

Housing and Property Chamber
First-tier Tribunal for Scotland



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/19/2240

Re: Property at 63 Wellpark Road, Saltcoats, KA21 5LH (“the Property”)

Parties:

Mr Stephen Morrison, 3 Taylor Place, Saltcoats, KA21 5TG (“the Applicant”)

Mr Robert Dickie, 63 Wellpark Road, Saltcoats, KA21 5LH (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

This is an application for an eviction order dated 5th August 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave with execution of service, and section 11 notice with proof of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 29th August 2019, and the Tribunal was provided with the execution of service.

A Case Management Discussion was held on 3rd October 2019 at Ardeer Neighbourhood Centre, Shore Road, Stevenston. The Applicant did not appear, but was represented by Ms Styles and Mrs Lindsay, property agents. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

This application proceeded upon ground 14 contained in Schedule 3 of the *Private Housing (Tenancies) (Scotland) Act 2016*. That ground is a discretionary one, meaning that if established the Tribunal may, but is not compelled to, grant an eviction order.

For that reason, the Tribunal required to hear evidence at a Hearing in support of the ground relied upon, which is in relation to the Respondent engaging in relevant anti-social behaviour.

Hearing

A Hearing was held on 17th March 2020 at Russell House, King Street, Ayr. The Applicant did not appear, but was represented by Ms Styles and Ms Boyd, property agents. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal heard evidence from both Ms Styles and Ms Boyd. It found them both to be credible and reliable witnesses.

They explained that the Respondent is a tall man, who is physically imposing in stature. He had come into their office a couple of times in relation to initial difficulties at the start of the tenancy to do with payment of his rent on the Property by Housing Benefit, and had been verbally aggressive towards staff using a raised voice. Staff in their office, and they, found him intimidating.

One of the Respondent's neighbours, who is elderly, had attended at the Applicant's representative's office on five or six occasions over the last six months expressing concern about the Respondent's behaviour. She reported regular excessive noise emanating from the Property, and visitors coming and going into the Property at all hours of the day and night. She complained that the Respondent was regularly drinking alcohol to excess, and was very loud.

Ms Styles had produced a log of complaints commencing 28th May 2019, and ending 21st October 2019, containing six entries of reports from neighbours and one from the police concerning excessive noise at unsociable hours, and an incident where the front door of the property had been smashed in.

She also produced a letter to the Applicant's representatives dated 30th July 2019 from Moira Dunlop, of North Ayrshire Council Antisocial Behaviour Investigation Team,

which reported receiving complaints concerning excessively loud music, sectarian music, shouting, people causing annoyance going in and out of the property until the early hours, all of which was witnessed by neighbours.

More recently, complaints of excessive noise over the Christmas and new year period had resulted in further police attendances at the Property. The police had required to attend at the property on a number of occasions in connection with complaints of excessive noise. Ms Styles produced a hand-written log of these complaints at the Hearing, which the Tribunal allowed her to lodge late. She had not appreciated that the written log would be of assistance to the Tribunal in connection with her evidence.

Ms Styles explained that she had asked various of the neighbours to provide statements for the Tribunal regarding these matters, but that the neighbours were frightened of repercussions from the Respondent if they did so.

Ms Boyd produced a short video which she played on her mobile device to the Tribunal, which she had taken on attending at the Property at 13.01 on Tuesday 12th November 2019 in response to complaints by neighbours received by her office of excessive noise.

The Tribunal allowed her to play this video, although provided late, again where she had not appreciated that the video would be of assistance to the Tribunal in connection with her evidence.

The video, which lasts for just over one minute, clearly records very loud noise which may be heard from outside the Property, and Ms Boyd then entered the common close and approached the internal front door of the Property, where the noise level could be obviously heard to be excessive, and described by Ms Boyd as at a level one might expect in a nightclub. She confirmed that the volume was such that it would be impossible to conduct a conversation in the common close without shouting, as a result of the noise level from the Property.

Ms Styles invited the Tribunal with reference to the application and papers to grant the order sought in terms of Paragraph 14 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

Statement of Reasons

In terms of Section 51 of the Act, 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.

Ground 14 sets out the test as to what, for the purposes of the ground, constitutes relevant anti-social behaviour, and is in the following terms:

“14 Anti-social behaviour

(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, 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.”

The Tribunal is satisfied that ground 14 has been established. The Respondent has behaved in an anti-social manner in relation to his neighbours, and in relation to staff of the Applicant’s representative, by acts which caused them distress, nuisance and annoyance. Those acts included being verbally aggressive, shouting, drinking alcohol to excess, creating excessive noise at unsociable hours, playing sectarian music, and allowing visitors to the Property to go in and out of the property until the early hours.

The Tribunal is further satisfied that the Respondent’s anti-social behaviour is relevant anti-social behaviour, and 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, and where it occurred.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Mr Neil Kinnear

17/03/2020

Legal Member/Chair

Date