



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51(1) of the Private Housing  
(Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/20/2408**

**Re: Property at 14, Willow Crescent, Rosyth, Dunfermline, KY11 2ZS (“the  
Property”)**

**Parties:**

**Hilton of Rosyth NHT 2014 LLP, Kiloran Hall, Middle Balado, Kinross, KY13 0NH  
 (“the Applicant”)**

**Mr Christopher Godden, 14, Willow Crescent, Rosyth, Dunfermline, KY11 2ZS  
 (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be refused.**

**Background**

1. By application dated 18 November 2020 the Applicant’s representative Mr William Dodd applied to the Tribunal for an order for the eviction of the Respondent from the property under Ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representative submitted a copy of the lease, a letter of authority, Notice to Leave, Section 11 Notice and copy email in support of the application.
2. By Notice of Acceptance dated 24 December 2020 a legal member of the Tribunal with delegated powers accepted the application and a hearing was assigned.
3. Intimation of the hearing was sent by post to the Applicant’s representative on 7 January 2021 and to the Respondent by Sheriff Officers on 8 January 2021.

## **The Hearing**

4. A hearing was held by teleconference on 12 February 2021. The Applicant was represented by Mr William Dodd. The Respondent attended personally.
5. By way of a preliminary matter the Tribunal considered the validity of the Notice to Leave which had been sent to the Respondent on 14 August 2020. Allowing 48 hours for delivery it would be deemed to have been received on 16 August and therefore the Notice period would have expired on 16 November 2020 and the earliest date for making an application to the Tribunal ought to have been the following day the 17 November. However, the Notice provided for an application being made not before 16 November 2020. The Tribunal explained to the parties that the Coronavirus (Scotland) Act 2020 allowed the Tribunal to consider an application made with the wrong date if an application is made after the correct date had passed. In this case the Application was made on 18 November and the Tribunal determined to allow the application to proceed particularly as the Respondent had no objection.

## **Mr Dodd's Submissions**

6. Mr Dodd explained the Applicant owned 98 properties in three streets in the area. He explained he had received three emails from three of the Respondent's neighbours complaining of anti-social behaviour.
7. The first email had been received on 6 April 2020. A redacted copy had been sent to the Respondent with the name and email address of the complainer removed. The complaint had been to the effect that the Respondent was smoking a lot of cannabis and the complainer could smell it in their house. Mr Dodd said the Respondent had not responded in any way to the complaint.
8. Mr Dodd went on to say that on 14 August 2020 he received two separate complaints from neighbours. One had reported anti-social behaviour on the part of the Respondent that included singing, arguments with a partner and was generally upsetting. The other had reported lots of shouting and singing and a strong smell of drugs coming from the property. Mr Dodd referred the Tribunal to the emails submitted with the application.
9. Mr Dodd said that following receipt of the emails on 14 August the Applicant decided to issue a Notice to Leave. Without further contact with the Respondent as he had not responded to the first complaint. Mr Dodd went on to say that after being served with the Notice to Leave the Respondent said he had done nothing wrong.
10. Mr Dodd said that he had subsequently explained to the Respondent that if he did not vacate the property by the date given on the Notice to Leave the Applicant would take action. He said that on 8 September the Respondent asked for a meeting and tried to appeal the decision to end the tenancy. The Respondent had advised he had children which the Applicant had been

unaware of. The Respondent had accepted that he had been loud on a few occasions but that it was going too far to evict him. Mr Dodd said that he had advised the Respondent that he could not consider withdrawing the termination. He said the Respondent had not offered an apology or indicated an intention to rectify his behaviour. He said that the Respondent had told him that he had spoken to his neighbour and that everything was fine with them.

11. Mr Dodd said that he subsequently contacted the Respondent with regards to the check-out procedure and had been told he was not prepared to leave.
12. Mr Dodd went on to say that since the application had been made to the Tribunal there had been phone calls around Christmas time complaining about the Respondent but these had not been put in writing. He said he had a conversation with the Respondent who had said he felt he was being victimised and that things were not how they looked and that he was trying to appease the other tenants.
13. Mr Dodd said that he had advised tenants that if they wished to make a complaint, they should provide a police incident reference number.
14. In response to questions from the Tribunal Mr Dodd confirmed he had not asked the complainers to be witnesses at the hearing as he felt the case was strong enough without their presence. He thought that the police may have been called but as there were no incident numbers provided that left some doubt as to whether the police had actually attended. Mr Dodd said that when they speak to a tenant who complains about anti-social behaviour, they advise them to contact the local authority but it was his understanding that they had not been contacted.
15. When asked if smoking cannabis at the property would constitute anti-social behaviour Mr Dodd referred the Tribunal to Clause 20 of the Tenancy Agreement that required the Tenant to show respect for others. He considered that it did amount to anti-social behaviour. The Tribunal also queried how the Applicant could prove that the Respondent was smoking cannabis without leading more evidence. Mr Dodd referred the Tribunal to the email of 6 April 2020.

### **The Respondent's Submissions**

16. Mr Godden said he had not seen the initial email from Mr Dodd for some weeks. He had been embarrassed. He said he had spoken to his neighbour and advised him that the smell had not been coming from his property.
17. The Respondent accepted he had been involved in an altercation in the summer following on from an incident at work and it had spilled out into the street. He said the other incidents had been exaggerated. He denied he had smoked cannabis.

18. The Respondent went on to say that there had been an incident involving a work colleague and that he had to leave work after he had been sexually assaulted. This had taken a serious toll on his mental health.
19. The Respondent said he had spoken to his neighbours and they had denied they had made any complaints. He said he had never been visited by the police and there had been no excessive noise. He said he worked away from home in Aberdeen five days a week. He said he sometimes had his 16-year-old daughter staying with him but that things had been different because of Covid.
20. The Respondent went on to talk about a meeting with Mr Dodd that he thought had been due to take place in January but had not happened. According to Mr Dodd the meeting was supposed to take place before Christmas.

### **Final Submissions**

21. Mr Dodd submitted that the Respondent's conduct constituted anti-social behaviour in terms of Ground 14 of the 2016 Act and because of the Respondent's unwillingness to engage with him it was difficult to maintain a good landlord/tenant relationship. Although the Respondent had said he was now on good terms with his neighbours there was no evidence to back this up. There had been verbal complaints over Christmas and the Respondent was not offering to disprove the allegations and therefore the application should be granted.
22. The Respondent submitted that after the initial complaint he had spoken to his neighbour and things were amicable. Subsequently his neighbours had denied making complaints to have him evicted and he felt any complaints around Christmas had been exaggerated. He was on good terms with his neighbour who had been in his house three weeks previously. The application should not be granted.

### **Findings in Fact**

23. The Respondent is the tenant of the Applicant in terms of a Private Residential Tenancy Agreement that commenced on 13 January 2020.
24. The Applicant's representative received three separate complaints about the Respondent's behaviour. One on 6 April 2020 and two on 14 August 2020.
25. A Notice to Leave dated 14 August 2020 was sent to the Respondent by email on 14 August 2020.
26. A Section 11 Notice was sent to Fife Council on 27 November 2020.

## **Reasons for Decision**

27. The Tribunal was surprised that the Applicant sought to rely solely on the emails of three un-named complainers as evidence of the Respondent's alleged anti-social behaviour. It was not possible for the Tribunal to properly assess the quality of the evidence or test the credibility and reliability of the complainers. There was an allegation that the Respondent was smoking cannabis at the property and quite apart from the issue as to whether this would fall into Ground 14 of Schedule 3 of the 2016 Act (which in some circumstances it might) the Tribunal was of the view that the Applicant faced an unsurmountable hurdle in proving in the balance of probabilities that it was the Respondent who was smoking and that it was indeed cannabis.
28. With regards to the complaints of 14 August 2020 the Tribunal was concerned that although there was a suggestion that there had been a course of conduct the Applicant again did not provide witnesses direct evidence or police or local authority reports or any cogent timeline other than one email speaking of events occurring over the previous month but without any significant detail. The Tribunal was also concerned that although these were the first allegations of this type of anti-social behaviour the Applicant had made no attempt to contact the Respondent but moved immediately to issue a Notice to Leave.
29. Although Mr Dodd spoke of some additional verbal complaints that had been made around Christmas time, he did not include these as part of his substantive case against the Respondent and in any event, they appeared to lack detail.
30. The Tribunal acknowledge that it can be difficult for neighbours to wish to become involved in this type of application but in these circumstances, it is all the more important for applicants to make use of the police and local authority if they wish to present a case that will meet the evidential requirements to merit an eviction of a tenant under this ground.
31. Given the evidence that was available to it, the Tribunal was not satisfied that the requirements of Ground 14 had been met in that the Respondent has behaved in an anti-social manner in relation to another person.
32. As the ground was not established the Tribunal did not require to determine whether in all the circumstances it would have been reasonable or not to evict the Respondent.

## **Decision**

33. Having carefully considered the Applicant's representatives written and oral submissions together with the other documents and the submissions made by the Respondent the Tribunal refuses the application.

## **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.**

**Graham Harding  
Legal Member/Chair**

**12 February 2020  
Date**