



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/20/2163

Re: Property at Flat 63B, High Street, Tranent, EH33 1LN (“the Property”)

Parties:

Mr Thomas O'Brien, 51E Middleshot Square, Prestonpans, EH32 9RJ (“the Applicant”)

Mr Paul Hunter, Flat 63B, High Street, Tranent, EH33 1LN (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the eviction of the respondent from the applicant’s property at Flat 63B High Street Tranent EH33 1LN be made in terms of ground 15 of Schedule 5 of the Act on the basis of the respondent’s antisocial behaviour and it being reasonable to grant the order.**
- 2. This was a case management discussion ‘CMD’ in connection with an application for eviction in terms of s19 of the Housing (Scotland) Act 1988, ‘the Act’, and Rule 65 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 ‘the rules’.**
- 3. The tribunal had before it the following copy documents: -**
 - (1) Application dated 13 October 2020.**
 - (2) Tenancy Agreement between the Ms Christine Mulgrew, a former manager of the applicant, and the respondent dated 9 October 2014.**
 - (3) AT6 dated 23 July 2020.**

- (4) Notice to quit dated 23 July 2020.
- (5) Proof of service of items 3 and 4 by sheriff officer on 23 July 2020.
- (6) Note of written submissions regarding the eviction ground dated 13 October 2020.
- (7) Execution of service of the application by sheriff officer dated 13 November 2020.
- (8) Land certificate.

- 4. The CMD proceeded by conference call due to the Covid-19 pandemic. The applicant was represented by Mr Stephen Blane solicitor. The tribunal had sight of item 7 above and was satisfied that the respondent had received appropriate notice of CMD in terms of rule 24. The tribunal proceeded in the absence of the respondents in terms of rule 29.

Preliminary matters

- 5. The tribunal noted that there was no s11 notice with the application. Mr Blane advised that the intimation had been carried out so the notice could be sent in to the tribunal.
- 6. The tribunal noted that the AT6 was dated 23 July 2020 and it stated that proceedings would not be raised until 13 October 2020. The tribunal noted that the temporary provisions of the Coronavirus (Scotland) Act 2020 have extended the notice period for ground 15 applications from 2 weeks to 3 months. The date on the AT6 should therefore be 27 October 2020 rather than 13 October 2020. Mr Blane explained that the AT6 was originally sent by recorded delivery post on 10 July 2020 with an expected delivery date of 13 July 2020. Service was unsuccessful and sheriff officers were instructed. The date was left at 13 July 2020 in error. The tribunal was mindful of the provisions of paragraph 10 schedule 1 of the Coronavirus (Scotland) Act 2020 and decided that the error in the AT6 was an oversight and not a material error that meant it could not be relied upon. It would however be helpful to have sight of a copy of the original AT6.
- 7. The tribunal noted that the written submissions set out the eviction ground and the reasonableness of the order, no direct evidence of the ground had been lodged. Mr Blane advised that his client had been obliged to reinstate the door of the property on two occasions after the police had forced entry to the property. He was in a position to lodge the invoices and the police reference number.
- 8. The tribunal adjourned to enable documents in relation to the above noted preliminary matters to be lodged.
- 9. The tribunal reconvened and had sight of the following copy documents:

- (1) Letter from Orbis Property to the applicant dated 17 June 2020.
- (2) Invoice from Orbis Property dated 18 May 2020.
- (3) Invoice from ATF Joinery dated 30 May 2020.
- (4) Letter from applicant's solicitors to East Lothian Council dated 21 October 2020 in terms of s11 of the Homelessness etc Act 2003.

Discussion

10. The tribunal noted that the letter to East Lothian Council referred to above was not in the correct form. Mr Blane undertook to make the correct intimation and lodge that with the tribunal before the close of business. The tribunal received the correct notification and was satisfied that the terms of s11 had been complied with.
11. As far as the eviction ground is concerned, Mr Blane explained that his client's former manager (who is in fact the applicant's daughter) entered into a tenancy agreement with the respondent. The respondent has refused to make payment of rent and there are substantial arrears. Police were called to the property on two occasions in May 2020 and on each occasion the door to the property was forced by police officers. The applicant was obliged to pay for the damage. As noted in the written submission, the respondent refused to answer the door of the property and the police were acting on an allegation that the respondent had assaulted his partner. On both occasions the door was damaged, and the respondent was removed from the property by police.
12. As far as reasonableness is concerned, Mr Blane advised that the flat is one of 3 properties owned by the applicant located above a pub that he also owns. The three flats are mortgaged. The pub has been shut since March due to the pandemic. The applicant requires to gain possession of his property to enable to rent out to a tenant who will pay the rent so that he in turn can make his mortgage payments. Unfortunately, the relationship between the applicant and Ms Mulgrew has broken down and court proceedings for count reckoning and payment have been raised. The applicant originally applied for eviction on ground 8 due to the substantial arrears, in addition to ground 15 but due to the current 6 month notice period for ground 8, only ground 15 is being sought.

13. Findings in fact

- (1) The applicant is the owner of the property.
- (2) The applicant's former manager Ms Christine Mulgrew and the respondent entered into an assured tenancy agreement on 9 October 2014 for let of the property for the initial period of 9 October 2014 until 12 April 2015 and month to month thereafter.

- (3) The respondent was served with a valid notice to quit on 23 July 2020 dated 23 July 2020 and with an ish date of 12 October 2020.
- (4) The tenancy has reached its ish and tacit relocation is not operating.
- (5) The respondent has acted in an antisocial manner in relation to a person residing, visiting or otherwise engaged in lawful activity in the locality.
- (6) It is reasonable in all of the circumstances that an eviction order be made.

Reasons

14. This was an undefended application for eviction proceedings on the basis of ground 15 of schedule 5 of the Act. Ground 15 provides:

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

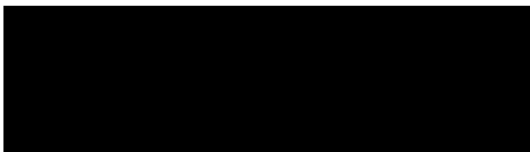
- (a) been convicted of—
 - (i) using or allowing the house to be used for immoral or illegal purposes; or
 - (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or
- (b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or
- (c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants.】

15. The tribunal was satisfied on the balance of probability that the eviction ground was met. Evidence has been lodged to confirm that the police were called on two occasions to the property due to allegations about the respondent’s conduct. Damage was incurred due to the respondent’s failure to answer the door and the applicant has had to bear the cost of the damage. The tribunal was satisfied that that it is reasonable to grant the eviction as the respondent continues to reside in the property and is refusing to pay rent. The applicant has a mortgage over the property and requires to derive an income from it. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The tribunal accordingly granted the order for eviction.

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.



Lesley A Ward Legal Member

18 December 2020

Date