



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/20/2380

Re: Property at 83 Littlejohn Street, Aberdeen, AB10 1FL (“the Property”)

Parties:

City 06 LLP t/a Aberdeen Letting Centre, Suite D1, 4/5 Golden Square, Aberdeen, AB10 1RD (“the Applicant”)

Mr Lee Kevin Anderson, 83 Littlejohn Street, Aberdeen, AB10 1FL (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

- 1. The tribunal determined that an order for the eviction of the respondent from the property at 83 Littlejohn Street Aberdeen AB10 1FL be made on the basis of ground 14, that the respondent has engaged in relevant antisocial behaviour at the property and it is reasonable to grant an eviction order due to that antisocial behaviour.**

- 1. This was a hearing in connection with an application for eviction in terms of s52 of the Private Housing (Tenancies)(Scotland) Act 2016 and Rule 109 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’.**

- 2. The tribunal had before it the following copy documents: -**

- (1) Application dated 10 November 2020 and received by the tribunal on 13 November 2020.**

- (2) Private Residential Tenancy Agreement 'PRT' between the parties dated 14 December 2018.
- (3) Notice to leave dated 6 October 2020.
- (4) Proof of service of notice to leave dated 6 October 2020.
- (5) S11 notice.
- (6) Execution of service of the application by sheriff officer dated 11 December 2020.
- (7) Land certificate.
- (8) Exchange of Emails between the applicant and another tenant dated 20 February 2020.
- (9) Email to the applicant dated 20 August 2020.
- (10) Emails to the applicant dated 8,9 March and 8 September 2020.
- (11) Email sent by applicant dated 10 September 2020.

- 3. The applicant's representative Ms Carole Ogston attended the hearing which proceeded by conference call due to the Covid-19 pandemic. The tribunal had sight of item 6 above and was satisfied that the respondent had received appropriate notice of the hearing in terms of rule 24. The tribunal proceeded in the absence of the respondents in terms of rule 29.
- 4. The tribunal heard oral evidence from Ms Ogston who made the application. Ms Ogston is employed by the Aberdeen Letting Centre as their office manager. The applicants own the property and trade as Aberdeen Letting Centre. Ms Ogston gave evidence that the applicants own 5 properties in the block of 10 flats which are situated in the block of 81 to 99 Littlejohn Street, namely 81, 83, 85, 89 and 93. Flat 83 is on the ground floor and 81 and 85 are at either side. 89 is directly above 83. The windows of 85 are on the street outside and the windows of 83 are at the rear. It was Ms Ogston's evidence since February 2020 the applicants have received repeated complaints from the tenants at flats 83 and 89 regarding noise and disturbance caused by a constant stream of individuals attending at the respondent's property. The visitors have been buzzing the controlled entry system on several occasions throughout the night and drunk people visiting the respondent have been found within the common close. It was her evidence that the letters lodged in support of the application relate to complaints made by the tenants at number 85, next door to the respondent and 89, directly above.
- 5. It was Ms Ogston's evidence that in February 2020 she first received emails from the tenancy at flat 89 regarding a complaint about the respondent. The tenant's email narrated that he had been disturbed by the respondent for many weeks due to persistent buzzing of the controlled entry system caused by frequent visitors to the respondent's flat. This had culminated in him calling the police during the previous night. Ms Ogston's evidence was that her colleague George McCahey the maintenance manager had brought to her attention that there seemed to be a constant stream of visitors to the respondent's property. He related that on one occasion two individuals entered the respondent's property without speaking to the respondent and they immediately left again. Ms Ogston was concerned but was not able to take any action until a complaint was received. Following on the complaint

from the tenant at number 89, Ms Ogston stated that she visited the respondent on 24 February 2020 and put the complaint to him. She stated that the respondent did not contradict anything said and indicated that he may be prepared to give notice to the property. She observed that the respondent had fitted three large bolts to the door of the property, one at the top one at the middle and one at the bottom.

6. Since then, the applicant has received a further complaint from the tenancy at number 85. Ms Ogston made recent to the emails lodged which stated that the tenant had filmed the common close on 2 occasions from her spy hole in the door of her flat. Ms Ogston stated that she had seen the footage which shows someone apparently drunk and lying on the floor in the common close and attempting to get into the respondent's property. The tenant at number 85 had also complained that the windows of her flat have been frequently knocked on by individuals seeking entry to the common close to visit the respondent.
7. Ms Ogston gave evidence that she has been in touch with the police in connection with the complaints made by neighbours. The tenant at number 89 states in his email of 20 February 2020 that he thinks the respondent is a drug dealer. Ms Ogston is unaware if this is the case, but it was her evidence that the police raided the property in October 2020 and there was an individual in the property (not the respondent) who was in possession of cocaine. It was her evidence that the police are monitoring the situation.
8. Regarding the tenants at number 81 it was Ms Ogston's understanding that those tenants are out a lot and less likely to be affected by the respondent's visitors. The tenants at number 93 are further away from the respondent's flat but they did however advise Mr McCahery that the door of number 83 had been damaged. Ms Ogston stated that the door was damaged during the police raid on the property and the respondent had the door repaired without contacting the applicants.
9. It was Ms Ogston's evidence that the tenants of both 85 and 89 have given notice and left their respective properties in November and December due to the behaviour of the respondent. The tenant at number 85 had three young children and she was concerned for their safety and wellbeing. The tenant at number 89 were a newly married couple and they had become overwhelmed by the number of disturbances they had to endure at night from people buzzing the entry systems. They had also encountered drunk people in the common close. Both tenants had contacted the police on multiple occasions. Ms Ogston does not feel able to rent those properties out while the respondent remains in occupation. This has led to a loss of rental income for both properties. Regarding the circumstances of the respondent, it was Ms Ogston's evidence that the respondent is unemployed. There are no rent arrears and Ms Ogston is not aware of any entitlement to housing benefit. The respondent's parents are guarantors to the property but Ms Ogston's understanding was that they are elderly, and she is reluctant to involve them.

10. Findings in fact

- (1) The applicant is the owner of the property.
- (2) The parties entered into a PRT for let of the property on 14 December 2018.
- (3) The respondent has behaved in an antisocial manner in relation to the other tenants in the block of flats in which the property is situated.
- (4) By inviting or allowing other individuals into the property, the respondent is doing something which is likely to cause others alarm, distress, nuisance and annoyance.
- (5) By inviting or allowing other individuals into the property, the respondent is pursuing a course of conduct which is likely to cause others alarm, distress, nuisance and annoyance.
- (6) A valid notice to leave dated 6 October 2020 was served on 6 October 2020.
- (7) It is reasonable in all of the circumstances that an eviction order be granted.

Reasons

11. This was an undefended application for eviction in connection with a PRT. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair.
12. The tribunal was satisfied that the notice to leave served on the respondent on 6 October 2020 was valid. This was served on the respondent at the email address noted in the PRT. The correct notice period is 28 days in terms of the Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses)(Notice Periods) Modification Regulations 2020. The date given on the notice to leave was 6 November 2020. The tribunal was satisfied that the terms of s49 and 54 of the Act had been complied with.
13. The tribunal took into account the written documents lodged in support of the application and the oral evidence of Ms Ogston. There was no contrary evidence.
14. The tribunal considered the evidence in the light of the terms of ground 14 of schedule 3 of the Act which provides:

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.

15. The tribunal found Ms Ogston to be a credible and reliable witness. She gave her evidence in a measured and thoughtful way, making reference to the written documents lodged. Ms Ogston gave evidence that she was concerned about the other tenants. It appeared to the tribunal that she took her obligations towards the tenants very seriously. The tribunal accepted her evidence in full.
16. The tribunal was satisfied on the balance of probability that the respondent has been 'doing something' in relation to the other tenants at flat 85 and 89 which is likely to cause alarm, distress, nuisance or annoyance. Further, the tribunal was satisfied on the balance of probability that the respondent was pursuing a course of conduct in relation to both tenants which would be likely to cause alarm, distress, nuisance or annoyance. The respondent has had many visitors to his property, both during the day and through the night. These individuals make a noise and disturb the other occupiers by buzzing the flats in the entry system. These individuals bang the doors and are drunk. They have also knocked the bedroom windows of the tenant at number 83. The tribunal was satisfied that the actions of the respondent in inviting or allowing these individuals into his home therefore amounts to antisocial behaviour.
17. The tribunal was satisfied that it is reasonable to grant the eviction order sought. Having regard to the whole circumstances of the case, the respondent has received his notice to leave and his behaviour is continuing. The applicant has lost 2 tenants as a result of the respondent's behaviour and is unable to rent out the two properties while the respondent remains in occupation. In accordance with the overriding objective the tribunal was satisfied that the eviction ground 14 was met and that it was reasonable to grant the eviction. The tribunal accordingly granted the order for eviction.

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.

20 January 2021

Lesley A Ward Legal Member

Date