



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“The Act”)

Chamber Ref: FTS/HPC/EV/22/3650

Re: Property at 5 Cowie Mill, Stonehaven, AB39 3BH (“the Property”)

Parties:

Mr Matthew Crowther, 43 Gorse Crescent, Newtonhill, Stonehaven, AB39 3AH (“the Applicant”)

Mr Kevin Neil Mackay Ross, 5 Cowie Mill, Stonehaven, AB39 3BH (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to refuse the Application.

Background.

[1] The Applicant seeks an Eviction Order under ground 14 of Schedule 3 of the Act in that it is said that the Applicant has engaged in relevant anti-social behaviour. The Application is accompanied by a copy of the tenancy agreement between the parties, the notice to leave relied on and proof of service; a notice sent to the relevant local authority under s 11 of the Homelessness (etc) (Scotland) Act 2003; various statements from the Applicant and the neighbours setting out the basis of the alleged anti-social behaviour. There are also emails exchanged between various parties which are said to demonstrate the behaviour founded upon. There was a previous Case Management Discussion

(CMD) during which various case management orders were made regarding the production of any documentation to be relied on together with a chronology setting out the alleged instances of anti-social behaviour.

[2] The Application called for a Hearing by conference call at 10 am on 24 May 2023 for evidence to be heard. The Applicant was represented by Ms Lynette Johnstone of PMC Management & Lettings. The Respondent was personally present.

Preliminary Matters.

[3] Neither side raised any preliminary matters and they both confirmed that that were content to proceed with the Hearing. Ms Johnstone confirmed that she wished the Tribunal to hear from three witnesses: Mr Richard Crowther who is the Applicant's father and two of the Respondent's neighbours; Ms Karen Box and Mr Ian Noble.

[4] At the outset there was some discussion as Mr Richard Crowther had introduced himself as intending "*to represent his son*". The Tribunal established that what Mr Crowther really intended to do was to give evidence about the Application rather than tread on the toes of Ms Johnstone who was the Applicant's representative. Accordingly, Mr Richard Crowther left the call and was only present from the moment he was called to give evidence.

[5] During this discussion, the Respondent pointed out that he thought his landlord might have changed at one point from Mr Richard Crowther to the current Applicant. This gave the Tribunal cause to review that matter and in doing so the Tribunal noted that the Landlord in the tenancy agreement and also in the Notice to Leave was narrated as Sarah Crowther or Graham rather than Matthew Crowther. The Application was in the name of Matthew Crowther. After hearing from parties and considering the land certificate obtained by the Tribunal administration, it appeared that title to the Property was transferred into the name of the Applicant in August 2022. The Applicant was therefore the owner of the Property and the Tribunal considered that he had title and interest to bring this Application.

[6] The Tribunal also ensured that all parties had all the documentation submitted to the Tribunal before them and that nobody was missing any document that might fall to be considered by the Tribunal.

[7] Having dealt with these preliminary matters, the Tribunal began hearing evidence from the Applicant's first witness.

Evidence.

Richard Crowther

[8] Mr Richard Crowther is the Applicant's father. He is 67 years of age and retired. He lives in Stonehaven. Mr Crowther's personal knowledge of the actual details of the Application was rather minimal. His evidence can be summarised as follows. He once came to the Property on 1 September 2022 and saw the aftermath of third parties having smashed the Respondent's windows. He didn't have any particular insight into what happened. He reported that his son gave him regular updates about the situation with the Respondent. He spoke in general terms about the concerns raised by his son in the Application. Mr Crowther also explained to the Tribunal about the design and structure of the building the Property is situated in. He acknowledged that "*transmissibility (of sound) is a bit of an issue.*"

[9] The Respondent had the opportunity to cross-examine Mr Crowther.

[10] The Tribunal considered Mr Crowther's evidence to be well intentioned and genuine but not of much assistance in considering what relevant facts were established.

Ian Noble

[11] Mr Ian Noble lives with his partner, Ms Karen Box directly above the Property at 9 Cowie Mill, Stonehaven. He has lived there for 16 years and is unemployed. He described his dealings and interactions with the Respondent. He described occasions when the Respondent played loud music and he described again the situation when third parties appear to have smashed the Respondent's windows on or around 1 September 2022. He described situations when the police attended at the Property and the Applicant was described as not letting the police inside. He spoke about the house being contaminated with "*the smell of drugs*" and provided some details about that. He spoke about a particularly concerning incident that was said to have taken place when the Respondent played loud music all night and then the next morning, after appearing to realise it was the upstairs neighbours who had phoned the police, the Respondent could be heard shouting obscenities at them before angrily banging on their door in an apparent wish to confront them. He also spoke about door slamming noises and the sounds of a carpet being pulled back. Mr Noble also spoke about noises coming from the Respondent's washing machine which was said to frequently be used late at night.

[12] The Tribunal considered that it was obvious that Mr Noble didn't like the Respondent and there was animosity between them. It seemed obvious to the Tribunal that this animosity permeated Mr Noble's evidence and left the Tribunal with the impression that Mr Noble did not necessarily come across as being entirely reasonable himself. His remark that on one occasion the Respondent "*ran away like a wee lassie*" was clearly designed to antagonise and score points. The Tribunal also did not like this language which displayed outdated views and which did little to establish Mr Noble as being objective and balanced in his evidence.

[13] The Respondent had the opportunity to cross examine Mr Noble.

Ms Karen Box

[14] Ms Karen Box is 48 years of age and is a data analyst for NHS Grampian. She has lived at 9 Cowie Mill, Stonehaven since 2001. Ms Box described her difficulties with the Respondent whose Property is located immediately below her own. She described how she didn't feel safe in her home and found it difficult to work at home. She described how her difficulties began when the Respondent moved into the Property around 18 months to two years ago. She described how noises did typically reverberate through the building. She spoke about strong smells of smoke and also burnt toast coming into her home and described her sensitivities to such odours. She talked about noises coming from downstairs that almost mirrored her own, as if the Respondent was moving about downstairs in retaliation for her own movements upstairs. She spoke about hearing thuds on occasion which she described as being like a *"large piece of furniture being dropped"*.

[15] Ms Box also described the Respondents use of the washing machine which Ms Box also described as causing excessive noise due to a plumbing issue which was not the Respondent's responsibility. Ms Box also described in great detail the incidents that took place on 19 September 2022 when the Respondent appeared to have created excessive noise before forcing the police to barge down his door at around 3 am causing widespread disturbance. Ms Box also described that after this, the Respondent could be heard audibly swearing at her and Mr Noble before angrily banging their door in an apparent attempt to confront them. The Tribunal discussed all these concerns in detail with Ms Box. Ms Box also disclosed that the fabric of the building was such that she could hear when a previous occupant of the Property was having a conversation with a third party. The words couldn't be made out but it was readily apparent if someone else was in the Property.

[16] Ms Box also described an incident when she was sure the Respondent had uttered offensive remarks to her when she was sitting next to an open window and the Respondent was down on the street below.

[17] The Respondent was given the opportunity to cross examine Ms Box.

[18] Respondent indicated that he wished to give evidence but had no other witnesses to call.

The Respondent- Mr Kevin Ross.

[19] Mr Ross started his evidence by apologising for any past behaviour that upset his neighbours. He said that he suffered from alcoholism and explained the efforts he was now taking to address these issues. He said that he took responsibility for the upsetting incident on 1 September 2022 and disclosed that he had been dealt with in the

criminal courts regarding this matter. He explained that you could hear a pin drop in the building and that when he had first moved in, Mr Noble from upstairs had approached him and told him that you could hear everything in the building. He said that Mr Noble said that he (Mr Noble) could hear when the previous occupant had sex with her partner. Mr Ross denied that he was deliberately trying to annoy his neighbours by stomping about the Property or slamming doors. He explained that on one occasion he had fallen over in the bath which might have explained a noise on one occasion. He also said that much of the evidence against him was lies.

[20] Ms Johnstone was given the opportunity to ask questions of the Respondent.

[21] Having heard from all witnesses and having considered all the documentation before the Tribunal, the Tribunal made the following findings in fact.

Findings in fact

- I. *The Applicant acquired the landlord's interest in a tenancy between Sarah Crowther and the Respondent in which the Property was let to the Respondent on a Private Residential Tenancy that commenced on 19 January 2021;*
- II. *The Applicant became concerned that the Respondent was engaging in anti-social behaviour;*
- III. *The source of the allegations was from other occupants in the building in which the Property is situated, including the residents in the property immediately upstairs from the Property known as 9 Cowie Mill, Stonehaven;*
- IV. *There were times when the Respondent behaved anti-socially and played loud music at inappropriate times not long after moving into the Property;*
- V. *On or around 1 September 2022, third parties smashed the Respondent's windows. There is no evidence before the Tribunal that suggests that the Respondent should be considered culpable for this in any way. There is similarly nothing before the Tribunal that suggests anyone really knows why this happened;*
- VI. *The Respondent played music at unacceptable volumes and at an unacceptably late hour on or around 1 September 2022. The police attended and the Respondent was unco-operative to the point that they had to break down his door at around 3am. Following this incident, the Respondent was heard swearing loudly and then aggressively started banging on the door of the upstairs proprietors. The resulting disturbance resulted in the Respondent being prosecuted and convicted of an offence in the criminal courts;*

- VII. *The Respondent played loud music late at night that disturbed others on around 10 occasions from when he moved into the Property until around the end of 2022;*
- VIII. *On 2 September 2022, the Applicant served a Notice to Leave on the Respondent in terms of ground 14 of Schedule 3 of the Act. This confirmed that the end of the notice period was 3 October 2022 and that no Application to this Tribunal could be made before then;*
- IX. *There is little evidence of there being any allegations of anti-social behaviour that have any substance to them since around the end of 2022;*
- X. *The Respondent uses his washing machine late at night to try and save money as he understands that electricity is cheaper at those times. The plumbing is faulty to the washing machine and results in an excessive noise being generated. This is not the Respondent's fault but rather would appear to be the responsibility of the landlord and any other owners of properties in the building to address. There is also no evidence of anyone appearing to have asked the Respondent to stop using his washing machine at these hours. There is certainly nothing to suggest he has ever been informed in writing that his use of the washing machine is an issue;*
- XI. *There is little doubt that the situation set out in the Application has improved markedly. This is no doubt in part due to the Respondent changing his behaviour and receiving assistance with alcohol related issues;*
- XII. *The acoustics of the building are such that sound readily transmits through the building. The upstairs proprietor probably did tell the Respondent that he could hear the previous occupant of the Property having sex. It is even possible to hear when an occupant of a downstairs property is speaking to a third party at normal volume. This is hugely intrusive and results in a general lack of privacy;*
- XIII. *This has more than likely contributed markedly to the perceptions held that the Respondent engages in anti-social behaviour. The allegations of banging and slamming doors may very well be more an indictment against the acoustics of the building than the behaviour of the Respondent. Similarly, the fact that the upstairs occupants can smell burnt toast throughout their home would appear to be more to do with the flaws in the building than anything inappropriate done by the Respondent. There is no evidence that the Respondent takes drugs in the Property. Even if he does smoke, which he denies, smoking in your own home is not anti-social behaviour within the meaning of the Act. There is nothing to suggest that the Respondent is deliberately trying to transmit fumes upstairs or does so recklessly;*
- XIV. *The Respondent is contrite about his past behaviours and is receiving help for his alcohol issues. This is reflected in the improvement in his behaviour which has been largely now maintained over many months. He is a single man who lives alone and is unemployed.*

The law.

[22] Ground 14 of Schedule 3 of the Act is in the following terms.

Anti-social behaviour

14(1) *It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.*

(2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

(a) the tenant has behaved in an anti-social manner in relation to another person,

(b) the anti-social behaviour is relevant anti-social behaviour,

[F36(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and]

(c) either —

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3) *For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—*

(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,

(b) pursuing in relation to the other person a course of conduct which—

(i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or

(ii) amounts to harassment of the other person.

(4) *In sub-paragraph (3)—*

- “conduct” includes speech,*
- “course of conduct” means conduct on two or more occasions,*
- “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*

(5) *Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and —*

(a) who it was in relation to, or

(b) where it occurred.

(6) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

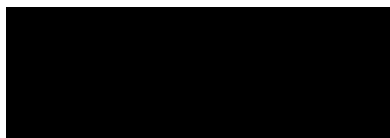
Applying the law to the facts.

[23] The Tribunal are satisfied that the Respondent did behave in an anti-social manner to other occupants of the Property. This behaviour includes the occasion when the police required to knock down his door and the subsequent swearing at other residents and the attempt to confront them that ended in a criminal conviction. It also includes the instances of loud music played late at night. The Tribunal does not conclude that the Respondent's use of the washing machine, or the alleged slamming of doors or dropping of objects, or indeed coughing (referred to in the Application but given less prominence in the evidence) constitutes relevant anti-social behaviour.

[24] Having heard evidence fully on the matter and having had regard to all the documentation including the statements and emails, the Tribunal does not consider that it is reasonable to issue an eviction order. The Tribunal considers that much of the issues are a result of the poor design of the building rather than necessarily the actions of the Respondent. The Respondent's behaviour has certainly been poor at times, criminal even on one occasion, but issuing an Eviction Order would involve unreasonably overlooking the clear recent improvements in behaviour and the fact that the fabric of the building is likely the root cause of much of the tension between occupiers in the building.

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

31 May 2023
Date