



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/21/0053

Property : 27A Riverside Drive, Aberdeen AB11 7DF ("Property")

Parties:

Drum Investments Limited, 12 Rubislaw Terrace Lane, Aberdeen AB10 1XF ("Applicant")

Mackinnons, Solicitors LLP, 14 Carden Place, Aberdeen AB10 1UR ("Applicant's Representative")

Ashley Millar, 27A Riverside Drive, Aberdeen AB11 7DF ("Respondent")

Tribunal Members:

**Joan Devine (Legal Member)
Eileen Shand (Ordinary Member)**

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for possession should be made.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Residential Tenancy Agreement dated 19 October 2020; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 1 December 2020 ("Notice to Leave"); copy sheriff officer execution of service evidencing service of the Notice to Leave on the Respondent on 2 December 2020; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 8 January 2021; copy emails and text messages covering the period 4 November 2020 to 28 January 2021 regarding anti-social behaviour at the Property; a timeline of events at the Property covering the period 19 October 2020 to 1 March 2021; a lease between Drum Riverview Ltd and the Applicant in respect of, *inter alia*, the Property and sheriff officer's execution of service certifying service of the Application on 29 January 2021.

Case Management Discussion

A case management discussion took place before the Tribunal on 2 March 2021 by teleconference. Rachael Bain of the Applicant's Representative was in attendance. There was no appearance on behalf of the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement which commenced on 19 October 2020 ("Tenancy Agreement").
2. The Notice to Leave was served by sheriff officer on 2 December 2020. It stated that an application for an eviction order would not be submitted to the Tribunal before 31 December 2020.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 8 January 2021.
4. Notice of the date of the case management discussion had been given to the Respondent on 29 January 2021.
5. The Respondent had engaged in relevant anti-social behaviour.
6. The Respondent associates in the Property with a person who has engaged in relevant anti-social behaviour.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act.

The Tribunal noted that title to the Property was held by Drum Riverview Ltd. Ms Bain explained that a lease had been granted by that company in favour of the Applicant who then granted the tenancy agreement for the Property. A copy of the lease dated 3 December 2017 was provided to the Tribunal.

The Tribunal then considered whether to grant an eviction order. In terms of section 51 of the Act, the First-tier 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.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Grounds 14 and 15 which state :

14 Antisocial behaviour

(1) *It is an eviction ground that the tenant has engaged in relevant antisocial behaviour.*

(2) *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 antisocial behaviour, and*

(c) *Either –*

(i) *the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or*

(iii) *the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

(3) *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,*

(b) *pursuing in relation to the other person a course of conduct which –*

(i) *causes or is likely to cause the other person alarm, distress, nuisance or annoyance or*

(ii) *amounts to harassment of the other person.*

(4) *In sub-paragraph (3) –*

'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.

(5) *Anti-social behaviour is relevant antisocial 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.*

(6) *In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.*

15 ***Association with person who has relevant conviction or engaged in relevant antisocial behaviour***

(1) *It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

(2) *The First-tier Tribunal may find that the ground named by sub paragraph (1) applies if*

(a) *A person who falls within sub paragraph (4) –*

(i) *has received a relevant conviction as defined by paragraph 13(3), or*

(ii) *has engaged in relevant anti-social behaviour,*

(b) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and*

(c) *Either –*

(i) *the application for an eviction order that is before the Tribunal was made within 12 months of the conviction or (as the case may be) the occurrence of the anti-social behaviour, or*

(ii) *the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

(iii) *In sub paragraph (2) (a) (ii), 'relevant anti-social behaviour' means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.*

(4) *A person falls within this sub-paragraph if the person –*

(a) *resides or lodges in the let property.*

(b) *has been admitted to the let property by the tenant on more than one occasion.*

(5) In a case where two more persons jointly are the tenant under a tenancy, the references in sub-paragraphs (3) and (4) to the tenant are to any of those persons.

The Tribunal considered the timeline of events at the Property provided by the Applicant's Representative which detailed numerous complaints from occupiers within the development of which the Property formed part regarding anti-social behaviour carried out by the Respondent and by an individual with whom the Respondent associated at the Property. The Police had attended the Property regarding the complaints on a number of occasions.

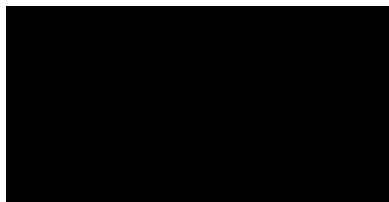
Having carefully considered the detail of the events outlined in the timeline, the Tribunal determined that the grounds for eviction had been established. In the absence of any submission by the Respondent that it would not be reasonable to grant an order for eviction, and in light of the submission made by the Applicant's Representative, the Tribunal determined that it was reasonable to issue an eviction order.

Decision

The Tribunal grants an order for possession of the Property.

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.



**Joan Devine
Legal Member**

Date : 2 March 2021