



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 2016 Act”)

Chamber Ref: FTS/HPC/EV/22/3683

Re: Property at 3 Gilchorn Farm Cottages, Arbroath, Angus, DD11 4UP (“the Property”)

Parties:

Mr Guy Stirling, Gilchorn Farmhouse, Arbroath, Angus, DD11 4UP (“the Applicant”)

Mr Eoghann Thomson, 3 Gilchorn Farm Cottages, Arbroath, Angus, DD11 4UP (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Gordon Laurie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made on the basis of paragraphs 11, 12 and 14 of schedule 3 of the 2016 Act.

1. Background

- 1.1 This is an application under Rule 109 of the Chamber Rules whereby the Applicant seeks an order for eviction of the Respondent. The application was accompanied by, amongst other things, a copy of the notice to leave served on the Respondent, copies of pictures and a timeline of relevant incidents involving the Respondent.
- 1.2 The notice to leave advised that the Applicant was seeking an eviction order on the basis of paragraphs 11 and 14 of schedule 3 of the 2016 Act. Specifically, the notice referred to the keeping of dogs within the property for which permission had not been granted and that the conduct of those dogs amounted to antisocial behaviour. Further documentation had been lodged after the initial application including an amended timeline of

incidents and rent statements demonstrating an apparent failure on the part of the Respondent to make payment of rent due.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 3 March 2023 by teleconference. The Applicant was represented by Ms Teresa Hamlet. The Respondent was neither present nor represented.
- 2.2 Ms Hamlet confirmed that the application was insisted upon. The Tribunal noted that intimation of the Case Management Discussion had been made to the Respondent by Sheriff Officers. Accordingly, the Tribunal considered it appropriate to proceed in the Respondent's absence as permitted by Rule 29 of the Chamber Rules.
- 2.3 The Tribunal sought to clarify with Ms Hamlet whether the Applicant sought to rely on non-payment of rent given that rent arrears were not specified in the notice to leave. Ms Hamlet confirmed that the Applicant was seeking to include this ground and explained that arrears had only accrued from August 2022, when the notice to leave had been served. The Tribunal considered it appropriate to grant permission in terms of section 52(5)(b) of the 2016 Act for the relevant ground, being contained in paragraph 12 of schedule 3 of the 2016, to be considered as a basis for an eviction order. No rent had been paid by the Respondent since August 2022 and, as of 1 March 2023, £2975.00 was due and owing to the Applicant.
- 2.4 Ms Hamlet confirmed that the primary reason for service of the notice to leave was the conduct of the Respondent and the animals he was keeping at the property. The Applicant had given permission for one dog to be kept by the Respondent. The Respondent now had three mastiff-type dogs within the property for which permission had not been given. He had apparently used these dogs for breeding and had a litter of nine puppies at one point, which he had sold. Although a full copy of the written tenancy agreement did not accompany the application, Ms Hamlet confirmed that parties had used the model private residential tenancy agreement and the paragraph 32 of the written agreement required the Respondent to seek the permission of the Applicant for the animals to be kept within the property.
- 2.5 Ms Hamlet further advised that the complaints against the Respondent could be summarised as complaints of the noise of the dogs barking, the dogs being out of control and roaming around the property, including one biting a visitor to a neighbouring property, drug use by the Respondent at the property and abusive behaviour on his part. She understood that the dogs were subject to conditions, perhaps through service of a Dog Control Notice, whereby they were to be on leads and muzzled. She was unsure if this only related to public places but, in any case, the dogs had regularly been found on the road by the property without any restraint. Furthermore, a visitor to the property had been bitten by one of the dogs in March 2022.

- 2.6 Beyond the issue of the dogs, Ms Hamlet advised that there were weekly complaints about the conduct of the Respondent from tenants of the neighbouring properties. The Respondent was aggressive and argumentative and the relationship between him and the Applicant had completely deteriorated. A pest controller had attended the property in September 2022 and observed drug paraphernalia within. Neighbouring tenants regularly complained about the smell of cannabis being smoked at the property on a regular basis. The property was one of four tenanted properties which formed part of a farm, with the Applicant residing at the farmhouse.
- 2.7 Ms Hamlet advised that it was unclear who resided with the Respondent. She advised that he appeared to spend much of his time residing with his partner. For a two month period in late 2022, he was not seen at the property. Currently, he would stay at the property around one night per week and he had also been there for one weekend since December 2022. When staying at the property, the Respondent's six year old son would be with him. Ms Hamlet was aware that the Respondent previously worked as a landscape gardener and as a delivery driver. He had claimed benefits in respect of his housing costs but payment of those were made to the Respondent as opposed to the Applicant directly.

3. Reasons For Decision

- 3.1 With the Applicant being granted permission for an additional ground to those detailed in the notice to leave, the Tribunal required to consider the issuing of an eviction order on the grounds contained paragraphs 11, 12 and 14 of schedule 3 of the 2016. Paragraph 11 is as follows:-

11 Breach of tenancy agreement

(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

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

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

The Tribunal accepted that the model PRT agreement had been used by the parties. In terms of clause 32 of that agreement, the Respondent required the permission of the Applicant to keep the dogs at the property. He did not have said permission. Accordingly, the Tribunal considered that the Respondent was in breach of the tenancy agreement.

- 3.2 Paragraph 12 is as follows:-

12 Rent arrears

- (1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*
- (3) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
- (a) *for three or more consecutive months the tenant has been in arrears of rent, and*
- (b) *the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*
- (4) *In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider*
- (a) *whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and*
- (b) *the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.*
- (5) *For the purposes of this paragraph—*
- (a) *references to a relevant benefit are to—*
- (i) *a rent allowance or rent rebate under the [Housing Benefit \(General\) Regulations 1987](#) (S.I. 1987/1971),*
- (ii) *a payment on account awarded under [regulation 91](#) of those Regulations,*
- (iii) *universal credit, where the payment in question included (or ought to have included) an amount under [section 11](#) of the [Welfare Reform Act 2012](#) in respect of rent,*
- (iv) *sums payable by virtue of [section 73](#) of the [Education \(Scotland\) Act 1980](#),*
- (b) *references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.*

In the present case, the monthly rent due was £425.00. The Respondent was in arrears in excess of one month's worth of rent and had been for in excess of three months. Whilst there was a suggestion that the Respondent was in receipt of benefits, or at least had been at some point, in the absence of any representations by him, there was nothing to suggest that the arrears were a consequence of any delay or failure in payment of a relevant benefit.

3.2 Paragraph 14 is as follows:-

14 Anti-social behaviour

- (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,*
- (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,

(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.

Based on the documents accompanying the application and that which was said by Ms Hamlet, the Tribunal considered that the Respondent had been behaving in an anti-social manner within the 12 months preceding the making of the application. Following the approach in *The Glasgow Housing Association Ltd v Stuart* 2015 Hous. L.R. 2, the Tribunal determined that the Respondent’s conduct ought to be judged objectively. The repeated failure to control his dogs which, by all accounts, were large animals, was capable of being considered a course of conduct which had both caused, and was likely to cause, alarm, distress, nuisance or annoyance to a reasonable person. In addition, the Tribunal accepted that there had been complaints regarding drug use by the Respondent at the property. Unlawful conduct involving the use of drugs on the part of the Respondent amounted to acting in an anti-social manner, irrespective of whether there had been complaints or not. Both the failure to control the dogs and the drug use occurred at the property, with complaints being made by the neighbours. Accordingly, it could be considered relevant anti-social behaviour.

3.3 The Tribunal considered that it was entitled to make an eviction order on any or all of the three grounds relied upon by the Applicant. Before doing so, the Tribunal required to consider whether it was reasonable to do so. The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground

for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.

3.4 The Tribunal considered that it was entitled to take into account the cumulative circumstances of the case. The Respondent had accrued significant rent arrears, which were continuing to increase. Regular complaints had been made regarding the Respondent's conduct which appeared to be continuing. The Respondent continued to keep dogs at the property despite having been told it was a breach of the tenancy agreement. The Respondent did not currently appear to be occupying the property as his principal home and alternative accommodation may be available to him and any dependents of his. In all of the circumstances, it was reasonable to make an eviction order on all three of the grounds.

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.

Alastair Houston

14 March 2023

Legal Member/Chair

Date