



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/20/1801

Re: Property at 51 Castings Drive, Falkirk, FK2 7BN (“the Property”)

Parties:

Isobel Harley, 81 Carronside Street, Bainsford, Falkirk, FK2 7QB (“the Applicant”)

Miss Danielle Masefield, Mr Shaun Davis Owen, 51 Castings Drive, Falkirk, FK2 7BN; (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the First Respondent)

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

1. This was a hearing in respect of an application by the Applicant dated August 2020 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 30th August 2019
 - Copy Notice to Leave
 - Copy S 11 Notice and letter confirming receipt by Falkirk Council
 - Copy statement saying Notice to Leave was hand delivered to the first Respondent Ms Masefield.

The Hearing

3. The Hearing proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the Hearing would be

conducted over the teleconference The Applicant did not attend but was represented by her daughter Mrs Wendy Ballantyne as the Applicant's representative who is also a joint landlord in the tenancy.

4. The first named Respondent did not attend nor was she represented on the teleconference. The Respondent had been served a copy of the application and papers by sheriff officers together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in her absence. The Second Named Respondent did attend on the call.
5. Mrs Ballantyne advised that the tenancy was entered into on 30th August 2019 with herself and her mother as landlords as her mother owned the Property and she dealt with all matters relating to the tenancy and that she had agreed that the application be raised in her mother's name alone. The Respondents were joint tenants but she advised that Mr Davis Owen had left the Property on 8th May 2020 after an altercation with the first named Respondent. She advised that she was seeking an order for eviction of Ms Masefield but that as it was a joint tenancy had added Mr Davis Owen on to the application although she appreciated he had left the Property. She further advised that Ms Masefield has not given up the tenancy although she believes that Ms Masefield has been living elsewhere although coming back and forth to the Property and collecting mail. Ms Ballantyne also advised that she believes from speaking to Ms Masefield that Ms Masefield has been offered another tenancy.
6. Mrs Ballantyne had confirmed that a Notice to Leave was served on the tenants by hand in May 2020 and that she is seeking the order on two grounds, the first is Ground 5 of Schedule 3 of the Act namely that her father Mr Harley, is planning to move into the Property as soon as it is empty as he had to give up his previous tenancy on 17th August 2020 and has since then been living with Mrs Ballantyne and her family which consists of herself, her partner and 2 children in her 3 bedroomed home while awaiting the Property becoming available. She had prepared an earlier Notice to Leave which only relied on the first ground but then updated that to add in averments about anti-social behaviour. She explained that her Mother and Father are separated but her mother is struggling with just her pension, that she has been helping her financially but due to possible employment issues with the pandemic will struggle to maintain that support in future. If her father moves into the Property she advised that this would help her mother in terms of the costs of that Property and he would then be able to help her mother with the costs of the marital home where her mother still lives. A letter from Mr Harley to his landlord is enclosed with the application confirming his intention to terminate his tenancy due to his retirement and confirming he would be leaving on 17th August 2020. It is then confirmed in an addendum to the letter that he did so. Ms Ballantyne confirmed her father has moved in with her and her family since August 2020 and that it is not ideal having her Dad live with her for so long with 2 young children in the house as well and that it would benefit all of them if they could regain possession of the Property to allow her Dad to move in to 51 Castings Drive Falkirk.
7. The Second ground mentioned in the application and the Notice to Leave dated 15th May 2020, is that the tenant has engaged in anti-social behaviour. The Applicant has written in part 3 of the notice to leave

“Due to my husband retiring and unable to afford his current rental property I have agreed to let him move into 51 Castings Drive Falkirk to avoid myself selling our marital home. In addition to this multiple complaints have been made from neighbours about your noise and the amount of people entering the property rubbish being left uncontrolled, security door being left open and myself being contacted by the council regarding this which is not acceptable.”

8. Mrs Ballantyne advised that as Ms Masefield has not been apparently staying at the Property recently there have been no reports of recent anti-social behaviour but she referred to the written evidence lodged with the application which includes two statements from elderly neighbours, a list of police incidents and several letters from Falkirk Council including copy letters issuing a first warning and then a second warning of Anti-social behaviour to Ms Masefield and long list of complaints made to the anti-social behaviour reporting line relating to the Property and to Ms Masefield's behaviour there from May 2020 to August 2020.
9. The Reports noted by the Council and the two neighbours consist of reports of accumulating waste, residents from a nearby hostel visiting and drinking outside, leaving the security door jammed open, loud noises at all times of the day and night including shouting, swearing, screaming and other noises and the playing of loud music.
10. Ms Ballantyne confirmed that she believed an anti-social behaviour order was being considered by the council but has not been pursued as the behaviour has ceased since Ms Masefield has been living elsewhere recently and has only been at the Property to pick up mail.
11. The Tribunal then asked Mr Davis Owen for his position on this matter and he explained that he left the Property on 8 May as Ms Masefield and her friends had forced him to leave and the police were called. He confirmed that the tenancy has not been formally ended or changed to be in Ms Masefield's name alone and that he had no objection to the application for eviction as he was living elsewhere and had no intention of returning to the Property.

- **Findings in Fact**

1. The Applicant and Ms Ballantyne entered into a lease of the Property with the Respondents which commenced on 30th August 2019.
2. The First Respondent is still occupying and in control of the Property but the second Respondent left on 8 May 2020 and has not resided there since.
3. The tenancy is continuing.
4. A notice to leave dated 15th May 2020 was served on the Respondent by hand confirming that no proceedings would be raised before 14th August 2020
5. These proceedings were raised on 20th August 2020 and the application included a copy of the Notice to Leave.
6. There is an error in the date specified in the Notice to leave stating when an application to the Tribunal can be raised but the Notice is not invalid by reason of that error.

7. A Section 11 notice has been served on Falkirk Council
8. A member of the landlords' family, namely the Applicant's husband Mr Harley, intends to live in the Property and cannot do so until the First named respondent leaves.
9. The Applicant is experiencing financial hardship as a result of the First named respondent failing to leave the Property and her husband not being able to live there. Her husband is having to live with his daughter and her family and both he and his family would benefit from a move to the Property.
10. The First named respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months.
11. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

12. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 5 and 14 of Schedule 3 of the Act as the relevant grounds of eviction.
13. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Applicant's husband requires to live in the Property and that this will also help the Applicant financially. That the Respondent has engaged in anti-social behaviour in the period up to August 2020.
14. Grounds 5 and 14 require 3 months' notice under the current rules which are currently amended by the Coronavirus (Scotland) Act 2020. The Notice sets out the notice period as expiring on 14th August 2020 which as the Notice has been delivered to the Respondent on the date it was signed, would not be the full 3 months plus the required extra day that should be added to comply with the requirements of Section 62(4) of the Act as that subsection states that the day to be specified in accordance with Subsection 1 (b) is the day falling after the day on which the notice period defined in section 54(2) will expire. The date which should have been inserted would appear to have been 16th August however Paragraph 10 of Schedule 1 to the Coronavirus Scotland Act 2020 states that "Where a notice to which this paragraph applies is completed without taking proper account of paragraphs 1-9 -
 - a) the notice is not invalid by reason of that error but
 - b) it may not be relied upon by the landlord for the purpose of seeking an order for possession until the date on which it could be relied upon had it been correctly completed.
15. The Application was lodged on 20th August. It was therefore lodged after the expiry of what should have been the Notice period and therefore complies with paragraph 10 of Schedule 1 of the 2020 Act and is therefore an application that the Tribunal can consider notwithstanding the error in the specification of the notice period.
16. Ground 5 of Schedule 3 of the Act is entitled "Family Member intends to live in the Property" and states
 - i. " It is an eviction ground that a member of the landlord's family intends to live in the let property.

- ii. The First Tier Tribunal may find that the ground applies if
 - a. A member of the landlord's family intends to occupy the let property as that person's principal home for at least 3 months and
 - b. The Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

17. For the purposes of Ground 5 a family member includes a spouse or father of a landlord.

18. Ground 14 of Schedule 3 of the Act states:-

- i. It is an eviction ground that the tenant has engaged in relevant anti-social behaviour
- ii. 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 the application for an eviction order that is before the Tribunal 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
- iii. 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 or amounts to harassment of the other person
- iv. In Sub paragraph (iii) 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

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

in a case where two or more persons are the tenant under a tenancy the reference in sub- paragraph 2 to the tenant is to any of those persons.

19. The Tribunal accepted the verbal averments of Mrs Ballantyne and the written statements included in the Notice to Leave by Mrs Harley and the notice to quit his former tenancy by Mr Harley, which all confirmed that Mr Harley intended to move in to the Property and make it his permanent residence. The Tribunal accepted that Mr Harley is a family member as he is married to the Applicant and is the father of the joint landlord Mrs Ballantyne. The Tribunal then had to consider if it accepts it would be reasonable to grant an action for eviction on this ground. Given the clear evidence that the Applicant's husband is currently sharing accommodation with his daughter, that this is not ideal especially in the current times with 2 young children in the house and that the Applicant is hoping to receive additional financial support from her husband when he is supporting the running costs of the Property, the Tribunal was satisfied that not only was the ground met but that it was reasonable for the order to be granted on this ground.
20. The Tribunal was also satisfied that Ground 14 was met. This is confirmed by the behaviour listed in detail in the written statements from the neighbours, from the list of complaints produced by Falkirk Council and the fact that two warnings relating to anti-social behaviour at and in the Property from the Respondent were issued by Falkirk Council. The Tribunal noted that there have been no recent incidents of anti-social behaviour as it would appear the Respondent has not been staying at the Property regularly recently although she has not terminated the lease and Mrs Ballantyne believes she was still claiming benefit for it until recently. The Anti-social behaviour is relevant behaviour as it has caused alarm and distress to two elderly neighbours and worry and anxiety to the Landlords who have had complaints from Environmental Health about the tenants conduct. The events have occurred within 12 months and although this appears to have quietened recently the Tribunal notes that if the tenant was to return to living there permanently there would likely be a return to the behaviour.
21. There being no response to counter this from the Respondent, the Tribunal is satisfied in terms of S 51 (1) of the Act that both of the eviction grounds specified in the application namely Grounds 5 and 14 are met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be granted

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.

Jan Todd

6th August 2020

Legal Member/Chair

Date