



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 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/EV/21/0323

Re: Property at Flat 3, Poynter Court, 23 Old Glasgow Road, Glasgow, G71 7HQ (“the Property”)

Parties:

Dr Henry Prempeh, 3 Sunningdale Wynd, Bothwell, South Lanarkshire, G71 8EQ (“the Applicant”)

Miss Jayde Gallagher, Mr Jamie McKinnon, UNKNOWN, UNKNOWN, UNKNOWN, UNKNOWN; UNKNOWN, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction in respect of the Property be granted against the Respondent

Background

1. This is an application under Rule 109 of the 2017 Rules for an order for eviction. The ground which the order is sought is Ground 14 of Schedule 3, Part 3 of the 2016 Act; that the Respondent has engaged in relevant anti-social behaviour. The application is dated 10th February 2021. A Case Management Discussion (“CMD”) was held on 4th June 2021.

2. Along with the application the Applicant had lodged the following documentation.

- Notice to Leave dated 18th December 2020.
- Copy Private Residential Tenancy Agreement (“PRT”) with a commencement date of 18th Jun 2019
- Proof of service of the Notice to Leave by e-mail dated 18th December 2020 to the email addresses for the Respondent as set out in the PRT
- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003 and proof of intimation to South Lanarkshire Council by e-mail dated 5th March 2021 .
- Email dated 1st December 2020 from Ms G McIntosh neighbour at the Property with regards to the Respondents behaviour.

3. The Tribunal had obtained the Title Sheet for the Property which showed the Applicant and Ms Frieda Shaffrali Prempeh as the joint proprietors of the Property. The Applicant produced an e-mail from the joint proprietor stating that she authorised the Applicant to act regarding the application.

4. In terms of the PRT the Applicant is the sole Landlord, and the Respondent is the tenant of the Property

The Case Management Discussion

5. The CMD took place at the appointed time. The Applicant was in attendance. There was no attendance by the Respondent. The Tribunal had received confirmation that the papers were served by advertisement and Execution of Service by Advertisement was produced confirming that the application was advertised on the Tribunal’s website over the period 30/04/21-03/06/21. The Tribunal was satisfied that the Respondent had received proper notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29 of the 2017 Rules.

6. The Applicant confirmed that he had entered into a PRT with the Respondent. The tenancy commenced on 18th June 2019. The monthly rent due in terms of the Agreement was £750 per calendar month.

7. The Applicant confirmed that the rent account provided to the Tribunal was correct and that he had received no further sums from the Respondent since 28th September 2020. He stated that the Respondent was continuing on occasion to attend at the Property, although it would appear not residing there.

8. The Applicant informed the Tribunal that his last interaction with the Respondent had been some months ago in early December 2020. He detailed in his application that the Respondent had been extremely anti-social and disruptive. The police had been called out on several occasions and the Applicant stated that the other occupants of Poynter Court do not feel safe and have appealed to him to remove the Respondent.

9. An e-mail from the neighbour at Flat 1 Poynter Court was referred to from Ms Gillian McIntosh which sets out that the behaviour of the Respondent has been anti-

social. This neighbour resides directly below the Property along with her partner and 3 children. She has narrated that there has been ongoing noise and anti-social behaviour by the Respondent and has formally complained in this e-mail to the Applicant. She sets out that on several occasions she has witnessed the police attending, to intervene in ongoing fights and to speak to the Respondent about the excessive noise and the inappropriate behaviour of the Respondent and their guests. She states that the loud noise and tv/ music is worsened by the Respondent leaving all the windows open for months, day and night. On two occasions she has called the police herself due to fear that someone was being hurt. She refers to being awoken on hearing the female Respondent and her daughter screaming which she states was highly distressing to both herself and her family. In August 2020, the male Respondent was taken away in handcuffs by the police. (That incident was also witnessed by the Applicant himself).

10. The neighbour goes on to refer to the fact that the Respondent has been repeatedly holding parties with large numbers of people in attendance during the lockdown period and behaving in a threatening manner when confronted about it.

11. On another occasion at the end of the summer of 2020, the neighbour refers to an evening at the end of summer when the male Respondent and a friend were fighting with the driver of a blacked-out car that had arrived to collect a female from the Property. The men attempted to stand in front of the car and stop it from leaving while shouting about money owed. The matter escalated to the point where the male Respondent's acquaintance was threatening to shoot the driver. This has all caused her to be extremely uncomfortable with the people visiting the Property. She states that having spoken to the other residents that they do not feel safe currently as they are stressed by the continuous disturbances and anti-social behaviour of the Respondent. She requests that the Applicant remove the Respondent as the Respondent is causing a significant disturbance to her life and that of her family and neighbours.

12. The neighbours have reported to the Applicant that the Respondent continues to frequent the Property for very brief periods once every two to three weeks and they feel very threatened by them both.

13. In addition to the neighbour who had provided written evidence to the Tribunal the Applicant said that another neighbour at Flat 2 Poynter Court had approached him 3 weeks ago stating that he wanted to attend to give evidence to the Tribunal today, such was the strength of feeling of the neighbours about the Respondent's behaviour.

Findings in Fact

14. The Applicant and the Respondent entered into a PRT in respect of the Property which has a commencement date of 18th June 2019.

15. The Respondent has engaged in anti-social behaviour in the Property.

16. A valid Notice to Leave dated 18th December 2020 has been served on the Respondent by the Applicant.

17. The Notice to Leave was served on the Respondents each by separate e-mails dated 18th December 2020.

18. The PRT specifies that service of documents in terms of the PRT may be by e-mail intimation

19. The Notice to Leave intimated that proceedings for removal would not be raised prior to 21st January 2021.

20. The Applicant presented an application to the Tribunal on 10th February 2021.

21. The Notice to Leave intimated that the Applicant was seeking recovery and possession of the Property of the grounds of the Respondents' anti-social behaviour

22. The Notice in terms of section 1 of the Homelessness etc (Scotland) Act 2003 had been intimated to the relevant Local Authority.

23. The Applicant is entitled to recover the Property because of the anti-social behaviour of the Respondent.

24. It is reasonable for the Order sought to be granted.

Reasons for Decision

25. The Tribunal noted that the Notice to Leave provided a period of notice of 28 days which is the appropriate period because of the statutory amendments put in place as a consequence of the coronavirus provisions and that the application was submitted after the expiry of the notice period.

26. The Applicant is the owner of the Property as evidenced by the Title Sheet.

27. The relevant statutory provisions are contained in Ground 14 of Schedule 3, Part 3 of the 2016 Act which sets out; -

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, 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.

28. The Tribunal noted that a letter of complaint had been received by the neighbour who resides directly below the Property. The email sets out numerous instances of anti-social behaviour and was dated 1st December 2020. Since that date, the Respondent continues to attend at the Property.

29. The Tribunal accepted that the Respondent has acted in an anti-social manner and that other occupants in the building where the Property is located have been affected. The Tribunal did not consider that there was any reason not to determine the application at the CMD and that the Respondent has not taken the opportunity to make representations

30. In the circumstances it appeared that a factual and legal basis had been made out for an order for eviction to be granted. Given that there was no appearance by or on behalf of the Respondent, there was no information before the Tribunal to enable it to conclude otherwise than that the granting of an order for eviction was reasonable and appropriate in the circumstances

31. The Tribunal determined in considering the matter that the tests set out in the statutory provisions are met and that it was reasonable to grant an order for eviction.

Decision

32. The Tribunal granted the eviction order

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.

Yvonne McKenna

4th June 2021

Legal Member/Chair

Date

Yvonne McKenna