



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Residential (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/1188

Re: Property at 36 Gladstone Street, Leven, Fife, KY8 4QF (“the Property”)

Parties:

Red Box Property Ltd, 24 Stewartfield, Edinburgh, EH6 5RQ (“the Applicant”)

Ms Beth Dow, 36 Gladstone Street, Leven, Fife, KY8 4QF (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member) and Leslie Forrest (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 of the Respondent from the property at 36 Gladstone Street, Leven, Fife, KY8 4QF should be granted.

Background

1. By application dated 17 May 2021 the Applicant sought an order for eviction of the Respondent from the property at 36 Gladstone Street, Leven, Fife, KY8 4QF on the following grounds:
 - i. Ground 11: Tenant has breached a term(s) of the tenancy agreement.
 - ii. Ground 14: Tenant has engaged in relevant antisocial behaviour.
2. Lodged with the application were:
 - i. Copy Lease dated 8 May 2019;
 - ii. Notice to Leave dated 12 April 2021 and enclosures;
 - iii. Copy Recorded Delivery receipts dated 12 April 2021;
 - iv. Copy of Royal Mail Track and Trace receipt dated 13 April 2021.

The Case Management Discussion

3. On 21 July 2021, the application called for a Case Management Discussion by telephone.
4. Mr Graham Morris of Red Box Property Limited ('the Applicant') was present.
5. The Respondent was neither present nor represented. Notice of the hearing and the application was served on the Respondent by Sheriff Officers on 21 June 2021. Service was completed by placing the documents in a sealed envelope addressed to the Respondent after diligent enquiries established that the Respondent continued to reside in the property.
6. The Tribunal was therefore satisfied that there had been effective and sufficient notice of the hearing to the Respondent in terms of Rule 24 and was content to proceed with the hearing in the absence of the Respondent in terms of Rule 29.
7. The Tribunal clarified with the Applicant the ground on which he relied in support of the application. The application sought eviction on grounds 11 and 14, whereas the Notice to Leave had only stated ground 14. Mr Morris clarified that eviction was sought on ground fourteen only. The Respondent's antisocial behaviour was the reason for the application. The only reason he had included ground 11 in the application form was that by reason of her behaviour, the Respondent has also breached her tenancy agreement. He was content to proceed on the basis of ground 14 only and asked that the Tribunal allow him to amend the application to ground 14 only.
8. The Tribunal, taking into account the circumstances, the explanation provided by the Applicant and that the Respondent was not prejudiced by the amendment, allowed the Applicant to amend the application.
9. The application therefore proceeded on the basis of ground 14 only.

Submissions for the Applicant

10. Mr Morris submitted that the application should be granted.
11. The Respondent is the sole tenant at the property. The tenancy started on 9 May 2019. At first, the Respondent lived there peacefully. However, in around March/April 2021 the Applicant began to receive complaints from neighbours that the Respondent was behaving in a threatening and abuse manner and "terrorising" her neighbours. She was behaving in a similar way to the Applicant's staff. The Applicant also received complaints about the condition of the outside and communal areas of the property at which the Respondent is storing large amounts of household waste. The Council is aware of the situation, however, has simply referred matters to the Applicant to deal with.

12. In response to the Applicant's emails raising these concerns with her, the Respondent has sent abusive emails. In addition, she continually refers to there being a roof/electricity problem at the property. On one occasion a switch had tripped on the fuse box but otherwise everything is working. In relation to the roof, a roofer had attended the property and made some repairs. However, Mr Morris submitted that as far as he is aware, there is no existing problem with either the roof or the electricity at the property. He submitted that the Applicant simply refers to those matters to attempt to excuse her behaviour.

13. In support of the application, Mr Morris referred the Tribunal to the redacted pieces of evidence enclosed with the Notice to Leave, labelled "evidence 1 to 9".

14. Mr Morris referred to "evidence 1" which was an email from the Respondent to Mr Morris dated 22 March 2021. The email was in response to an email from the Applicant advising that tribunal proceedings would require to be instigated. In the email, the Respondent had stated:

"I have been to your box unit address taken video to produce in court have had contact FROM BENEFIT OFFICE YOU DUM FUCK WHO THE FUCK DO YOU THINK YOU ARE I HAVE ALL I NEED FOR COURT YOU AND YOUR FUCKWIT DEREK WILL BE IN COURT" [original emphasis]"

15. Mr Morris explained that 'Derek' is his business partner who assists with visits to the Applicant's tenanted properties.

16. The document marked "Evidence 2" was an email from the Respondent to the Mr Morris responding to an email in which he attempted to address, amongst other things, the problems of waste and noise at the property. The Respondent wrote:

"Let's clear up a few points you were emailed and contacted by phone last year about gutters plus bins which took till end off [sic] NOVEMBER 20 for you to get anything done this a one time thing the boiler did nothing but breakdown for months. Since I moved in the bins were full from entry the roof has not been touch you a stupid man nothing to do with gutters which I have evidence of the gutters were so bad I took video off the tide wave off water which is why there was brown water dripping in past windows that was only the start the rubbish under stairs nothing to do with me suggest you contact the other Landlord now back to point Since you and your PARTNER do not understand simple terms wind PROOF WATER TIGHT IS STANDARD NO EXCEPTIONS THIS IS BUILDING STANDARDS AND THE LAW! WHEN ARE YOU GOING TO ADDRESS THIS [original emphasis]"

17. The document marked "Evidence 3" was a letter from the Applicant's colleague, Derek in which he outlined his experience of dealing with the Respondent. It

was prepared in advance of the application to the Tribunal in around March 2021:

“Just a rough outline of my dealings with the tenant at 36 Gladstone St. Each time I have visited the tenant there has been shouting, swearing and aggressive behaviour. This is mirrored in phone calls I have received. I have asked the tenant every time to tone down her voice and language and each time she ignored me and carried on.

The last time on the phone she told me to “fuck off” and hung up after I asked her to stop shouting and swearing.

My last visit to the property she told me I was a “prick” and I ended up walking away from her.

I am trying to help the tenant who is now claiming she has issues; however, I can get to the bottom of these issues due to her abuse and threatening behaviour.

We will not tolerate abuse to ourselves and/or any tradesmen who need to enter the premises to rectify problems.

Like all our tenancies, any issues we have been made aware of in the past have been rectified.”

18. The document entitled “evidence 4” was an anonymous letter from an electrician who had attended a neighbouring property. The document was redacted. The Applicant explained that the documents were redacted because the Respondent’s neighbours are frightful that the Applicant will seek retribution if their identities are revealed.

19. The letter stated:

“Confirming we attended [] Gladstone Street, Leven to repair toilet fan on Tuesday 9th March at 9am.

When up the attic to check ventilation the female neighbour next door popped her head up the attic, screaming and swearing at me and informing me she was calling the Police.

The Police attended approx 10.15am.

The neighbour was taking photos and could be heard outside shouting and swearing.

Approx 10.30, when taking my son was out at the van, she followed him out to the street and threatened to hit him with a baseball bat.”

20. Mr Morris advised that he didn’t have any information on whether the police had charged the Respondent over this incident.

21. The document entitled “evidence 5” was a redacted letter dated 8 April 2021. It was from a neighbour of the Respondent and stated:

“To whom it may concern,

This letter describes the issues [redaction] I have been having with the woman who lives [redacted] at No.36. I do not want my details shared with the tenant at No 36. I think she will try to harm us if she is given access to this letter.

The woman at No 36 Gladstone St was banging on my door on the 5th January, shouting and swearing – [redacted]. The woman started shouting again and banging on the door some days later [redacted].”

22. The document entitled “evidence 6” was another anonymous letter from a neighbour received around March/April this year:

“Anonymous Complaint

I wish to complain about your tenant at 36 Gladstone St. I do not wish to give you my name as your tenant is very unpredictable and will target me should she find out who I am.

I like to live a quiet life and work hard and keep myself to myself. However, your tenant is increasingly making that hard, with her frequent loud music at various times of the day and night and her shouting and swearing at other neighbours. I have heard her verbally abusing someone several times at the doorstep.

She has also started glowering at people as they pass by, me included and this is very intimidating.

Over the last few months this has got worse to the point I have considered moving.

We also now have a rubbish issue going and its starting to smell. This must be causing mice and rats.

I would appreciate it if you could take action as its not fair on us who have to live in fear like this.”

23. The document entitled “evidence 7” was an undated letter from Fife Council to the Applicant in which it is stated:

“This Service has received complaints regarding illegal dumping at the property 36 Gladstone Street, Leven KY8 4QF which is owned and being rented out by you. The tenant is failing to place bins out for collection, and strong smells coming from property and stopping waste under the stairwell.

This Service visited the area on 23rd March 2021 and found that this is indeed the case. I must advise you that as Landlord of the garden and communal areas in question you have a responsibility for the cleanliness of the area and have an Environmental Duty of Care towards the waste in question.

I am sure that should you wish to visit this area you would recognise the distress that this anti-social behaviour is causing the responsible residents and landlords of properties within the street.

Appreciation is given to the fact that you are only accountable for the area in the vicinity of your properties. However, we may have to pass this investigation over to our Public Protection Team, as they have the legislative powers to take further action should this become necessary.

I trust I can rely on your co-operation in this manner and that you will organise for your area to be maintained in the appropriate manner.”

24. Mr Morris advised that the letter was received on 29 March 2021.

25. The document entitled “evidence 8” was an email from the Respondent to Mr Morris dated 5 April 2021 in response to him referring the matters raised in the Council’s letter with the Respondent. Mr Morris submitted that the email showed the way in which the Respondent has responded to the Applicant’s attempts to engage with her on these issues. The email stated:

“Graham

How ridiculous are you no mention off the roof holes being sorted ie the roof still not been sorted yet you have the brass neck to talk about waste!

FOOD WASTE WILL NOT BE MOVED UNTIL THIS HAS BEEN COMPENSATED FOR THAT’S THE FOOD I LOST DUE TO ROOF LEAKING. 30 DAYS OFF LOST POWER LIGHT NO HEAT OR LIGHT. AS FOR MUSIC COMPLAINT I KNOW THE HOURS AND HAVE SPOKEN TO NEIGHBOURS SO PLEASE DO NOT WASTE MY TIME I HAVE CONTACTED FIFE COUNCIL BUILDING CONTROL TO GET ROOF INSPECTION LAWFUL ACTION FOR LOSS IS MY NEXT STEP!

LADY BETH DOW.”

26. The document entitled “evidence 9” was a redacted anonymous letter from a neighbouring Landlord received by the Applicant on 1 April 2021 which stated as follows:

“Hi Graham

Happy to assist with this eviction [redacted].

I have blocked 2 mobile numbers belonging to her. She keeps threatening me with 'Court action' because "I'm sending men into her attic and they are interfering with her gas and electricity supply." Our attic is one space that spans both properties. I did call the police a couple of months. [redacted].

27. Mr Morris submitted that he has had no choice but to make the application to the Tribunal. He advised that even the notice of this action has not brought about better behaviour from the Respondent. He is continuing to receive complaints from neighbours and therefore, for the sake of the neighbouring properties and the Applicant's reputation as a Landlord, he has no option but to seek an order for eviction.

Findings in Fact

28. The Tribunal made the following findings in fact:

- (i) The Applicant is Red Box Property Limited;
- (ii) The Applicant is the heritable proprietor of 36 Gladstone Street, Leven, Fife, KY8 4QF;
- (iii) By lease dated 8 May 2019 the Applicant and the Respondent entered into a Private Residential Tenancy at the Property with the Applicant;
- (iv) The Respondent is the tenant at the property;
- (v) The start date of the tenancy was 9 May 2019;
- (vi) Since January 2021 the Respondent has on more than one occasion, shouted and swore at her neighbours;
- (vii) On 5 January 2021 the Respondent was banging on a neighbour's door and shouting and swearing at the neighbour;
- (viii) On 9 March 2021 the Respondent shouted and swore at a tradesman attending a neighbouring property and threatened the tradesman's son with a baseball bat;
- (ix) The police were in attendance at the incident on 9 March 2021;
- (x) Since around March 2021 the Respondent has played loud music at various times during the day and night;
- (xi) The Respondent has been verbally abusive to the Applicant's representatives;
- (xii) The Respondent is storing household waste in communal and garden areas at the property with strong smells emanating therefrom;

- (xiii) The Applicant emailed the Respondent about her behaviour on 22 March 2021 and 5 April 2021;
- (xiv) On 12 April 2021 a Notice to leave was issued by the Applicant to the Respondent by first class delivery post;
- (xv) On 17 May 2021 an application was lodged with the Tribunal.

Reasons for Decision

29. In terms of section 51 of the Private Tenancies (Scotland) Act 2016 ('the Act'), the Tribunal is to issue an eviction order against the tenant of a private residential tenancy if, on application by the Landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
30. The ground on which the Applicant relies is ground 14 of Schedule 3.
31. In terms of section 52 of the Act, the Tribunal is not to entertain an application for an eviction order unless it is accompanied by the Notice to Leave; and unless it is not made in breach of any of sections 54 to 56; unless the eviction ground applied for is stated in the notice to leave accompanying the landlord's application.

The Notice to Leave

32. The Tribunal is satisfied that the Notice to Leave complies with the formal requirements of the Act.
33. Part 2 of the Notice to Leave issued by the Applicant states that the eviction grounds are that the Respondent has engaged in relevant antisocial behaviour. In Part 3 the Applicant sets out the following:
- "The tenant has been anti-social to neighbours and Red Box Property Limited staff member. The tenant has threatened neighbours and others going about their working day on neighbouring properties. The tenant plays her music loud, again this is anti-social. The tenant is not cleaning away her food waste and has it stored outside, this encouraging pests."*
34. The Applicant attached the nine documents entitled "evidence 1 to 9" described above.
35. The Tribunal is therefore satisfied that the Notice to Leave complies with the requirements of section 52(5); namely that the application is proceeding in accordance with the grounds set out in the Notice to Leave.
36. The Notice to Leave was dated 12 April 2021 and therefore served while the Coronavirus (Scotland) Act 2020, schedule 1 para 2 was in force, in terms of

which the notice periods are altered in accordance with that paragraph. In relation to a Notice to Leave in which the sole ground stated is that the tenant has engaged in antisocial behaviour, the relevant notice period is 28 days after the notice begins (Section 54(2)(c) and section 54(3B) as amended by the Coronavirus (Scotland) Act 2020, schedule 1, para 2).

37. The Notice to Leave must “specify the day falling after the day on which the notice period defined in section 54(2) will expire (see section 62(4)). For the purposes of section 62(4) “it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

38. The Tribunal is satisfied that the notice was sent on 12 April 2021 and therefore the Respondent was assumed to have received the notice on 14 April 2021. The first day on which the Applicant could have submitted an application to the Tribunal was therefore 12 May 2021. The notice provided to the Respondent stated that “an application will not be submitted to the Tribunal for an eviction order before 14 May 2021.” The application was submitted to the Tribunal on 17 May 2021. The Tribunal is therefore satisfied that the Respondent has been provided with sufficient notice of the application.

Ground 14

39. The Tribunal is satisfied that the ground for eviction is established on the undisputed evidence lodged with the Tribunal and the submissions made by Mr Morris.

Ground 14 of schedule 3 of the Act states:

“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 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 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.”*

40. Mr Morris' submissions to the Tribunal were supported by the documentary evidence lodged in support of the application. The Tribunal was satisfied that the Applicant had, prior to the service of the Notice to Leave and thereafter, been threatening and verbally abusive to her neighbours as well as the Applicant's representative. The behaviour has caused one neighbour such distress and nuisance that they had contemplated moving from their property. In addition, the neighbours are so fearful of the Respondent's behaviour that they had asked their complaints to the Applicant/Tribunal to be anonymised.

41. The Respondent's behaviour has not improved, despite warnings from the Applicant and the police attending on at least one occasion. In addition, the Tribunal is satisfied that the waste outside the property is causing her neighbours distress, nuisance, and annoyance. The neighbours have complained to Fife Council and the Applicant about the rubbish at the property.

42. The behaviour towards the neighbour on January 2021, to the tradesman on 9 March 2021 and the various instances of swearing, shouting and abusive behaviour and playing loud music at all times of the day and night contained within the anonymous letters from neighbours comprised conduct on two or more occasions and therefore comprises a 'course of conduct.' In addition, and the storage of household waste in communal and garden areas from which neighbours have reported strong smells also amounts to antisocial behaviour that has continued since around March 2021. The Respondent's course of conduct has continued despite notice of these proceedings.

43. While the Tribunal had before it evidence that the Respondent's behaviour had caused actual alarm, distress, nuisance and annoyance to her neighbours, the Tribunal also concludes that in any event, the Respondent's conduct is conduct that is likely to cause another person alarm, distress, nuisance, or annoyance.

44. In considering whether it is reasonable to issue an eviction order as a consequence of the Respondent's antisocial behaviour the Tribunal takes into account that the behaviour has taken place in and around the property. The Respondent has displayed antisocial behaviour towards a number of people, all of whom are individuals connected to the tenancy, namely her neighbours, people attending her neighbours' properties, and her Landlord. The Tribunal also takes into account that there has been no improvement in her behaviour.

Decision

45. Taking all of those circumstances into account, the Tribunal concludes that it is reasonable to grant the order for eviction on the basis of ground 14.

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.

L. J

Legal Member/Chair

27 July 2021
Date