



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/21/2081

Re: Property at 7H Centenary Gardens, Coatbridge, ML5 4BY (“the Property”)

Parties:

Mr Brian Hillen, Fairways, Drumpellier Avenue, Coatbridge, ML5 1RX (“the Applicant”)

Mr John Dougal, 7H Centenary Gardens, Coatbridge, ML5 4BY (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Linda Reid (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 be granted.

Background

1. This was a case management discussion in respect of an application by the Applicant dated 22nd August 2021 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
 - A copy of the Tenancy Agreement dated 9th October 2019
 - Copy Notice to Leave dated 13th July 2021
 - Copy S 11 Notice and copy e-mail sending the notice to North Lanarkshire Council
 - Copy written Statement of Witness from Ms Karen Butler.
 - Copy of redacted bank statements

The CMD

3. The CMD proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the CMD would be conducted over the teleconference. The Applicant was in attendance along with his wife Mrs Hillen and Mr Hillen confirmed his wife would be his representative and would speak for him.
4. The Respondent did not attend on the call at 10 am and the Tribunal waited for 10 minutes to see if he would attend. The Respondent had been served a copy of the application and papers by sheriff officers together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence and the hearing commenced at 10.10am.
5. Mrs Hillen confirmed that the tenancy was entered into on 9th October 2019 with Mr Dougal as the tenant. She advised that around March 2021 she had received a phone call from the Respondent's mother who had messaged about certain repairs and who also asked what notice a tenant had to give as she advised her son wanted to move out in around a month's time. However around the time he was due to move out Mrs Hillen explained that his mother phoned again to say the new flat had fallen through and the Respondent would not be moving. Mrs Hillen then explained that her husband was planning on selling the property and she advised the Respondent's mother that Mr Dougal could stay and continue to rent the Property provided he would let potential viewers and agents in to show around the property. Mrs Dougal agreed to this. Mrs Hillen advised the Respondent was cooperative initially, and allowed access to the surveyor, he then refused to allow anyone in and was verbally aggressive on the phone to the Applicant and his wife around April 2021. Mrs Hillen confirmed that she believed the Respondent had been drinking heavily when he spoke to them on the phone. She then advised they received more threatening and drunken phone calls in or around July 2021 during one of which the Respondent threatened to send some gangsters round. She advised that after a while they had no contact from him as the number they had for him was no longer valid. She then advised that on 27th June 2021 she had received a text message from Karen Butler advising that she and her husband had an incident with the Respondent when she was at the close to clean it. She advised Karen Butler is a landlord of a neighbouring flat in the close and is very good at looking after the close. She advised that Karen had been looking for a mop and bucket but when she asked the Respondent if he had seen them he accused them of saying he had stolen them and became very verbally aggressive and started shouting and attempted to punch Mr Butler. The Applicant has lodged a statement from Mrs Butler which confirms this account noting that the Respondent when he answered the door of his flat was obviously drunk; shouting that he was being accused of stealing the mop and brush and when Mrs Butler tried to assure him she wasn't, she advised he kept shouting and when he saw her husband he got more irate and clenched his fists ready to take a swing. Mrs Butler confirms in her statement that the Respondent's girlfriend stopped him and tried to encourage the Respondent inside but without success. Mrs Butler

confirms in her statement that she is now very nervous to go back to see her tenant or clean the landing and she has reported this incident to the police.

6. Mrs Hillen confirmed that she has since had messages from Mrs Butler advising that they are terrified to go back and have been advised by the police not to clean the close, while the Respondent is there.

Findings in Fact

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 9th October 2019.
2. The Applicant is the owner of the Property and has title and interest to bring this action.
3. The Respondent is still occupying and in control of the Property.
4. A notice to leave dated 13th July 2021 confirming that no proceedings would be raised before 10th August 2021 was served on the Respondent by hand delivery on 14th July 2021
5. These proceedings were raised on 22nd August 2021 and the application included a copy of the Notice to Leave.
6. A Section 11 notice has been served on North Lanarkshire Council
7. The Respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months, being abusive to his landlord and his wife on phone calls and behaving in a threatening and aggressive manner to two other persons in the close of the Property around June 2021.
8. The behaviour has caused significant fear, alarm, distress nuisance or annoyance to another person.
9. The Respondent has not paid any rent to the Applicant since May 2021. The current arrears are £3400.
10. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

7. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 14 of Schedule 3 of the Act as the relevant ground of eviction.
8. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Respondent has engaged in anti-social behaviour at the Property, by threatening another person or persons in the close at the Property when they were there as part of their landlord duties for another tenant living in an adjoining flat and that the Respondent has caused criminal damage by smashing a window at the Property.
9. Ground 14 requires 28 days' notice under the rules which are currently amended by the Coronavirus (Scotland) Act 2020 and are currently in place. The Notice to Leave was served by hand delivery on 14th July 2021. The Notice sets out the notice period as expiring on 10th August 2021 but as the application was not raised until 22nd August the notice period, is compliant with the requirements of Section 62(4) of the Act as amended by the Coronavirus (Scotland) Act 2020.

10. The Application being lodged on 22nd August 2021 was therefore lodged after the expiry of the Notice period and is therefore an application that the Tribunal can consider

11. Ground 14 of Schedule 3 of the Act states:-

- i. It is an eviction ground that the tenant has engaged in relevant anti-social behaviour
- ii. 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 the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring or the tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period
- iii. 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 or amounts to harassment of the other person
- iv. In Sub paragraph (iii) 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

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

in a case where two or more persons are the tenant under a tenancy the reference in sub- paragraph 2 to the tenant is to any of those persons.

12. The Tribunal accepted the verbal averments of Mrs Hillen and the written statements included with the Application. The Tribunal found Mrs Hillen to be very credible in her summary of her contact with the Applicant.

13. From this the Tribunal accepted that the Respondent has acted in a way that caused Mr and Mrs Butler distress and alarm, namely the Anti-social behaviour is relevant behaviour as it has caused annoyance, alarm and distress to a neighbouring landlord and caused them to make a complaint to the police. The events have occurred within 12 months and although there have been no further incidents the Respondent has not been in contact with the landlord and the landlord and tenant relationship appears to have broken down completely.
14. There has been no written response from the Respondent and the Respondent has not attended the CMD today. The Tribunal has no information from the Respondent as to his position or any matters he wishes to be taken into account. The Tribunal considered that the incident amounts to anti-social behaviour because it caused significant distress, annoyance and nuisance and some alarm to another person. In addition Mrs Hillen confirmed that she and her husband had received drunken abusive phone calls from the Respondent earlier in 2021 and he is not paying his rent and is not in contact with the Applicant. The Tribunal is therefore satisfied that the landlord tenant relationship has broken down, that there is the risk of recurrent abusive behaviour to others and the Tribunal's rules allows the Tribunal to make any decision at a CMD as it can make at a full hearing. Given there is no response or attendance by the respondent to put forward any reason why this order should not be granted then the Tribunal is satisfied there is no reason why the matter requires to go to a hearing and finds the evidence before it today is sufficient.
15. So the Tribunal is satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application, namely Ground 14 is met, and that it is reasonable for the Tribunal to grant the application.

Decision

The Tribunal determined that the order for eviction sought by the Applicant should be 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.

Jan Todd

26th January 2022

Legal Member/Chair

Date