



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/19/1656

Re: Property at Pleasance House, 6 Annan Rd, Flat 5, Dumfries, DG1 3AD (“the Property”)

Parties:

The Executors of the late Dilbagh Singh Athwal, c/o Steven Athwall, Starvilla, Annan Rd, Dumfries (“the Applicant”)

Kieran McClimonds, present whereabouts unknown (“the Respondent”)

Tribunal Members:

George Clark (Legal 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 Respondent.

Background

By application, received by the Tribunal on 26 August 2019, the Applicant sought an Eviction Order against the Respondent under Ground 14 of Part 3 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), namely that the Respondent had engaged in relevant anti-social behaviour.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 4 March 2019 at a monthly rent of £420 and a copy of a Notice to Leave, dated 29 April 2019, advising the respondent that the Applicant intended to apply for an Eviction Order on the ground that the Respondent had engaged in relevant anti-social behaviour and that the application would not be submitted before 28 May 2019. The Applicant also provided the Tribunal with a copy of an email from Police Scotland dated 29 April 2019, listing dates and times of visits to the Property made by Police Scotland following nine complaints and reports made to them, and an e-mail from a neighbour dated 29 April 2019 giving dates and Incident Numbers in respect of five occasions on which the

neighbour had complained to Police Scotland about the behaviour of the Respondent in the Property. The neighbour stated that the Respondent had hosted wild parties in the Property and had verbally abused her. The noise from the parties had been so excessive that the foundations of the building had been shaking. The Respondent's behaviour had affected her, her partner and her daughter so much that they had had to terminate their own tenancy, as they could not stay any longer. She had feared for her life and was on antidepressant medication as a result of the Respondent's behaviour. Her daughter had also become very withdrawn. The Applicant also provided a copy of an Antisocial Behaviour Order made against the Respondent on 12 July 2018 which, *inter alia*, prohibited him from behaving in any manner designed to cause or likely to cause alarm, distress, nuisance or annoyance to one or more persons not of the same household as himself within the jurisdiction of Dumfries Sheriff Court. The Order subsisted until 12 July 2019.

On 25 November, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion. Intimation to the Respondent was effected by advertisement on the Tribunal's website between 25 November 2019 and 7 January 2020.

Case Management Discussion

A Case Management Discussion was held at Lochvale House, Georgetown Road, Dumfries, on the afternoon of 7 January 2020. The Applicant as represented by Mrs Sandra Thom of Sandra Thom Properties, Dumfries. The Respondent was not present or represented. Mrs Thom asked the Tribunal to decide the application without a Hearing and to make an Eviction Order against the Respondent.

Reasons for Decision

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 and that it would decide the application without a Hearing.

Section 51 of the 2016 Act states that the 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 to the 2016 Act applies. Ground 14 of Part 3 of Schedule 3 to the 2016 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, the anti-social behaviour is relevant anti-social behaviour and the application for an Eviction Order is made within 12 months of the anti-social behaviour occurring. A person is regarded as behaving 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 and 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 the nature of the anti-social behaviour and who it was in relation to, or where it occurred.

The Tribunal was satisfied by the documentation provided by the Applicant that the Respondent had behaved in an anti-social manner towards his neighbours and that his conduct had caused alarm, distress, nuisance and annoyance to his neighbours. The Tribunal's view was that it was reasonable to issue an Eviction Order as a consequence of the Respondent's conduct and that, accordingly, the anti-social

behaviour was "relevant anti-social behaviour" as defined in Ground 14 of Part 3 of Schedule 3 to the 2016 Act.

Decision

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

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/Chair

7 January 2020

Date