



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/21/0189

Re: Property at 36 Damacre Road, Brechin, Angus, DD9 6DU (“the Property”)

Parties:

Tarragon Properties Ltd, 62 New Wynd, Montrose, DD10 8RF (“the Applicant”)

Mr Andzejs Bartusevics, Ms Oksana Gabruseva, 36 Damacre Road, Brechin, Angus, DD9 6DU (“the Respondents”)

Tribunal Members:

Martin McAllister (Legal Member) and David Fotheringham (Ordinary Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order 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 of eviction. The ground under which the order is sought is Ground 14 of Schedule 3, Part 3 of the 2016 Act: that the Respondents have engaged in relevant anti- social behaviour. The application is dated 25th January 2021. A case management discussion was held on 19th May 2021.**
- 2. The case management discussion was conducted by audio conferencing.**

3. Ms Niamh Lee, trainee solicitor, appeared for the Applicant. There was no appearance by the Respondents.

Preliminary Matters

4. The purpose of a case management discussion was explained. Ms Lee said that she was seeking the eviction order to be made without the matter proceeding to a Hearing. She said that the Respondents had had the opportunity to provide written representations and had not done so and had also not attended the case management discussion despite having its details intimated to them.
5. The Tribunal noted that the Respondents had received intimation of the case management discussion as evidenced by the certificates of sheriff officers dated 20th April 2021.
6. Ms Lee said that her clients have advised that the antisocial behaviour by the Respondents is continuing.

7. Documents before the Tribunal:

- 7.1 The application dated 25th January 2021.
- 7.2 Notice to Leave dated 1st September 2020.
- 7.3 Notice under Section 11 Homelessness Etc. (Scotland) Act 2003 dated 25th January 2021.
- 7.3 Copy Private Residential Tenancy Agreement dated 30th August 2019.
- 7.4 Various emails from neighbours with regard to behaviour of Respondents.
- 7.5 Copy Letters from Angus Council dated 10th April 2020 and 17th July 2020.
- 7.6 Copies of Unacceptable Behaviour Notices from Angus Council addressed to each Respondent dated 17th July 2020.
- 7.7 Title Sheet for the Property.

Findings in Fact

8. 8.1 The Applicant and the Respondents entered into a private residential tenancy agreement in respect of the Property which was dated 30th August 2019.

8.2 The Respondents have engaged in anti-social behaviour in the Property.

Findings in Fact and Law

9. 9.1 A valid notice to leave has been served on the Respondent by the Applicant.

9.2 The Respondent is entitled to recover the Property because of the anti-social behaviour of the Respondents

Reasons

10. The Tribunal noted that the period of notice in the notice to leave was three months which is the appropriate period as a consequence of the statutory amendments as a consequence of the coronavirus provisions and that the application was submitted after the expiry of the notice period.

11. The Tribunal noted that the Title Sheet evidenced that the Applicant is the owner of the Property.

12. The relevant statutory provisions are contained in Ground 14 of Schedule 3, Part 3 of the 2016 Act:

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.

13. The Title Sheet discloses that the Property is an attic flat in a tenement. The Tribunal was referred to the copy emails which had been lodged. Ms McNicol explained that they consisted of emails from two other occupiers of flats in the tenement.

14. The Tribunal noted that the emails were addressed to the Applicant and referred to complaints about the conduct of the Respondents and were dated within twelve months of the date of the application.

- 15. The common theme of the emails was that there was excessive noise caused by the Respondents and that there were a significant number of incidents.**
- 16. The Tribunal noted one email from an occupier dated 26th August 2020 which listed eighteen incident numbers from reports which had been made to the police about the conduct of the Respondents. The dates of the incidents ranged from 14th June 2020 to 25th August 2020.**
- 17. The Tribunal noted the exchange of emails between the Applicant and Angus Council with regard to the conduct of the Respondents and letters to the Applicant from the Council dated 10th April 2020 which stated that a verbal warning had been given to the Respondents and the letter of 17th July 2020 which stated that an Unacceptable Behaviour Notice has been issued to the Respondents.**
- 18. The Tribunal noted the terms of the Unacceptable Behaviour Notices which had been served on each of the Respondents and which were dated 17th July 2020. Both notices refer to shouting, thumping and banging as the behaviour complained of.**
- 19. The Tribunal accepted that the emails before it evidenced that the anti-social behaviour continued after service of the Unacceptable Behaviour Orders and that this behaviour was in the Property and that there was a course of conduct undertaken by the Respondents.**
- 20. The Tribunal accepted that the Respondents have conducted themselves in an anti-social manner and that other occupiers of the tenement are affected.**
- 21. The Tribunal did not consider that there was any reason not to determine the application at the case management discussion and that the Respondents had not taken the opportunity to make representations.**

22. The Tribunal determined that, in considering the matter, the tests set out in the statutory provisions are met and that it was reasonable to issue an 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.

M McAllister

**Martin J. McAllister, Legal Member
21st May 2021**