

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/21/1426

Re: Property at Flat 1, 29 Nicholson Street, Greenock, PA15 1UL (“the Property”)

Parties:

RAAC (Scotland) Ltd, 6th Floor, Gordon Chambers, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)

Mr Christopher Woods, Flat 1, 29 Nicholson Street, Greenock, PA15 1UL (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 1, 29 Nicholson Street, Greenock, PA15 1UL under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 14 June 2021, the Applicant’s agent applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for

an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The basis for the application was ground 14 of schedule 3 of the 2016 Act (anti-social behaviour)

2. The application was accompanied by a Summary of Complaints, a Private Residential Tenancy Agreement dated 18 May 2020 between the parties, a Notice to Leave dated 22 April 2021 with email to the Respondent, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Inverclyde Council dated 14 June 2021 with covering email.
3. On 25 June 2021, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 1 July 2021 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 10 August 2021. The Respondent required to lodge written submissions by 22 July 2021. This paperwork was served personally on the Respondent by Damian Cusick, Sheriff Officer, Hamilton on 2 July 2021 and the Execution of Service was received by the Tribunal administration.

Case Management Discussion

5. The Tribunal proceeded with the Case Management Discussion on 10 August 2021 by way of teleconference. The Applicant was represented by Ms Donnelly from Messrs TC Young, solicitors. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the Summary of Complaints, the Private Residential Tenancy Agreement dated 18 May 2020 between the parties, the Notice to Leave dated 22 April 2021 with email addressed to the Respondent, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Inverclyde Council dated 14 June 2021 with covering email.
7. Ms Donnelly moved the Tribunal to grant an Order to evict the Respondent. She referred to the Notice to Leave served on 22 April 2021 which relied solely on ground 14 of schedule 3 of the 2016 Act. She submitted the Notice to Leave had been effectively served. She referred the Tribunal to Clause 4 of the tenancy agreement which provided for service of the Notice by email at the email address in Clause 1. The Tribunal noted the terms of the covering email with the Notice was addressed to the Respondent at the email address in Clause 1. She submitted the Notice to Leave complied with all the statutory requirements.

8. She referred to the summary of complaints from 10 November 2020 to 20 April 2021 and submitted that the Respondent had been anti-social during this period. The summary set out anti-social behaviour including noise at all hours of the day and night, kicking and banging doors, suspected drug dealing, theft of a parcel, threats of violence, shouting and swearing towards the letting agent and neighbours. She submitted neighbours were living in fear. The Respondent's behaviour was so alarming to neighbours, two had terminated their tenancies.
9. On being questioned by the Tribunal, Ms Donnelly explained the Property was one flat in a block of four. All four flats were owned by the Applicant. The Respondent lived in the Property on his own. The main complainer had been a 17 year old female neighbour. The Respondent had preyed on her vulnerability. He had threatened her. She had been scared by the Respondent's behaviour. Another neighbour had made complaints of numerous visitors to the Property at all times of the day and night, kicking the front door in and buzzing to gain entry. The tenancies where the tenants had terminated were now tenanted by males in their 40s. There had been no complaints against the Respondent since 20 April 2021. Ms Donnelly advised an earlier Notice to Leave had been served on the Respondent sometime in March 2021, but not acted upon as containing a wrong date and containing reference to rent arrears as well as anti-social behaviour. The agents had emailed the Guarantor under the tenancy agreement advising her about the behaviour and the arrears.
10. Ms Donnelly was not able to advise the Tribunal of the Respondent's approximate age, whether any warnings had been issued and whether there had been any recent contact with the Respondent. As this was information the Tribunal needed in the consideration of the matter, the Tribunal granted an adjournment for her to obtain this information.
11. After the short continuation Ms Donnelly advised the Tribunal that the Respondent was approximately 25 years of age. The letting agents had had considerable correspondence from January 2021 with the Respondent's Guarantor whom they understood was the Respondent's cousin and a teacher by profession. She has advised she would speak to the Respondent and his mother about his behaviour. The letting agents had been advised by Inverclyde Council the Respondent had contacted them for rehousing. The Respondent had approached the letting agents for a reference and was aggrieved they would not give him a positive reference. The Respondent's mother had contacted the letting agents the day before. Whilst there had been no complaints since April 2021 an electrician who attended the Property to repair a cooker hood had reported that a bag of pills had fallen out from behind the cooker hood. This re-enforced the suspicion the Respondent had been involved in drug dealing.

Findings in Fact

12. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 18 May 2020 in relation to the Property. Clause 21 provides that the Respondent and those living with him and his visitors would not engage in anti-social behaviour towards another person including neighbours. "Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person and includes speech.
13. The Property is one flat in a block of four. The Applicant owns all four flats in the block. The Applicant rents out all the flats in the block.
14. The Respondent has breached the terms of Clause 21 of the tenancy agreement.
15. The Respondent and his visitors have engaged in anti-social behaviour between 10 November 2020 to 20 April 2021 including excessive noise, making threats of violence to neighbours, threatening the letting agents , kicking in the front door and buzzing to gain entry to the Property at all times of the day and night. The police had been called on occasion. This behaviour has placed the neighbours in fear and caused them nuisance and annoyance. Two neighbours have given up their own tenancies due to the Respondent's anti-social behaviour.
16. The letting agents wrote to the Guarantor in January 2021 to bring the Respondent's behaviour to her attention. She advised the letting agents she would discuss this with the Respondent and his mother.
17. The Applicant's solicitor sent a Notice to Leave to the Respondent by email on 22 April 2021. The Notice required the Applicant to leave the Property by 23 May 2021. The Notice to Leave relied solely on ground 14 of schedule 3 to the 2016 Act (anti-social behaviour). The Notice to Leave was sent to the Respondent at the email address set out in Clause 1 of the tenancy agreement. Service by email is permitted in terms of Clause 4 of the tenancy agreement.
18. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Inverclyde Council on 14 June 2021.
19. The Respondent has approached Inverclyde Council for rehousing.

20. The Respondent continues to reside in the Property.

Reasons for Decision

Legislation

21. The Tribunal considered the Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020 in its determination. The relevant sections and ground 14 state -

Private Housing Tenancies (Scotland) Act 2016, as amended by the Coronavirus (Scotland) Act 2020

Section 51 First-tier Tribunal's power to issue an eviction order.

Section 51 (1) of the 2016 Act provides the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Section 51 (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

Section 51 (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

Section 51 (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Section 52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3), or (b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2) (b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

Section 54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave— (a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

- (iii) that the tenant has a relevant conviction, [ground 13]
 - (iv) that the tenant has engaged in relevant anti-social behaviour [ground 14]
 - (v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]
 - (vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]
 - (vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or
- (b) the only eviction grounds stated in the notice to leave are—
- (i) the eviction ground mentioned in subsection (3), and
 - (ii) an eviction ground, or grounds, mentioned in paragraph (a)
- (3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
- (a) that the tenant is not occupying the let property as the tenant's home, [ground 10]
 - (b) that the tenant has a relevant conviction, [ground 13]
 - (c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]
 - (d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]
- (3C) This subsection applies if—
- (a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the landlord intends to live in the let property, [ground 4]
 - (ii) that a member of the landlord's family intends to live in the let property, [ground 5]
 - (iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

Section 62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) 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.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Ground 14 in Schedule 3 of the Act - Anti-social behaviour

(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.

Notice to Leave

22. The Tribunal considered whether the Notice to Leave served on the Respondent met all the statutory requirements as submitted by Ms Donnelly. Section 51 (1) of the 2016 Act gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on ground 14, namely that the Respondent has engaged in anti-social behaviour. Ground 14 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
23. In terms of Section 52 the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave, is not made in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
24. Notice to Leave is defined in terms of Section 62. Part 2 of the Notice to Leave states it proceeds on the Respondent's anti-social behaviour. Part 3 of the Notice lists the complaints made against the Respondent including threatening behaviour, causing fear and alarm to neighbours. The Tribunal is satisfied the Notice to Leave complies with Section 52(5) of the 2016 Act that the application proceeds on an eviction ground stated in the Notice to Leave accompanying the application.
25. The application is based on a Notice to Leave given after 7 April 2020, the date the Coronavirus (Scotland) Act 2020 came into force amending the terms of the 2016 Act under Schedule 1 paragraphs 1 and 2. The Notice to Leave was sent on 22 April 2021 and only stated one ground of eviction, namely ground 14 of schedule 3. Accordingly the notice period is 28 days under Section 54 (2) (c) (i) and Section 54 (3B) (c).
26. Under Section 62(1) (b) the Notice to Leave must specify the day on which the landlord can apply to the Tribunal. The day so specified is the day falling after the day on which the notice period defined in section 54(2) will expire. Section 64(5) assumes a tenant will receive the Notice to Leave 48 hours after it is sent. In this case the Notice to Leave was served on 22 April 2021 by email in accordance with Clause 4 of the tenancy agreement. The Respondent is assumed therefore to have received it on 24 April 2021. The earliest date the Applicant could have made an application to the Tribunal was 22 May 2021 being 28 days later. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal as 23 May 2021. The application was

made on 14 June 2021. The Tribunal is accordingly satisfied the Respondent has been given proper notice in terms of the 2016 Act.

Anti-social behaviour – Ground 14 of Schedule 3

27. The Tribunal had to determine whether ground 14 as specified in the Notice to Leave had been made out by the Applicant. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms Donnelly. The Tribunal noted the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms Donnelly that the facts were not in dispute. The behaviour was threatening and intimidating and had caused two of the Applicant's neighbouring tenants to terminate their tenancies with the Applicant. The Tribunal was satisfied the Respondent had acted in an anti-social manner.

Reasonableness

28. In determining whether it is reasonable to grant an Order, the Tribunal is required to balance all the evidence, to weigh the various factors which apply and to consider the whole circumstances of the case. In this case the Tribunal was of the opinion that the behaviour complained of was particularly alarming to neighbours. It was criminal in nature. It was threatening. The actions of the Respondent should not have to be tolerated by anyone. His behaviour had forced two neighbours to give up their tenancies. The Respondent had also been abusive to the letting agents. While the Tribunal accepted there had been no complaints since 20 April 2021 the Tribunal was concerned there was a possibility the Respondent was involved in drugs with the a bag of pills being found in the Property since then. The Respondent was seeking rehousing with Inverclyde Council. He was a single man who lived alone at the Property. The balance of reasonableness in this case is accordingly heavily weighted towards the Applicant.

29. In the circumstances the Tribunal considered that in terms of ground 14 of schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

30. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

S. Evans

12 August 2021

Legal Member

Date