



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (Act)

Chamber Ref: FTS/HPC/EV/22/4146

Re: Property at 17 Captains Drive, Edinburgh, EH16 6QN (“the Property”)

Parties:

Mr Afzal Boksh, 95 Meadow House Road, Edinburgh, EH12 7HR (“the Applicant”)

Mr Christopher Law, 17 Captains Drive, Edinburgh, EH16 6QN (“the Respondent”)

Tribunal Member:

Alan Strain (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

This is an application under Rule 65 and section 18 of the Act for eviction and recovery of possession on Ground 15 of Schedule 5 to the Act.

The Tribunal had regard to the following documents:

1. Application received 16 November 2022;
2. Short Assured Tenancy Agreement (**SAT**) commencing 1 April 2017;
3. AT6 dated 28 October 2022 and served by Sheriff Officer on that date;
4. Section 11 Notice to Local Authority;
5. Email dated 12 December 2022 to Local Authority serving Section 11 Notice;
6. Undated Letter from Applicant’s Letting Agent to Respondent;
7. Document entitled “new complaint”;
8. Written Representations from the Respondent;
9. Written Representations from the Applicant.

Hearing

The case called for an in person Hearing on 3 October 2023. The Applicant did not participate but was represented by his Letting Agent. The Respondent participated and represented himself.

The Ordinary Member participated by telephone call. The Legal Member was in attendance at the venue.

The case had called previously for a CMD on 24 March 2023 and the Tribunal had issued a Direction requesting further specification of the allegations by the Applicant and response from the Respondent.

The information and further specification had been provided by both Parties and the Tribunal considered at a further CMD on 22 June 2023 there were clearly factual matters in dispute so the case should proceed to a Hearing. The Tribunal had determined that the issues for determination would be:

- 1. Whether or not the Respondent had engaged in relevant anti-social behaviour as defined in Ground 15 of Schedule 5 to the Housing (Scotland) Act 1988; and*
- 2. If so, was it reasonable in all the circumstances of the case to grant the eviction order sought.*

The Tribunal outlined to the Parties what the process was going to be for the Hearing. The Tribunal took time to explain the precise wording of Ground 15, the burden of proof on the Applicant and also that even were the Ground to be established, the need to persuade the Tribunal that it would be reasonable in all the circumstances of the case to grant the order sought.

The Applicant's case

The Tribunal then clarified with the Applicant's representative that no witnesses were to be led and the Applicant would be relying on the documentation contained within the Written Submissions sent to the Tribunal by email on 29 March 2023 as establishing the anti-social behaviour.

The Tribunal also clarified with the Applicant's representative that the Respondent was a "good" tenant, paid his rent and looked after the Property to an acceptable standard. He was such a good tenant that the Applicant had offered the Respondent accommodation in one of his other Properties.

It appeared that the driver behind the application for eviction was complaints made by neighbours to Kevin Hawes, a support worker with Edinburgh City Council. The Applicant had been advised by both Mr Hawes and the Scottish Association of Landlords (**SAL**) to initiate proceedings for eviction on anti-social behaviour grounds.

The Applicant's representative confirmed that there had been no complaints for a year and that one of the complainers (Dale Finlayson) no longer lived next to the Respondent.

The Tribunal then took the Applicant's representative through each of the documents that had been produced with the email of 29 March 2023.

None of the documents produced were original documents from the Applicant or his representative. The documents had all been produced by third parties other than screenshots of Facebook posts made by the Respondent.

None of the originators of the documents were to attend the Tribunal and speak to the contents.

None of the complainers were to attend the Tribunal and give evidence.

The Applicant's representative accepted that she could not give direct evidence on the specific allegations against the Respondent. She also accepted that the allegations (at best) were generalised and did not detail dates, times, specific incidents and details of people involved.

In response to question from the Tribunal the Applicant's representative accepted that complaints had been made by the Respondent about the actions/activities of his neighbours and vice versa by the neighbours against the Respondent. Both parties had reported incidents to the police and no action had been taken by the police against anyone.

The Applicant's representative was asked whether or not she was in a position to lead evidence that the Respondent's descriptions of his neighbours and their activities was not correct. She confirmed that she was not.

She accepted that the Respondent described potentially unlawful activities of his neighbours. She was not in a position to say whose version of events was correct.

The Applicant's representative asserted this was now a matter of safety for the Respondent as he was being targeted. His window had again been smashed in on 11 August 2023 for the second time.

The Respondent's case

The Tribunal then heard from the Respondent. He spoke to his Written Submissions which set out in detail the allegations against his neighbours and their alleged unlawful behaviour. They also included his complaints to the Police about their activities.

The Respondent was simply exposing their activities on social media. He contended he had photographic and video evidence of this which had been submitted to the Tribunal.

The Respondent was taking active steps to secure alternative accommodation by "bidding" for properties with the council. He had also now been certified fit to return to work on a part-time basis and was looking to secure sufficient funds to move to a private property as another alternative.

At this point the Applicant's representative confirmed there would be no problem with the provision of a reference.

Both Parties were afforded the opportunity to make submissions but declined to do so.

Findings in Fact

Having considered the oral evidence at the Hearing and the documentary evidence lodged in advance the Tribunal, in so far as was material, made the following findings in fact:

1. The Applicant let the Property to the Respondent under the terms of a SAT commencing 1 April 2017;
2. The Applicant considered the Respondent a "good" tenant who paid his rent on time and kept the Property in an acceptable condition;
3. The Applicant had offered to rehouse the Respondent in one of his other Properties;
4. The Applicant would provide the Respondent with a reference were he to seek alternative accommodation;
5. The Respondent and his neighbours had made complaints about the actions/activities of each other to the Police and to Kevin Hawes of Edinburgh City Council;
6. The police had taken no action against the Respondent or any of his neighbours;
7. The Respondent had named neighbours in social media posts in which he accused them of criminal and/or anti-social behaviour;
8. The Respondent took video footage through a CCTV camera on the Property of the activities of his neighbours and posted them on social media;
9. The Applicant had not asked the Respondent to remove the CCTV camera;
10. Form AT6 was served on the Respondent on 28 October 2022;
11. Section 11 notification had been given to the local authority;
12. No complaints about the conduct or behaviour of the Respondent had been received for a year;
13. The Respondent had, as recently as 11 August 2023, had his window smashed in for a second time;
14. The Respondent was taking active steps to source alternative accommodation.

Decision and Reasons

The Tribunal considered the term of Ground 15:

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

(b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or

(c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

In this Ground "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, "conduct" includes

speech and a course of conduct must involve conduct on at least two occasions and "tenant" includes any one of joint tenants.

The burden of proof was on the Applicant. The Applicant had to establish the anti-social behaviour by the Respondent.

The Tribunal did not consider that the burden of proof was satisfied. No direct evidence had been led from the Applicant as to any specific incidences of alleged anti-social behaviour. At most, what was produced was generalised and unsubstantiated allegations of conduct by the Respondent.

The Applicant did not lead any evidence to contradict the assertions made about the Respondent's neighbours and their conduct/activities on social media posts. As such, the Applicant could not establish that the Respondent's conduct (even were it to have been established as anti-social) was conduct in relation to a person engaging in lawful activity in the locality.

The Respondent's clear assertion was that the activities/conduct he had posted about were unlawful.

Accordingly the Tribunal found that anti-social behaviour had not been established for the purposes of Ground 15.

Reasonableness

Furthermore, the Tribunal were not satisfied that it would have been reasonable to grant the order sought. According to the Applicant, the Respondent was a "good" tenant. So good in fact that the Applicant was prepared to rehouse the Respondent in another of his Properties and also provide a reference.

The Applicant's representative expressed her concern for the safety of the Respondent were he to remain in the Property. The Tribunal consider that the Respondent was entitled to enjoy peaceful possession of the Property. A fact not in dispute is that he has been the unfortunate target of criminal activity – having his flat window smashed in on 2 occasions. The Tribunal consider that to be a matter for police action.

The Respondent is taking steps to try and secure alternative accommodation.

In all of the circumstances the Tribunal were not satisfied that it would have been 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.



Legal Member

9 October 2023

Date