

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 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).

Chamber Ref: FTS/HPC/EV/18/2889

Re: Property at 24B Mugdock Road, Milngavie, Glasgow, G62 8PB (“the Property”)

Parties:

Northwood (Glasgow) LTS, Unit 4, Skypark 5, 45 Finnieston Street, Glasgow, G3 8JU (“the Applicant”)

Mrs Minnie Dhami, 24B Mugdock Road, Milngavie, Glasgow, G62 8PB (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member)

Decision (in absence of the Respondent)

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

- Background

This is an application for an eviction order in relation to the Respondent’s tenancy at the Property. It called for a case management discussion (“CMD”) at 10am on 12 January 2019. The Applicant was represented by two its directors, Mr Keith Robin and Ms Isabel Harte. The Respondent was present in person, with a supporter, Mr John Leonco.

- Preliminary Matter

At the commencement of the CMD the Respondent asked for an adjournment, to allow her legal representative to attend. She had not notified the Tribunal in advance of the CMD that she was to be represented, as is required by Rule 10(1) of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). As the CMD was principally concerned with establishing the parties’

positions in relation to the facts of the application, taking into account the fact that the Applicant was not legally represented and considering the overriding objective to deal with the proceedings justly, the Tribunal did not consider that there was cause shown to adjourn the CMD to allow the Respondent to remedy her failure to comply with Rule 10.

- Findings in Fact

The Respondent stated that she did not agree with the great majority of the matters of fact presented by the Applicant. She stated that she had a poor memory and did not remember most of the events relied on. Nonetheless, there were some points raised in the application which she did not dispute. Unless otherwise noted, the following was therefore agreed between the parties:

1. The Respondent has a private residential tenancy at the Property, commencing 27 March 2018 ("the tenancy"). The Applicant is her landlord. Clause 23 of the tenancy states (so far as is relevant):

"The Tenant... must not engage in antisocial behaviour to another person. A person includes... a neighbour.... "Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person; or which amounts to harassment of any person. Harassment of a person includes causing the person alarm or distress."

2. On the evening of 29 July 2018, the Respondent was arrested by Police for persistently banging on the door of her neighbour, shouting and refusing to leave when asked to do so. She was held in custody for 4 weeks and charged with breach of the peace. She pled guilty to this charge. The Respondent originally stated that she had indeed shouted and refused to leave her neighbour's door, but subsequently retreated from that position, without clearly stating a contrary one. Insofar as it is in dispute, the Tribunal found it to be established that she did shout and refuse to leave, given that Police found it necessary to arrest her and her own inconsistency on the point.
3. On 17 October 2018, the Respondent was again arrested and held overnight in custody. The Applicant stated that the reason for her arrest was breach of a bail condition, by having approached residents at the block of which the Property forms part and been abusive and threatening towards them. The Respondent stated that she does not recall why she was arrested on this occasion. The Tribunal considered the Applicant's version of events to be established. That the Respondent should not remember such a serious event lacks credibility; and, in any event, she was not able to offer any alternative explanation for her arrest.
4. A notice to leave in terms of s.62 of the Act was sent to the Respondent on 3 August 2018. It specified 3 September 2018 as the date on which the Applicant expected to become entitled to make an application to the Tribunal for an eviction order. It stated the grounds for such an application as: "You have breached a term of your tenancy agreement," and, "You have engaged in relevant antisocial behaviour." These correspond to grounds 11 and 14 of

Schedule 3 to the Act ("the grounds"). A copy of this notice to leave accompanied the application, which was made on 26 October 2018.

- Reasons for Decision

The Applicant has complied with the formal requirements in regard to service of a notice to leave and raising the application. On the basis of the facts set out above, the Tribunal considers that the grounds have been established. The Respondent engaged in anti-social behaviour. Her actions on 29 July 2018 and 17 October 2018 were of a sort that would be likely to cause her neighbours alarm and distress, or at least nuisance and annoyance. This anti-social behaviour is relevant anti-social behaviour in terms of the Act, because it is of a serious nature (extending as far as criminality in at least one case), is directed at her neighbours in particular and takes place at the Property itself. The Tribunal therefore considered it reasonable to issue an eviction order as a result of it. In so finding, the terms of ground 11 are also met, insofar as the tenancy also prohibits such behaviour and it is equally reasonable to issue an eviction order for the breach of that term.

- Decision

Eviction order issued.

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.

N Young

Legal Member/Chair

12 FEBRUARY 2019

Date