



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/21/0551

Re: Property at Ardgowan North Lodge, Inverkip, Greenock, PA16 0DN (“the Property”)

Parties:

Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust, Ardgowan Estate, Ardgowan Estate, Inverkip, PA16 0DN (“the Applicant”)

Ms Moira McClellan, Ardgowan North Lodge, Inverkip, Greenock, PA16 0DN (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for eviction against the Respondent

Background

1 By application to the Tribunal dated 9 March 2021 the Applicant sought an order for possession of the Property against the Respondent. In support of the application the Applicant provided:

- (i) Tenancy Agreement between the parties;
- (ii) Form AT5 with proof of service;
- (iii) Form AT6 – Notice of Intention to Raise Proceedings for Possession with proof of service;
- (iv) Witness Statement of Sir Ludovic Shaw Stewart;
- (v) Witness Statement of Colin Kehrer;
- (vi) Witness Statement of Jodie Storie;
- (vii) Email from Kathleen McFarlane;
- (viii) Email from Catherine Cairns;

- (ix) Extracts from the Respondent's Facebook page;
- (x) Photograph of the Respondent on private grounds;
- (xi) Video of the Respondent walking dogs off their leads on the estate;
- (xii) Video of the Respondent walking dogs off their leads in private grounds;
- (xiii) Section 11 Notice to Inverclyde Council.

2 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 17 June 2021.

The Case Management Discussion

3 The Case Management Discussion took place on 17 June 2021 by teleconference. The Applicant was represented by Ms Katherine Wade, Trainee Solicitor of Clyde and Co. The Respondent was not present. Service of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions for joining the case conference had been served upon the Respondent by Sheriff Officers in advance of the discussion therefore the Tribunal determined to proceed in her absence.

4 The Tribunal heard submissions from Ms Wade and noted her understanding that there had been further incidents of antisocial behaviour since the lodging of the application. The Respondent continued to post messages on Facebook. Ms Wade referred to a recent incident, which she believed had taken place in June, in which the Respondent had entered the landlord's private home without consent. There was video evidence to support this complaint, however the Applicant had been reluctant to lodge this due to privacy concerns. He would be willing to do so if the Tribunal required it as part of an evidential hearing. Ms Wade advised that it had been recommended to the Respondent that she seek legal advice and assistance, however the Applicant was not aware of her having done so. She had not made any written representations in response to the application.

5 Whilst it was noted that the Respondent had not put forward any representations to counter the Applicant's position, the Tribunal ultimately concluded that it required further information regarding the complaints of antisocial behaviour in order to properly determine the application and therefore determined to fix a hearing in the matter. The Tribunal identified the issues to resolve as (1) whether the provisions of ground 15 of Schedule 5 of the Housing (Scotland) Act 1988 have been met, and (2) whether it is reasonable to make an order for eviction.

6 A Direction was subsequently issued to parties confirming the requirements for lodging documents and lists of witnesses in advance of the Hearing.

- 7 Following the Case Management Discussion and in compliance with the Direction the Applicant lodged a list of witnesses, video clips showing the Respondent walking dogs off the lead in the estate and on private property, a chronology of incidents and the following additional documents:
- (i) Map of Ardgowan Estate
 - (ii) Ardgowan Estate Guidelines
 - (iii) Landlord Registration of Moira McLellan at 3 Bailey Grove, Greenock, PA16 0FJ

The Hearing

- 8 The Hearing took place on 30 July 2021. The Applicant was represented by Mr Ryan Watson, Clyde and Co. The Respondent was not present. The Tribunal noted that the date and time of the Hearing together with instructions for joining the case conference had been intimated upon her in advance of the hearing and therefore it could reasonably assume she was aware of the proceedings. Mr Watson also highlighted that the Respondent had photographed and published recent correspondence from the Tribunal on Facebook which again evidenced an awareness of the ongoing action against her. On that basis the Tribunal determined to proceed with the Hearing in the absence of the Respondent.
- 9 The Tribunal heard evidence from Sir Ludovic Shaw Stewart prior to adjourning the Hearing to consider whether it had sufficient information upon which to make a proper determination of the application. The Tribunal subsequently concluded that it could make findings based on the evidence before it that would allow for a decision to be taken on the application.

Findings in Fact and Law

- 10 The Applicant and Respondent entered into a Tenancy Agreement dated 16 September 2016.
- 11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.
- 12 The Respondent has been served with Form AT6 dated citing grounds 15 of Schedule 5 of the Housing (Scotland) Act 1988 as the ground upon which the Applicant seeks repossession.
- 13 The Form AT6 complies with the requirements of section 19 of the Housing (Scotland) Act 1988 and is in the prescribed form.
- 14 In September 2019, there was an incident in the locality of the property whereby a dog under the care of the Respondent attempted to bite the son of a resident of Ardgowan Estate.

- 15** In late 2019, there was an incident in the locality of the property whereby a dog under the care of the Respondent attempted to force its way into a neighbouring property on Ardgowan Estate.
- 16** In February 2020, the Respondent impeded an employee of Ardgowan Estate by standing in front of his car and shouting in an intimidating and aggressive manner.
- 17** On or around April or May 2020, the Respondent challenged a cyclist in the locality of the property on Ardgowan Estate in an aggressive manner.
- 18** In July 2020 the Respondent approached a resident of Ardgowan Estate who was walking her dogs with her children. The Respondent had several dogs with her, all off their leashes. The Respondent's dogs acted aggressively towards the said resident's dogs. The Respondent refused to put her dogs on a leash and behaved aggressively by shouting obscenities and pushing a gate towards the said resident's son. The Respondent continued to behave in an intimidating and threatening manner, stating that she was "coming for them" and proceeded to follow the family for approximately twenty minutes.
- 19** On 4 September 2020, a dog under the care of the Respondent forced its way into the property of Sir Ludovic Shaw Stewart.
- 20** In October 2020 the Respondent published a series of Facebook posts which contained threats and accusations towards Sir Ludovic Shaw Stewart and other employees of Ardgowan Estate.
- 21** On or around 14 October 2020, the Respondent behaved aggressively towards a resident of Ardgowan Estate who expressed concerns regarding dogs being off their leads and roaming the estate.
- 22** On 26 October 2020 the Respondent behaved in an intimidating manner towards a resident of Ardgowan Estate by refusing to let him past her, staring at him and subsequently following him.
- 23** On 12 February 2021 the Respondent was walking four dogs off their leads within the private grounds of Sir Ludovic Shaw Stewart.
- 24** In March 2021, a dog under the care of the Respondent ran out of her house and into a neighbouring field, where sheep and lambs were grazing. The dog separated a lamb from its mother, attempted to bite and paw at it, before chasing it across the field.
- 25** On 10 April 2021 the Respondent was walking two dogs, off their leads, within the private grounds of Sir Ludovic Shaw Stewart and attempting to look into the private property. The Respondent subsequently posted photos on Facebook. The Respondent was advised that the area was private property.

- 26 On 28 April 2021 the Respondent was walking three dogs, off leads, within the private grounds of Sir Ludovic Shaw Stewart on two occasions. The Respondent was advised on both occasions that the area was private property.
- 27 In June 2021, the Respondent challenged a member of the public who was walking her dog within the estate and followed said member of the public in an intimidating manner.
- 28 The Respondent has been warned regarding her conduct, verbally, by text message and by email. The Respondent was offered mediation by the local authority following an approach by the Applicant but refused to engage in the process.
- 29 Employees of Ardgowan Estate are not comfortable having contact with the Respondent due to her aggressive and intimidating behaviour.
- 30 The Respondent's conduct has caused alarm, nuisance and distress to employees and residents of Ardgowan Estate. In particular the Respondent has pursued a course of intimidating and threatening conduct against Sir Ludovic Shaw Stewart.
- 31 The Respondent's conduct, through failing to ensure dogs within her care are kept under control, poses a significant risk to the operation of the estate, and in particular grazing animals.
- 32 The Respondent's conduct has created negative publicity regarding Ardgowan Estate, thereby impacting on visitors to the estate.
- 33 The Respondent has acted in an antisocial manner in relation to persons residing in, visiting or otherwise engaging in lawful activity in the locality of her tenancy and within Ardgowan Estate.
- 34 It is reasonable to make an order for eviction due to the impact of the Respondent's conduct on residents, employees, visitors and the Applicant as owner of Ardgowan Estate.

Reasons for Decision

- 35 The Tribunal took into account the documentation produced by the Applicant, witness statements, video clips, photographs and the evidence of Sir Ludovic Shaw Stewart at the hearing in reaching its decision. The Respondent had not chosen to enter the proceedings, albeit the Tribunal accepted she was aware of them from her recent posts on Facebook. The Tribunal therefore considered it was able to take a decision in her absence at the hearing.
- 36 The Tribunal found Sir Stewart to be wholly credible in his account of events at the hearing. He had clearly been affected personally by the Respondent's

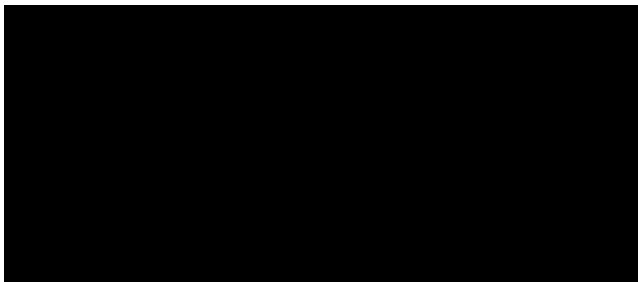
conduct, which had at times been directed at himself. However it was evident from the number of witness statements and complaints that the behaviour had not only affected Sir Stewart, but many other residents and workers of Ardgowan Estate. The Respondent's conduct in failing to exercise appropriate control over dogs was in the view of the Tribunal particularly serious given the nature of the locality in which the tenancy was based, being a rural estate with grazing lands. The estate documentation produced by the Applicant stressed the important of keeping dogs on leads when walking through the estate, however the Respondent had continued to defy such requests, and responded aggressively and threateningly when challenged. The Tribunal also noted the conduct of the Respondent was having an impact not only on residents of the estate, but on visitors who had been made aware through social media channels of her behaviour.

37 The Tribunal therefore determined that ground 15 had been met and that it would be reasonable to make an eviction order. The decision of the Tribunal was unanimous.

38 As an observation, the Tribunal does have some concerns regarding the Respondent's mental state, given the nature of some of the Facebook posts and comments directed at Sir Stewart. Whilst the Tribunal was unable to make any findings in this regard in view of the Respondent's failure to enter these proceedings, the Tribunal would request that the Applicant notifies the local authority of the making of the order, so that they can offer assistance and support to the Respondent where appropriate.

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.



Legal Member/Chair

30 July 2021

Date