



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/22/1741

Re: Property at 15A Wallfield Crescent, Aberdeen, AB25 2LJ (“the Property”)

Parties:

Mr David Yates, 6 Highwood House, Longhurst Avenue, Horsham, West Sussex, RH12 1DH (“the Applicant”)

Miss Shannon Miller, 15A Wallfield Crescent, Aberdeen, AB25 2LJ (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 11 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
 1. An application was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis that the Respondent had breached a term of their private residential tenancy, being Ground 11 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).
- Case Management Discussion
 2. A Case Management Discussion (“CMD”) took place on 3 October 2022 by conference call. The Applicant was represented by Ms Walker of Ledingham

Chalmers LLP. The Respondent did not attend nor was she represented. The papers had been served on the Respondent by Sheriff Officer on 11 August 2022. The Tribunal was satisfied that the Respondent had received notification of the CMD and that the CMD could proceed in her absence.

3. The Applicant's representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement ("the Agreement"), which commenced 27 August 2021. Clause 35 of said Agreement stated *"the Tenant will not keep any animals or pets in the Let Property without the prior written consent of the Landlord. Any pet (where permitted) will be kept under supervision and control to ensure that it does not cause deterioration in the condition of the Let Property or common areas, nuisance either to neighbours or in the locality of the Let Property."*
4. The Applicant's representative submitted that it had been made clear to the Respondent at the outset of the tenancy that there would be no pets permitted. It thereafter transpired that the Respondent had two dogs, for which she had not obtained any consent from the landlord to keep in the Property. Complaints have been received consistently throughout the Agreement from neighbours regarding the Respondent allowing her dogs to foul in the common garden and hallway, and the Respondent failing to clean this up. The neighbours had complained directly to the Respondent as well as to the managing agent, to no avail. The neighbours had left out bags and brushes for the Respondent to use to clean up after her dogs, but she had failed to do so.
5. The landlord spoke with the Respondent immediately upon receipt of the initial complaint, to advise her that she had not obtained consent to keep the dogs and that her failure to clean up after the dogs was causing nuisance and annoyance to neighbours. The Respondent thereafter persistently failed to clean up after her dogs and this has resulted in the condition of the common garden deteriorating, and the neighbours feeling they are unable to use the garden. This has created an unpleasant environment for the neighbours to live in. None of the other occupiers have dogs. There is no direct access from the Property to the garden.
6. The Respondent is a single tenant with no dependants in the household. She is believed to be unemployed and in receipt of housing support.
7. The Applicant's representative lodged a number of documents as productions including email correspondence from the neighbours complaining about the dog fouling, and numerous photographs of the mess left in the common garden. The most recent complaint was received on the morning of the CMD.
8. The following documents were lodged alongside the application:
 - (i) Copy Private Residential Tenancy Agreement
 - (ii) Copy Notice to Leave
 - (iii) Proof of service of the Notice to Leave

- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (vi) Correspondence from neighbours (including photographs) outlining the dog fouling issues.

- Findings in Fact

9. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 27 August 2021;
- (ii) In terms of Clause 35 of the Agreement, the Respondent agreed that they would not keep any animals or pets in the Property without the prior written consent of the Landlord. The Respondent also agreed that any pet (where permitted) will be kept under supervision and control to ensure that it does not cause deterioration in the condition of the Let Property or common areas, nuisance either to neighbours or in the locality of the Let Property.
- (iii) The Respondent has been consistently in breach of Clause 35 of the Agreement by allowing her dogs to foul in the common garden and common hallway and failing to clean up after them.
- (iv) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 11 of Schedule 3 to the 2016 Act, and which was served on 4 May 2022.

- Reasons for Decision

10. Section 51 of the 2016 Act states as follows:

51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

11. Ground 11 of Schedule 3 to the 2016 Act states as follows:

“(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”

12. The Tribunal was satisfied that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. The Tribunal was satisfied that the terms of Ground 11 of Schedule 3 to the 2016 Act had been met, namely that the Respondent has been in persistent breach of Clause 35 of the Agreement, by her failure to clean up after her dogs have fouled in the common areas, causing a nuisance to the other occupiers in the building.

13. The Tribunal was satisfied that it was reasonable to grant the Order sought. No explanation had been given by the Respondent as to why she has failed to clean up after her dogs. There were no known medical or physical issues which would prevent her from being able to do so. The Tribunal was satisfied that the Applicant had taken appropriate steps to try and engage with the tenant and offer them assistance. The neighbours have also tried to assist the Respondent by offering her use of bags and brushes for cleaning. It appeared that the Respondent had simply chosen not to engage with any such contact. The Respondent's failure to clean up after her dogs consistently during the course of her tenancy had resulted in an unpleasant living environment for the neighbours, and had prevented them from being able to freely utilise the common garden for recreational purposes. In the absence of any representations by the Respondent to the contrary, the Tribunal was satisfied that it was reasonable to grant the Order.

- Decision

14. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 11 under schedule 3 to 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.

Fiona Watson

Legal Member/Chair

Date: 3 October 2022