



**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/18/2627

**Re: Property at 37 Tay Grove, Mossneuk, East Kilbride, G75 8XB (“the
Property”)**

Parties:

**Mr David Bennett, 2 Orwell Wynd, Hairmyres, East Kilbride, G75 8FZ (“the
Applicant”)**

**Miss Mechelle Patricia Kavanagh, 37 Tay Grove, Mossneuk, East Kilbride, G75
8XB (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that, Grounds 12 and 14 of Schedule 3 to the Private
Housing (Tenancies) (Scotland) Act 2016 being satisfied, an eviction order
should be granted.**

STATEMENT OF REASONS

1. This application called for a Case Management Discussion on 11 February 2019 along with the grouped action CV/18/3307. Insofar as the civil proceedings are concerned, they are the subject of a separate Case Management Discussion Note. This decision is related solely to the eviction application.
2. The Applicant was present together with his solicitor, Mr Buchanan. There was no appearance for or on behalf of the Respondent.
3. In terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”):-

“51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

...

Schedule 3 EVICTION GROUNDS

...

12 Rent arrears

(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph

(1) applies if—

(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—

(i) 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

(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and

- (b) 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.
- (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
- (a) for three or more consecutive months the tenant has been in arrears of rent, and
- (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.
- (4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
- (5) For the purposes of this paragraph—
- (a) references to a relevant benefit are to—
- (i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),
- (ii) a payment on account awarded under regulation 91 of those Regulations,
- (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
- (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
- (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

13 Criminal behaviour

- (1) It is an eviction ground that the tenant has a relevant conviction.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
- (a) after the tenancy is granted, the tenant receives a relevant conviction, and
- (b) either—
- (i) the application for an eviction order that is before the Tribunal was made within 12 months of the tenant's conviction, or
- (ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.
- (3) In sub-paragraph (2), "*a relevant conviction*" means a conviction for an offence—
- (a) which was committed by using, or allowing the use of, the let property for an immoral or illegal purpose, or
- (b) which—
- (i) was committed within or in the locality of the let property, and
- (ii) is punishable by imprisonment.
- (4) 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.

14 Anti-social behaviour

Mr Andrew Upton

- (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.”

4. The Applicant seeks an eviction order. He has presented a copy of a Notice to Leave which was given to the Respondent asserting as a basis for recovering possession (i) Ground 12, that she has been in rent arrears for three consecutive months and that a sum in excess of one month’s rent is outstanding, (ii) Ground 14, that she has engaged in relevant anti-social behaviour, and (iii) Ground 15, that she has an association with a person with a relevant criminal conviction. In the Notice to Leave, it was asserted that the tenant had been in rent arrears since June 2018, and that the arrears were £1,354.38. The Notice to Leave asserted that the Respondent was causing “alarm, distress, nuisance and annoyance” to neighbours. The Respondent keeps dogs and they bark “incessantly”, to the disturbance of neighbours. The Respondent is accused of being excessively noisy, playing loud music and engaging in frequent loud arguments. The Notice to Leave asserts that on 22 August 2018, the Respondent was involved in a fight where she assaulted the

other party with a hammer. It is said that she appeared in Hamilton Sheriff Court following that incident.

5. In respect of Ground 15, the Tribunal is not satisfied at this stage that the Notice to Leave gives adequate notice of the foundation for this Ground. Ground 15 requires that the tenant have an association with an individual who has a relevant conviction. The Notice to Leave does not specify (i) the identity of the individual with whom the association is asserted, or (ii) details of the relevant conviction.
6. However, the Notice to Leave does specify the rent arrears that are said to have accrued, and the manner in which they have accrued. It also specifies the anti-social behaviour that the Respondent is accused of. Those allegations are repeated in the Application.
7. In terms of Rule 2 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules"), I am required to have regard to the Overriding Objective to deal with proceedings justly, which is to say:-

“(a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties;
(b) seeking informality and flexibility in proceedings;
(c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take;
(d) using the special expertise of the First-tier Tribunal effectively; and
(e) avoiding delay, so far as compatible with the proper consideration of the issues.”
8. In terms of Rule 17(4) of the Rules, the Tribunal has the power to do anything at a Case Management Discussion which it may do at a Hearing, including making a decision.
9. The Respondent has been afforded an opportunity to attend the Case Management Discussion for the purposes of disputing any of the allegations made, but she has chosen not to avail herself of that opportunity. Accordingly, having regard to the Overriding Objective, I find that the Respondent does not dispute that Grounds 12 and 14 apply in this case. Ground 12 is a mandatory ground for eviction in this case, the Respondent having been in arrears for in excess of three consecutive months and a sum in excess of one month's rent being in arrears, unless the arrears have been caused in whole or in part by a delay or failure to pay housing benefit. The Respondent has not asserted that the arrears have been so caused. Nor does the Respondent challenge the reasonableness of granting the eviction order under Ground 14.

Mr Andrew Upton

10. For those reasons, the Tribunal grants the eviction order sought under Grounds 12 and 14 of Schedule 3 to the Act.

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 Andrew Upton

Legal Member/Chair

Date

11 FEBRUARY 2019