

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/17/0560

Re: Property at 34 Carmel Avenue, Kilmarnock, KA1 2PG (“the Property”)

Parties:

**Mr Andrew McKeen, c/o Ardanach Lettings Ltd, The Andrew Barclay Heritage
Centre, West Langlands Street, Kilmarnock, KA1 2PR (“the Applicant”)**

**Miss Lauren Ka McDowall, 34 Carmel Avenue, Kilmarnock, KA1 2PG (“the
Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

The Applicant was represented by Miss Machin and Miss Campbell, Solicitors. The Respondent did not appear and was not represented.

Background

The Application was brought under section 18 of the Housing (Scotland) Act 1988, Schedule 5, part II, ground 13.

The Hearing

Evidence was led from the Applicant, Andrew McKeen. He told the Tribunal that the property was let to the Respondent through letting agents, and the tenancy began on 25th August 2017. He was aware of complaints from the upstairs neighbour, Jacqueline Carswell, from the beginning of September 2017. The letting agent, Carol Dickie, spoke to the tenant about the complaints. He then received a letter from James Paton, Anti Social Behaviour officer at East Ayrshire Council, advising him of further incidents and reminding him of his responsibilities as a landlord. The Applicant said he took these responsibilities very seriously. He instructed Miss Dickie to serve the Notice To Quit. By this point Miss Carswell had sold the property upstairs to Mr & Mrs McInnes. The Applicant had been regularly advised by Mr

McInnes that the anti social behaviour was continuing. This was right up until just before the hearing.

Mr McKeen also spoke to production 5/7/1, which was the police log of incidents reported to them. There had been 36 incidents between 30th August 2017 and 26th January 2018.

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Evidence was led from Carol Dickie, Letting Agent with Ardanach Lettings. Miss Dickie told the Tribunal that she had let the property to the respondent. The Respondent had moved in on 25th August 2017 and the first complaint Miss Dickie received about her was on 31st August 2017. Miss Carswell, the upstairs neighbour, reported a smell of cannabis. She had reported it to the police. Miss Dickie met with the respondent, and although she could see no evidence of cannabis use herself she warned the Respondent that if such behaviour was taking place she could be evicted. She heard nothing further until Mr Paton from East Ayrshire Council contacted her at the end of September 2017 regarding numerous incidents which had been reported to the police. She was instructed to serve Notice To Quit. To the best of her knowledge complaints are still being made against the Respondent. She had inspected the property and concluded that the property was not being occupied by the Respondent.

Evidence was led from John McInnes, 36 Carmel Avenue, Kilmarnock. His flat is directly above the property. He lives there with his wife and two children, aged 7 and 5. He moved in on 10th November 2017, having purchased from Miss Carswell. He told the Tribunal that he had not had much direct contact with the Respondent but had concluded that she lived a chaotic lifestyle. He was of the opinion that there was a lot of drug use in the house and a lot of undesirable people coming and going. Mr McInnes reported the situation and incidents to the police and to the Applicant on a regular basis. He said this would have been on at least 20 occasions. He was asked what the main concerns for him were and he said it was the constant smell of drugs and the people coming and going. He described an incident when there had been noise downstairs and he had found his 5 year old son huddled up in his room. The boy said that there were bad men downstairs and he was afraid they were going to hurt him and his sister. As a consequence of the behaviour Mr McInnes does not allow his children to go out to play. They have considered moving but have only just bought the flat. They have had a set of bunk beds installed at Mr McInnes's mother's house in case they need to move there in a hurry.

Mr McInnes spoke to a diary he had compiled and which was document 5/8. He spoke to an incident on 29th November when there had been disturbance from downstairs which had continued until 6am. When he left his flat that morning he said hello to the respondent's father who then began shouting at him. Mr McInnes is a minister and tries to avoid any form of confrontation and found this very unpleasant.

Mr McInnes spoke to the text messages which he had sent to the Applicant and which were productions 5/8/1 onwards.

Mr McInnes confirmed that in the last month things have not been quite so bad because he suspects that the respondent isn't actually living in the property, but there

have been some incidents, on 3rd and 7th March. The respondent knocked on his door when she received copies of the productions. She seemed very upset and made vague threats that although she was staying away at the moment when she came back there would be a continuing smell of cannabis.

Evidence was led from James Paton, Anti Social Behaviour Officer from East Ayrshire Council regarding the letter he had sent and the complaints of which he was aware. He said that it appeared at the moment that the property was being used as a party flat.

The Tribunal found all witnesses to be credible and reliable.

Submissions were made by Miss Machin on behalf of the Applicant.

In summary she submitted that the notices had been correctly served, the ground for eviction had been established and that given the nature, duration and frequency of the conduct it was reasonable to grant the order. She submitted that the Applicant had taken all steps he could prior to raising the current proceedings.

She made reference to the case of Midlothian Council –v- Mrs Lee Greens [20`7] SC EDIN 57.

She moved the Tribunal to grant the order for eviction plus expenses.

Findings In Fact

The Tribunal made the following findings in fact:

1. The tenancy was constituted by Lease dated 25th August 2017.
2. Notice To Quit and AT6 were served on 11th October 2017.
3. There had been an ongoing course of anti social behaviour by the Respondent and those visiting her lasting from just after commencement of the tenancy to the date of the Tribunal.

Reasons For decision

The Tribunal was satisfied that the tenancy had been constituted by the lease and that the notices had been served correctly. From the evidence led The Tribunal were satisfied that there had been a continuing course of conduct which was in breach of Clause of the lease, and satisfied the requirements of Ground 13 of Part II of Schedule 5 to the 1988 Act. Further the Tribunal was satisfied from the evidence that the nature, frequency and duration of the conduct established was such that it was reasonable in terms of section 18(4) of the Act to grant the order for eviction.

The Motion for expenses was refused. In terms of the Procedure Rules Rule 40, expenses can only be awarded against a party where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. The Respondent had not entered appearance and therefore there was no suggestion that she had behaved in such a manner.

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction 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.

A Kelly

Legal Member/Chair

J

Date

23/3/18