



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/EV/21/0286

Re: Property at 69 Auchiraith Avenue, Hamilton, ML3 0JG (“the Property”)

Parties:

Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL (“the Applicants”)

Miss Abbey-Louise Sneddon, 69 Auchinraith Avenue, Hamilton, ML3 0JG and Mr Dylan Traynor, 82 Whistleberry Drive, Hamilton, ML3 0PZ (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents

Background

1. By application, received by the Tribunal on 5 February 2021, the Applicants sought an Eviction Order against the Respondents under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Grounds relied on were Grounds 11,12,14 and 15 of Schedule 3 to the Act.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 1 January 2020 at a rent of £630 per month, a Rent Statement showing payments made by the Respondents between 1 January and 27 December 2020, and an Invoice from Orbis Protocol Ltd regarding a call out from Police Scotland to temporarily resecure the Property.

3. The Applicants also provided the Tribunal with a copy of a Notice to Leave, sent to the Respondents and dated 5 January 2021. It stated that no application for an Eviction Order would be made to the Tribunal before 5 February 2021. The Notice to Leave listed 4 Grounds of Eviction (Grounds 11, 12, 14 and 15) as set out in Schedule 3 to the Act on which the Applicants intended to apply to the Tribunal for an Eviction Order and stated that the Order was being sought as there were several instances of anti-social behaviour during the tenancy, including an incident where police had to force entry, and that rent had been in arrears for more than 3 consecutive months, with consistent failure to pay rent on dates, flexibly offered by the Applicants and agreed to by the Respondents.
4. On 17 February 2021, the Tribunal advised the Applicants that Grounds 11 and 12 require 6 months' notice to be given, whereas the Applicant had only given 28 days' notice. The Applicants responded on 24 February that they wished the application to rely on Grounds 14 and 15, in respect of which only 28 days' notice was required, but if the Tribunal was not minded to accept those Grounds, the Applicants respectfully invited the Tribunal to consider Grounds 11 and 12. They provided a Rent Statement to 24 February 2021 showing arrears of £1,260.
5. The Applicants provided further written representations in which they stated that they had attempted to discuss the situation with the Respondent Miss Sneddon over the course of almost a year following a number of serious anti-social incidents, persistent delays in paying rent refusal to communicate and refusal to allow an inspection following damage to the Property caused by a police incident. They said that the Respondents had engaged in relevant anti-social behaviour affecting the Property and had associated in the Property with someone who has a relevant criminal conviction or has engaged in relevant antisocial behaviour. On 1 September 2020, the police had forced entry to the Property by breaking down the door and had retrieved a bag from the Property. The Applicants provided the Police Scotland Incident Number and had only found out about the incident when Orbis, a company that Police Scotland engaged to secure the front door, sent them an Invoice for payment. The police had refused the Applicants' request for details of the incident and the Respondents had refused to explain it. Accordingly, the Applicants were relying on a witness statement from Mr Hugh Murray, who manages the Property on their behalf and who had spoken with neighbours. The view of the Applicants was that it was reasonable to conclude that criminal and/or anti-social conduct had occurred at the Property, caused by the Respondents. The witness statement also, the Applicants said, documents a history of disturbance caused to neighbours, who had reported on multiple occasions extremely loud disturbances, parties and unsavoury activities of the Respondents and their guests during the tenancy. Based on the police incident, the witness statement and the Respondents' refusal to engage and/or explain the issue, the Applicants reasonably believed that the Respondents have engaged in relevant criminal and/or anti-social behaviour in the Property and have associated in the Property with someone who has a relevant criminal conviction or has engaged in relevant anti-social behaviour.

6. In relation to Ground 12, the Applicants stated that the Respondents have not paid rent on time since April 2020. The Applicants had afforded the Respondents complete flexibility over a payment schedule, taking account of the effects of the ongoing pandemic, but the Respondents continually breach these self-declared payment schedules, missing deadlines. They had been in rent arrears for 10 of the 14 months that the tenancy had been running by the time of the application and more than one month's rent remained unpaid.
7. Under Ground 11, the Applicants contended that the Respondents had not allowed the Applicants to inspect the damage caused during the police raid on 1 September 2020, to ensure it has been rectified. They had also not paid the Invoice from Orbis. This had resulted in debt collectors sending letters to the Applicants; address threatening legal action against the Applicants if the Respondents refuse to pay.
8. The witness statement to which the applicants referred was provided on 24 February 2021 by Mr Hugh Murray, the Applicants' agent. He confirmed that, after the arrival of the Invoice from Orbis alerted him to the fact that there had been a police incident at the Property, he contacted the Applicant Miss Sneddon, who did not want to provide an answer as to what had happened. A neighbour, who did not want to be identified, had told him that he had observed the police breaking into the Property on 1 September 2020 with a sniffer dog and then re-emerging some time later with a large evidence bag. Mr Murray understood that Police Scotland refused, on privacy grounds, to provide the Applicants with details of the incident. The neighbour had also reported that, prior to the introduction of COVID-19 related restrictions, the Respondents had hosted several noisy parties in the Property late at night, causing disturbance to the neighbourhood. On 6 January 2021, Mr Murray had visited the outside of the Property to post the Notice to Leave through the letterbox and could confirm that the door was not replaced or repaired to the standard as it had been in before the incident. The underlying damage had not been rectified despite a large number of requests to the Respondents over a period of 5 months.
9. On 12 March 2021, the Tribunal asked the Applicants to confirm whether, as the Notice to Leave did not provide the notice period of 6 months required for Grounds 11 and 12 they wished to withdraw the application and re-submit it when the full 6 month period had expired or wished to make an application to the Tribunal that, in terms of Section 52(4) of the Act, the Tribunal should allow the application to proceed meantime and consider at the stage of a Case Management Discussion, when this issue could be considered taking into account all the relevant considerations, whether it was reasonable to allow the application to be made while the notice period was still ongoing.
10. On 14 March 2021, the Applicants advised the Tribunal that they wished to make an application under Section 52(4) of the Act and that they wished the Tribunal to consider all 4 Grounds set out in the application.
11. On 8 April 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondents were invited to make written representations by 29 April 2021. The Respondents did not make any written

representations to the Tribunal but on the afternoon prior to the Case Management Discussion, Miss Sneddon emailed the Tribunal seeking a postponement, due to work commitments, until 17 May 2021. This was objected to by the Applicants and the Tribunal, after consideration, decided that the Case Management Discussion would proceed as scheduled, as the papers including notification of the date for the Case Management Discussion had been served on the Respondents on 9 April and they had had ample time to make suitable work arrangements and/or provide written representations. It was not, in any event, possible for the Tribunal to accommodate the requested postponement to 17 May.

Case Management Discussion

12. A Case Management Discussion was held by means of a telephone conference call on the morning of 13 May 2021. The Applicants' Directors, Mr Graeme Murray and Mr Rok Lasan participated. The Respondents did not participate and were not represented. The Legal Chair told the Applicants that the Tribunal would consider first their application for an Eviction Order under Grounds 11 and 12 and thereafter, the application under Grounds 14 and 15.
13. The Applicants told the Tribunal that they had purchased the Property shortly before the Respondents took the tenancy and that it was managed on their behalf by Mr Murray's father, who had provided the written statement. They confirmed that there had been no direct complaints from neighbours about the conduct of the Respondents prior to the police incident and no reports to them of any later incidents. They accepted that what they had heard about the police raid was largely hearsay, but stressed that the police had felt unable, on grounds of privacy, to provide them with any details about the incident and that the Respondents had refused their polite requests to explain why the police had broken down the door. When asked, Miss Sneddon had said nothing to rebut their suggestion that the raid was drugs related. She had also confirmed to them that she was not taking any action against Police Scotland in connection with the incident. They felt that the police breaking down the door and the refusal of the Respondents to explain it, combined with the fact that at least one evidence bag had been removed during the police raid, entitled them to reach the reasonable conclusion that a criminal offence had been committed in the Property and/or that the Respondents had been guilty of anti-social behaviour, entitling the Applicants to seek an Eviction Order under Grounds 14 and/or 15.
14. In relation to Ground 12, the Legal Chair told the Applicants that for their application to succeed, the Tribunal must find that the Notice to Leave was not incompetent and, if that hurdle were overcome, it would be for the Applicants to persuade the Tribunal that it was reasonable to accept, under Section 54(2) of the Act, the application for an Eviction Order prior to the expiry of the period of notice required under Ground 12 and also, should it make such a finding, that, in terms of the emergency COVID-19 procedures currently in place, it was reasonable to issue the Eviction Order.

15. The Applicants told the Tribunal that the rent had never been paid on time since March 2020. They accepted that the Respondents had made irregular payments and that by the end of each month to December 2020, the rent had been paid in full. The Respondents had not paid anything in January 2021, two payments in February totalling £270, one payment of £400 in March and nothing in April or on 1 May, when the latest rent payment had fallen due. The Applicants provided an updated rent statement showing arrears of £2,480 as at 2 May 2021. They also provided a number of screenshots of text correspondence with the Respondents' guarantor and with Miss Sneddon, including a proposal to reduce the arrears by £200 per week between 6 March and 22 May 2021. The Applicants told the Tribunal that this arrangement had not been honoured, nor had the rent itself been paid during that period, apart from a payment of £400 in March. They said that they had tried to be understanding and flexible during the lockdown, as they understood that Miss Sneddon was furloughed, but the rent had been paid, albeit late and by instalments, for most of that period and Miss Sneddon must now be back at work, as she had cited work commitments as the reason for being unable to attend today's proceedings. The Respondents had made no effort to adhere to agreed payment plans and the position had become progressively worse in the last few months.
16. The Applicants then left the conference call and the Tribunal members considered all the evidence, written and oral, that had been presented to them.

Reasons for Decision

17. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.
18. Ground 14 of Part 3 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour and that the Tribunal may find that Ground 14 applies if the tenant has behaved in an anti-social manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance or amounts to harassment of the other person. Such behaviour is relevant anti-social behaviour if the Tribunal is satisfied that it is reasonable to issue an Eviction Order as a consequence of it, given its nature and who it was in relation to or where it occurred.
19. The Tribunal had heard evidence in relation to the incident on 1 September 2020, when Police Scotland forced entry to the Property by breaking down the door. This was an action taken by the police, so could not be said to be anti-social behaviour on the part of the Respondents. The Tribunal recognised that the Applicants had been unable to obtain detail from the police as to the reasons for the action they took or any explanation from the Respondents, but the view of the Tribunal was that it would be speculation to draw the conclusion that it

was anti-social behaviour on the part of the Respondents that had prompted the incident. The Applicants had stated that there had been instances of parties with excessive noise, but, while the Tribunal understood the possible reluctance of neighbours to become involved, there was no evidence before the Tribunal to suggest that anyone had complained to the Applicants or their representative, or to the police or the local authority, at the time that these alleged incidents occurred. In any event, the hearsay statement attributed to a neighbour related to events prior to lockdown in March 2020 and the Applicants had confirmed that there had been no complaints since the police raid on 1 September 2020. Accordingly, the Tribunal was unable to determine that the Respondents had engaged in relevant anti-social behaviour and the Tribunal did not uphold the application for an Eviction Order under Ground 14.

20. The Tribunal also did not uphold the application under Ground 15 of Part 3 of Schedule 3 to the Act. Ground 15 applies where the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. No evidence was provided to suggest that anyone other than the Respondents themselves had been involved in the matters which were the subject of the application.
21. The Tribunal then considered the application under Ground 12 of Part 3 of Schedule 3 to the Act. Ground 12 states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal must find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
22. The normal period of notice, provided for in Section 54 of the Act, which has to be given before a landlord can make an application for an Eviction Order under Ground 12 is 28 days, but the terms of the Coronavirus (Scotland) Act 2020 and the emergency procedures made thereunder provide that this period is extended to 6 months and also that, whilst in normal times, the Tribunal must issue an Eviction Order if the requirements of Ground 12 are met, the Tribunal must not, at present, issue the Eviction Order unless it considers it reasonable to do so.
23. The Tribunal noted that the Notice to Leave of 5 January 2021 did not provide 6 months' notice. It stated that an application to the Tribunal would not be made before 5 February and it was in fact made on that date. Accordingly, the period of notice given was only 28 days. But for the emergency provisions, the date stated in the Notice to Leave would have been correct.
24. Section 52(4) of the Act states that the Tribunal may entertain an application made in breach of Section 54 if it considers it reasonable to do so. The

Applicants had asked the Tribunal to use the discretion vested in it by Section 52(4) and the Tribunal decided, on balance, that it would be unfair to the Applicants to require them to begin the process all over again by having to serve a further 6-months' Notice to Leave and, at the end of that period, make an application to the Tribunal for an Eviction Order. The evidence before the Tribunal indicated that the Respondents had not adhered to agreed payment plans and the arrears position had deteriorated significantly in the last few months. The Tribunal did not consider that the Applicants' error in the Notice to Leave had been in any way deliberate and accordingly the Tribunal determined that it would entertain the application under Ground 12 even though it had been made in breach of Section 54 of the Act.

25. Section 54 also states that a landlord may not make an application for an Eviction Order using a Notice to Leave until the expiry of the relevant period in relation to that notice. In the present case, the relevant period should have been 6 months, so would have been due to expire on or about 6 July 2021. The Applicants, however, had asked the Tribunal to exercise its power to entertain the application (admittedly made in breach of Section 54) under Section 52(4) of the Act and to issue an Eviction Order even though the correct period required for the Notice to Leave had not yet expired. The reason for this request was the rapidly deteriorating arrears situation, with no rent at all having been paid in April or May 2021 and the Respondents' failure to adhere to any payment plan agreed with them.
26. The view of the Tribunal was that, looking at all the evidence before it, it appeared that the Applicants had shown considerable sympathy toward the Respondents when the pattern, first of late payments then of missed payments, developed. The Applicants had appeared to the Tribunal to be truthful and reliable. Had the Respondents made efforts to comply with payment plans and, in particular the plan to reduce the arrears by £200 per week between 6 March and 22 May 2021, as well as making the normal monthly rental payments, the Tribunal would not have regarded it as reasonable to issue an Eviction Order, but the position had deteriorated very substantially and there was no indication that the Respondents intended to take any steps to clear the arrears or to maintain the contractual monthly payments. Accordingly, the Tribunal decided that it was reasonable to decide the application even though the 6 months period that a correct Notice to Leave would have stipulated had not expired. The requirements of Ground 12 had been met in that there had been arrears for a continuous period from 1 January 2021, the arrears currently exceeded one month's rent and no evidence had been produced to indicate that the Respondents' being in arrears was wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
27. The Tribunal decided that, in all the circumstances, it would be reasonable to issue an Eviction Order against the Respondents.
28. The Tribunal then considered the application under Ground 11 of Part 3 of Schedule 3 to the Act, which states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy, other than the term under which the tenant is required to pay rent. The Applicants had stated that

the failure to allow access to inspect the external door was a failure to comply with an obligation under the tenancy. The Tribunal agreed that it was a breach but did not consider that it was reasonable to issue an Eviction Order on account of that fact. There were other remedies open to landlords seeking to enforce a right of entry, and the Applicants had not pursued them. The evidence suggested that, whilst the repair to the door carried out following the police action was not to the standard that the Applicants would like, the door was lockfast and functional, so it would not be reasonable to issue an Eviction Order as a consequence of this failure alone.

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: George Clark

Date: 13 May 2021

