



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/21/0139

Re: Property at Flat 4, 6a Oakshaw Street East, Paisley, PA1 2DD (“the Property”)

Parties:

Mr Timothy Cupples, Unit 2, 68-74 Queen Elizabeth Avenue, Glasgow, G52 4BJ (“the Applicant”)

Mr Connor James Galloway, Flat 4, 6a Oakshaw Street East, Paisley, PA1 2DD (“the Respondent”)

Tribunal Members:

George Clark (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 the application should be decided without a Hearing and issued an Eviction Order against the Respondent

Background

By application, received by the Tribunal on 19 January 2021, the Applicant sought an Eviction Order against the Respondent under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The Ground relied on was Ground 14, namely anti-social behaviour.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties commencing on 25 April 2020 and of a Notice to Leave dated 10 December 2020. The Notice to Leave advised the Respondent that the Grounds being relied on were Grounds 11 and 14, namely that the Respondent had breached a term or terms of his tenancy agreement and that he had engaged in relevant antisocial behaviour, and that an application would not be submitted to the Tribunal for an Eviction Order before 16 January 2021.

The Applicant also provided the Tribunal with copies of two letters from JLC Property Lettings, the letting agents for the Property, to the Respondent. The first one, dated 6

November 2020, warned the Respondent as to his behaviour, following a complaint from one of his neighbours that there had been noise of music and social gatherings that had continued after sociable hours to the disturbance of other residents of the building and that this had happened on several occasions since the start of the tenancy. The letter also stated that there had been other instances of loud banging and crashing noises again happening outside of sociable hours, again to the disturbance of other residents. The letter referred to a meeting between the Respondent and the letting agents on the previous day at which the Respondent had given a commitment that nothing of this nature would happen again during his stay in the Property. The letter warned the Respondent that if the behaviour was repeated the letting agents might have no alternative but to begin steps to terminate the tenancy.

The second letter was dated 30 November 2020. It advised the Respondent that, despite the previous discussion and warning letter, the letting agents had received further complaints from a total of three neighbours regarding noise coming from the Property at unsociable hours and of rubbish left outside the building at times not in line with scheduled Council refuse collection times. The letter informed the Respondent that any further complaints of this nature would result in the letting agents having to take steps to bring the tenancy to an end.

The Applicant also provided the Tribunal with copies of a number of emails relevant to the application. They included an email of 6 December 2020 from a neighbour, advising the letting agents that on the previous night, he had contacted Police Scotland about the noise levels from the Property, having been unable to obtain an answer when he knocked on the door at 2am to complain about it. Approximately 15-20 people had been in the Property. The police had attended the Property. The neighbour said that this was the third or fourth time in the last few months that he had had to knock on the door in the early hours of the morning in similar circumstances. An email from a neighbour, dated 25 September 2020, cited incidents on 6 May, 12 June, 4 July and 1 August 2020, all involving loud music and shouting from late evening and lasting throughout the night. In an email, dated 7 December 2020, another neighbour confirmed that she too had called the police on the night of the most recent incident.

The Applicant provided an email of 7 January 2021 from the Respondent to the letting agents, in which the Respondent stated that he would not be leaving on the date set out in the Notice to Leave and that if they wanted him out, they would need to take him to court. He contended that the letting agents had not given him any actual warnings of what was happening, apart from one which was issued on the same day as the eviction notice, which, he said, was clearly invalid. He was severely struggling with his mental health as a result of the way in which they, as his letting agent, and the landlord had handled this issue. He had previously mentioned that he struggled with complex mental health issues and the letting agents were trying to manipulate a situation for their own gain "i.e. evicting in 28 days for antisocial behaviour instead of the law that you cannot evict for 6 months minimum". He then made various comments about the condition of the Property and made allegations about the conduct of neighbours towards him. He concluded that, due to the pandemic, he had no choice other than to continue living in the Property for the foreseeable future, but they had his absolute word that as soon as he had the means, and it was possible to do so, he would be out of the Property as fast as he could.

On 15 February 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 8 March 2021. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 23 March 2021. The Applicant was represented by Mr Marcus Whyte of Whyte Fraser & Co, solicitors, Motherwell. The Respondent was not present or represented. The Applicant's representative had, earlier in the day, forwarded to the Tribunal an email from a neighbour of the Respondent, reporting a further incident of a party having taken place in the Property on the previous Saturday night into Sunday morning (20/21 March 2021), where loud music, shouting and screaming went on all night. At about 7.20 am, the neighbour had called the police, but he was unsure whether they had attended or not. Mr Whyte pointed out that, in allowing multiple people to enter the Property and have all-night parties the Respondent was not only engaging in anti-social behaviour but was also flagrantly flouting current COVID-19 lockdown restrictions. It was clear that the Respondent had no intention of changing his behaviour and Mr Whyte asked the Tribunal to decide that the issue the Eviction Order without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

Ground 14 of Schedule 3 to the Act provides that it is an Eviction Ground that the tenant has engaged in relevant anti-social behaviour and that the Tribunal may find that Ground 14 applies if the tenant has behaved in an anti-social manner in relation to another person by doing something in relation to another person, or by 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. A course of conduct means conduct on two or more occasions and anti-social behaviour is relevant anti-social behaviour for the purpose of Ground 14 if the Tribunal is satisfied that it is reasonable to issue the Eviction Order as a consequence of it, given the nature of the anti-social behaviour and who it was in relation to, or where it occurred.

Having considered all the written and oral evidence before it, the Tribunal was satisfied the requirements of Ground 14 had been met, and that the Respondent had engaged in a course of anti-social behaviour, causing distress, nuisance and annoyance to his neighbours, over a period of many months and on more than two occasions, by playing or permitting to be played loud music and permitting social gatherings at the Property at unsociable hours which lasted on occasions throughout the night. He had continued with this course of action despite clear warnings in emails and letters from the letting agents about his behaviour and despite having given a commitment on 5 November 2020 that nothing of this nature would happen again during his stay in the Property. The police had been called to the Property on two occasions and the neighbours had repeatedly complained to the letting agents about the late-night noise coming from the Property. It appeared from the

neighbour's email regarding the incident on 20/21 March 2021, that the course of conduct was still ongoing and was a source of distress, nuisance and annoyance to the other residents in the tenement . Accordingly, the view of the Tribunal was that it was reasonable to issue the Eviction Order as sought by the Applicant.

Decision

The Tribunal determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondent.

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.

George Clark

Legal Member/Chair

23 March 2021
Date