



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/22/3305

Re: Property at Flat 7, 105, Echline Drive, South Queensferry, EH30 9UX (“the Property”)

Parties:

Mr Phillip Pinder and Mrs Ann Pinder, 2 South Learmonth Gardens, Edinburgh, EH4 1EY (“the Applicants”)

Mr Archie Nicholson, Flat 7, 105 Echline Drive, South Queensferry EH39 9UX (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to issue an Eviction Order against the Respondent under Grounds 12 and 14 of Schedule 3 to the Private Housing (Residential Tenancies) (Scotland) Act 2016.

Background

By application dated 8 September 2022, the Applicants sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Grounds relied on were Grounds 11, 12 and 14 of Schedule 3 to the Act.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 12 July 2019 at a rent of £450 per month, a Notice to Leave dated 22 July 2022, advising the Respondent of the Grounds on which the application was being made and that an application to the Tribunal would not be made before 22 August 2022.

In support of the application under Ground 11 of Schedule 3 to the Act the Notice to Leave cited failures to comply with Clauses 8 and 23 of the Tenancy Agreement. The complaint under Ground 12 of Schedule 3 related to rent arrears and the complaint under Ground 14 to allegations of anti-social behaviour by the Respondent.

The Applicants provided the Tribunal with copies of a large number of emails between their letting agents and the Respondent regarding the arrears of rent between March 2020 and August 2022. In a number of these emails, the Respondent made promises to pay certain sums towards the arrears and various payment plans were suggested. The letting agents also directed the Respondent to sources of possible help and assistance, including possible eligibility for benefits. An email from the letting agents of 5 January 2022 referred to "further complaints about incidents" in the Property and stated that the letting agents had been told that Police Scotland had been called on several occasions and that this information had come from several sources. The Respondent replied that the police had only been called out once, on 17 December 2021, regarding a welfare check. On 1 April 2022, the letting agents emailed the Respondent again, referring to more complaints from another resident in the block about disturbances and incidents with the Respondent. They understood that the police had been called again as a result of the Respondent's actions. The reply of the Respondent was that he and the other resident who had complained had been having a few minor issues "just after we ended our relationship" and the incident the previous evening had been the result of a misunderstanding on his part and had been blown out of all proportion.

On 31 May 2022, the letting agents sent a letter to the Respondent, in which they stated that they had received a further complaint from a neighbour about his anti-social behaviour. The complaint was that he was continually causing a disturbance in the Property that could be heard by neighbours and could cause alarm and distress to them. They had received ongoing complaints for a considerable time and despite previous contacts and conversations with the Respondent, these allegations still continued. The letting agents understood that the police had been called on several occasions, including the previous Friday when, following an allegation that the Respondent had trashed the Property, the police attended again. They reminded the Respondent that such behaviour was a breach of his tenancy agreement and that if it was repeated, the letting agents might have no alternative but to begin steps to terminate the tenancy.

It appears from the emails that agreement was reached that the Respondent would move out of the Property on 21 August 2022, but on that day, he advised the letting agents by email that he would not be moving out, as he had nowhere to go, and that he had no alternative but to wait for the court (sic) proceedings to give him a fair opportunity to defend himself and to dispute the anti-social allegations.

The Applicant also provided the Tribunal with a Rent Statement, which showed arrears of £2,320 as at 12 July 2022.

On 13 October 2022, the Applicants' letting agents provided further information to the Tribunal. They said that a neighbour had contacted them from 2021 by telephone

and email, detailing issues she had with the Respondent. The neighbour had said that she had had a long conversation with the Respondent in January 2022, after which she thought he understood better the issues he had. She told the letting agents that she would try and keep civil communications with the Respondent in the hope there would be better behaviour. The Respondent, however, then contacted the letting agents to say he was now in a relationship with the neighbour. This, the letting agents said, as strenuously denied by the neighbour. The letting agents had had several visits and conversations with the Respondent, who had not denied the disturbances or the police having attended, but he went on to say that most of the information was exaggerated or misconstrued, and that the police were only there to check on his mental welfare. He had said that he had neighbours who had said that they would write to the letting agents to confirm he was a good neighbour, but no such emails or letters had been received.

The letting agents included a report of the Respondent having been convicted and banned from driving after being caught driving at excessive speed in Edinburgh, having been disqualified from driving 10 days earlier. They also attached copies of extensive email correspondence with the neighbour who had complained about various incidents.

On 23 January 2023, the letting agents emailed the Respondent, having received ongoing complaints from neighbours regarding his anti-social behaviour. They said that they continued to receive regular complaints regarding his aggressive behaviour shouting, causing a large amount of disturbance and frightening another tenant. They also commented that he continued to make no effort to make payments towards his very substantial rent arrears, currently £3,086.

Case Management Discussion

A Case Management Discussion was held on 15 February 2023. The Applicants were represented by Mrs Anne Johnstone of Northwood Central Lowlands Ltd, Falkirk, the Applicants' letting agents. The Respondent was also present.

The Applicants' representative told the Tribunal that she understood that the Respondent had earlier in the week been charged for sending indecent communications regarding communications with a neighbour in October/November 2022. The Respondent had advised her of this. The Respondent said that it was a personal matter and that he has a detailed past on and off relationship with the neighbour.

The Applicants' representative confirmed that the Respondent had made a payment of £1,000 towards the rent arrears two days previously. The arrears were now £2,591.

The Applicants' representative told the Tribunal that there had been ongoing complaints about the Respondent and that she had suggested to him ways of dealing with the complaints, including speaking to neighbours beforehand if he was having a party. She said that he had spoken to the neighbours and had met the

downstairs neighbour and had told the Applicants' representative that he was in a relationship with this neighbour and they were in love. The Applicants' representative said that this had not been accepted by the neighbour, who had had long talks with the Respondent to try and resolve the issues regarding the noise and complaints. The neighbour had contacted the police on a regular basis about the Respondent. The Applicants' representative had seen a number of sexualised texts sent by the Respondent to his neighbour.

In relation to the rent arrears, the Applicants' representative said that the Respondent had been in arrears since her company took over management of the tenancy in December 2020. There had been a pattern of the Respondent starting a new job then that job ending, with sporadic rent payments. The Respondent had been drinking, gambling and taking drugs, which meant he was not wise as regards money, He does not engage if a payment plan is put in place and does not keep to payment arrangements.

The Respondent strongly disputed that he takes alcohol, drugs and is involved in gambling. He said the police had not been called out since May 2022. Prior to that, they had been called 2 or 3 times, but it was just to ask him to turn down music. The only complaints related to the girl downstairs from him, who had called the police for a welfare check on him. He had an on/off relationship with her, and it was a personal dispute. He also said that the structure of the Property was poor.

The Tribunal decided that it was appropriate to continue the case to a Hearing. There was much in dispute between the Parties and additional evidence could be obtained as directed by the Tribunal.

Following the Case Management Discussion, the Tribunal issued Directions to the Parties on 15 February 2023.

The Applicants were required to provide:

1. Redacted text messages between the Respondent and a neighbour that the Applicant seeks to rely on;
2. Any information known regarding police involvement;
3. Information on any outstanding mortgage on the Property;
4. Details of the Applicants' portfolio, including any outstanding mortgages, rental income and any relevant account information; and
5. An up to date rent statement 7 days before the Hearing.

The Respondent was required to provide:

1. Confirmation of employment and salary;
2. Dated photographs of the condition of the Property;
3. Copy email correspondence regarding the Tenancy Grant Fund; and
4. Redacted information about any police charges relevant.

On 17 and 18 April 2023, the Applicants' representatives responded to the Tribunal's Directions. They provided copies of a large number of text messages between the Respondent and a neighbour, copies of emails between the neighbour and the Applicants' representatives, including the Incident Numbers relating to two visits to the Property by Police Scotland, and details relating to the Applicants' finances. They also confirmed that the Respondent had to attend court on 9 March 2023, having

been arrested and charged with sending indecent communications. He had pleaded not guilty, and trial was set for September.

The financial information regarding the Applicants was that they own 11 rental properties, producing net income of c.£46,000 per annum. They are reliant on a steady income flow from these properties as they represent their principal source of income following Mr and Mrs Pinder having stopped working in, respectively, 2010 and 2014. They rely on their letting agents to ensure that voids and arrears are kept to a minimum, as any repairs to properties to get them in a marketable condition need to be funded by rental income from the other properties in the portfolio. They currently have two under-performing properties, namely the present Property and a flat in Falkirk. That flat is currently undergoing a series of repairs before being put on the market. The cost is around £2,500 and the Applicants' ability to afford it is being compromised by the shortfall in rental income caused by the arrears on the present Property.

The Applicants' representatives included a Rent Statement showing arrears at 12 April 2023 of £2,851.

The Tribunal, mindful of the very sensitive and personal nature of the text messages between the Respondent and his neighbour, asked the Applicants' representatives if they were content to allow them to be cross-copied to the Respondent. They replied that they would prefer them not to be cross-copied, provided the Tribunal could have the same regard to them as if they had been. The Tribunal decided not to cross-copy them.

The Respondent did not provide any of the documentation or information required by the Tribunal's Direction of 15 February 2023, but on 3 May 2023, he submitted an Application for a Time to Pay Direction. He stated that his monthly income was £1,800 and indicated that he could pay £850 per month towards the arrears.

The Hearing

The Hearing took place by means of a telephone conference call on the morning of 10 May 2023. The Applicant, Mr Pinder was present, in case he was required to give further evidence, but the Applicants were otherwise represented again by Mrs Johnstone. The Respondent was present, as was Mr Nikolai Koudreiko, the Respondent's Guarantor under the tenancy agreement.

In relation to the Tribunal's Directions, the Respondent told the Tribunal that he has been employed full-time by British Gas since the end of 2022. He had not provided copies of correspondence regarding the Tenant Grant Fund as half of the communication had been by telephone. Police Scotland had told him they could not provide information to him. He confirmed that he had appeared in court on 9 March 2023, had pleaded not guilty and that trial had been set for September. He also confirmed that the subject matter of the prosecution was the content of his text messages to his neighbour. He had planned to clear the rent arrears over the past three months, but had been unable to do so due to other substantial debts. His

situation had now improved, as his probationary period in his job had come to an end. He had been in touch with the Council regarding being re-housed. The Council appeared to be awaiting the outcome of the Tribunal Hearing.

The Respondent said that the only charge brought against him was a matter going to trial in September 2023 and he was innocent until proved guilty. He accepted that some of the text messages to his neighbour were of a sexual nature, but they related to the private relationship between them. He said that the last message he had sent to his neighbour had been on the day he was charged. He was subject to a bail condition that he must not communicate with her.

The Applicants' representative told the Tribunal that the rent arrears were currently £2,251, with a further payment of £550 due in two days' time. The Applicants were opposed to a Time to Pay Direction. More than a dozen payment plans had been agreed in the past, and the Respondent had failed to comply with any of them. She added that it had been agreed at the Case Management Discussion that the relationship between the Respondent and his downstairs neighbour had been platonic, not romantic. The Respondent has exhibited a pattern of finding jobs fairly easily but then losing them fairly quickly. Mrs Johnstone said that she had also had ongoing communications from another neighbour with reports of anti-social behaviour, but that neighbour was too scared to put the complaints in writing. She also repeated that, should the Tribunal be unwilling to uphold the complaint under Ground 14 without having to refer to specific text messages included their submissions of 17 April 2023, she would wish the Hearing to be continued and the text messages cross-copied to the Respondent.

Reasons for Decision

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 applies.

Ground 11 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has failed to comply with an obligation under the tenancy and that the Tribunal may find that Ground 11 applies if the tenant has failed to comply with a term of the tenancy, other than the requirement to pay rent, and the Tribunal considers it to be reasonable to issue an Eviction Order on account of that fact.

In the Notice to Leave, the Applicants had stated that the Respondent had failed to comply with Clauses 8 and 23 of the tenancy agreement. Clause 8 relates to rent arrears, so could not be considered in relation to Ground 11. The reference to Clause 23 appeared to be an error, as it deals with Data Protection. The description which followed in the Notice to Leave referred to "Respect for Others-harassing neighbours", which suggests that the Clause which should have been referred to was Clause 21 of the tenancy agreement. The Tribunal did not, however, have to determine whether this meant that the complaint under Ground 11 must fail, as the Respondent had not been given accurate notice of the specific Clause of the tenancy agreement which was the subject of the alleged failure, as the view of the Tribunal was that the substance of the complaint in relation to anti-social behaviour would be

dealt with in relation to the complaint under Ground 14. Accordingly, the Tribunal did not uphold the complaint under Ground 11.

Ground 12 of Schedule 3 to the Act states that it is an Eviction Ground that the tenant has been in rent arrears for three or more consecutive months and that the Tribunal may find that Ground 12 applies if, at the beginning of the day on which the Tribunal first considers the application for an Eviction Order on its merits, the tenant is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and has been in in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, that the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order.

The Tribunal noted that the arrears at the date of the Case Management Discussion were £2,251 and that the rent had been in arrears since June 2020. Only occasionally since arrears reached £2,000 in February 2021 had they been below that figure, and the lowest they had been was since that date was £1,370, in August 2022. No evidence had been presented by the Respondent to indicate that the rent being in arrears was wholly or partially a consequence of a delay or failure in the payment of a relevant benefit and the Tribunal decided that, given the level and long-standing nature of the arrears, the requirements of Ground 12 had been met and that it would be reasonable on account of that fact to issue an Eviction Order.

Ground 14 states that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour. The Tribunal may find that Ground 14 applies if the tenant has behaved in an anti-social manner in relation to another person, and the behaviour is relevant anti-social behaviour. 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 (b) pursuing in relation to the other person a course of conduct which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or amounts to harassment of the other person. Anti-social behaviour 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 (a) who it was in relation to, or (b) where it occurred.

The Tribunal considered carefully all the evidence before it related to the conduct of the Respondent. The Tribunal had to determine whether it could decide the matter without reference to any specific text messages sent by the Respondent to his downstairs neighbour as, were it essential to make such references, it would be necessary to continue the Hearing and to cross-copy the text messages to the Respondent, so that he could have an opportunity to make further representations to the Tribunal.

The Tribunal noted that the representations which had been copied to the Respondent as part of the case papers included redacted copies of a number of emails from the downstairs neighbour to the Applicants' representatives as the letting agents, reporting and complaining about the Respondent's conduct towards her. Much of the

correspondence concerned events that took place at the end of May 2022, so could be considered by the Tribunal as they occurred less than 12 months prior to the application for an Eviction Order (8 September 2022), as could an incident reported by the neighbour on 5 January 2022. In an email of that date, the neighbour stated that she had phoned the police on 12 December 2021. She felt not only unbelievably anxious but unsafe in her own flat. She reported to the Applicants' representatives a "serious incident" that had taken place on 31 March 2022, when she was suffering from COVID-19, in which the Respondent had tried to gain entry to her flat. She had called the police, who had attended and told him that he was not allowed to come near her again. She said that again she felt unsafe, but was unable to leave her flat on that occasion, as she had to self-isolate. On 30 May 2022, she contacted the letting agents again, to say that on 27 May, following a disturbance in the Property, she had called the police who had attended, but when they left, the Respondent began harassing her in text messages. A policewoman had called at her flat and had asked when her relationship with the Respondent had broken down. This had surprised her and she had replied that they "absolutely were not in any way shape or form in a relationship." She had gone to stay with a family member, because, after the policewoman left, the text messages started again. She said that she had been forced out of her flat because of the Respondent's harassment.

The neighbour sent a further email to the Applicants' representatives on the following day, reporting that the police had been called again and that, after they left, she was subjected to absolutely shocking verbal abuse and disgraceful obscenities. As a result, she had called the police who had attended again. She did not feel safe in her flat with the Respondent being aggressive and using threatening behaviour towards her and had arranged to stay in different accommodation for the rest of the week. She provided the Applicants' representatives with the two police Incident numbers.

At the Hearing, the Respondent had confirmed that he had been charged in relation to his communications with the downstairs neighbour, but stated, as he had done at the Case Management Discussion, that he had been in a relationship with the neighbour, so this was a private matter.

The Tribunal did not consider the copies of the messages that had been provided by the Applicants' representatives as they had not been cross-copied, but the Tribunal was in any event, satisfied, on the balance of probabilities, from the emails summarised above, that the neighbour was adamant that they were not and had never been in a relationship which was anything other than platonic and that the Respondent's conduct towards her had caused alarm, distress, nuisance or annoyance and amounted to harassment. This was anti-social behaviour as defined in Ground 14 and the Tribunal was satisfied that it was 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, namely a neighbour in the same block, and (b) where it occurred, namely within the block.

The Tribunal's Decision to issue an Eviction Order under Ground 12 of Schedule 3 to the 2016 Act is not affected by the Cost of Living (Tenant Protection) (Scotland) Act 2022, as the application to the Tribunal was made on 8 September 2022, before the Act came into force. The Decision under Ground 14 would not, in any event, have been affected by the 2022 Act.

The Tribunal's Decision was unanimous.

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.

George Clark

Legal Member/Chair

10 May 2023
Date