



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/21/1587

Re: Property at 4 Crichtie Cottages, Crichtie Farm, Kemnay, Inverurie, AB51 5NP (“the Property”)

Parties:

M Davidson & Son, M Davidson & Son, Crichtie Farmhouse, Inverurie, AB51 5NP (“the Applicant”)

Mr Keith McKay, Ms Diane E Findlay, 4 Crichtie Cottages, Crichtie Farm, Kemnay, Inverurie, AB51 5NP (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should not be granted.

Background

On 2nd June 2021 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.

Lodged with the application were: -

1. Copy Tenancy Agreement;
2. Copy Notice to Leave;
3. Proof of service of Notice To Leave;

4. Section 11 Notice;
5. Fire Report
6. Email with Police Reference Number

The Application was served on the Respondent by Sheriff Officers on 27th July 2021.

Case Management Discussion

The Case Management Discussion (“CMD”) took place by teleconference. The Applicant did not attend and was represented by Martin Kingdon. Lettings Manager with Peterkins. The Respondents represented themselves.

Summary of Discussion

The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules. The Chairperson explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and that it was reasonable for the Tribunal to grant the order.

Mr Kingdon said that he was seeking an order for eviction on the grounds of anti-social behaviour.

The Chairperson asked Mr McKay if the Respondents were opposed to the action. He said “yes and no”. He did not agree with the ground and he said that the version of events given by the Applicant was not accurate.

The Tribunal considered that the respondents were opposed to the ground of eviction. The tribunal were not satisfied that there was sufficient information before them to make a decision and decided to continue the case to a Hearing.

The issues which were agreed between the parties were:

1. There was a tenancy agreement between the parties for rental of the property;
2. A fire occurred on 25th April 2021.

The issues in dispute were:

1. How the fire started;
2. Where the fire started;
3. What damage the fire caused.

Mr Kingdon thought that the Applicant might want to give evidence. The Respondents both thought that they would give evidence. The tribunal explained that they should look at the Rules and give the Tribunal notice of the witnesses to be called in accordance with the Rules.

A Hearing was fixed for 14th October 2021 at 10am.

On 1st October 2021 Mr Kingdon lodged a Written Submission with photographs.

On 10th October 2021 the Respondents lodged a Written Submission with photographs.

Hearing

The hearing took place by teleconference on 14th October 2021. The Applicant was again represented by Mr Kingdon of Peterkins. The Respondents represented themselves.

Mr Kingdon said that he was not calling any witnesses and was happy to rely on his Written Submission.

The Respondents said that they were not calling any witnesses and were happy to rely on their Written Submission.

The Respondent said that they had new information to put before the Tribunal. They had, on the Monday before the Hearing received a phone call from the Housing Office at the local authority telling them that the local authority had issued a Closure Notice on the property and that they were effectively homeless.

Mr Kingdon said that he had been aware that investigations were ongoing and that repairs were required. He said that in the circumstances it might not be necessary for the Tribunal to make a decision.

The Tribunal took the view that the matter was entirely separate from the action for eviction and that they would proceed to make a decision.

The Tribunal asked the Respondents to confirm where the fire had started. Their position was that it had started in a fire pit in their garden, shown on one of the photographs produced by them. The wind had caught the fire and it had blown over the fence, in to the vegetation and then towards the barn. They had been burning old wood and weeds. There were no other witnesses to the fire as far as they knew.

Mr Kingdon confirmed that the Applicant had not been present and did not see what happened.

Mr Kingdon was asked to make a submission on why he considered that the Ground of eviction, Ground 14, had been met. He did not have a copy of the Ground before him. He was not able to fully apply the Ground to the facts. He said that he felt that setting the fire was anti- social behaviour, and that no fire should have been set at all.

The Tribunal pointed out that the Ground referred to a tenant behaving in an anti-social manner to another person. Mr Kingdon said that the Respondents had behaved in an anti-social manner and had caused the Applicant distress by burning down his barn. He said that he appreciated that it was a difficult ground to use.

The tribunal asked Mr Kingdon to address them on the reasonableness aspect. He said that it was reasonable to evict given the loss to the Applicant. Apparently the insurance claim is for over £100,000.

The First Respondent said that he did take responsibility for what happened, but it had been completely accidental.

Findings In Fact

1. The parties entered in to a tenancy agreement on 25th June 2020;
2. The Respondents started a fire in their fire pit on 25th April 2021;
3. The fire spread outwith the curtilage of the tenanted property and caused substantial damage to a near by barn owned by the Applicant;
4. The fire was not started with the intention of causing damage;
5. The damage was entirely accidental;
6. A Notice to Leave dated 12th May 2021 was served on the Respondents giving the date of 12th June 2021 to leave the property.

Reasons For Decision

The Applicant sought to evict the Respondents using Ground 14 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016. It states as follows:

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.

No one gave evidence to the Tribunal. The Applicant's Representative relied on Written Submissions, which were referred to within as evidence. A Written Submission is not evidence. The Applicant's Representative did not adequately address how the act of starting a fire which accidentally led to damage constituted anti-social behaviour in relation to another person in terms of paragraph 2(a) of the Ground.

Even if the Tribunal were to accept that the actions of the Respondents did constitute anti-social behaviour that behaviour would only be relevant anti-social behaviour if the Tribunal were satisfied that it was reasonable to issue an eviction order as a consequence, in terms of paragraph 5. The Applicant's Representative did not adequately address this point. He submitted that it was reasonable because of the size of the Applicant's loss. Nothing had been lodged, and no evidence had been led, to show the financial extent of the loss. The Tribunal were told that the insurance claim amounted to over £100,000. This is the amount claimed on the insurance, it is not a measure of the Applicant's loss.

Ground 14 is a ground that requires careful application of the law to the facts.

The Tribunal were of the view that the fire was started by the respondents but there was no intention to cause the damage to the barn, which was entirely accidental. It was therefore not anti-social behaviour, and it was not behaviour in relation to another person.

Given that the Tribunal did not accept that the behaviour was anti-social they did not need to determine whether or not it was reasonable to grant an order to evict. However, the tribunal would have taken the view that it was not reasonable for the Respondents to lose their home over an accident.

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: Alison Kelly

Date: 14th October 2021

