



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/23/4191

Re: Property at 53 Cromwell Road, Falkirk, FK1 1SN (“the Property”)

Parties:

Mrs Lynsey Hansford, 2 Millar Place, High Bonnybridge, FK4 2AR (“the Applicant”)

Miss Emma Jane Parkhill, 53 Cromwell Road, Falkirk, FK1 1SN (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at 53 Cromwell Road, Falkirk, FK1 1SN under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application for repossession of the Property under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The basis for the application was

ground 11 (breach of tenancy), ground 12 (rent arrears) and ground 14 of schedule 3 of the 2016 Act (anti-social behaviour)

2. The application was accompanied by a Tenancy Agreement dated 11 August 2019 between the parties, a letter dated 18 April 2023 to the Respondent, a rent statement, a text dated 11 April 2024 from Universal Credit to the Applicant, a Notice to Leave with Recorded Delivery receipt dated 19 October 2023 and signed proof of delivery dated 21 October 2023, and a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Falkirk Council with a read receipt dated 21 November 2023.
3. On 25 January 2024, the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 19 March 2024 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 29 April 2024. The Respondent required to lodge written submissions by 9 April 2024. This paperwork was served personally on the Respondent by Stephen McCallum, Sheriff Officer, Kirkcaldy on 19 March 2024 and the Execution of Service was received by the Tribunal administration.
5. On 8 April 2024 the Applicant lodged an up to date rent statement. On 9 April 2024 the Applicant lodged an email dated 8 April 2024 from one of the Respondent’s neighbours setting out complaints she had made to Falkirk Council regarding the behaviour of the Respondent and her partner.
6. On 14 April 2024 the Applicant submitted information regarding a Police Incident report dated 12 April 2024.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 29 April 2024 by way of teleconference. The Applicant represented herself. There was no appearance by or on behalf of the Respondent despite the teleconference starting 10 minutes late to allow the Respondent plenty of time to join. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in her absence.
8. The Tribunal had before it the Tenancy Agreement dated 11 August 2019 between the parties, letter dated 18 April 2023 to the Respondent, the up to date rent statement, the text dated 11 April 2024 from Universal Credit to the Applicant, the Notice to Leave with Recorded Delivery receipt dated 19 October 2023 and signed proof of delivery dated 21 October 2023, the Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Falkirk Council with a read receipt dated 21 November 2023, complaints from

a neighbour and further information regarding a Police Incident report dated 12 April 2024. The Tribunal considered the contents of these documents.

9. The Applicant moved the Tribunal to grant an order for eviction. She explained when the Respondent had signed for the tenancy in August 2019 it was just the Respondent and her young daughter who lived in the Property. To begin with there were no issues with the tenancy. Throughout the pandemic, The Respondent had stayed in contact with the Applicant and would always text if she was going to be late with her rent. The Applicant had no issue with that and was happy to be flexible.
10. With reference to the rent statement lodged the Applicant submitted that the Applicant had missed three months of rent in February, March and April 2023 leaving arrears of £1573.00. These were the current arrears. She explained she had requested rent direct from Universal Credit. She started to receive rent direct and arrears have remained since then. She referred to the text from Universal Credit dated 11 April 2023 which referred to the fact that a Daniel Richardson was also claiming benefit at the Property. She had since found out that Mr Richardson is living with the Respondent at the Property. She had not given consent for him to reside there. She understood from neighbours that he had two children of his own. There may also be a baby in the house but she was not sure.
11. On being questioned by the Tribunal as to whether she had tried to get the Respondent to pay the arrears she explained that the Respondent no longer took her calls. She had written to the Respondent on 18 April 2023 to get access to the Property for gas servicing. The Respondent had ignored that. The Applicant explained that she realised at that time she would probably never get the arrears back so had not pursued these.
12. She had received a call from Falkirk Council to say there had been complaints made against the Respondent. There were concerns from Environmental Health about a sofa being dumped and rubbish left outside. The Property was in a four in a block with neighbours above and through the walls. There were also complaints about the Respondent's behaviour towards neighbours. The Tribunal noted the email from the neighbour dated 8 April 2024 which noted complaints to Falkirk Council on 26 December 2022 and 6 January 2023 regarding noise nuisance and smoking drugs outside, on 2 March 2023 regarding a neighbour's car being egged, on 28 May 2023 regarding the Respondent and her partner fighting, the Respondent being verbally abusive to a neighbour, smoking drugs and noise nuisance, on 29 May 2023 regarding Daniel Richardson being verbally abusive to a neighbour, on 4, 17 and 22 September 2023 regarding loud arguing and fighting, on 12 October 2023 regarding noise nuisance, on 13 October 2023 regarding the Respondent slamming bucket lids in the middle of the night, on 14, 16 and 17 October 2023 regarding noise nuisance, on 6 December 2023 regarding noise nuisance, on 9 December 2023 regarding abusive language and noise

nuisance, on 17 December 2023 regarding noise nuisance and spitting on the communal path and on 2 April 2023 regarding Daniel Roberston being verbally abusive. The Tribunal noted these complaints and that there had been other incidents between December 2023 to April 2024 as noted in the email of 8 April 2024. The Tribunal also noted that the Police had been involved with a number of these complaints. The Applicant also referred to the Police Incident of 12 April 2024 when Daniel Roberston had kicked in the door of the Property.

13. The Applicant explained the Respondent was a very different person from when she had moved in. She understood another neighbour had also reported behaviour to the Council's Anti-Social Behaviour Team and to the Social Work Department. She had tried to get the Council to put something in writing to her for the Tribunal but they advised they could not do so as they had not taken out an anti-social behaviour order. She understood the Council had written to the neighbours who had complained as well as the Respondent. She just wanted the Respondent out and had served the Notice to Leave. She was concerned about the state of the Property and that the neighbours were being subjected to ongoing anti-social behaviour.

Findings in Fact

14. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 11 August 2019 in relation to the Property.
15. Clause 4.1 of the tenancy agreement states that the rent is £475 per month.
16. Clause 12 provides that the Respondent and those living with her and her visitors would not engage in anti-social behaviour towards another person including neighbours. "Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person and includes speech.
17. The Property is a two bedroomed flat in a block of four. The Respondent lived in the Property with her daughter at the commencement of the tenancy. At some stage, unknown to the Applicant, the Respondent's partner Daniel Roberston moved into the Property with his children.
18. The Respondent is on Universal Credit. She failed to pay rent in February, March and April 2023 from her Universal Credit. Thereafter the Applicant requested that the DWP pay rent direct to her. Universal Credit confirmed in a text message to the Applicant on 11 April 2023 that they would pay rent direct to her from the claims of the Respondent and Daniel Richardson.
19. The rent has been paid direct to the Applicant since May 2023. The current arrears are £1573, being over three months of arrears.

20. The Respondent and her partner have engaged in anti-social behaviour at the Property between 26 December 2022 to 12 April 2024 including excessive noise, being verbally abusive, smoking drugs and kicking in the front door of the Property. The police had been called on occasion. This behaviour has caused nuisance and annoyance to neighbours. Neighbours have reported this behaviour to the Falkirk Council.
21. Falkirk Council have written to the Respondent regarding her behaviour. The Applicant has issued no warnings to the Respondent.
22. The Applicant has attempted to contact the Respondent by phone. The Respondent has not engaged with her and ignores her calls.
23. The Applicant sent a Notice to Leave to the Respondent by Recorded Delivery mail on 19 October 2023. The Notice required the Applicant to leave the Property by 19 November 2023. The Notice to Leave relied on ground 11 (breach of tenancy), ground 12 (rent arrears) and ground 14 (anti-social behaviour) of schedule 3 to the 2016 Act. The Notice to Leave was sent to the Respondent by Recorded Delivery mail on 19 October 2021. This was signed for by the Respondent on 21 October 2021.
24. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Falkirk Council on 21 November 2023.
25. The Respondent continues to reside in the Property with her daughter and her partner and his children.

Reasons for Decision

26. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination Private Housing (Tenancies) (Scotland) Act 2016 and The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
27. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on ground 11 (breach of tenancy), ground 12 (3 months rent arrears) and ground 14 (anti-social behaviour).
28. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

29. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of grounds 11,12 and 14 of Schedule 3 is 28 days.
30. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on grounds 11,12 and 14 of schedule 3 of the 2016 Act and states the breaches of the tenancy agreement in relation to the Applicant's partner living there, the arrears and the instances of anti-social behaviour at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 19 November 2023. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 21 October 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
31. The Tribunal considered the Respondent had not opposed the order for eviction. The Respondent's arrears had remained static for over a year, the monthly rent being £475 with reference to the rent statement which showed arrears at £1573. Despite the fact that the Applicant had not complied with the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 the Tribunal accepted that the Applicant felt there was no point in chasing the Respondent for payment of the arrears due to the Respondent being on Universal Credit.
32. Further the Tribunal accepted the submissions of the Applicant regarding the involvement of Falkirk Council. The Tribunal accepted that the Council had issued warnings to the Respondent but that the behaviour complained of continued with the most recent incident being on 12 April 2024.
33. As the Applicant did not make any real objection to the general breach of the tenancy agreement the Tribunal did not find that ground 11 had been satisfied. The Tribunal was satisfied that the Applicant had established that grounds 12 and 14 had been satisfied.
34. However, ground 12 (three months rent arrears) and ground 14 (anti-social behaviour) are discretionary grounds of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

35. In determining whether it is reasonable to grant an Order, the Tribunal is required to balance all the evidence, to weigh the various factors which apply and to consider the whole circumstances of the case. In this case the Tribunal was of the opinion that the behaviour complained of was particularly alarming to neighbours. It was criminal at times in nature. It was threatening at times. It clearly caused them nuisance and annoyance. The Applicant's Property had been damaged as a result of the behaviour. The actions of the Respondent and her partner should not have to be tolerated by anyone. The local council was clearly assisting in managing that behaviour which despite their warnings to the Respondent was continuing. The behaviour had taken place over a period of 16 months. The Tribunal accepted the Applicant was concerned that the neighbours were being subjected to such behaviour. Although there was no pre action requirement letters the Tribunal accepted the Applicant's submission that the Respondent had ignored her calls and that she thought it pointless to write to her about the arrears as she had failed to respond to requests for access for gas servicing. On the other hand, the Respondent did not oppose the application. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Falkirk Council had been served. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by the Applicant that the balance of reasonableness in this case weighted towards the Applicant. The Tribunal was satisfied it was reasonable to evict.

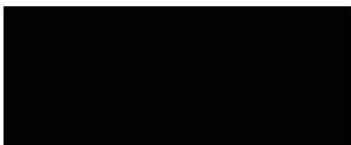
36. In the circumstances the Tribunal considered that in terms of ground 12 and 14 of Schedule 3 the Respondent is in rent arrears of over three months and has engaged in anti-social behaviour over the past 16 months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

37. The Tribunal granted an order for repossession. The decision of the Tribunal 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.



29 April 2024

Legal Member

Date

