



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/20/2566

Re: Property at 18 Delta Gardens, Musselburgh, EH21 8DS (“the Property”)

Parties:

Mr Robert Wilson Gordon, Rose Cottage, Duns Road, Gifford, EH41 4QW (“the Applicant”)

Ms Maureen Taylor, 18 Delta Gardens, Musselburgh, EH21 8DS (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member) and Elizabeth Currie (Ordinary Member)

Outcome

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber determined that an order for possession be granted on ground 14 schedule 3 of the Private (Tenancies) (Scotland) Act 2016, on the basis that the respondent has behaved in an antisocial manner in relation to another person and it is reasonable in all of the circumstances that an eviction order be granted.**

1. This was a third hearing in connection with an application in terms of s51 of the Private Housing (Tenancies)(Scotland) Act 2016, ‘the Act’ and rule 109 of the First-tier Tribunal Housing and Property Chamber Procedure Regulations 2015, ‘the rules’. There was a second application before the tribunal in terms of rule 111 to recover rent arrears. The applicant was represented by Mr Callum Macleod of Gordon Stirling Burnett Solicitors. The respondent did not attend and was not represented. At the first hearing on 10 February 2021 the tribunal had sight of the execution of service of sheriff officer dated 11 January 2021 and was satisfied that the respondent had received appropriate

notice in terms of rule 24. At this hearing, the tribunal noted that a recorded delivery letter was sent to the respondent by the tribunal on 22 March 2021 notifying her of this hearing. This was signed for on 23 March 2021. The tribunal proceeded with the hearing in her absence in terms of rule 24 and 29.

2. The tribunal had before it the following copy documents:
- (1) Application dated 9 December 2020 and received on 11 December 2020.
 - (2) Private Residential Tenancy Agreement 'PRT' dated 11 September 2018.
 - (3) Notice to leave dated 1 September 2020.
 - (4) Royal Mail track and trace regarding acceptance of the notice to leave dated 3 September 2020.
 - (5) Letter to respondent by the lettings department of GSB Properties dated 24 August 2020.
 - (6) Letter to respondent by the lettings department of GSB Properties dated 28 September 2020.
 - (7) S11 notice to local authority.
 - (8) Email from East Lothian Housing Council Housing office to GSB Properties dated 26 November 2020.
 - (9) Email to tribunal from applicant's representative dated 4 February 2021.
 - (10) Email to the tribunal from the applicant's representative dated 1 and 2 March 2021.
 - (11) Email from respondent to applicant's representatives dated 27 January 2020.
 - (12) Email from Carol Scott of GMB Solicitors to Lesley Scott dated 18 January 2021.
 - (13) Emails from GMB properties Ltd to the housing Options Team at East Lothian Council dated 16 February 2021 and 29 January 2021.
 - (14) Email to the tribunal from the applicant's solicitor dated 6 April 2021.
 - (15) Statement from Lesley Scott (undated).

Preliminary matters.

3. **At the adjourned hearing on 15 March 2021 the tribunal made the following directions:**

The Applicant is required to provide:

- (1) A list of witnesses who will be giving evidence at the adjourned hearing on 26 April 2021.**
- (2) Any other written evidence he has to substantiate the eviction ground, including but not restricted to:**
 - (a) A copy of the email or letter sent to the respondent by GSB Properties Lettings Department around January 2020.**
 - (b) Copies of any other correspondence sent by GMB Properties Lettings Department to the respondent (apart from those dated 24 August 2020 and 28 September 2020 which have already been lodged) regarding alleged antisocial behaviour.**

- (c) A letting agent report by GSB Properties Letting department providing a summary of their dealings with the respondent from September 2018 until April 2021.**

The said documentation should be lodged with the Chamber no later than close of business on 6 April 2021.

4. The tribunal noted that the applicant's representative had intimated his list of witnesses and he had also lodged item (15) above in relation to the direction (2)(c). Mr Macleod advised that he had lodged 3 documents in compliance with the directions (2)(a) and (b) but these had only been sent to the chamber on the morning of the hearing. Before making its decision the tribunal had sight of three letters sent by GSB Properties to the respondent regarding alleged antisocial behaviour dated 4 January 2019, 2 July 2019 and 24 January 2020.
5. Mr McLeod advised he proposed to lead evidence from Lesley Scott of GSB Properties and Jennifer Scott of 20 Delta Gardens.

Hearing

6. The tribunal heard oral evidence from Ms Lesley Scott, letting negotiator of the Haddington Branch of GMB Properties. Ms Scott spoke to the various letters her company had sent to the respondent since January 2019 as a result of complaints her company had received from Ms Jennifer Scott, a neighbour of the respondent. Ms Scott gave evidence of the nature of the complaints and that Ms Jennifer Scott had contacted the police on many occasions due to frequent loud parties, a strong smell of cannabis emanating from the property, which has penetrated her son's bedroom on frequent occasions. Ms Scott also spoke to the rental statement and that the respondent has had rent arrears since February 2020 and has paid no rent since July 2020. It was Ms Scott's evidence that the respondent and her teenage daughter reside in the property. Ms Scott has been in regular contact with the Homelessness Department of East Lothian Council who are monitoring the situation.
7. The tribunal heard oral evidence from Ms Jennifer Scott who resides at 20 Delta Gardens. Ms Scott explained that her property is an end terrace and the respondent lives next door in a middle terrace in the block of 4 houses. Ms Scott has resided in her property for around 3 and a half years with her husband and 6 year old son. She gave oral evidence about difficulties which arose a few weeks after the respondent moved into the property. It was Ms Scott's evidence that she has had to contact the police on numerous occasions due to noisy parties at number 18 Delta Gardens every other week. She estimated that although she has made frequent calls she has gotten through to the police on around 6 occasions. She has been disturbed by loud arguments; regular parties; loud music until the early hours of the morning; items being smashed; doors being slammed; and what sounds like violent

exchanges between the respondent and her daughter, and the daughter and her boyfriend. Ms Scott last called the police 2 weeks before the hearing. There was also a party 2 days before the hearing, with music being played until around 3 am. She stated that there is a frequent strong smell of cannabis and this penetrates her son's bedroom to the extent that when this occurs, she has to move her son from his bed and take him into her bedroom. Ms Scott was not aware what action the police have taken as a result of her complaints, but she has had recent contact from the council who have been contacted by the police as a result of her complaints. Ms Scott has also spoken to the other neighbours in the block, and they have also been disturbed by noise and contacted the police. Ms Scott has spoken directly to the respondent about her concerns, but she does not appear to be interested.

8. Findings in fact.

- (i) The applicant is the owner of the property.**
- (ii) The parties entered into a private residential tenancy 'PRT' for let of the property in September 2019 with a start date of 21 September 2018.**
- (iii) The respondent continues to occupy the property.**
- (iv) The respondent was served with a valid notice to leave dated 1 September 2020 by first class post and recorded delivery post around 3 September 2020.**
- (v) Proceedings were raised on 11 December 2020.**
- (vi) A section 11 notice has been served on East Lothian Council.**
- (vii) The respondent has engaged in relevant anti-social behaviour at the property during the last 12 months namely causing noise by loud music, banging, slamming of doors, having regular loud parties at the property until the early hours of the morning and causing a strong smell of cannabis to emanate from the property.**
- (viii) This behaviour has persisted from around December 2018 to date and has caused alarm, distress and nuisance to another person.**
- (ix) Rent arrears began to accrue in February 2020.**
- (x) No rent has been paid since July 2020 and the arrears of rent as at 7 December 2020 were £3448.66.**
- (xi) It is reasonable in all of the circumstances that an eviction order be granted.**

Reasons

9. This is an undefended application for eviction. There was a second application before the tribunal to recover rent arrears.

10. At the first hearing on 10 February 2021, the tribunal noted that the notice to leave was dated 1 September 2020, but the track and trace information lodged was dated 3 September 2020. Further, it was not clear to the tribunal

whether the notice to leave had been signed for. The PRT was silent on the mode of service of the notice to leave but the respondent's email address is noted on the PRT. Mr Macleod stated that the PRT was served by first class post and recorded delivery post on 3 September 2020. The document lodged (item 4 above) was a receipt from the post office to confirm that the item was presented to the post office on 3 September 2020. The receipt was not provided, and he has been unable to ascertain if the notice to leave was signed for. He has been advised by the royal Mail that the item was probably signed for. The tribunal noted that the email from the local authority at item 8 above confirmed that the notice to leave was received by the respondent. In the absence of any evidence to the contrary it appeared to the tribunal that the notice to leave had been served in accordance with s62 of the Act.

11. The tribunal was satisfied that the eviction ground was established on the clear oral evidence of both witnesses who spoke to the written documents lodged. The tribunal was satisfied that the respondent's neighbour has been disturbed and annoyed by the respondent's behaviour and that of her teenage daughter. The police have been involved on at least 6 occasions and other neighbours have also been disturbed. The respondent's behaviour is causing a nuisance and her neighbour has been alarmed and distressed by it.

12. The tribunal is satisfied that it is reasonable in all of the circumstances for the eviction to be granted. The behaviour complained of is continuing and the respondent has paid no rent since July 2020 despite being in employment.

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.

L Ward

**Lesley A Ward
Legal Member**

Date: 26 April 2021