

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/21/3165

Re: Property at 6A Stanlane Place, Largs, KA30 8DA (“the Property”)

Parties:

ACRE LETTINGS LTD, 6 Stanlane Place, Largs, KA30 8DA (“the Applicant”)

Miss Jenny Lovell, 6A Stanlane Place, Largs, KA30 8DA (“the Respondent”)

Tribunal Members:

Jan Todd (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

- Background
- 1. This was a hearing to consider the application by the Applicant for an order of eviction against the Respondent. The Application was dated 20th December 2021 and was accompanied by the following documents: -
 - a. Tenancy agreement dated 5th March 2020 with a date of entry of 3rd March 2020
 - b. Notice to leave dated 15th November 2021 sent by e-mail dated 15th November 2021
 - c. S11 notice dated 17th December 2021 sent by email to North Lanarkshire Council on 17 December 2021.
 - d. Various e-mails dated from May 2021 to November 2021 regarding dog mess and other behaviour related to the tenant.
- 2. A Case Management Discussion took place on 31st March 2022 and Ms Andrea Bell of Acre Lettings represented the Applicant and advised that the applicant was seeking an order for eviction of the tenant due to her repeated failure to deal with dog mess left lying and putrid at the shared entrance to their office premises and the Respondent’s flat which is situated above and to the

front of the offices of the Applicant. She advised the entrance way is narrow and the dog mess causes offence and nuisance to both herself and other staff of the Applicant, and she advised that after asking the Respondent to remove dog mess which Ms Bell confirmed was caused by the tenant's dog, on 15th November 2021, she also heard the Respondent shouting, screaming and kicking her door in the flat above the office and felt it was directed at their staff and as a result they had to close the office that morning. Ms Bell advised that she had sent a statement to the Tribunal, on 18 March 2022, in response to a direction from the Tribunal regarding what impact this had on staff but the Tribunal did not receive the statement.

3. The Tribunal determined that a full hearing was required to consider whether or not the ground of eviction was met and if so whether it would be reasonable to grant the order of eviction and advised Ms Bell that she should bring witnesses to the hearing or lodge written statements. The Respondent was also invited to attend the hearing and lodge anything in writing to represent her position.
4. Ms Bell presented the missing statement dated 16th March 2022 and lodged two other written statements, one from Ms Maureen McKinlay dated 11th April and one from Mr David Corrigan the upstairs neighbour of the Respondent dated 4th April both 2022. All three statements confirm the Respondent regularly leaves dog faeces and urine at the entrance to the office and stairway to the flats, that this is both very unpleasant and a nuisance; that the Respondent has caused the upstairs neighbour distress and alarm by shouting and banging doors; that both Mr Corrigan and Ms McKinlay were caused distress and alarm by her screaming and shouting on the 15th November 2021 and Mr Corrigan confirmed that noise and being woken up when he is asleep, which can happen when the Respondent's dog is left in the flat on his own, can and has affected his physical health and quality of life.
5. The Respondent also wrote to the Tribunal Administration by e-mail on 9th, 12th and 13th May. In her e-mail of 9th May the Respondent writes "*What's the point in taking part in a call when it's all slander against me my side is here I am sick fed up of leaks and damages so I snapped in November at the neighbour who had the cheek to bang my door down over a dog poo on Saturday night when the office was closed and I said I'll start to pick up poo when ur dad fixes the leaks he said I'd be evicted and I said make that a promise not a threat then shouted Monday morning in the hopes the office staff would hear me this is what I deal with every time it rains for over two years took them 7 months to do my son's room and mine is ongoing who wouldn't snap couldn't pay me to live here I want out I wanted evicted he is a bad landlord who does nothing for all his tenants and soon as you get angry brandished with anti-social eviction order do not even care in the slightest Get me out of here stop moving the dates and delaying it I need out of her before I end up losing my mind.*"
6. The Respondent repeated her view that she did not want to join the call in her later e-mails and also advised the council had awarded 200 points for the flat being below the tolerable standard. She also advised there was a rat infestation underneath and that it was the landlord's responsibility even if there was broken furniture there. The Respondent also advised in her e-mail of 12th May 2022 that she "*snapped and being evicted and leave dog poo occasionally as a way of saying you annoy me I'll annoy you back*".

The Hearing

1. The Hearing took place at 10am on the 7th June 2022 by teleconference and only Ms Andrea Bell of Acre Lettings was in attendance for the Applicant although the Tribunal did wait for a further 10 minutes to see if the Respondent was going to dial in. The Respondent had responded in writing and had advised that it was unlikely she was going to join the call due to her anxiety. The application and papers have been served on the Respondent by Sheriff Officers on 17th February 2022, and the Respondent has submitted written representations which the Tribunal noted. The Tribunal felt it was therefore fair and appropriate to proceed in her absence.
2. The legal Member made introductions and advised the purpose and order of the hearing and invited Ms Bell to describe the events of 15th November and how matters have been at the Property with the Respondent since.
3. Ms Bell confirmed that on 15th November she arrived at work which is an office in the same block as the Property and the entrance to the flat is just past the office's front door, to find more dog faeces from the Respondent's dog lying at the door. This was a common problem and Ms Bell referred to several e-mails she lodged asking the tenant repeatedly to remove dog mess from outside the office. The e-mails are dated between 18th May and 27th September 2021. Ms Bell advised that on 15th November she sent an e-mail at 9.04 asking the Respondent to remove dog mess left lying at the shared entrance to their office premises and the Respondent's flat which is situated above and to the front of the offices of the Applicant. She also advised that this had been the case on Saturday and the Saturday before as well and asked the Respondent to move some bikes left at the access to the stairs. Ms Bell then advised that within minutes she heard screaming, banging and swearing and she received a torrent of e-mails back, numbering 6 within a short space of time. She advised that the behaviour went on most of the day and because the Respondent was acting so aggressively, she locked the door for the morning. Ms Bell advised she felt frightened and that the shouting was directed at her and her colleague Ms McKinlay who was in the office that morning. She advised they both felt uncomfortable and noted that the Respondent was looking for and in fact demanding an eviction notice which she finally sent to her at the end of the day on 15th November 2021.
4. Ms Bell confirmed that the Respondent has continued to leave dog faeces and urine at the front of their door and that it is foul smelling and putrid and causes offence and nuisance to both herself and other staff of the Applicant, as well as members of the public and other tenants who visit their offices. Ms Bell confirmed the constant dog dirt outside their office, with the disgusting smell and constant need to clean it up is distressing and that it is behaviour neither she nor her colleagues should have to tolerate at their place of work. She also advised that the neighbouring tenant upstairs, Mr David Corrigan is also disturbed by the Respondent's shouting and noise especially at weekends. She referred to his statement dated 4th April and advised that until she saw his statement she did not realise that the constant barking of the Respondent's dog during the day was also causing him distress and disturbing his sleep which could have an effect on a health condition he mentions in the statement.
5. Ms Bell confirmed the Respondent lives in the Property with her young son, who she believes is around 3 years old and that she believes the Respondent

is waiting for and wanting an eviction order so that she can get a council property. Ms Bell acknowledged that the Property is not wind and watertight at all times and that she has been advised by the Council that it cannot be re-let until the roof is fixed. She explained that they have had a contractor attend on several occasions and try and fix the issues with the roof and they had thought it was fixed until it became apparent there is still a leak during stormy weather in the corner of one of the bedrooms in the Respondent's flat. Ms Bell confirmed that the contractor has advised that it will require a new roof and that he has not been able to give a timescale for this. She noted that contractors are hard to obtain currently in Largs. She further advised that she has spoken to someone from the Council and that the council is aware of the issues with the roof, that the Council have advised the property does not meet the tolerable standard, that the Applicant will not be allowed to re-let it to another tenant until this is fixed and that the Respondent has been given maximum points for housing but until she gets an eviction order she will not be rehoused.

6. Ms Bell advised that the roof cannot be replaced with either of the tenants in Flat 6A or 6B Stanlane remaining in the building and that there are arrangements for Mr Corrigan to move when this is able to be done. Ms Bell advised that with regard to the Respondent's claim that there are rats around the entrance way to the flats that they had this problem a few years ago, managed to get rid of them with poison and keeping the area very clean and tidy but that the Respondent has been throwing old furniture, toys etc. into that area and as a result the rats have returned. Ms Bell believes this is due to the Respondent's behaviour. Finally, Ms Bell advised that the rent payment due to be paid in May has not in fact been paid. She could not clarify why it has not been paid nor whether or not the payment normally comes direct from the tenant or is paid directly to the Applicant from benefits.
7. Ms McKinlay then came on to the teleconference call. She confirmed her name and advised she worked in accounts for Acre Lettings. She confirmed that her written statement was true and confirmed that the constant leaving of dog faeces and urine around the entrance to the office and flats was very unpleasant, a nuisance and distressing for her and other staff and clients. She advised that the incident with the Respondent shouting and screaming on 15th November was very disturbing, that she is not used to that kind of behaviour and that the screaming and shouting went on for most of the day. She also advised of another incident where the Respondent and 2 friends were near the entrance during a lockdown period and when Ms McKinlay asked for them to give her room to enter her office the Respondent "bawled and yelled at me" to the point where her husband got out of the car to check I was okay. Ms McKinlay advised that after that the Respondent shouted at her again in the street and she now tries to avoid any confrontation with the Respondent or her dog. She advised those incidents have made her feel very uncomfortable and caused distress.
8. Ms Mckinlay also confirmed that the last rent payment received from the tenant was on 29th April and so the rent due in May has not been paid.

Findings in Fact

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 3rd March 2020.

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 15th November 2021 confirming that no proceedings would be raised before 16th December 2021 was served on the Respondent by e-mail dated 15th November 2021
 5. These proceedings were raised on 20th December 2021 and the application included a copy of the Notice to Leave.
 6. A Section 11 notice has been served on North Ayrshire Council.
 7. The Respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months, namely shouting, screaming and swearing causing alarm and distress to two of the applicant's employees on 15th November and a neighbour.
 8. The Respondent has allowed or directed her dog to defecate and urinate at the door of the entrance to the Applicant's office which is situated below the Property, causing a foul putrid stench, annoyance and unpleasant working conditions. This has happened on multiple occasions and caused significant distress, nuisance or annoyance to another person.
 9. The Respondent has shouted and caused alarm to one of the employees of the Applicant on another occasion whilst near the Property.
 10. The Property is not wind and watertight and currently falls below the tolerable standard.
 11. The Respondent has complained about the leaks but the Property needs a new roof and there is no current timescale for this to be done.
 12. The monthly rent due is £385.
 13. Prior to the current application there was a small amount of rent outstanding.
 14. The Respondent has not paid rent to the Applicant due in May 2022. The current arrears are £556.99.
15. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

Reasons for Decision

1. 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.
2. The Notice to Leave was also accompanied by evidence of how the ground was met noting that the Respondent has engaged in anti-social behaviour at the Property, by acting "*in the past and present in an anti-social manner. Tenant has behaved in a manner causing alarm, distress, nuisance and annoyance to a neighbour and employees of the letting agency. Verbal abuse and making excessive noise, abusive e-mails of a threatening nature received by the letting agency from the tenant. The tenant has failed to control her dog properly and allowed it to continually foul the entrance pathway to letting agency office and the flat she resides in. There have been ongoing issues since the start of the tenancy but the incident on 15th November resulted in staff locking the office door for the full morning. The letting agency staff should*

not feel threatened in anyway in their working environment and this behaviour cannot be tolerated."

3. Ground 14 requires 28 days' notice under the rules which were amended by the Coronavirus (Scotland) Act 2020 and were in place for Notices served prior to 31st March 2022. The Notice to Leave was served e-mail on 15th November after staff from the applicant's office which is situated below the Property and shares an entranceway at the back with both flats situated above it, felt so alarmed by the Applicant's reaction to an email asking her to remove her dog's dirt that they locked the door of their office for the whole morning. The Notice sets out the notice period as expiring on 16th December 2022 as the application was not raised until 20th December, the notice period, is compliant with the requirements of Section 62(4) of the Act as amended by the Coronavirus (Scotland) Act 2020.
4. 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.

5. The Tribunal accepted the verbal averments of Ms Bell and Ms McKinlay and the written statements included with the Application. The Tribunal found Mrs Bell and Ms McKinlay to be clear and credible in their summary of their contact with the Respondent and they both confirmed that the issues with dog faeces and urine lying in the common entranceway to the Property and their office to be foul, annoying and distressing. They advised clients have often commented on it and they have had to remove it themselves in the past. Both commented that the smell was particularly bad last summer in the heat and both confirmed this behaviour is still ongoing. Ms Bell and Ms McKinlay have provided a written and oral account of the incident on 15th November and confirmed it was so alarming that the door of the office had to be locked such was the volatile reaction of the Respondent that day. Ms McKinlay also spoke of a separate incident during lockdown where she asked the Respondent and two friends to comply with social distancing when at the office and advised she received a tirade of shouting and swearing from the Respondent which was alarming and distressing and has led to her trying to avoid leaving the office if the Respondent is outside. The Tribunal also accepts the written statement from Mr Carrigan which supports their account of dog fouling and shouting and screaming in the flat.
6. The Applicant lodged copies of the e-mails from the Respondent on 15th November and the tribunal notes the Respondent responds immediately to the request to remove dog mess at 9:04 with "Step in my dog shit use didn't care when I have rain in my room use don't care about me I don't care about you simple." The Respondent goes on to say she wants out "here this dirty hole and a council house so evict me and get the points I need". Over a few more e-mails all written within a few minutes of each other the Respondent advises the Property leaks, everything is vile and she has mental health issues and just wants to be evicted. She ends the series of e-mails saying "Why u gone quiet I'll get my dog to shit and am sure you will reply then hope u r busy writing up my eviction..."
7. The Respondent has written to the Tribunal Administration as noted above and in her e-mails appears to confirm that due to her frustration and annoyance at the fact the leaks are not being repaired and the time this has been taking, she has in fact "snapped" and left dog poo occasionally.
8. From the oral evidence and written statements the Tribunal accepted that the Respondent has acted in a way that has caused Ms Bell and Ms McKinlay annoyance, distress and alarm by her actions on 15th November and the continual leaving of dog faeces and urine have been done to deliberately cause a nuisance and annoyance. In addition, the Respondent causes Mr Carrigan distress and annoyance by her loud noise and her dog constantly barking in the house. The behaviour is relevant behaviour as it has caused annoyance, alarm and distress to staff of the landlord and the upstairs neighbour. The events have occurred within 12 months and although there have been no further incidents of shouting and screaming the dog fouling and

this being left untreated or removed appears to be ongoing. The Respondent has made it clear she is not happy with the state of the Property which the Tribunal accepts is not acceptable and does not currently meet the tolerable standard. The Respondent has reacted at times because of this situation however when considering whether it is reasonable to grant the order for eviction the tribunal notes the landlord and tenant relationship appears to have broken down completely. The Applicant has advised that the behaviour causing distress and annoyance is ongoing and that they cannot fix the roof which is apparently the cause of the leak because of shortage of tradesmen and that they would require the tenant to leave to allow a new roof to be constructed. The Tribunal has weighed up all the evidence and accepts that the incident on 15th November along with ongoing incidents of leaving dog faeces and urine deliberately amounts to anti-social behaviour because it caused and causes significant distress, annoyance and nuisance and has caused alarm to another person.

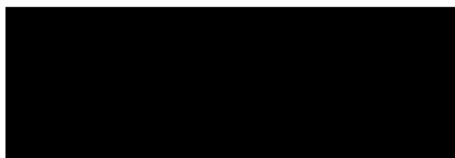
9. It is not known whether the Respondent is withholding rent due to the lack of repairs or whether there is an issue with her benefits but the tribunal did not find that to be relevant to this application.
10. The Tribunal then considered whether or not it was reasonable to grant the order for eviction. Given that the landlord and tenant relationship has totally broken down, that the Respondent actively wishes to leave the Property and the Property is not fit for a tenant to be in and her behaviour is causing distress and annoyance is likely to continue if the tenancy was to continue, the Tribunal accepted that it was reasonable and in both party's interest for the order to be granted.

- **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.



7th June 2022

Legal Member/Chair

Date