



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

Chamber Ref: FTS/HPC/EV/22/0382

Re: Property at 35 Melrose Court, Rutherglen, Glasgow, Lanarkshire, G73 3DB (“the Property”)

Parties:

Mr Michael Dooley, 403 New Kings Road, London, SW6 4RL (“the Applicant” and “the Landlord”)

Ms Jacqueline Morrison, 35 Melrose Court, Rutherglen, Glasgow, Lanarkshire, G73 3DB (“the Respondent” and the “Tenant”)

Tribunal Members:

Martin McAllister (Legal Member) and Jane Heppenstall (Ordinary Member) (“the tribunal”)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the tenant in respect of the Property.

Background

1. On 27th January 2022, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction.
2. The grounds for eviction referred to in the application were Grounds 14 and 15 of Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
3. No representations were received from the Respondent.
4. A case management discussion was held on 6th May 2022. It was held by audio conferencing.

5. On 7th April 2022, the Applicant's solicitor submitted a request to the Tribunal seeking to amend the Application to add an additional ground of eviction: Ground 5 of Part 1 of Schedule 3 of the 2016 Act.

The case management discussion

6. There was no appearance by the Respondent.
7. Ms Claire Mullan, solicitor, represented the Applicant.
8. The purpose of a case management discussion was explained by the Legal Member.

Preliminary Matter

9. Ms Mullan asked the Tribunal to allow the application to be amended so that Ground 5 be included and be considered along with Grounds 14 and 15. Ms Mullan sought this amendment in terms of Rule 13 (1) (a) of the Tribunal Rules. The tribunal noted that the Tribunal administration had sent a copy of Ms Mullan's application of 7th April 2022 together with a copy of an affidavit by Dr Lara Dooley to the Respondent.
10. Ms Mullan referred the tribunal to the terms of the affidavit by Dr Dooley dated 3rd December 2021 wherein she stated that she is the daughter of the Applicant and that she wants to live in the Property since she is employed in Glasgow and is currently living in unsuitable accommodation.
11. Ms Mullan said that there was no prejudice to the Respondent in including Ground 5 in the application. She said that the Respondent knew that the Respondent wanted the Property for his daughter to live in. She said that a Notice to Leave dated 13th December 2021 in respect of this ground had been sent to the Respondent together with a copy of the affidavit of Dr Dooley.
12. The tribunal determined that there was no prejudice to the Respondent in allowing the additional ground to be included in the application. The Respondent had been made aware of the Applicant's intention to seek amendment of the application and had been served with a Notice to Leave in respect of that ground. In respect of that Notice to Leave, no application to the Tribunal could be made prior to 16th March 2022. The request to amend the application was dated 7th April 2022.

Findings in Fact

- (i) On 14th August 2021, the Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property.
- (ii) The tenancy commenced on 17th August 2021.
- (iii) The monthly rent due under the private residential tenancy agreement is £475.

Finding in Fact and Law

Dr Lara Dooley, daughter of the Applicant intends to live in the Property as her only or principal home for at least three months.

Documents before Tribunal

- (i) Private residential tenancy agreement dated 14th August 2021.
- (ii) Affidavit by Dr Lara Dooley dated 3rd December 2021.
- (iii) Copy Notice to Leave dated 13th December 2021 in respect of Ground 5.
- (iv) Copy Notice to Leave dated 22nd December 2021 in respect of Grounds 14 and 15.
- (v) Copy Section 11 intimation to local authority dated 3rd February 2021.
- (vi) Copies of photographs of the common areas in the development of which the Property forms part.
- (vii) Title sheet LAN102196 in respect of the Property.
- (viii) Various redacted emails and other correspondence relating to alleged anti-social behaviour.

13. The Law

Section 51 of the 2016 Act:

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 or must 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 5, Part 1 of Schedule 3 of the 2016 Act

Family member intends to live in property

5(1) It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) a member of the landlord’s family intends to occupy the let property as that person’s only or principal home for at least 3 months, and

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

(3) A member of the landlord’s family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a) the family member is incapable of having, or expressing, that intention, and

(b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member’s only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord’s family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person’s stepchild is to be regarded as the person’s child,

(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B’s child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.

Ground 14, Part 3 of Schedule 3 of the 2016 Act

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.

Ground 15, Part 3 of Schedule 3 of the 2016 Act

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

15 (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)—

(i) has received a relevant conviction as defined by paragraph 13(3), or

(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, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(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,*
- (b) has sub-let the let property (or part of it) from the tenant, or*
- (c) has been admitted to the let property by the tenant on more than one occasion.*
- (5) In a case where two or more persons jointly are the tenant under a tenancy, the references in sub-paragraphs (3) and (4) to the tenant are to any one of those persons.*

Schedule 1 of the Coronavirus (Scotland) Act 2020

1 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies, in relation to a notice to leave within the meaning of section 62 of that Act served on a tenant while this paragraph is in force, in accordance with the modifications in this paragraph.

(2) Section 51 (2) (First-tier Tribunal's power to issue an eviction order) has effect as if the words "or must" were repealed.

(3) Schedule 3 (eviction grounds) has effect as if—

(h) in paragraph 10 (2) (not occupying let property)—

(i) in the opening words, for the word "must" there were substituted "may",

(ii) after paragraph (a), the word "and" were repealed,

(iii) after paragraph (b) there were inserted " , and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."

Evidence

14. Ms Mullan referred the Tribunal to Ground 5 and the terms of the affidavit which had been lodged. The affidavit was by Dr Lara Dooley, daughter of the applicant and in it she states that she is currently living in a small bedroom in a friend's house which is unsuitable for her needs. She states that she intends to reside in Glasgow and has applied for a job as a doctor and has worked bank shifts in Glasgow Royal Infirmary. The affidavit states that Dr Dooley's father has made the Property available to her and that it would be suitable for her needs.

15. Ms Mullan referred the tribunal to the information in the application relating to anti-social behaviour by the Respondent and by others who reside in the Property and to various redacted emails from neighbours concerning anti-social behaviour. She said that, in contravention of the tenancy agreement, the Respondent had allowed others to reside in the Property: her son, daughter-in-law and two children. She referred to issues with the failure of the Respondent and others residing in the Property to deal properly with disposal of household waste and the collection of dog faeces from the common area of the development of which the Property forms part. She said that the fact that the Respondent had a dog in the Property not only contravened the terms of the private residential tenancy agreement but also the title conditions of the Property and she referred the tribunal to both documents.
16. Ms Mullan asked the tribunal to consider the terms of the redacted emails which she had lodged and which supported her contention that there had been anti-social behaviour conducted by the Respondent and others residing at the Property. She said that the emails were from neighbours and had been redacted because the senders had concerns because of the aggressive behaviour of the Respondent and others residing at the Property.
17. Ms Mullan also referred to other documents which she had lodged: emails from the Applicant to the Respondent about her behaviour, a letter from South Lanarkshire Council with regard to waste management and a letter from her firm to the Respondent dated 24th November 2021 in which issues of the Respondent's failure to manage waste and keeping a dog in the Property were raised together with the Respondent's failure to pay rent. Ms Mullan said that the Respondent has not paid rent since the outset of the tenancy.

Submissions

18. Ms Mullan asked the tribunal to grant an order of eviction on all three grounds. She said that she saw no merit in a Hearing being fixed and that the tribunal had sufficient information before it to grant the order. She said that she believed that the tribunal has considerable information with regard to anti-social behaviour. She said that Ground 5 was met and that the tribunal should accept the terms of the affidavit which was before it.
19. Ms Mullan asked the tribunal to find, on balance, that it was reasonable to grant the order of eviction. She said that it was unreasonable for the Respondent to continue living in the Property whilst engaging in anti-social behaviour. She said that the applicant was concerned that other residents

were suffering as a result of the behaviour of the Respondent and others she allowed to reside in the Property. She said that the Applicant had concerns that he would be at risk of legal consequences because his tenant was breaching the title conditions and that it was unreasonable that he was exposed to such danger. She also suggested that the non payment of rent was something that could be weighed when judging reasonableness.

20. Ms Mullan asked the tribunal to consider it reasonable that the Applicant should be allowed to provide the Property for the use of his daughter.

Discussion

21. The tribunal first considered Ground 5 of Part 1, Schedule 3 of the 2016 Act. Paragraph 5(7) of Part 1, schedule 3 of the 2016 Act makes reference to an affidavit by a family member stating that it is her/his intention to live in a property as that person's only or principal home for at least three months to be sufficient evidence that the ground is met.
22. The tribunal considered the terms of the affidavit and accepted that it was the intention of Dr Dooley to reside in the Property. The affidavit states that it is her intention to make her home in Glasgow.
23. The tribunal had to consider, in terms of Paragraph 5(2) (b) of Part 1, Schedule 3 of the 2016 Act, if it is reasonable to issue an eviction order on account of the fact that Dr Dooley wants to reside in the Property.
24. The Respondent had not engaged in the Tribunal process and the tribunal could take no view on reasonableness in respect of her circumstances. It seemed to the tribunal to be entirely reasonable that the Applicant be entitled to recover the Property to house his daughter.
25. The tribunal, having determined to make an order for eviction under Ground 5 of Part 1, Schedule 3 of the 2016 Act, did not determine if Grounds 14 and 15 of Part 3, Schedule 3 of the 2016 Act were engaged.

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.

**Martin J. McAllister
Legal Member
6th May 2022**