



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 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/1250

Re: Property at 3 Boghead Farm Cottages, Arbroath, Angus, DD11 5SP (“the Property”)

Parties:

FIRM OF I R STIRLING, Dickmontlaw Farm, Arbroath, Angus, DD11 5RB (“the Applicant”)

Miss Georgia Tosh, 3 Boghead Farm Cottages, Arbroath, Angus, DD11 5SP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted.

Background

1. This is a Rule 109 application dated 14th March 2024, whereby the Applicant is seeking an eviction order, under grounds 11 and 14 of Schedule 3 of the Act. The Applicant representative lodged a copy of a private residential tenancy that commenced on 8th November 2021, together with Notice to Leave with evidence of service, section 11 notice, and evidence to support the eviction grounds, including photographs, correspondence, and timelines of incidents.
2. The application and notification of a forthcoming Case Management Discussion was made upon the Respondent by Sheriff Officers on 13th September 2024.
3. On 13th and 30th September 2024, the Applicant representative lodged written representations and productions.

The Case Management Discussion

4. A Case Management Discussion (“CMD”) took place by telephone conference on 17th October 2024. Neither party was in attendance. The Applicant was represented by Mrs Teresa Hamlet, Farm Secretary.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied in respect of the Respondent. The Tribunal considered it was appropriate to proceed with the application in the absence of the Respondent.
6. Mrs Hamlet addressed the Tribunal on the background to the application. There have been concerns about the condition of the Property since an inspection on 28th September 2023, when damp staining was noted in a bedroom, and there was an overwhelming smell of urine in the Property. A damp specialist was instructed to investigate. Mrs Hamlet said this was a beautiful property at the start of the tenancy. An inventory had been provided to the Respondent at that time, but she had not signed and returned it.
7. Mrs Hamlet referred to photographs taken when she attended the Property on 6th February 2024. Mrs Hamlet said she was concerned about dog hair and faeces within the Property, and marks on carpets. The carpets were cream at the start of the tenancy. One bedroom carpet had been removed, and the other bedroom carpet was no longer cream, as it was badly stained. The doorframe had been chipped, marked and chewed. The blinds had been damaged. Mrs Hamlet said the blinds are in a worse state now.
8. A further photograph was taken by Mrs Hamlet from outside the Property on 15th July 2024. The grass was waist height. A contractor had reported this, and stated that the garden was full of dog faeces. The contractor said he would be concerned about sending anyone to the Property due to the condition.
9. The Respondent has a large wolfhound type dog, and a smaller dog. They have been contaminating the garden at the Property and a neighbouring garden with faeces. The dogs are left alone for long periods during the day, and a neighbour has described them as crying and barking all day. The Property is semi-detached and the immediate neighbour clearly hears the dogs. This has been reported to the SSPCA and the dog warden by the neighbour. The dogs have jumped up on neighbours, knocking a neighbour over, and they have frightened the neighbour’s puppy. The neighbours have been alarmed by the behaviour of the dogs.
10. The Respondent has not paid the rent since June 2024. She claims to be withholding rent due to repair issues, but she is not allowing access to contractors to carry out any investigation or repairs. The Respondent cancels appointments repeatedly. Mrs Hamlet said the Applicant decided not to try to gain right of entry by application to a tribunal, as she wished to await the outcome of the CMD.

11. The Applicant has 26 properties for let. Most of their tenants are long term, which the Applicant prefers. The Applicant tends to keep the rent low and treats tenants well.
12. Mrs Hamlet said the Respondent had been a good tenant until around the middle of 2023. Mrs Hamlet said she was aware the Respondent was experiencing health and relationship issues, and the Applicant had tried to be sensitive when dealing with the Respondent after being informed of the issues.
13. The Respondent is the sole tenant. She does not have any dependents. At some stage, without permission, a partner and a child moved into the Property. Mrs Hamlet said there had since been issues and the police and court had been involved, and the ex-partner and child are no longer there. The ex-partner had used the Respondent's email address to email the Applicant representative. The Respondent had informed Mrs Hamlet that she was scared to be in the Property on her own and tended to be out for long periods. The Applicant arranged to have the locks changed. Mrs Hamlet said she understood there had been a police incident a month ago.
14. Mrs Hamlet said the Respondent has been in touch with another local authority as she wishes to secure social housing in a different area. The Respondent has told Mrs Hamlet that she wants to leave the Property but has been informed by the local authority that she must await an eviction order before leaving. Mrs Hamlet is aware that the Respondent was offered a move to temporary accommodation, but was unable to take up the offer as she has two dogs. The local authority was in touch with Mrs Hamlet on 2nd September 2024 to ask for the date of the CMD. It is her understanding that the local authority wishes to assist the Respondent in securing social housing.
15. Mrs Hamlet said the procedure of evicting a tenant was very upsetting and not something that the Applicant wished to do, but the Applicant is greatly concerned about the condition of the Property. Mrs Hamlet said the Applicant would assist the Respondent in moving on.
16. Responding to questions from the Tribunal regarding its discretion to extend the period before which an eviction order could be executed, Mrs Hamlet said there could be concerns about the deterioration of the Property in that circumstance, however, she accepted it was a matter for the Tribunal to consider.

Findings in fact and law

17.
 - (i) Parties entered into a private residential tenancy commencing on 8th November 2021.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.

- (iii) The Applicant has served notice of their intention to make an application for an eviction order upon the local authority.
- (iv) The Applicant is the landlord of 26 properties including the Property.
- (v) The Respondent has breached clause 16 of the tenancy agreement by failing to take reasonable care of the Property, and failing to keep the Property and its fixtures and fittings clean during the tenancy.
- (vi) The Respondent has breached clause 20 of the tenancy agreement by engaging in antisocial behaviour by:
 - (a) failing to control her dogs and allowing them to cause nuisance and alarm to neighbours;
 - (b) allowing them to foul other people's property;
 - (c) causing damage to the Property.
- (vii) The Respondent has breached clause 26 of the tenancy agreement by removing a bedroom carpet and carrying out redecoration without the prior written consent of the Applicant.
- (viii) The Respondent has breached clause 27 of the tenancy agreement by failing to maintain the garden in a reasonable manner.
- (ix) The Respondent has breached clause 28 of the tenancy agreement by failing to keep her pets under supervision and control to ensure they do not cause deterioration to the condition of the Property and nuisance to neighbours.
- (x) The Respondent has engaged in relevant anti-social behaviour within 12 months of the date of making the application by causing alarm, distress, nuisance and annoyance to neighbours through her failure to control her dogs.
- (xi) It is reasonable to grant an eviction order.

Reasons for Decision

18. Ground 11 of schedule 3 to the Act is met if the tenant has failed to comply with an obligation under the tenancy. The Tribunal may find that 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.
19. In reaching its decision that ground 11 was met, the Tribunal took into account the significant evidence, including oral, written and photographic evidence that the Respondent had failed to comply with the terms of the tenancy by failing to look after the Property, causing internal damage to carpets, doorframes

and blinds. The Respondent failed to keep the garden in a reasonable condition and failed to prevent her dogs from fouling therein and in the neighbouring garden. The actions of the Respondent have caused damage to the Property. This is in breach of the Respondent's obligations in terms of the tenancy agreement.

20. Ground 14 of schedule 3 to the Act is met if the tenant has engaged in relevant anti-social behaviour. The Tribunal may find the ground is met if the tenant has behaved in an anti-social manner in relation to another person, and the behaviour is relevant anti-social behaviour. The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact, and if the application was made within 12 months of the anti-social behaviour occurring or the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period. A person is to be regarded as behaving in an anti-social manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or pursuing 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 who it was in relation to or where it occurred.
21. The Tribunal is satisfied that ground 14 is met in that the Respondent has behaved in an anti-social manner in relation to her neighbours by allowing her dogs to cause alarm, distress, nuisance and annoyance. The Tribunal took into account the oral and written evidence of a significant number of incidents involving the dogs behaving in an alarming way towards the neighbours. The Tribunal noted that the incidents continued despite the concerns being notified to the Respondent. The Tribunal noted that the first incident involving the dogs occurred on 26th November 2023, which is less than 12 months before the date the application was made.
22. The Tribunal considered that a *prima facie* case had been made by the Applicant in respect of reasonableness. The Tribunal took into account the limited information provided regarding the Respondent's circumstances; however, the Respondent did not appear at the CMD or make any representations in respect of reasonableness.
23. Having weighed all the circumstances, the Tribunal considered it was reasonable to grant the order for possession.

Decision

24. An eviction order is granted in favour of the Applicant. The order is not to be executed prior to 12 noon on 20th November 2024.

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.

Ms H Forbes

Legal Member/Chair

17th October 2024
Date