



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/22/1296

Re: Property at 5 Old Mains, Fasque House Estate, Fettercairn, AB30 1DL (“the Property”)

Parties:

Dick Watson Construction Limited, Fasque House, Fasque House Estate, Fettercairn, Laurencekirk, Aberdeenshire, AB30 1DN (“the Applicant”)

Ms Melody Hay, 5 Old Mains, Fasque House Estate, Fettercairn, AB30 1DL (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Miss J Heppenstall (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted.

Background

1. This is an application received on 5th May 2022 and made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant is the landlord of the Property, and the Respondent is the tenant, in terms of a tenancy agreement that commenced on 1st November 2017 until 30th April 2018 at an agreed rent per month of £695. The Applicant is seeking an order for possession under ground 15 of the Housing (Scotland) Act 1988 (“the 1988 Act”).
2. The Applicant’s representative lodged a copy of the short assured tenancy agreement, copy Notice to Quit served by Sheriff Officer on 29th November 2021, ending the contractual tenancy on 30th April 2022, with evidence of service, copy form AT6 dated 11th April 2022, served by depositing at the Property on the same date, copy section 11 notice with evidence of service,

copy correspondence to the Respondent, diary notes of letting agent, email correspondence from neighbours and police disclosure.

3. Service of the application and notification of a Case Management Discussion was served upon the Respondent by Sheriff Officers on 30th June 2022.

The Case Management Discussion

4. A Case Management Discussion took place by telephone conference on 10th August 2022. Neither party was in attendance. The Applicant was represented by Mrs Claire Mullen, Solicitor.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the Hearing, together with details on joining the telephone conference. The Tribunal determined that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicant and the material before the Tribunal.
6. Mrs Mullen moved the Tribunal to grant an order for possession. The required documents have been served and the contractual tenancy came to an end on 30th April 2022. There have been various incidents of anti-social behaviour by the Respondent and visitors to the Property which have caused the neighbours to suffer fear, alarm, nuisance and annoyance. Ms Mullen referred the Tribunal to particular incidents on 11th and 12th January 2022, on both of which occasions the police were in attendance following reports of shouting, screaming and fighting. On 18th January 2022, someone was trying to open the windows of a neighbouring property, and the occupants, a single mother and three children, had to flee to a hotel. On 26th March 2022, the police were in attendance, having returned the Respondent to the property, and she was shouting at them and causing a disturbance. On 30th March 2022, the Respondent was shouting and swearing at her neighbour, causing fear and alarm. There was a quiet spell then until June 2022 when it was believed the Respondent was predominantly living elsewhere. On 12th June 2022, the Respondent was banging on a neighbour's door and shouting. She removed the neighbour's dog from the dog kennel, cutting ties to do so. The kennel ties were cut again on 1st July 2022.
7. Mrs Mullen said the Respondent has mental and physical health problems. She is a sole tenant, thirty-four years of age. She is a hoarder and a drug user, and drug paraphernalia has been observed in the Property following access by the estate manager, and by pest control on another occasion.
8. There are four tenanted properties in the location, which is a quite rural location. One tenant has now left, another is in the process of leaving, and the third has now handed in her notice. This is entirely due to the behaviour of the Respondent. The Applicant hopes that they may be able to persuade the last

tenant to change her mind, if the order is granted. They will be unable to let the properties while the Respondent continues to reside there.

9. Mrs Mullen said the Applicant has engaged with services and the Respondent's next of kin in an attempt to assist her, but the Respondent does not engage, and has shown aggression towards those trying to assist her. The Applicant has contacted the Respondent to ask her to modify her behaviour (Applicant's productions 17, 22 and 24) with no success. The behaviour is likely to continue if the Respondent remains in the Property.

Findings in Fact and Law

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- (i) The parties entered into a short assured tenancy in respect of the Property commencing on 1st November 2017 until 30th April 2018 at an agreed rent per month of £695.
 - (ii) Notice to Quit was served upon the Respondent by Sheriff Officers on 29th November 2021
 - (iii) The Notice to Quit terminated the contractual tenancy on 30th April 2021.
 - (iv) Form AT6 was hand delivered to the Respondent on 11th April 2022.
 - (v) The Respondent and persons visiting the Property have acted in an anti-social manner to persons residing in the locality of the Property.
 - (vi) The Respondent has pursued a course of anti-social conduct, causing alarm, distress, nuisance and annoyance in relation to persons residing in the locality of the Property.
 - (vii) It is reasonable to grant an eviction order.

Reasons for Decision

11. The Tribunal is satisfied that Ground 15 of schedule 5 of the 1988 Act has been met, in that the Respondent and persons visiting the Property have acted in an anti-social manner to persons residing in the locality of the Property, and the Respondent has pursued a course of anti-social conduct, causing alarm, distress, nuisance and annoyance in relation to persons residing in the locality of the Property.
12. The Tribunal took into account the significant number of serious incidents outlined in the diary notes, police information and emails from neighbours, which have occurred over a lengthy period, subjecting the neighbours to anti-social behaviour which has had a considerable effect upon their lives, ultimately forcing them to leave their homes.

13. The Tribunal took into account the effect upon the Applicant, in terms of losing tenants due to the Respondent's behaviour, and experiencing difficulty in letting their adjacent properties.
14. In considering whether it was reasonable to grant the eviction order, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
15. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having been notified of the application and the CMD.
16. The Tribunal took into account the representations made regarding the circumstances of both parties. In all the circumstances, the Tribunal considered it reasonable to grant the order sought.

Decision

17. An order for possession in respect of the Property is 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.

Helen Forbes

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Legal Member/Chair

10th August 2022
Date