



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/19/0523

Re: Property at 13 Jean Armour Drive, Mauchline, KA5 6DE (“the Property”)

Parties:

Mrs Barbara Andrews, 124 Townhill Road, Portglenone, County Antrim, BT44 8AW (“the Applicant”)

Miss Shelly Campbell, 13 Jean Armour Drive, Mauchline, KA5 6DE (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:-
 - a copy of the tenancy agreement;
 - a copy of the notice to leave;
 - a copy of an Anti-Social Behaviour letter served on the Respondent by East Ayrshire Council dated 25 July 2018;
 - a copy of a letter from Mackenzie Way to the Respondent dated 27 July 2018;

- a letter of confirmation that Mackenzie Way are the representatives for the Applicant; and
 - a copy section 11 Notice
3. The Applicant was represented by Jane Parks from Mackenzie Way Estate and Letting Agents.
 4. Notice of the Hearing had been served on the Respondent by sheriff officers on 22 March 2019. The Respondent did not appear at today's case management discussion; however she had telephoned to the Tribunal Office earlier in the morning to advise that she was not going to attend the hearing as she was leaving the property in three weeks' time. The Tribunal was satisfied that the Respondent had been served with notice of today's hearing and I was prepared to proceed with today's hearing in her absence.

Hearing

5. The Applicant's agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, the notice to leave, and the correspondence which had been sent to the Respondent in relation to complaints of anti-social behaviour.
6. She confirmed that the notice to leave had been served by recorded delivery. While they were unable to produce any evidence of postal service, she advised that they had posted it the day it was signed; and the Respondent had contacted them after it had been served on her in relation to discuss the notice to leave.
7. She advised that the notice to leave sought eviction under grounds 11 and 14 of the 2016 Act, namely breach of tenancy agreement and anti-social behaviour. She referred to Clause 21 of the Tenancy Agreement which set out that that the Respondent had to have respect for others and not act, or allow others staying or visiting her to act, in an anti-social manner.
8. She advised that a couple of months after the Respondent had moved in to the property, they had started to receive complaints from a number of different persons in the neighbourhood regarding the conduct of the Respondent and persons visiting her. Sometime these complaints had been on a daily basis. They had been liaising with the anti-social behaviour team in the East Ayrshire Council regarding the conduct to try and get it stopped, however it had continued. She advised that neighbours had now lost patience with the Respondent.
9. She advised that the complaints of anti-social behaviour related to on-going noise, including noise from animals, alleged use of illegal drugs, rubbish in the garden, verbal abuse to neighbours.
10. She advised that they had tried to speak to the Respondent about the conduct, on some occasions she was ok and on others she was quite

aggressive in her manner. It was also sometimes difficult to get in touch with the Respondent at all.

11. She said that after the notice to leave had been served on the Respondent the Applicant had given her some time to try and moderate her behaviour, this was also as the Respondent had two young children in the property, however the anti-social behaviour had continued and therefore this is why the Applicant now sought the order for eviction.
12. She advised that the anti-social behaviour continues to be a problem and is still on-going.
13. She advised therefore that the Applicant was seeking an order for recovery of the possession of the property under the breach of tenancy and anti-social behaviour grounds.

Findings in Fact

14. The Tribunal found the following facts established:-
 15. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 21 March 2018. The tenancy agreement had been signed by the parties on 21 March 2018.
 16. The tenancy was for the property 13 Jean Armour Drive, Mauchline.
 17. Clause 21 of the tenancy agreement was entitled "Respect for Others" and set out in detail that the tenant, those living with her and visitors must not engage in anti-social conduct, it goes on to list the types of anti-social conduct which is prohibited.
 18. The notice to leave was addressed to the Respondent. It contained the necessary information and provided the Respondent with notice as to why an eviction order would be sought. It was dated 27 July 2018. It confirmed that proceedings would not be brought until 24 August 2018.
 19. The Applicant's agent stated it had been sent to the Respondent by recorded delivery on 5 September 2018.
 20. The grounds in the notice to leave were grounds 11 "breach of tenancy agreement" and 14 "anti-social behaviour".
 21. East Ayrshire Council had written to the Respondent on 25 July 2018 regarding complaints of anti-social behaviour that they had received about the Respondent or in relation to persons residing or visiting her.
 22. That the Council letter stated that the complaints concerned antisocial behaviour consisting of shouting, swearing, frequent disturbances, and the

police had had to attend due to the behaviour caused by the Respondent and visitors to the property.

23. That the Applicant's agent had written to the Respondent on 25 July 2018 about the allegations of anti-social behaviour.
24. The section 11 notice had been sent to the local authority providing them with notice of the intention to raise recovery proceedings.

Reasons for Decision

25. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
26. The grounds which the Applicant seeks eviction under are ground 11 (breach of the tenancy agreement) and ground 14 (anti-social behaviour).
27. In summary Ground 11 states that it is an eviction ground that the tenant has failed to comply with an obligation under the tenancy; the tribunal may find that the ground applies if the tenant has failed to comply with a terms of the tenancy and the tribunal considers it to be reasonable to issue an eviction order on account of that fact.
28. Clause 21 of the tenancy agreement deals with the respect to others and provides in summary that "the tenant ... and her visitors must not engage in anti-social behaviour to another person, ... another person includes a neighbour... ; and the clause goes on to define what is meant by anti-social behaviour and to list examples of what would constitute it. The list includes making excessive noise, allowing visitors into the property to be noisy or disruptive, leaving rubbish, harassing other persons and includes engaging in unlawful activity, which using illegal drugs.
29. In summary Ground 14 provides that it is an eviction ground that the tenant has engaged in relevant anti-social behaviour. The tribunal may find the ground established where the tenant has behaved in an anti-social manner in relation to another person, the antisocial behaviour is relevant anti-social behaviour and the application was made within 12 months of the behaviour happening or there is a reasonable excuse for not making it sooner. A persons is to be regarded as acting in an anti-social manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance.
30. I find the terms of both grounds are met. I have found that the Respondent has breached Clause 21 of her tenancy agreement and further, that the tenant has engaged in relevant anti-social behaviour. The conduct complained of appears to me to be anti-social behaviour both within the definition in the tenancy agreement and also, as defined in Ground 14 of the 2016 Act.

31. It appears that the conduct commenced shortly after the Respondent took the tenancy, and it appears to have been on-going since then. The Respondent will be aware of the conduct due to the correspondence which she has received from the letting agent and the council; however it appears that she has continued to act or allow others to act in an anti-social manner and has failed to moderate her own behaviour and that of others despite having the time to do so.

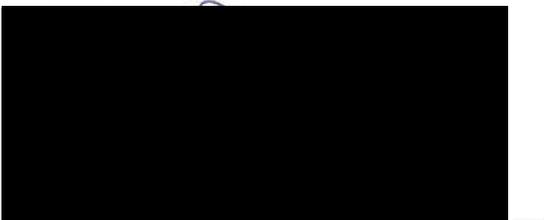
32. I note that that she has two children in the property, however that fact needs to be balanced against the fact that she has had a number of months to moderate her behaviour and has failed to do so, and the detrimental impact that her conduct has had on the wider community. Accordingly, I consider that I am entitled to grant an order for eviction under Grounds 11 and Ground 14 of the 2016 Act.

Decision

33. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under Ground 10 and Ground 14 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.



Legal Member/Chair

12. 4. 19

Date