



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/3079

Re: Property at 54 Locksley Avenue, Glasgow, G13 3NB (“the Property”)

Parties:

Mr Bhubinder Burmy, Mrs Swarnjit Burmy, 10 Blackhill Crescent, Glasgow, G23 5NF (“the Applicants”)

Mr James Ballantyne, 54 Locksley Avenue, Glasgow, G13 3NB (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicants. It called for a hearing at 10am on 27 September 2022, by teleconference. The First-named Applicant was present on the call and the Applicants were also represented by Ms McKinley of Eve Property. The Respondent did not call in and was not represented.

The Respondent had instructed a solicitor to represent him following a previous hearing. Some representations had been made on his behalf by that representative

relating to a direction that had been issued. The representative sent an email on 20 September 2022 indicating he was withdrawing from acting, due to a lack of instructions. The clerk to the hearing contacted that representative to confirm that he had informed the Respondent that he had to appear at the hearing himself or instruct new representation: which confirmation was given. The Tribunal was satisfied that the Respondent had been given sufficient opportunity to contradict the case made by the Applicants, but that he had declined to do so, and that it was therefore fair to proceed in his absence.

- Findings in Fact

1. The Respondent lets the Property from the Applicants in terms of a private residential tenancy agreement with a start date of 15 February 2018.
2. The Respondent's partner also resides at the Property.
3. On 21 October 2019, the Respondent's partner, while at the Property, shouted aggressively at neighbours in the street and threw stones at passing vehicles.
4. On 21, 24 and 30 December 2019, 1, 5, 10, 13 & 30 January, 8 & 9 February, 13 August 2020, 2, 10, 11, 12, 14, 15, 17, 18, 20, 23, 27 & 28 April 2021 the Respondent and his partner made excessive noise at the Property, screaming and swearing, and banging the walls and furniture, with the television on at a high volume, for a sustained period of several hours on each occasion.
5. The Respondent and his partner continued to make excessive noise at the Property on frequent occasions throughout June and July 2021.
6. The behaviour listed at paras.3- 5 caused, variously, alarm, distress and annoyance to the Respondent's neighbours.
7. On 21 October 2021, the Applicants served a notice to leave on the Respondent identifying Grounds 14 and 15 of Schedule 3 to the Private

Housing (Tenancies) (Scotland) Act 2016 ('the Act') as the basis for any eviction order subsequently sought.

8. On 24 November 2021, the Applicants notified Glasgow City Council of his intention to seek an eviction order, in terms of s.11 of the Homelessness etc. (Scotland) Act 2003.

9. This application was made 9 December 2021.

10. The Respondent and his partner continue to make excessive noise at the Property frequently.

- Findings in Fact and Law

11. The behaviour listed at paras.3- 5 constitutes a course of conduct which caused alarm, distress and annoyance to the Respondent's neighbours.

12. It is reasonable to issue an eviction order as a consequence of the behaviour listed at paras.3- 5.

13. The Respondent and his partner have engaged in relevant anti-social behaviour.

14. The Respondent associates in the Property with a person who has engaged in relevant anti-social behaviour.

- Reasons for Decision

15. Section 51 of the Act states that the 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.

16. In this case, the Applicants rely on grounds 14 and 15 from that schedule. So far as is relevant to this case, these read:

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 subparagraph (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,

(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... .

(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.

...

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15 Association with person who has relevant conviction or engaged in relevant anti-social behaviour

(1) It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or 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) a person who falls within sub-paragraph (4)—

...

(ii) has engaged in relevant anti-social behaviour,

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and

(c) either—

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the conviction or (as the case may be) the occurrence of the anti-social behaviour

(3) In sub-paragraph (2)(a)(ii), “relevant anti-social behaviour” means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.

(4) A person falls within this sub-paragraph if the person—

(a) resides or lodges in the let property,

... .

17. The findings in fact and findings in fact and law above lead to the conclusion that both of these grounds have been made out by the Applicants. In large part this conclusion is automatic from the terms of the findings as applied to the law, as quoted above. However, it is necessary to explain the Tribunal’s reasoning on two points a little further.

18. Firstly, the Tribunal considers that the events narrated in the findings in fact at paras.3-5 above constitute a ‘course of conduct’ for the purposes of para.14(3)(b) of Schedule 3 to the Act. They encompass conduct on two or more occasions, as required by the definition contained in sub-para. (4); but, it

is also worth noting that they exhibit a coherence that allows them all to be grouped together in this manner, albeit they take place across a lengthy period of time and with some gaps. In particular, the type of behaviour in question is of a similar nature, all being variations on a theme of noisy and unruly conduct, that pays no heed to the right of neighbours to enjoy a reasonable level of peace and quiet in their homes.

19. Secondly, the Tribunal is satisfied that it is reasonable to grant an eviction order as a consequence of the behaviour. The conduct in question is objectionable largely because it takes place at the Property and has its deleterious effect in relation to the Respondent's neighbours, in that it impacts those neighbours' peaceful enjoyment of their homes. It has subsisted for a long time and even the service of the notice to leave did not lead to a cessation of it. It is not reasonable to expect the Respondent's neighbours to continue to put up with it.

- Decision

Eviction order granted

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.

Nairn Young

Legal Member/Chair

21 October 2022
Date