



Decision 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/22/0461

Re: Property at 208 Braehead, Alexandria, West Dunbartonshire, G83 9ND (“the Property”)

Parties:

Mrs Tracey McKernan, 127 Strathleven Drive, Alexandria, West Dunbartonshire, G83 9PG (“the Applicant”)

Ms Joanne Rundell, 208 Braehead, Alexandria, West Dunbartonshire, G83 9ND (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Linda Reid (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 for an order to evict the Respondent from the property.
2. Case management discussions (“CMDs”) took place on 17 May 2022 and 23 June 2022 and a Hearing took place on 17 October 2022. On 17 October 2022, the Tribunal dismissed the application. The Applicant applied to recall the decision of 17 October 2022 and that application was granted on 16 November 2022. The Tribunal assigned a Hearing for 21 March 2023 and intimated details of the Hearing to the parties’ representative.

3. On 14 March 2023, the Respondent's representative intimated his withdrawal from acting on behalf of the Respondent. The Tribunal wrote to the Respondent on 14 March 2023, providing her with details of the Hearing.

The Hearing

4. The Hearing took place by conference call. The Applicant joined the call and was represented by Mr Corrigan. The Respondent did not join to conference call. The Applicant's representative raised the issue of whether the Hearing should proceed without the Respondent. Having noted that a letter was issued to the Respondent on 14 March 2023 The Tribunal decided that the Hearing would proceed in the absence of the Respondent.
5. The Tribunal heard from the Applicant, Mrs McKernan. She explained that the local authority contacted her by telephone in or around June 2021 to advise her that the door to the property had been kicked in because there were drugs in the property. She contacted the Respondent by telephone who confirmed that what the local authority had told the Applicant was accurate. The Applicant was distressed to learn that there was criminal activity going on at the property. She served the Notice to Leave on the Respondent by email on 20 August 2021. She does not have a copy of the email that she sent. She did however draw the Tribunal's attention to a text message sent by the Respondent on 21 August 2021 acknowledging receipt of the Notice to Leave. The Applicant is a responsible landlord and was worried about the effects of the Respondent's behaviour on the neighbours of the Respondent. She has been told that the Police have attended at the Respondent's address on several occasions since June 2021 in connection with antisocial behaviour towards her neighbours. On one occasion, the Applicant arranged for a plumber to attend the property to effect a repair. That contractor reported to her that the Respondent had been verbally abusive to him and he left the property and refused to return. The Applicant contacted the Respondent in January and February of this year because rent had not been paid since December 2022. That has been the only recent contact between the parties.
6. The Tribunal was referred to an email the Applicant received from West Dunbartonshire Council on 16 March 2022. That email referred to the Antisocial Behaviour Team of the Council being aware of "*a pending drug case against your tenant following drugs seized within the property*". The Tribunal was also referred to text exchanges between the parties, copies of which have been lodged. A text message sent by the Applicant to the Respondent on 3 August 2021 reads "*what exactly did they take out the house so I don't need to phone environmental health or police for details....*" The Respondent responded to that on the same day, saying "*They took 7 plants!....*" A further text message sent by the Respondent to the Applicant after the Notice to Leave was served reads "*And the fact that 2 neighbours contacted u about me....how come ah nvr knew about that? That's lies as we only started doin what we were doin during lockdown if you remember we already got a bust n they nvr had anythin the plants were for personal use av had 1 party since ah moved in the only people who come to this house is Gary's brother n ma best pal certainly no causing any trouble wae anyone at all hours!.....*"

7. It was submitted on behalf of the Applicant that being involved in the cultivation of cannabis plants constituted antisocial behaviour on the part of the Respondent. It was submitted that the Respondent has admitted the criminal activity in her text exchanges with the Applicant. The Applicant's representative made reference to clause 21 of the tenancy agreement which is headed "Respect for others". That clause provides that the Respondent as tenant "*must not engage in antisocial behaviour to another person. A person includes anyone in the let Property, a neighbour, visitor, Landlord, Agent or contractor.*" On page 28 of the guidance notes which were issued along with the tenancy agreement, one of the examples of antisocial behaviour is "*using, selling, growing, making or supplying unlawful drugs or selling alcohol.*" It was submitted that ground 14 has been established and that it would be reasonable for the Tribunal to grant an order evicting the Respondent from the property.

Findings in Fact

8. The parties entered into a private residential tenancy which commenced 1 February 2019.
9. The Applicant served Notice to Leave on the Respondent by email on 20 August 2021.
10. The Respondent has behaved in an antisocial manner towards the Applicant.

Reason for Decision

11. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the Hearing. The Respondent failed to take part in the Hearing. It was noted that neither at the CMDs nor the earlier Hearing did the Respondent challenge the text exchanges between the parties, nor the apparent admissions made by her in the text messages sent by her.
12. The Tribunal found the Applicant to be a credible and reliable witness. The Tribunal's construed the Respondent's text messages as admissions that she was involved in the cultivation of illegal drugs at the property. It was clear that the Applicant was distressed about the criminal activity taking place at the property. She described being tearful and worried about the effect of the Respondent's behaviour on the property and the neighbours. The Tribunal was satisfied that ground 14 has been established and that it was reasonable to grant the order sought.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

N. Irvine

Legal Member/Chair

21 March 2023

Date