would be able to provide to him. The letting agent was not sure whether or not there was any contact with mental health charities and the respondent, however he noted that when the respondent emailed the letting agent he copies in numerous other support workers and groups, including war veteran services and council agencies, so he considered that they were aware of the current situation relating to the respondent.

23. The agent advised that the landlord had been patient and understanding in relation to the conduct of his respondent however given the condition of the property; the level of arrears; and the threatening emails the landlord was now keen to resolve matters and pursue an order for eviction. The landlord had only this one property which he let out.

Findings in Fact

24. The Tribunal found the following facts established: -

25. There existed a private residential tenancy between the parties.

26. The tenant was Steven Gibb.

27. The landlord was David Spence.

28. The property was 31b Fullerton Street, Kilmarnock.

29. It had commenced on 21 March 2018.

30. The tenancy stated that rent was £375 a calendar month payable in advance.

31. Rent arrears as of 10 September 2024 were £1,362.72.

32. Condition 17 of the tenancy obliged the tenant to take reasonable care of the property including ensuring its fixtures and fittings are kept clean during the tenancy.

33. There was submitted a check-in report for the property dated 22 March 2018 showing the property to be in a clean and tidy and good condition.

34. There was submitted an interim report for the property dated 27 April 2023 showing the property to be in a poor condition; with damage shown to doors walls and fixtures and fittings; paint marks and engrained dirt on flooring; the property was in a dirty condition.

35. From at least around January 2024 until 28 February 2024 the respondent had engaged in anti-social behaviour on a frequent basis. He would play music very loudly from early evening until around 4/5am. These behaviours had led to a number of complaints of anti-social behaviour being made to the letting agent and the local council. The council had issued anti-social behaviours letters to the respondent on at least three occasions.

36. From at least August 2023 the respondent had sent numerous threatening and offensive emails to the letting agent. The letting agent and his staff were fearful of attending at the property.

37. In around March 2024 the police had attended at the property and had to force entry to the property. The police warned the respondent about his conduct in sending threatening emails to the letting agent. The police found the property to be in poor condition.
38. The respondent suffers from poor mental health.
39. The respondent resides in the property alone. He is a 54-year-old man.
40. There was submitted a notice to leave dated 15 May 2023, stating that an application would not be made until 9 August 2023. It sought eviction under ground 11 breach of tenancy agreement. It set out that the respondent had not kept the property to a reasonable standard. The 2023 inspection report was attached to the notice. The notice to leave had been emailed to the tenant. There was evidence of service.
41. There was submitted a second notice to leave dated 29 February 2024, stating that an application would not be made until 29 March 2024. It sought eviction under ground 14 antisocial behaviour. It set out that the council had sent letters about the respondent antisocial behaviour at the property. The notice to leave had been emailed to the tenant. There was evidence of service.
42. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

Reasons for Decision

43. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.
44. The ground which the Applicant seeks eviction are grounds 11 and 14:-

Breach of tenancy agreement

11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

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

(a)the tenant has failed to comply with a term of the tenancy, and

(b)the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

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,

[F36(ba)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 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.

45. The applicant’s agent confirmed that they sought an order for eviction based on both grounds 11 and 14.

46. In terms of ground 11 Condition 17 of the tenancy agreement obliges the tenant to take reasonable care of the property including ensuring its fixtures and fittings are kept clean during the tenancy. There was submitted a check-in report for

the property dated 22 March 2018 showing the property to be in a clean and tidy and good condition. There was submitted an interim report for the property dated 27 April 2023 showing the property to be in a poor condition; with damage shown to doors walls, fixtures and fittings; paint marks and engrained dirt on flooring; the property was in a dirty condition. It appeared to us that there had been a breach of this condition. There was evidence of damage to the property; there were multiple marks on walls and doors. There were paint splatters in rooms. There appeared to be damage to the flooring. Doors had been removed and used to paint on. There was evidence of engrained dirt in the living room area. There were so many items lying around the bedroom entry could not be taken. We find that the first part of this ground has been met.

47. In terms of ground 14 the letting agent advised that he had been getting regular complaints about the conduct of the respondent since taking over the property from at least April 2023. The agent had received letters and emails from the council about the respondent's anti-social conduct. He had received complaints directly from residents. The council emailed the agent in January 2024 to advise that the respondent played music very loudly daily from early evening until 4/5am; and there was a strong smell of cannabis from the property. The council had written to the agent twice in February 2024 to advise had been receiving complaints about the conduct of the respondent and the council had served three warning letters on the respondent due to receiving complaints from other residents in around January and February 2024. We find that this ground is met given that there have been multiple complaints of anti-social behaviour by the respondent, due to excessive loud music, and these complaints have been received within 12 months of raising this application. The behaviour has clearly caused a nuisance and annoyance to other residents in the area around the property. We consider the behaviour to be relevant anti-social behaviour. We find the first part of this ground established.

48. Given the first part of both grounds are met the tribunal is therefore required to proceed to consider if it would be reasonable to grant the order under either or both grounds.

49. We find it would be reasonable to grant the order for eviction under both grounds. In coming to this conclusion, we took into account the following matters:-

50. Matters in support of granting the order are as follows:-

51. Each ground is established, and there is no evidence before the tribunal of any improvement in either ground. The police in March 2024 found the condition of the property to be poor. The letting agent told us on 10 September 2024 that he was receiving ongoing complaints directly from residents about anti-social behaviour by the respondent.

52. That the letting agents have been unable to engage with the respondent to address the concerns about the tenancy condition and/or the respondent's anti-social conduct.

53. In addition, we note that the letting agent is unable to attend at the property as he has not been allowed entry since the inspection in April 2023; and we note that the police had to force entry when they attended in March 2024.

54. Of further concern is that the respondent has engaged in an ongoing course of conduct against the letting agent and his staff sending frequent and multiple emails to them which are threatening and sexually offensive in tone and content. These emails have led to the involvement of the police and warnings being given to the respondent.

55. The letting agent and his staff are fearful of attending the property.

56. The recent failure to pay rent and the accruing arrears is a further factor supporting that it would be reasonable to grant the order. The fact that the letting agent is unable to raise the issue with the respondent for fear of antagonising him is an aggravating factor.

57. That this is the only property that the landlord rents out and it is not large-scale commercial rental business that he is operating.

58. That the landlord has been patient with the respondent, but there has been no improvement in the condition of the property or conduct of the respondent.

59. That the respondent is a single man without dependents living in the property.

60. Matters against the order being granted are that the respondent has lived in the property for 6 and a half years, and he is understood to suffer from poor mental health and therefore appears to be vulnerable.

61. In balancing up the various factors before us, we consider that while the respondent will likely suffer detriment if removed from the property that factor is not sufficient to refuse the order when weighted against the other factors which support the granting of it. The property is in poor condition, it will require to be

refurbished. The respondent has caused damage to it and has not taken care of it. It appears that he will continue to breach this condition. The applicant has also engaged in anti-social behaviour, which appears to be a recurring theme during his tenancy. There appears no likelihood of any improvement in respect of either issue. There appears to be no way in which the landlord's agent will be able to engage with the respondent to discuss these issues and secure any improvement in relation to them. On the contrary the respondent has engaged in threatening and abusive conduct towards the letting agent and his staff, leading to a position whereby the letting agent cannot undertake a service for the landlord for fear of antagonising the respondent. Added to the fact that the respondent has now paying stopped his rent, and will now accrue small but ongoing arrears if housing benefit continues to be paid direct to the landlord, in our opinion this further exacerbates the relationship between the parties and is to the detriment of the landlord. Taking all matters together we consider that it would be reasonable to grant an order for eviction.

62. We would take the opportunity of noting that the second notice to leave was served on the respondent after the application had been made to the tribunal. The application was accompanied by the first notice to leave which had been served on the respondent before the application was made. We would confirm that we were prepared to allow ground 14 to be considered as part of the landlord's application in terms of section 52 (5)(b) of the 2016 Act.

63. Accordingly, considering the papers before us and the oral submission by the applicant's agent the tribunal was prepared to grant the order for recovery of possession, given that the first part of grounds 11 and 14 were met and in all the circumstances it appeared to us to be reasonable to grant the order.

Decision

64. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under grounds 11 and 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Observed

65. The tribunal notes that the respondent is believed to suffer from poor mental health. That being so, we consider that he is likely to be vulnerable. The letting agent was frank in his assessment that this man would likely require support if the order was granted. Given this, we will instruct that this decision be issued to East Ayrshire Council so that the Housing department and Social Work can investigate the respondent's situation and provide support as necessary.

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.

Melanie Barbour

10 September 2024

Legal Member/Chair

Date