



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/21/2299

Re: Property at 17D Gertrude Place, Barrhead, G78 1JY (“the Property”)

Parties:

Norman Macdonald and Elizabeth Macdonald T/A Quality lets, 20 Woodlands Grove, Kilmarnock, KA3 1TZ (“the Applicants”)

Mr James Rafferty, 17D Gertrude Place, Barrhead, G78 1JY (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent under ground 14, and the Private Residential Tenancy between the parties terminated on 23 December 2021.

STATEMENT OF REASONS

1. This Application called for its Case Management Discussion by teleconference call on 23 December 2021. Norman Macdonald appeared on behalf of both Applicants. The Respondent was neither present nor represented.
2. In this Application, the Applicants seek an eviction order. They say that the Respondent is their tenant under a Private Residential Tenancy Agreement which commenced on 4 May 2018. They say that they were made aware of complaints about the Respondent’s use of the rear garden at the Property. In particular, he had built a wooden structure as an outdoor seating area. He was leaving rubbish throughout the common areas. He was storing bikes in the common close. The Applicants say that they had been contacted by the

local authority in respect of their landlord registration, and suggested that a failure to seek eviction of the Respondent may result in their being found not to be fit and proper persons to be landlords. Against that background, the Applicants served Notice to Leave on the Respondent dated 30 July 2021. The Notice to Leave specified several grounds for eviction, but the Applicants are only founding on ground 14 in these proceedings. The Notice to Leave incorporated, in Part 3 thereof, several letters from the Applicants to the Respondent, by way of explaining the reasons why eviction was being sought. The description of anti-social behaviour complained of was in the following terms: “... *refuse being dumped in the common close and disruption in the garden area*”. The Notice to Leave referred to the local authority having received complaints regarding the Respondent's behaviour.

3. In terms of Rule 17(4) the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, the Tribunal may do anything at a CMD that it may do at a Hearing, including make a decision. In terms of Rule 2, the Tribunal is required when making a decision to have regard to the overriding objective to deal with proceedings justly, including by avoiding unnecessary delay.
4. The Respondent was served with a copy of the Application. He has been afforded an opportunity to dispute the allegations made against him by the Applicant. He has chosen not to do so. In the circumstances, the Tribunal has determined that the allegations made by the Applicant in the Application are not in dispute.
5. In terms of the Private Housing (Tenancies) (Scotland) Act 2016 (as temporarily amended by the Coronavirus (Scotland) Act 2020):-

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

- (1) 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.
- (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.
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- (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.

Ground 14 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.”

6. The Tribunal had some significant concerns regarding the validity of the Notice to Leave. It is, at best, sparse in its explanation of the anti-social behaviour upon which it founds. However, it does appear to incorporate other correspondence which gives a brief description of the behaviour complained of and, coupled with the Respondent's failure to appear to dispute that he had behaved in that manner, the Tribunal is prepared to accept that the Respondent dumped refuse in the common close and caused disruption in the garden area. The Tribunal is also satisfied that the said behaviour caused nuisance or annoyance to other persons, standing the reference to complaints made to the local authority. For those reasons, the Tribunal is satisfied that the Respondent has behaved anti-socially. The only remaining matter to determine is whether it is reasonable to grant the eviction order.
7. The Tribunal's investigation of reasonableness was significantly hampered by the Respondent's failure to attend the CMD. However, the Applicant was able to advise that the Respondent resided at the Property with his two sons, who the Applicant believed to be between 12 and 15 years old. The Applicant made reference to the complaints received about the Respondent. He spoke of the lingering threat of being stripped of his landlord registration and the impact that would have on the Applicants' letting business which has a portfolio of twenty properties. Having heard the Applicant's submissions, the Tribunal agreed that it was reasonable to grant the eviction order under Ground 14.
8. For completeness, the Tribunal determined that the tenancy came to an end on 23 December 2021.

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.

Andrew Upton

24/12/21

Legal Member/Chair

Date