



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 (1) and 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”)

Chamber Ref: FTS/HPC/EV/21/2301 and FTS/HPC/CV/21/2302

Re: Property at 6 0/2, Brick Lane, Paisley, PA3 4AE (“the Property”)

Parties:

Mr Sarbjit Singh, 2 Crosslee Crescent, Houston, PA6 7DT (“the Applicant”)

Mr Anthony Connor Arkwell, 6 0/2, Brick Lane, Paisley, PA3 4AE (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to refuse the Application for an Eviction Order and to grant the Application for a Payment Order in part for the sum of £1,400.00.

Background

In Application with reference FTS/HPC/EV/21/2301 The Applicant seeks an Eviction Order under Ground 14 of Schedule 3 of the Act in that it is alleged that the Respondent has engaged in relevant anti-social behaviour. In Application with reference FTS/HPC/CV/21/2302 the Applicant seeks a Payment Order in the sum of £1,620.00 for rent arrears said to be lawfully due by the Respondent to the Applicant under a tenancy between the parties but which remain unpaid.



There had been a Case Management Discussion (CMD) which called on 6 April 2022 and at which various case management orders were made regarding the production of evidence.

There had been a Hearing scheduled for 19 July 2022 which had to be adjourned due to the illness of a Tribunal Member. The Applications were continued to a further Hearing to determine both Applications on 20 September 2022. Both parties had submitted various documents, photos, sets of representations and in the Respondent's case- video evidence of the inside of the Property. An order had previously been made by the Tribunal specifically allowing the Respondent to submit video evidence in this manner.

The Hearings

Both Applications called for a conjoined Hearing in Paisley Sheriff Court at 10 am on 20 September 2022. Both parties were in attendance.

Before hearing evidence, the Tribunal discussed with both parties whether they had any preliminary matters to raise. The Tribunal explained what this meant and the procedure which the Tribunal intended to follow during the Hearing itself.

Both parties also confirmed that they were content to proceed without legal representation and understood the nature of both Applications. Both parties also confirmed that they had adequately considered all the documentation submitted to Tribunal. This having been suitably explored and the Tribunal being satisfied that it was fair to start hearing evidence, the Tribunal began hearing from the Applicant.

The Applicant- Mr Sarbjit Singh.

Mr Singh confirmed that he has owned the Property since 2006. He confirmed that he let the Property to the Respondent by virtue of a Private Residential Tenancy that commenced on 7 March 2021.

The contractual monthly rent was £350.00. At the start of the tenancy Mr Singh described that there were no difficulties for the first two months until issues developed regarding a leak in the Property. In May of 2021, there was a leak from an upstairs property into the Property below.



Mr Singh confirmed attending at the Property with his son, Jay Singh Benning, to investigate the problems. They determined that the leak was coming from the upstairs bathroom which they took action to repair. Mr Singh gave evidence that the issue took around one week to resolve. Mr Singh explained that around one month later, he received texts from the Respondent which advised that the leak had returned. The Applicant and his son returned and took further steps to assess the source of the water ingress.

Further work was carried out to the bathroom in the property immediately above the Property. Sometime later, further texts were received from the Respondent again about the leak. The Applicant attended at the Property and saw a bucket on the floor. The Applicant described how he looked at the ceiling and couldn't see any damp. The Applicant asked the Respondent if he could himself assist matters by, in the event of any further water ingress, asking the occupant of the property immediately above the Property to turn off whatever water they were using.

At this point the Applicant stated that he had concluded that he would need to cut a hole in the ceiling to carry out more comprehensive repairs. The Applicant explained that the Respondent was less than impressed with being asked to contact the upstairs occupant himself and had made a comment along the lines of *"I'm not doing your work for you- you need to come and sort this."*

On 29 July 2021 at around 3pm the Applicant and his son again attended at the Property with a view to cutting a whole in the ceiling in an attempt to resolve matters. The Applicant described knocking on the door and hearing very loud swearing from inside. The Applicant described how he had to *"bring resolve to the situation"* and was fearful of going inside. The Applicant described how the Respondent answered the door and pointed at the Applicant and said *"You-In!"* before commanding the Applicant's son to *"Wait there."*

The Applicant described how the Applicant then entered the Property with the Respondent closing the door, separating the Applicant from his son on the outside. The Applicant described the Respondent as gritting his teeth and clenching his fists, he was saying *"I'm sick, I'm worried I'm on the edge, I've got problems."*

The Applicant's evidence was that he explained that he was there today to resolve matters and it was going to cause a bit of disruption as they were going to cut a hole in the ceiling. The Applicant sought permission to proceed with the works and for his son



to enter. He explained to the Respondent that they required to turn off the water and the electricity and that the Applicant's son knelt down to access the water valve.

The Respondent was described by the Applicant as pacing up and down rolling cigarettes. The Applicant described being concerned about the presence of "*knives and stuff*" in the kitchen and that he was trying to keep the situation calm. The Applicant described the Respondent as getting more aggressive. He made a sign to his son that they should leave. The Applicant stated in his evidence to the Tribunal that: "*I felt in fear of my life and for my family member- I wanted to leave and was uncomfortable. I made an excuse that we had to get a special tool and we left.*"

The Applicant described how he and his son then drove off not to return. The next day he contacted his solicitor and asked for advice about what to do. The Applicant said that he was advised that such aggression should be reported to the police and that is what the Applicant did. He gave a statement to two police officers and understood that whilst the Respondent was ultimately not being prosecuted, the police had spoken to the Respondent and given him a warning.

As a result of this incident, and this incident alone, the Applicant decided to attempt to evict the Respondent on the basis of ground 14 of Schedule 3 of the Act on account of the Respondent's alleged anti-social behaviour.

The Applicant explained that he and his son attended at the Property on 12 August 2022 and posted a Notice to Leave in terms of ground 14 through the letterbox of the Property. The Applicant explained that his son had taken pictures of him doing this which were "*time stamped*" and which showed that the notice had been served. There was also an email purporting to have been sent to the Respondent with a copy of the Notice to Leave albeit the version of the Notice to Leave the Applicant had submitted with that email was unsigned and undated.

The Applicant confirmed that the sum of £1,620 remained outstanding and in actual fact that the sums now owed were now far greater. The Applicant explained that the Respondent had not paid any rent whatsoever since around June 2021. The Respondent referred to an email sent to the Tribunal which constituted a rent statement of sorts in that it provided some level of detail of the outstanding monthly rental payments claimed.

The Applicant had also incorporated the sum of £220.00 into the claim to account for his expenses for what was described as "*visit and admin costs*". The Applicant did not



explain how it was reasonable to charge for a visit when this seemed solely related to repairing issues and neither was the contractual basis behind the £220.00 ever really satisfactorily explained.

Whilst the Respondent was given the opportunity of cross-examining the Applicant, he chose not to do so. The Tribunal however did ask the Applicant a series of questions covering all aspects of his evidence and generally addressing the basis of the Application. After the Applicant's evidence was concluded, the Tribunal then heard further evidence from the Applicant's son.

Jay Singh Benning

Jay Singh Benning is the Applicant's 21-year-old son and is employed as a gas engineer. Mr Benning corroborated his father's account of almost all aspects of the Applicant's evidence. Mr Benning's account of the events of 29 July 2021 was largely identical to that of the Applicant. The Respondent did wish to ask one question of Mr Benning which related to a suggestion that Mr Benning had challenged the Respondent "*to a fight the other day*". Mr Benning denied this but did appear to acknowledge that there had been an encounter between himself and the Respondent but that Mr Benning "*couldn't remember*" exactly what was said.

The Tribunal asked Mr Benning questions and then the Applicant confirmed that there was nothing further he wished Mr Benning to comment on.

That concluding the Applicant's evidence- the Tribunal then heard from the Respondent.

Mr Anthony Connor Arkwell

The Respondent is 27 years old and is in full time employment in a restaurant. He described that right at the start of the tenancy he had observed tape in the ceiling where previous repairs had been undertaken.

The Respondent spoke of there being much damage though out the Property. The Property itself was described as being akin to a bedsit which had one small bedroom, a bathroom and a small adjoining kitchen and living space.

The Respondent described reporting the leak to the Applicant and the Applicant informing the Respondent that this was the first time he had heard about it. The



Respondent described ultimately being told by the Applicant to chap the upstairs door whenever water started leaking and to ask the occupant to stop whatever they were doing in terms of water usage.

The Respondent described numerous visits by the Applicant which didn't solve the problem. The Respondent described contacting the Applicant around 20-30 times about various issues ranging from door handles falling off, the toilet not flushing, bluebottles and constant leaks. The Respondent explained that he told the Applicant he wouldn't be paying any rent due to the leaks. The Respondent said he had a large bucket that collected the water that leaked from the roof. The Bucket was located in between the bedroom and the kitchen. The Respondent said the presence of the bucket prevented him from operating the oven or opening the fridge.

The Respondent described what happened on 29 July 2021. He described taking a day off work to be at home for the Applicant to attend and address the ongoing issues regarding the leak. The Respondent explained that he was angry and upset at the time about the situation the leak had left him in. The Respondent explained that he only wanted the Applicant to enter the Property due to concerns about Covid-19 which was the forefront of much anxiety and public health guidance at that time. That is why the Respondent did not want the Applicant's son initially to enter.

The Respondent further explained that he was rolling cigarettes and he was swearing as he was angry about the whole situation and that he often swears when he speaks. The Respondent denied ever threatening the Applicant or his son although he accepted that he was angry. When the Applicant's son turned the water and electricity off, the Respondent then explained that the Applicant said they needed to pick up some extra tools and they would be back in 15 minutes.

The Respondent then said that they left the Property and kept him waiting there for much longer than 15 minutes. The Respondent then phoned the Applicant who told him that they weren't coming back and that he should find someone else to turn the water and electricity back on.

Eventually, the Respondent found the valve to turn the water on himself but then had to call Scottish Power about the electricity. Scottish Power informed the Respondent that someone would have to come out and they could not assist over the phone. The Respondent explained that Scottish Power informed him that they couldn't assist until The Respondent called the police, as a "master fuse" appeared to have been unlawfully removed. The Respondent required to stay at his mum's that night



The Respondent accepted that he received a Notice to Leave in respect of Ground 14 of Schedule 3 of the Act through his letter box on or about 12 August 2021.

The Respondent accepted he had not paid any rent whatsoever and explained that he had no intention of paying any rent. He advised that he does wish to move out of the Property, but that he wanted to set the record straight at this Tribunal because it was a nonsense that he should be evicted because of anti-social behaviour. The Respondent went on to describe the Property being very cold and being extremely expensive to heat. He also spoke of damage to household items caused by the water ingress.

The Applicant had the opportunity to cross-examine the Respondent and asked several questions which primarily related to why the Respondent stayed in the Property if it was all so bad. The Applicant also sought to suggest to the Respondent that other occupants of the building in flats owned by the Applicant were happy with the conditions in the building. The Applicant also challenged the Respondent's evidence regarding the incident with Scottish Power and the police. The Tribunal also asked questions of the Respondent including about his wider situation and also in respect of clarifying certain parts of his evidence.

With The Respondents evidence being concluded and there being no other witnesses, the Tribunal was formally adjourned for the Tribunal to deliberate.

Having heard evidence and having considered all the documentation, images, videos and numerous items emailed to the Tribunal by both sides, the Tribunal made the following findings in fact.

Findings in fact.

- I. *The Applicant and the Respondent entered into a tenancy agreement whereby the Applicant let the Property to the Respondent by a Private Residential Tenancy that commenced on 7 March 2021;*
- II. *The contractual monthly rent was £350.00;*
- III. *There was a continual leak in the Property that was of a source of great frustration to the Respondent;*



- IV. *The Respondent frequently had to contact the Applicant to address the issue;*
- V. *On one occasion on 29 July 2021, the Applicant and his son attended at the Property, ostensibly to fix a leak, although the Applicant in his Application also described attending there to discuss "rent arrears" with the Respondent;*
- VI. *At the time of this meeting the Respondent was annoyed with the Applicant and frustrated by the whole affair;*
- VII. *The Respondent raised his voice and used bad language;*
- VIII. *The Respondent did not overtly threaten the Applicant or the Applicant's son nor assault them;*
- IX. *In some regards it was perfectly understandable for the Respondent to have been upset during this meeting;*
- X. *The Applicant and his son then fabricated a reason and left the Property having turned off the water and electricity;*
- XI. *The Applicant and his son then waited until the Respondent contacted them before informing him that they would not be returning and that the Respondent would have to deal with the water and power issues himself;*
- XII. *The Applicant contacted the police about the above matter which has not resulted in any criminal prosecution of the Respondent;*
- XIII. *On 12 August 202, the Applicant and his son then served a Notice to Leave on the Respondent in respect of Ground 14 of Schedule 3 of the Act;*
- XIV. *The Notice to Leave was posted through the door when the Respondent was out;*
- XV. *The Applicant has lodged a notice under s11 of the Homelessness (etc) (Scotland) Act 2003;*
- XVI. *The Respondent has now been living in the Property without paying any rent at all for around 15 months;*



- XVII. *The Applicant's claim for a Payment Order for £1,620.00 includes a head of claim in the sum of £220.00 for "Visit and admin". There is no legal basis or adequate explanation for the charge for "Visit and Admin" given the Applicant stated in his evidence that he only attended at the Property to carry out necessary repairs.*
- XVIII. *There is insufficient evidence to establish that the rent arrears claimed by the Applicant are not lawfully due. The Respondent accepts that he did not pay the rent and has not paid any rent since.*
- XIX. *There is insufficient evidence to establish any defence of rent abatement. In any event, it would be an extremely high evidential test which would be required to be met to establish that no rent at all should be lawfully due.*
- XX. *The relevant test set out in Ground 14 of Schedule 3 of the Act has not been established.*

Analysis of the Evidence.

Ultimately the case in respect of the Eviction Order was about a single allegation of anti-social behaviour. Having heard all of the evidence, the Tribunal unanimously concluded that the evidence fell substantially way short of establishing that ground of eviction. The Tribunal considered that there was no basis whatsoever for finding the ground established.

Ground 14 itself is in the following terms:

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.

The Tribunal unanimously considered that it would be manifestly unreasonable to grant an Eviction Order on the basis of the evidence heard.

The Tribunal did not conclude that what the Respondent allegedly did even amounted to anti-social behaviour within the meaning of Ground 14 (3) (a) or any other section.

The Tribunal decided the Application for a Payment Order should be granted subject to the head of claim in respect of “Visit and Admin” being refused- the Tribunal could not understand why the sum of £220.00 had been added and it seemed to have been plucked



out of the air. The Applicant did not seem to recognise that he was attempting to charge the Respondent for attending at the Property to fix a leak. That might not have been how the Applicant saw it, but the Tribunal were unanimously of that view. The Tribunal also did consider that the "*Visit and Admin*" charge might constitute an illegal "*Premium*" within the definition of 90 (1) of the Rent (Scotland) Act 1984 as amended and as directly applicable to Private Residential Tenancies by s 20 of the Act. It seemed to be an admin charge imposed on the tenant for a dubious purpose.

In addition to this, the Tribunal gave serious thought to the issue of whether an additional sum of £350.00 ought to be deducted from the sums claimed. That is because the Tribunal were concerned that the Applicant had effectively retained a deposit of £350.00 without openly declaring that this sum should be treated as a deposit. The Applicant had requested an initial rental payment of £700.00 for the first month of the tenancy. The Applicant described in his evidence that £350.00 of that sum would be returned at the end of the tenancy if "*everything was fine*" and when challenged about this by the Tribunal- conceded that it could fairly be construed as a deposit.

The Applicant however appeared entirely ignorant of the corresponding obligations under the Tenancy Deposit Schemes Regulations 2011 ("*The Deposit Regulations*"). There was no suggestion that this sum was registered with any approved scheme.

The Tribunal was left unimpressed with the Applicant's awareness of the rules in this regard and considered it very likely that the Applicant was in breach of his obligations under the Deposit Regulations.

That being said, the Tribunal did not consider that this was strictly relevant to the issue of whether the rent arrears claimed were lawfully due and that there was no legal justification for the Tribunal to offset this amount against the sum claimed. It may however be relevant in any future Tribunal proceedings which focus purely on compliance with the Deposit Regulations.



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.

A. McLaughlin

Legal Member/Chair

27 September 2022
Date