



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/20/2189

Re: Property at 27 Park Drive, Blairgowrie, PH10 6PA (“the Property”)

Parties:

Mrs Sandra Stewart, Elizburn Cottage, Carsie, Blairgowrie, PH10 6QW (“the Applicant”)

Miss Tamera Jenkins, 27 Park Drive, Blairgowrie, PH10 6PA (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application be refused.

Background

1. This is an application for eviction brought under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant bases her action on Ground 15 of Schedule 3 of the 2016 Act, namely that the Respondent as tenant has associated with someone who has engaged in anti-social behaviour.
2. The matter called before the Tribunal for a Case Management Discussion (“CMD”) on 4 December 2020 by way of teleconference call. The Applicant represented herself as did the Respondent.
3. The Tribunal had before it the Applicant’s application with a copy of the tenancy agreement, Notice to Leave dated 7 July 2020 and proof of postage, a signed letter from a neighbour dated 14 October 2020 and a Notice to Perth and Kinross Council under Section 11 of the Homelessness (Scotland) Act 2003. There was no written response from the Respondent.

4. After representations from both parties the Tribunal decided it wished to hear evidence from the Respondent's neighbour who had complained to the Applicant about the Respondent's partner's behaviour which would assist the Tribunal in considering the whole circumstances as to whether it was reasonable to issue an order to evict the Respondent. A Note following the CMD was issued to both parties.

Hearing

5. The matter called before the Tribunal for a hearing on 5 February 2021 by way of teleconference call. The Applicant again represented herself as did the Respondent.
6. In addition to the documents lodged with the application, the Applicant had lodged a Police report relating to an incident on 3 April 2020. The Respondent confirmed she had received a copy of this from the Tribunal.
7. The Applicant had one witness, Allan Smith. He gave evidence that he was 70 years old and had lived in his property at 28 Park Drive, Blairgowrie for 28 years. His property was a middle property in a terrace of 4 houses and was next door to the Property. In February 2020 he was physically blocked by the Respondent's partner Ronnie Lyons from using the common path at the back of the Property which led to Mr Smith's house. Mr Smith felt intimidated by Mr Lyons's aggressive behaviour and had called the Applicant who had agreed with Mr Smith that he had a legal right to use the path and that Mr Lyons should not stop him. Mr Smith gave evidence that at some point a blue bin had been placed on the path, which was narrow. There was about 6 inches free on either side. Mr Smith could not get his bin past and did not want to move the bin in case it triggered another confrontation with Mr Lyons. In March 2020 and on 3 April 2020 Mr Lyons again stopped Mr Smith from using the path by standing on the path and blocking his access to his house. Mr Lyons claimed Mr Smith should not be there. Mr Smith explained the Respondent came out the Property and tried to get Mr Lyons to move. Mr Lyons had refused. Mr Smith explained that he had called the Applicant again whilst this was happening and that she had called the Police. Mr Lyons had then moved. The Police attended later that day and spoke to him about what had happened. Mr Smith had since made arrangements with the other neighbours in the terrace to use the path that went round their properties and had not used the path. He felt like a prisoner in his own home.
8. The Applicant's evidence corroborated that of Mr Smith. She explained Mr Smith had called her to complain that Mr Lyons had blocked his access in February 2020. She had immediately called the Respondent to explain that Mr Smith had access and that Mr Lyons should not be stopping Mr Smith from using the path. The Applicant explained that the Respondent had assured her on 2 occasions that would not happen again. She explained she had used the standard private residential tenancy and had inserted in Clause 4 that the path was shared. On the second occasion when Mr Lyons had blocked access she

had spoken to her solicitor who advised that neither the Respondent nor Mr Lyons had any legal right to block access. She had also phoned the non-emergency Police number as at the time of the second occasion the country had just gone into lockdown due to the COVID 19 crisis. The Police advised if she was concerned to call them. She again called the Respondent to advise that access should not be blocked. She explained Mr Lyons had permission to live in the Property as part of the Respondent's household and as such the Respondent was responsible for his behaviour in terms of Clause 20 of the tenancy agreement. On the third occasion when Mr Lyons blocked access on 3 April 2020 Mr Smith again called her. She called the Respondent who did not answer her phone. She could hear the Respondent in the background trying to get Mr Lyons to move when Mr Smith had called her. As Mr Lyons refused to move, the Applicant called the Police. The Tribunal noted the contents of the Police report lodged by the Applicant.

9. The Respondent gave evidence that all she wanted to do was get on with things without bickering. She had only witnessed one occasion in April 2020 when Mr Lyons had blocked access when she asked Mr Lyons to move. He had refused as Government laws meant Mr Smith had to use his front door. Mr Lyons had eventually moved out of the way. She could only recall the Applicant phoning her once before then and had assured the Applicant that would not happen again. Her evidence was that Mr Lyons had only blocked access on 2 occasions during lockdown and not 3 occasions. When questioned by the Tribunal she would not say whether a reasonable response would simply to have been for Mr Lyons to have stepped away from the path or go into the Property to let Mr Smith to get to his house past whilst allowing for social distancing.
10. Mr Ronald Lyons gave evidence for the Respondent. He was 47 years of age, had lived at the Property for approximately 2 and a half years and was a joiner. He had blocked Mr Smith from using the path twice during lockdown. He felt Mr Smith should use his front door and not the path which went past the Property as that was what the Government had said during lockdown. He explained he and the Respondent were self-isolating due to medical reasons. He denied being aggressive. He had spoken nicely to Mr Smith on the first occasion. On the second occasion his tone of voice and choice of words had been "stronger" to get his point across to Mr Smith. In cross examination he clarified he had not been shielding at the time, but for medical reasons he wanted Mr Smith to keep away. He explained the Applicant was aware of his and the Respondent's medical conditions.
11. The Applicant explained that eviction was for the benefit of Mr Smith who had been a very good neighbour when her mother had lived in the Property and whom should be able to live in his house without any hassle. She felt that eviction would also benefit the Respondent as the Property was under occupied. There had been no further incidents since 3 April 2020 but this was due to the fact that Mr Smith had not used the path since then. Although the Respondent had been helpful and given her past assurances that access would not be blocked, that had not happened and her concern was that if Mr Smith used the path the same thing might happen.

12. The Respondent submitted there had been no issues out since 3 April 2020 and that no-one would say anything to Mr Smith if he used the path. She submitted that Mr Lyons worked during the day and was unlikely to come across Mr Smith. She and Mr Lyons were actively looking to be rehoused by the Council. Both had MS. There were no other members of the household.
13. Before reaching a final decision the Tribunal needed to be satisfied whether it was reasonable to evict. It was relevant to the Tribunal's consideration of reasonableness that Mr Smith had not used the path since 3 April 2020 and that the Respondent had not had an opportunity to be true to her word that Mr Smith could to use it without interruption. This had not been tested. The Tribunal considered it was in the interests of justice and consistent with the overriding objective of dealing with the proceedings justly that the hearing be adjourned to monitor the behaviour which would assist the Tribunal in its consideration as to the reasonableness. The hearing was accordingly adjourned.

Continued hearing

14. The matter called before the Tribunal for a continued hearing on 26 March 2021 by way of teleconference call. The Applicant again represented herself as did the Respondent.
15. The Applicant advised that since the hearing on 5 February 2021 Mr Smith had started to use the path again uninterrupted. This was confirmed by the Respondent.
16. In relation to reasonableness, the Applicant submitted that she was not bothered one way or the other if the order was granted as her concern was the behaviour, which was why she had raised the action. The drawback was that the Council would view the Respondent as being adequately housed. The Respondent reiterated that she liked living in the Property and did not want to bicker. She explained that she was on the Council waiting list for a 2 bedroom property.

Findings in Fact

17. The parties entered into a Private Residential Tenancy Agreement on 5 August 2018 in relation to the Property. Clause 4 of the tenancy agreement stated that the footpath was shared to allow access to 28 Park Drive, Blairgowrie. Clause 20 provides that the Respondent and those living with her would not engage in anti-social behaviour towards another person including neighbours. "Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person and includes speech.

18. The Respondent lives in the Property with Ronnie Lyons her partner. The Respondent is responsible for the behaviour of Mr Lyons in terms of the tenancy agreement.
19. The Property is at one end of a terrace of 4 houses. The house at 28 Park Drive, Blairgowrie is next to the Property and is one of the middle properties in the terrace. A common pathway goes round the terrace.
20. Mr Allan Smith resides at and is entitled to use the common path past the Property to obtain access from and to 28 Park Drive, Blairgowrie.
21. Mr Lyons blocked Mr Smith from using the common path on 3 occasions in February 2020, March 2020 and on 3 April 2020.
22. Mr Lyons had acted aggressively towards Mr Smith in blocking access and in his tone of language and in the words used.
23. Mr Smith was intimidated by Mr Lyons.
24. Mr Smith telephoned the Applicant to complain about this behaviour in February 2020, March 2020 and on 3 April 2020.
25. The Applicant had contacted the Respondent in February 2020 and March 2020 to explain that Mr Smith was entitled to use the path. The Respondent had given assurances to the Applicant on 2 occasions that the behaviour complained of would not be repeated.
26. The Respondent tried to get Mr Lyons to move out of Mr Smith's way on 3 April 2020. Mr Lyons refused to move. Mr Smith required to call the Applicant who had to call the Police. The Police attended the Property later that day and spoke with Mr Smith and Mr Lyons and gave advice to parties. The Police produced a report PS – 20200403-1700. No action was taken against Mr Lyons.
27. From 3 April 2020 Mr Smith made an arrangement with his neighbours at the opposite end of the terrace to access the common path past their properties to avoid passing the Property as he feared that could trigger Mr Lyons to block his access again.
28. On 7 July 2020, the Applicant served a Notice to Leave on the Respondent requesting that she remove from the Property by 10 October 2020. The Respondent remained in the Property after 10 October 2020.
29. The Applicant served a Notice under Section 11 of the Homelessness (Scotland) Act 2003 on 16 October 2020.
30. From about 5 February 2021 Mr Smith started to use the common path past the Property. His access from then to the date of the continued hearing on 26 March 2021 had been uninterrupted.

31. There had been no further incidents since 3 April 2020.

32. The Respondent and Mr Lyons have MS and are waiting to be rehoused by Perth and Kinross Council.

Reasons for Decision

33. Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power the Tribunal to evict if it finds that any of the grounds named in Schedule 3 apply. This application proceeds on ground 15, namely that the Respondent, as the tenant, associates with someone who has engaged with anti-social behaviour, in this case Mr Lyons. Whilst ground 15 is a discretionary ground of eviction, as well as being satisfied that the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

34. There is very little dispute about the factual circumstances leading to this application. The only dispute was whether Mr Lyons had blocked access on 2 or 3 occasions and whether he had been aggressive towards Mr Smith in doing so. The Tribunal preferred the evidence of Mr Smith and the Applicant that his access had been blocked by Mr Lyons on 3 occasions, including one before lockdown. The Tribunal was also satisfied that Mr Lyons had been verbally aggressive towards Mr Smith. On his own evidence, Mr Lyons had used words on the second occasion which were "stronger". The Tribunal also formed the impression from the evidence of the Applicant, the Respondent and Mr Smith that on 3 April 2020 Mr Lyons was not at all happy about the situation and had indeed acted in an aggressive manner. This is borne out by the fact that even when the Respondent intervened, he refused to move and it was not until the Police were called that he moved.

35. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence, to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was of the opinion that as there had been no further incidents since 3 April 2020 and particularly since Mr Smith started to use the path from 5 February 2021 uninterrupted, those factors heavily weighted in favour of the Respondent. The Respondent was happy in the Property despite being on the waiting list to be rehoused by Perth and Kinross Council to a smaller property. However that desire to be rehoused by the Council was not relevant or a reason for the Tribunal to grant the order in all the circumstances. The Applicant's position had initially been to raise action because of the behaviour, which was no doubt incredibly disturbing for Mr Smith. However as things had quietened down the Applicant was not bothered whether an order be granted or not. The balance of reasonableness in this case is accordingly heavily weighted towards the Respondent. The behaviour complained of has not been repeated and the Tribunal accepted the Respondent's evidence that she just wanted to live in the Property without any bickering. The Tribunal does not find that it would be reasonable to grant the order.

Decision

36. In all the circumstances, the Tribunal refuses the application. The decision of the Tribunal 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.

S.E

26 March 2021

Legal Chair

Date