



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/CV/23/0085

Re: Property at 41a Newtoft Street, Edinburgh, EH17 8RB (“the Property”)

Parties:

Mr Fraser Sandison, Louise Sandison, 18 Gilmerton Station Road, Edinburgh, EH17 8RZ (“the Applicant”)

Mr Ben Gray, Ashley Forrest, 41A Newtoft street, Edinburgh, EH17 8RB; 23/1 Grove Street, Edinburgh, EH3 8AF (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order in favour of the Applicant against the Respondent granting recovery of possession of the private residential tenancy under ground 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking a payment order against the Respondent.

2. The application contained:-
 - a. the tenancy agreement,
 - b. the notice to leave with evidence of service
 - c. section 11 Notice with evidence of service
 - d. video evidence of fire in garden of property around 1.00am on 19 June 2022 and someone throwing an item into a neighbouring garden at 12.30am on 19 June 2022
 - e. emails to landlord from neighbours about anti-social behaviour of tenants
 - f. rent account showing rent arrears
 - g. property inspection reports dated 9 August 2022, 11 November 2022; and 6 March 2023

3. A case management discussion had taken place for this application on 19 June 2023. Reference is made to the terms of the case management discussion note. A direction was issued at the case management discussion, reference is made to that direction. In summary the tribunal requested further information about the incidents of alleged anti-social behaviour if the applicant wished to rely on ground 14 as a basis for an order for recovery of possession.

4. The applicant submitted further papers by email on 4 August 2023. Included in those papers were:-
 - a. Redacted statement from neighbour complaining that rubbish bins were not emptied on time; and they were concerned about pest problems; they provided photographic evidence.
 - b. Redacted statements from neighbours advising that they experienced regular disturbance by the respondent and his guests: including drinking; shouting; partying; loud music; fighting on one occasion; the poor condition of the garden; and failure to take bins out (with photo of garden attached).
 - c. Statement by landlord.

5. A second case management discussion took place on 10 August 2023. The Applicant's representative, Mr Barr from DJ Alexander, appeared on behalf of the Applicant. The applicant Mr Sandison also appeared. There was no appearance by either Respondent. The second respondent (Ashley Forrest) had spoken to the letting agent on 10 August 2023 to confirm that she wanted the eviction order to be granted. She had already left the tenancy and she was concerned that she had ongoing responsibilities under the tenancy agreement.

Discussion

6. The Applicant's agent asked the tribunal to grant the order for eviction due to anti-social behaviour.
7. The landlord had submitted a statement in the following terms:-
 - a. There has been ongoing anti-social behaviour at the property consisting of partying every weekend, loud music and shouting since the tenants moved in.
 - b. Even more worrying was a more recent party where a neighbour thought there was a loud fight in the property (as mentioned in most recent neighbour email).
 - c. This started last summer and has been ongoing since.
 - d. It was particularly bad last summer when neighbours reported the grass in the garden being set on fire, and someone from the property was filmed dangerously throwing a glass bottle into the darkness.
 - e. He had been told parties would often spill into the streets with shouting arguments going on into 1 or 2 in the morning.
 - f. Threats from neighbours to phone the police were reportedly ignored and returned with banging in the walls and shouting. He imagined this was quite intimidating especially when the party obviously knows where the neighbours live.
 - g. A neighbour who moved in February 2023 confirmed there's still ongoing parties and they regret moving in; they said it sounds like the noise is

coming from their own living room. They had submitted their own statement which shows this is an ongoing issue.

- h. 5 couples who live closest have all verbally complained in passing about the general noise and parties on a weekly basis; 2 of these couples complaints were already submitted via text and email for previous hearing with a 3rd more recent email now submitted - showing the problem still exists.
- i. Complaints are mainly focussed on the noise and parties, with additional complaints around the bins not being emptied and the grass never cut which looks terrible.
- j. The other 2 couples didn't want to formally get involved which is frustrating but their complaints are covered by the other evidence already submitted.
- k. When he received the first complaint he escalated to the letting agency who tried to contact the tenants. Every complaint since then he explained that the agency was dealing with it.
- l. In hindsight he should have asked each neighbour to submit any complaints in writing to the agency and/or report to the police - but he didn't realise it would get to this stage at the time.
- m. In terms of impact, the previous neighbour moved house as a result of the partying, neighbours who remain are still unhappy with the partying especially considering the number of babies and young children in the area.
- n. It was also mentioned that parties spilling into the street raise a concern over safety of neighbour's cars, hence the reluctance to challenge the behaviour.
- o. In addition it has caused severe stress to the landlord's family and soured the great relationships they once had with the neighbours.
- p. Even when there's not a party it's sad to see the state of the garden and over spilling bins. Some of the neighbours have put up bamboo screening so they don't have to look at the mess.
- q. Neighbours have also reported they can hear pets in the property which he had not been aware of.

- r. He checked with neighbours and it was never reported to police/council which is a lesson learnt for everyone suffering this issue - we would have more evidence collated.
8. In addition the tribunal had regard to the property inspection reports and noted that the internal property had not been well maintained by the respondent and was in a poor and dirty condition.
9. There was also evidence that other persons had moved into the property, but the tenancy agreement had not been updated by the tenants to regularise who was living there.
10. There were rent arrears for the property and an order for payment had been granted for unpaid rent. The landlord advised that rent arrears were still outstanding as at 10 August 23023.
11. He advised that since the anti-social behaviour began he has been getting complaints from 5 families. Two have given written evidence in support of what is happening, a third supplied evidence for the second case management discussion; and the final two were not keen to get involved, as parties can spill out into the streets where the cars are parked and they were concerned about damage to their property and repercussions
12. He advised that the parties occur on a weekly basis. They go on into the early hours of the morning.
13. He advised that there were other breaches of the tenancy including that there had been smoking in the property, and not taking the bins out and the condition of the garden.
14. The landlord advised that if the order was not granted it would have an impact on him and the people residing in the vicinity of the property. He advised that he rents out 3 rental properties, this one was his last family home. He knew the neighbours well. He advised that it is a residential area and the neighbours have young families and there are quite a few babies in those families. He said

that these tenants had impacted the neighbours lives causing disturbance on a regular basis, and it had soured his relationships with those neighbours too, he was upset by this.

15. He advised the failure to pay the rent also had an impact on his family. He has to pay the mortgage over the property and it has doubled in the last year. He has other financial outgoings to pay for in relation to the property as well. He advised that taking all the points together if he can not get an order to get the tenant out then he will have to think about selling the property.

16. He advised that he is unclear who is staying in the property, he thinks that the male tenants' sister stays there, however they have never tried to regular the tenancy agreement. The letting agent had requested that the sister go through their vetting process but she had not done so.

17. The applicant's agent advised that he had spoken to the female tenant that morning. She had left the property sometime ago. She had advised him that she was keen for an order to be granted for eviction., she was concerned that she currently remains on the tenancy agreement and continues to be responsible for the rent in the property. She advised that the remaining tenant is a very heavy drinker and this was why she had left the property. The last time she had been at the property it was in a "total state". She advised that the male tenant had been violent to people, including her. She was agreeable to the lettering agent providing this information to the tribunal.

Findings in Fact

18. The Tribunal found the following facts established:-

19. There existed a private residential tenancy between the Applicants and the Respondents. It had commenced on 16 December 2021.

20. The tenancy was for the property 41A Newton Street, Edinburgh, EH17 8RB.

21. The tenants were Ashley Forrest and Ben Gray. Although Ashley Forrest no longer lived in the property having moved out some months ago.
22. The landlords were Fraser Sandison and Louise Sandison.
23. Clause 8 of the Tenancy Agreement provides that the rent for the property is £890 per calendar month. It is payable in advance and due on the 16th of each month.
24. There appeared to be rent arrears outstanding of £3,243 at 23 June 2023. There were arrears of over £3,000 still outstanding as at 10 August 2023.
25. Clause 13 provides that if other persons are residing in the property the tenant has a duty to notify the landlord of the name and relationship to the tenant. The respondents had failed to do this, even though it appeared his sister was residing with him.
26. Clause 17 deals with reasonable care and provides that the tenant must take reasonable care of the property.
27. There was evidence of the property not being kept in a clean and tidy condition. Bins appeared to be overflowing. Bins were not being put out regularly. The garden was overgrown and unkempt.
28. Clause 21 deals with respect for others. Tenants must not engage in anti-social behaviour. This includes making excessive noise; vandalise or endanger property; allow visitors to be noisy and disruptive; leave rubbish in unauthorised places or at inappropriate times; allow any person living in or using the property to cause a nuisance to other people; use drugs in the property. The clause provides that the particular prohibitions on behaviour does not in any way restrict the general responsibilities of the tenant.

29. There had been a fire in the back garden of the property on 19 June 2022 at around 1am. There were trees situated close to the back garden.
30. A person living or visiting the property on 19 June 2022 at around 12.30am had thrown an object into a neighbouring garden.
31. From around June 2022 on a regular weekly basis, the respondent and/or other persons living or visiting the property had made excessive noise, played music, shouted; and been involved in fighting at the property. There had been regular parties taking place at the property for at least 12 months.
32. The noise made by the respondent and/or persons visiting the property had caused alarm, nuisance and annoyance to residents residing in the vicinity of the property on a number of occasions.
33. The area where the property was situated was a residential area with a number of young families.
34. The poor condition of the back garden and the overflowing bins had caused nuisance to other persons residing in the vicinity of the property.

Reasons for Decision

35. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it found that one of the grounds in schedule 3 of the Act applies. The seeks to rely on ground 14 which is in the following terms:-

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, [...]1 [

(ba) 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 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.

36. The tribunal finds that at least one of the Respondents has acted in an anti-social manner; and had allowed others living with him or visiting him to act in an anti-social manner on a regular basis since at least June 2022. The property is situated in a residential area, with young families. These families had experienced nuisance, annoyance and distress and alarm on a number of occasions. The cause of the anti-social behaviour was due to the noise, shouting, partying and fighting taking place. We were also concerned about the fire in the garden, as we noted that the garden appeared to be bordered by trees on one side and there was wooden sun house on the other side. We considered that this fire would have caused considerable distress to neighbours, particularly as it had been started in the early hours of the morning.

37. We find that the first part of ground 14 has been established.

38. We must go on to consider whether it was reasonable to grant the order. We find that it would be reasonable to grant the order given the nature of the

behaviour, the frequency of it and the impact that it has had on neighbours and the applicant. We note that the neighbours and the landlord have spoken to the respondent about the noise however it has had no impact on the behaviour which has continued. We place weight on these matters.

39. We consider that issues of reasonableness are wide ranging and we have also taken into account and place weight on the fact that the respondent fails to ensure bins are emptied. The garden ground is not maintained. There are rent arrears. There are other persons living in the property. The interior of the property is not being properly maintained.

40. We note that the landlord is struggling to meet his financial responsibilities for the property and we place weight on that fact.

41. We have also placed weight on the second respondent advising that she wanted the tenancy to be brought to an end given her ongoing responsibilities, and her advice about drinking and violence at the property.

42. We are aware of no mitigation or reasons why the order should not be granted.

43. On the basis of the evidence submitted and having regard to all papers submitted with the application and the oral submission of the landlord and the letting agent, we consider that we should make an order for eviction.

Decision

44. We grant an order in favour of the Applicant against the Respondent granting recovery of possession of the private residential tenancy under ground 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Legal Member/Chair

15th August 2023

Date