



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

Chamber Ref: FTS/HPC/EV/22/3244

Property at 53F Cowgate, Dundee, DD1 2JJ (“the Property”)

Parties:

**Positive Steps Partnership, East Wing, Swan House, 2 Explorer Road, Dundee,
DD2 1DX (“the Applicant”)**

Miss Kerry Alcorn, Flat 53F Cowgate, Dundee, DD1 2JJ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should not be granted.

Background

1. The Applicant lodged an application for an eviction order in terms of Section 51 and grounds 10, 11, 14 and 15 of schedule 3 of the 2016 Act. An occupancy agreement and notice to leave were submitted with the application. A copy of the application was served on the Respondent by Sheriff Officer. The application was deposited and not served personally. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 28 February 2023 at 10am. The CMD took place on this date. The Applicant was represented by Ms Reid and Ms McGraw (“the representatives”). The Respondent did not participate.
2. The representatives told the Tribunal that the Respondent signed the occupancy agreement in November 2020. The Applicant is a charity that provides supported accommodation. It is a condition of the agreement that the tenant takes the support which is provided. Within a couple of months problems developed. Neighbours reported antisocial behaviour including threats and

damage to property. The Respondent also refused to engage with support. There has been fire damage to the property. Housing benefit payments stopped in November 2022. The reason given was that the Respondent was not residing at the property and was claiming benefits at a different address. Other people appeared to have been given keys and were staying at the property. The representatives said that they did not know where the Respondent currently resided, although one or two other addresses had been mentioned. They received information from other agencies which appeared to confirm that she did not live at the property.

3. In response to questions from the Tribunal, Ms Reid said that the notice to leave had been sent by recorded delivery post to the Respondent. However, she also provided the Respondent with a copy of the notice, in person, at the property. The Tribunal noted that the Royal Mail track and trace indicates that the Respondent signed for the Notice on 3 August 2022. If she was also handed a copy of the Notice by Ms Reid, it appears that she was residing at the property in August 2022, at least some of the time. However, if Housing Benefit stopped in November 2022, and as the representatives had been told that she is living elsewhere, she may not have received the application paperwork deposited by Sheriff Officer in January 2023. As the Tribunal was not satisfied that the application has been served on the Respondent, the representatives were advised that the CMD would be continued to a later date to allow for service at the new/current address (if the Applicant was able to obtain this) or for the application to proceed by way of service by advertisement. The Tribunal also indicated that a direction would be issued in relation to information and documents which should be submitted in advance of the continued CMD.
4. Following the CMD, the Applicants notified the Tribunal that the Respondent's representative had been in touch and confirmed that the Respondent still resided at the property. They also submitted several documents. The parties were notified that a further CMD would take place on 6 June 2023 at 10am. The CMD took place on this date. The Applicant was again represented by Ms McGraw and Ms Reid. The Respondent was represented by Mr Marshall, solicitor.
5. The representatives told the Tribunal that they wished to withdraw ground 10 as the Respondent is occupying the property. They confirmed that the application is to proceed on the other grounds and wished to add ground 12, as substantial rent arrears have now accrued. The Tribunal noted that ground 12 is not specified in the Notice to leave lodged with the application and that a rent statement had not been provided. Mr Marshall told the Tribunal that the application is opposed. He confirmed that he had no issues to raise regarding the application paperwork, if it is accepted that the tenancy is a private residential tenancy under the 2016 Act. He also confirmed that he had no objection to the application being amended to include ground 12 but that evidence of the arrears would be required. He indicated that if the arrears are related to non-payment of benefit, this could be addressed as the Respondent is entitled to housing benefit. In relation to the eviction grounds, Mr Marshall said that the Respondent denies that she has failed to engage with housing support. In relation to grounds 14 and 15, the Respondent denies that she has

engaged in antisocial behaviour or that anyone visiting the property has done so. She also denies that her boyfriend stays at the property. It is her position that she has been harassed by one of the other residents.

6. Following a short adjournment, the Tribunal advised parties that the request to amend the application to include ground 12, in terms of Section 52(5) of the 2016 Act was granted. The parties were also advised that the application would proceed to an evidential hearing, to take place “in person” in Dundee, if this could be arranged. The Tribunal noted that following issues for the hearing;-
 - (a) Has the Respondent been in rent arrears over three or more consecutive months?
 - (b) If so, are the arrears due to a delay or failure in the payment of a relevant benefit?
 - (c) Has the Respondent breached her tenancy agreement by failing to engage with the housing support provided by the Applicant?
 - (d) Have the Respondent or other residents at, or visitors to, the property engaged in antisocial behaviour?
 - (e) Would it be reasonable to grant an order for eviction?
7. The hearing was scheduled for 29 August 2023 and then 27 October 2023. Both hearings were postponed due to the Legal Member of the Tribunal being unable to attend. The parties were notified that the hearing would take place on 1 February 2024, at Endeavour House Dundee. Prior to the hearing, both parties lodged submissions and documents. The hearing took place on this date. The Applicant was again represented by Ms Reid and Ms McGraw (now Mrs Ritchie). The Respondent participated and was represented by Mr Marshall, solicitor.

The Hearing

8. At the start of the hearing, the Tribunal asked parties about a submission lodged by Mr Marshall in relation to the tenancy and whether the Tribunal had jurisdiction. The Tribunal noted that the application had been raised under Rule 109 and section 51 of the 2016 Act, on the basis that the tenancy is a private residential tenancy, although the document lodged is described as an occupancy agreement. The status of the tenancy had not been disputed by the Respondent. Mr Marshall told the Tribunal that the position regarding occupancy agreements, and licenses to occupy is not clear. The Applicant is a charity and there is English case law on the issue. Ms Reid told the Tribunal that they raised proceedings in relation to another property and occupier at the Sheriff Court and were unsuccessful, the Sheriff concluding that the agreement was a PRT. Since then, they have taken their cases to the FTT. The Tribunal noted that the agreement did not fall within one of the categories of tenancy

excluded from the 2016 Act and were happy to proceed on the basis that the 2016 Act applied. Both parties confirmed their agreement.

Summary of the evidence of Ms Reid and Mrs Ritchie

9. Ms Reid said that she is the operations manager for the Respondent and was previously accommodation services manager. She explained that the Applicant was set up to assist people with complex needs to sustain a tenancy. They lease properties from Hillcrest Housing Association and place people in these properties and provide them with support. The aim is to get the tenant to a point where they can manage their tenancy independently. If satisfied that this has been achieved, the housing association then take the tenant on. However, it is a condition of the tenancy that the tenant engages with the support which is provided. The housing association will only agree to take the tenant on if they are satisfied that there are no tenancy related issues ongoing. The Housing Association and the Applicant work together. In the present case, they are aware of the antisocial behaviour because it is reported to them and comes to Positive Steps to manage.

Ground 12

10. The Applicant lodged an updated rent statement on 24 January 2024. This showed arrears of £900, although a payment of housing benefit was due to be made at the end of January. Mrs Ritchie advised that this is not yet showing on the statement but that it is expected and will reduce the arrears to about £300. The representatives confirmed that the substantial housing benefit backdate paid to the rent account in August 2023 cleared most of the arrears. Currently, there is a shortfall between the monthly rent charge and the housing benefit being received (the rent charge being £634 and the HB £597.36). As the Respondent will not engage with the Applicant, they don't know if the shortfall is just due to the Respondent failing to tell the DWP that the rent has increased or if there is a deduction from her HB due to a previous overpayment. The current rent charge is made up of three components (£318 rent, £198 furniture package, £115 enhanced management charge). The total rent charge is in line with the local housing allowance.

Ground 11

11. The Tribunal noted that the Applicant had lodged an email from Rachel Prophet, Team Leader Housing Support, dated 24 January 2024 which relates to recent efforts to engage with the Respondent. This email states that there have been 12 "non-engagements" since she started working with Ms Alcorn in September 2023. There was no response to attempts to contact her between 18 December and 22 January. The report goes on to say "Kerry has never required any housing support on any visit and any issues she has had she has dealt with herself. We have done a review of her support in October but there were no support needs at all our visits have been very short due to Kerry not wanting anything or being under the influence when we have arrived".

- 12.** Mrs Ritchie said that it is clear from Sarah Healy's involvement that there is still a need for support. The Tribunal also noted that section 2(b) of the occupancy agreement/tenancy states that the tenant must accept the support. In response to questions from the Tribunal, Ms Reid said that the support is tailored to the service user. However, the minimum requirement is once a week. The support worker will help with budgeting, benefits, shopping, antisocial behaviour. There is a care plan, and they are regulated by the care inspectorate. If someone does not engage, or does not have support needs, they cannot remain in the tenancy because it was granted for that purpose. The email from Rachel Prophet is based on what she was told by the Respondent. In response to questions from the Tribunal, Ms Reid told the Tribunal that the appointments are made in advance, usually a regular weekly appointment on a day or time that suits the tenant. The appointments with the Respondent always involve 2 workers. If they don't get an answer at the door, its recorded as a non-engagement. The email indicates that there were 12 non engagements. There were 5 visits where the workers saw and spoke to the Respondent – on three occasions she was under the influence, the other two she said she did not have any support needs. In response to further questions the representatives indicated that on these 5 occasions the discussions probably took place at the door of the property.
- 13.** Ms Reid told the Tribunal that the Respondent engages with her social worker and with TCA. She has to do so in terms of a criminal court order However, her engagement with these services is not material to her accommodation and her obligations in terms of the tenancy. It is essential that she engages, and she won't do so.

Grounds 14 and 15

- 14.** Ms Reid told the Tribunal that the Applicant housed the Respondent through their connection with Women's Aid and the behaviour of the Respondent's ex-partner had been one of the main reasons for her homelessness . There were problems when workers visited because they thought that her ex-partner (or another male) was in the house. It was known that he had violent tendencies and workers had surmised it was the ex-partner who was visiting the property. There were complaints about antisocial behaviour about him. However, this was a couple of years ago and he is not mentioned in more recent reports. Back in 2020, a neighbour reported that they had been threatened by the partner. However, at the present time, it seems that the only issues are with the Respondent.
- 15.** In response to questions from the Tribunal, Ms Reid said that there were no updated disclosures because the neighbour who made the complaints has stopped phoning the police. She said that this is because nothing is being done. Other neighbours have complained to the housing association. They don't want to be identified. The applicant advised that one of the neighbours was now not willing to appear as a witness at the hearing. The current complaints are that the Respondent comes to their door, shouts at them in the hallway or even the town centre, often loses her fob, demands money and food. In response to questions, the Tribunal was told that the Applicant has two flats in the block. All other properties are owned by Hillcrest and are mainstream. They are all one-

bedroom flats – single people and couples – with a mixed age group.

16. Mrs Ritchie told the Tribunal that she and a colleague did a door-to-door check in October 2022. They spoke to 8 occupants who all confirmed that there were problems with the Respondent. They complained of noise, arguing, loud music, shouting at passers-by, the Respondent asking for food and money. The representatives advised the Tribunal that they spoke to Ms Adams about 2 months ago. She previously said that she would attend the hearing and give evidence. However, she is now not willing to attend and spoke of being trapped in her home and said that her family can no longer visit. Her flat is directly underneath the respondent's flat. Ms Adams and four other tenants have requested management transfers. There have been no complaints about other properties, including the other property occupied by a Positive Steps tenant. There was a fire in the block in the summer of 2023 caused by the Respondent.
17. Mr Marshall asked Ms Reid what she meant when she said that the Respondent needs support just not what they provided, Ms Reid said that the property is not the right situation for her, she doesn't want to be there and doesn't want the support. Perhaps she would be better off with full blown medical support or in mainstream. She stated that the engagement with Social Work and TCA is only because of a court order, and this is due to come to an end. Otherwise, she could end up in prison. Ms Reid was asked whether she would take a different view if there was no antisocial behaviour. She said that the failure to engage was the main issue. When asked about Rachel's report, she said that there have been 9 different workers allocated to the Respondent. They have tried everything, and she won't engage. The current staff members (Rachel and Sara) are very experienced. Ms Reid said that although it is accepted that Ms Alcorn has a chaotic life and problems with memory etc (based on the medical problems) she is not unique in this respect. However, other tenants engage with support. Lots have complex needs. They have tenants in 70 properties. Ms Alcorn had the option of going into mainstream accommodation but chose Positive Steps and this property and there had been input and assessments from Women's Aid and Social Work
18. Mr Marshall suggested that the Applicant should give the Respondent a three-month trial to see if she refrains from antisocial behaviour. Ms Reid said that they are past that now. She has had many opportunities, and they were not now allowed into the property. It was put to her that the report from Rachel indicates that there are no support needs. She said that the report/assessment is based on what Ms Alcorn said. In September and October 2023, there was access to the property and the condition of it was fine. However, the support in place is not necessarily to assist with that. It involves budgeting, shopping, attending appointments, substance misuse, antisocial behaviour.
19. Ms Reid was asked about the report in terms of non-engagement and times that the workers had a conversation with Ms Alcorn. She said that non engagement refers to a refusal or failure to answer the door. The times that there is engagement are generally due to Ms Alcorn needing a fob, money, or food. She was offered help with her housing benefit and would have been taken to appointments but refused. The HB was only sorted out when Mr Marshall got

involved. In relation to the antisocial behaviour, Ms Reid said that the neighbours have stopped complaining. Ms Adams said that she was harassed outside her flat. That the Respondent shouts at people, verbally abuses and threatens them. She had hoped to submit signed statements, but they refused to provide them. Ms Alcorn also shouted at Ms Adams and her grandchildren in the town centre.

20. In response to questions about the process for reviewing support needs, Ms Reid said that the initial assessment is the baseline. This is documented but the assessments/reviews have not been lodged. The reviews/assessments are based on what the service user says. That's why the report from Rachel says no support needs – because Ms Alcorn stated that. Ms Reid said that Ms Alcorn engages if she loses her keys or needs food parcels, At the start of the tenancy support had been needed with mental health and addiction but they can't help her with that, she does need help with appointments.

The Respondent's evidence.

21. Ms Alcorn told the Tribunal that she became homeless when she separated from her partner who had been quite abusive . The house was in his name, and she ended up in the Lilian Walker centre. His name is Alexander Kemp and she lived with him and ran the house for over 10 years. When she moved into the property Lynn Colhoun came out every week. The neighbour downstairs used to hit her door and ceiling with a hammer and her man offered Ms Alcorn money for sex. Ms Adams harassed her from the start but when the police attended, they saw that she was usually just sleeping. She doesn't play loud music or shout or threaten. Ms Alcorn confirmed that she had a problem with drugs but is now just taking one small, prescribed tablet every day. She has never asked neighbours for money or food and there were no men in her house when the positive steps workers attended. For the last year and a half, she has kept people away from the flat. Ms Alcorn denied refusing support. Lynn came every week. When she filled in the form, Lynn and Sarah told her to score low. She often listened out for them arriving and turned down her radio, but they often didn't come. That was Rachel. On one occasion she walked past Ms Alcorn in the street and said she would get her next time and then put it down as non-engagement. However, Rachel was out on Monday with another worker. Ms Alcorn said that she had enough to eat. They mentioned the Tribunal was soon. If there have been 12 non engagements, it's because they didn't turn up and one day, she was sitting quiet, and a letter was put through the door from Positive Steps.
22. Ms Alcorn said that she receives UC and ADP although the latter might have stopped. £270 and £136. She said that she has been living quietly and would like to stay at the property. She gets on Ok with her neighbours and that she hasn't annoyed them except for when she lost her fob. She is worried that if she lost the flat, she would end up on drugs again. In response to a question from Ms Reid she stated that she always lets the workers in. In response to questions from the Tribunal, she said that she gets support from TCA and is down to one tablet a day. She was on heroin. She has to attend appointments with TCA and Social Work but that is coming to an end in a few weeks.

Submissions

23. Ms Reid said that there has been a breach of the tenancy agreement. The Applicant has gone above and beyond their usual service to support the Respondent. However, they must consider the wellbeing of the other tenants. If unsuccessful the Applicant will have to appeal the decision, to bring this tenancy to an end. Ms Reid said that she believes that the Respondent does require support and they would support to the ends of the earth. She must consider the neighbours. They may have to consider an asbo if they can't recover the property.
24. Mr Marshall told the Tribunal that his heart goes out to the Applicant who are trying to support tenants with support needs. However, this case is about the Respondent, and she wants to stay in the property. In relation to ground 15 it is clear that this is not really an issue and that there have been no recent problems. In terms of ground 12, the arrears can be remedied by notifying HB that the rent has increased. In the circumstances, he would argue that it would not be reasonable to evict on this ground. Based on the evidence and submissions of the Applicant representatives, it appears that ground 11 is the most important one. In terms of antisocial behaviour (ground 14), there is evidence of police call outs. The Respondent denies any antisocial behaviour. The evidence in relation to specific incidents is largely historic. Neighbours have stopped complaining and Ms Alcorn says that she has been living quietly. Having regard to the balance of probabilities the Tribunal has to consider the absence of direct evidence from the people who have complained about the behaviour. Ultimately, the Tribunal has to make findings in fact. It would be far-fetched to say that there has been no antisocial behaviour. But the evidence is second hand hearsay – the representatives have been told by the housing association who have been told by the neighbours. There was no direct evidence even from the Housing officer. Mr Marshall stated that there is insufficient evidence to establish this ground on the balance of probabilities. Even if the Tribunal does not agree with this assessment, it is evident that things have not been so bad recently and incidents have not been serious enough. Mr Marshall invited the Tribunal to consider adjourning the case in terms of Rule 28 of the Procedure Rules for a period to allow the Respondent the opportunity to show that she can refrain from antisocial behaviour. If not, his position is that it has not been established that it would be reasonable to evict the Respondent on this ground.
25. In relation to ground 11, Mr Marshall said that it is accepted that it is a condition of the tenancy agreement that the tenant takes the support. The Applicants have provided evidence that she has failed to do this. The question is whether it would be reasonable to grant an eviction order on this ground. Mr Marshall referred to the medical evidence which has been lodged which provides evidence that the Respondent's chaotic lifestyle has been caused by a number of factors including mood fluctuations and cognitive difficulties. The Respondent has also experienced withdrawal symptoms as she reduces her dependence on substances. The medical reports indicated that she is likely to require support in relation to decision making and would benefit from structure

and routine which are largely absent. There are mental health issues which may result in the Respondent being unable to engage with support rather than refusing to do so. The Tribunal should also consider the fact that this property was not necessarily a short-term arrangement and that if she becomes independent, she might be given the opportunity to stay there as tenant of the Housing Association. Mr Marshall told the Tribunal that if she loses the tenancy, the effect could be catastrophic. She could end up in a hostel where she might be mixing with people who will lead her back to her previous lifestyle.

26. The Tribunal asked parties whether they could consider a delay in enforcement, rather than adjourning the case in terms of Rule 28. The Applicant would then have the option of allowing her to continue to live in the property, if she engaged with support and refrained from antisocial behaviour for a few months. Mr Marshall said that this would not be the best option because the situation would not be subject to the scrutiny of an independent Tribunal at the relevant time. Ms Reid told the Tribunal that if the order is granted, it will not be enforced until suitable homeless accommodation - a network flat and not a hostel – has been provided by the Local Authority. She said that she was able to provide an undertaking on behalf of the Applicant that this would be the case.
27. Following the hearing the Applicant notified the Tribunal that they had received information from the Local Authority that the Respondent had refused or failed to respond to two offers of housing from the Local Authority. The offers had been sent to TCA and not to the Respondent. The Local Authority now have determined that they had discharged their duties to the Respondent in terms of the homelessness legislation.

Findings in Fact

28. The Applicant is the landlord of the property.
29. The Applicant is a charity and leases the property from a housing association to provide accommodation and support to people with housing support needs.
30. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.
31. The Respondent is due to pay rent at the rate of £628.63 per month.
32. The Respondent has been in arrears of rent since April 2021.
33. The Respondent currently owes the sum of approximately £300 in unpaid rent.
34. Prior to August 2023, the arrears of rent were due in part to a delay or failure in the payment of Housing Benefit.
35. In August 2023 the Respondent received a Housing Benefit backdate which cleared most of the arrears

36. The Applicant has not issued information to the Respondent in compliance with the Rent Arrears Pre action Protocol.
37. The Respondent is currently in receipt of housing benefit which covers most of the rent charge. There is a shortfall of £31.27 per four weeks.
38. The Respondent has not associated in the property with a person who has engaged in antisocial behaviour at the property.
39. In October 2022, the Applicant's representative was told by residents at the block in which the property is situated that they have experienced behaviour by the Respondent including noise, shouting, loud music, and the Respondent asking for food and money.
40. On 19 November 2021, a neighbour contacted the Police to complain of noise from the property. The Police did not attend.
41. On 4 December 2021, a neighbour contacted the Police to complain of noise from the Property. The Police attended. The Respondent was in the property with the television up loud.
42. On 12 October 2022, a neighbour contacted the Police to report a domestic disturbance. Police attended. The Respondent was alone and said that she had been shouting at someone on her phone.
43. On 2 February 2023, a neighbour contacted the Police to report a disturbance at the property. The Police attended and arrested a female on a warrant.
44. On 16 February 2023, a neighbour contacted the Police to report loud music and shouting. Police did not attend and there were no further calls.
45. On 3 April 2023, a neighbour contacted the Police to report a female shouting and screaming on her phone. The Police did not attend and there were no further calls.
46. On 30 May 2023, a neighbour contacted the Police to report to report a disturbance. The Police attended and found no disturbance.
47. On 14 June 2023, a neighbour contacted the Police to report loud banging and music. Police attended and told the respondent to keep the noise down.
48. Between November 2021 and June 2023, the Respondent caused nuisance and annoyance to a neighbour on at least three occasions.
49. It is a condition of the Respondent's tenancy agreement that she accepts housing support provided by the Applicant.

50. The support offered by the Applicant to the Respondent is in the form of weekly visits by a support worker to assist with tenancy related matters such as rent, budgeting and antisocial behaviour.
51. From the start of the tenancy the Respondent has frequently failed to engage with the support which has been provided.
52. The Respondent required support at the start of her tenancy. The Respondents support needs have reduced since the start of the tenancy.
53. The Respondents current support needs are being met by Social Work and TCA.
54. The Respondent has a history of depression and substance misuse. The substance misuse has led to cognitive impairment. The Respondent has previously had a chaotic lifestyle and became homeless following the break-up of an abusive relationship.
55. The Respondent has been engaging with Social Work and addiction services since February 2023. Initially engagement and attendance at appointments was poor. This was addressed and both improved. She has also been addressing her substance misuse and her recovery from addiction is progressing.

Reasons for Decision

56. The application was submitted with a Notice to Leave dated 2 August 2022, together with a post office receipt and track and trace report which establishes that the Notice was sent to the Respondent on the same date. The Tribunal was advised that the Notice was also handed personally to the Respondent on the same date. The Notice states that an application to the Tribunal is to be made on grounds 10, 11, 14 and 15. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 4 September 2022.
57. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
58. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
59. The evidence given by Ms Reid and Mrs Ritchie was generally credible and reliable, if somewhat limited. This was particularly the case in relation to grounds 14 and 15, where the difficulty was the lack of evidence, rather than

the content or quality of it. In advance of the hearing the Tribunal were advised that there would be evidence from a housing officer from Hillcrest and a neighbour of the Respondent. There was also a reference to signed statements from other residents. None of these were produced. The Respondent's evidence was neither credible nor reliable. She was vague and confused. The medical evidence lodged indicates that she has suffered cognitive impairment because of substance misuse and the Tribunal concluded that they could have little regard to her oral evidence as a result.

Ground 12

60. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states "(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 in 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."
61. Sub-Paragraph (4) states, "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 Minister in regulations." Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant's rights in relation to eviction proceedings and how the tenant can access information and advice.
62. It is not in dispute that the Respondent is in arrears of rent and that she has been in arrears for three or more consecutive months. The rent statement lodged in advance of the hearing was not challenged by the Respondent. The arrears started in April 2021 and for a period of time there were no payments to the rent account. However, a substantial housing benefit backdate was received in August 2023 and this reduced the arrears to £197. The Applicant's representatives said that the housing benefit stopped in November 2022 because the Respondent was living elsewhere. However, the Respondent lodged a letter from the Council which confirmed that she had been entitled to housing benefit since the start of the tenancy. The updated rent statement shows current arrears of £900. However, the Applicant representatives said that a payment of Housing benefit is expected, so the actual arrears are only about £300. This is due to a shortfall between the rent and the benefit being paid. There seem to be two possible reasons for this. One is the Council have not been told about a rent increase. The other is that her benefit is subject to a deduction for a previous overpayment. The former seems to be the most likely option as there is no reference in the email from the Council to an overpayment deduction and the housing benefit covered the whole rent charge prior to the increase in April 2023. If this is the case, it can be easily remedied, and the

arrears might be cleared. The Tribunal also notes that the Applicant did not provide evidence of compliance with the Rent Arrears Pre Action Protocol, although there was oral evidence that the support workers made numerous efforts to assist the Respondent with her rent issues.

63. Although the Applicant confirmed that they were insisting on all 4 eviction grounds, it was conceded that the main focus is on the other eviction grounds.

Grounds 14 and 15

64. Ground 14 states “(1) It is an eviction ground that the tenant has engaged in relevant antisocial behaviour”. Subsection (2) requires the behaviour in question to be “relevant antisocial behaviour” and stipulates that the Tribunal has to be “satisfied that it is reasonable to issue an eviction order on account of that fact”. In addition, the application for the order must be made within 12 months of the behaviour or the Tribunal is satisfied that there is a “reasonable excuse” for the delay. In terms of subsection (3), antisocial behaviour occurs where the conduct “causes or is likely to cause the other person alarm, distress, nuisance or annoyance” or “amounts to harassment...”. The Tribunal also must take into account “who it was in relation to” and “where it occurred” (Subsection 5).
65. Ground 15 states applies where “the tenant associates in the let property with a person who has a relevant conviction or has engaged in antisocial behaviour.” In order to establish this ground, the person has to be someone who lives at the let property, has sublet the property or “has been admitted to the let property by the tenant on more than one occasion”.
66. In many respects, the inclusion of ground 15 (and to a certain extent ground 14) appear to be something of an afterthought as little evidence was produced by the Applicants. Mr Marshall invited the Tribunal to find that ground 15 is not established. He said that there was no evidence to support the ground and even if the Tribunal thought that there had been issues with the Respondent’s partner at one time, they were historical. The Applicant representatives conceded that recent complaints were only about the Respondent. In relation to ground 14, Mr Marshall said that the Respondent denies any antisocial behaviour. He conceded that the Tribunal might not be wholly persuaded by this claim and might be satisfied that there has been some behaviour on the part of the Respondent which has caused concern. However, he pointed out that there was no direct evidence of the alleged conduct. The only people who gave evidence – Ms Reid and Mrs Ritchie - have not experienced the behaviour. For the most part, they have also not been the people to whom the behaviour was reported. Some incidents were reported to the Police. Others were reported to the housing association, although the records lodged only mention two such reports. These were recorded as “less serious” and were recorded on 8 February and 19 November 2021.
67. Mrs Ritchie told the Tribunal that she spoke to 8 residents in October 2022 who stated that there was antisocial behaviour on the part of the Respondent. She did not obtain full details from them – the precise nature of the behaviour, when

it had occurred, what action they had taken, whether it had caused them distress or nuisance. Ms Reid told the Tribunal that the Housing Association reports that 4 tenants have requested management transfers and that the neighbour who had been due to give evidence at the hearing had stated two months ago that there was ongoing antisocial behaviour but that she was not willing to attend the hearing and had stopped calling the police because they didn't do anything. Again, no specifics of the alleged recent behaviour were provided.

68. The Applicant lodged two Police disclosures which had been obtained by the Housing Association. These contain incidents which were reported to the Police and the outcome of the Police involvement. In the disclosures there are also a number of incidents recorded where the Respondent has contacted the Police. These appeared to be irrelevant. The Tribunal notes that, although the Applicant made reference to a fire at the property, this is not mentioned in the disclosures and no further details of the alleged incident were provided. The following incidents about the Respondent are recorded:-

- (a) 10/12/20. Caller – Adams. Complaint of banging and shouting. Police attended. No sign of life at the property. Next door neighbour told them that she had gone out. Said he had not been aware of any disturbance from Flat F but there had been banging and shouting from Flat T.
- (b) 4/2/21. Caller - Adams. Complaint that neighbours have been arguing for several hours. Caller went to the door and Kerry's partner was aggressive. Police traced a male and female. Both confirmed no argument and that they were loud speakers. Unit also confirmed that there were "ongoing neighbour issues with each other"
- (c) 19/11/21. Caller – Adams. Complaint of neighbour banging loudly. No units free to attend and caller signposted to housing association and antisocial investigation team.
- (d) 4/12/21. Caller – Adams. Complaint of loud banging and moving stuff about. Police attended and found a female in the property alone. There was no disturbance, but the TV was loud.
- (e) 12/10/22. Caller – not specified. Complaint is a domestic disturbance. Male and female shouting and screaming. Police attended. Female on her own said that she was shouting at someone on her phone.
- (f) 2/2/23. Caller – Adams. Kerry shouting, screaming, cursing, and swearing. Police attended and a female was arrested on a warrant.
- (g) 16/2/23. Caller – Christie. Loud music, shouting, party. No units free and no further calls.
- (h) 3/4/23. Caller – not specified. Complaint of female shouting and screaming on her phone. No units free and no further calls.

- (i) 30/5/23. Caller – Adams. Shouted at caller and now shouting and bawling at locus. Police attended and found no disturbance and no crime established.
- (j) 14/6/23. Caller – Adams. Loud music and banging. Police attended and told the occupant to keep the music down.
- (k) 24/7/23. Caller – Adams. Loud music. Police attended and found the music not excessive. Kerry had fallen asleep listening to the radio.

69. The Tribunal notes that the first two incidents occurred more than 12 months before the application was made to the Tribunal, on 5 September 2022. As no explanation or excuse was provided, the Tribunal is not persuaded that these incidents can be considered (Ground 14(2) of schedule 3). In any event, neither appear to establish antisocial behaviour by the Respondent. Incident (b) appears to establish that there was a male in the property, but not who he was or that the Police were satisfied that he had engaged in antisocial behaviour. Police were told by another neighbour that the disturbance was at another property in incident (a). In (b) the Police have recorded it as a neighbour dispute.

70. The fact that someone has called the Police does not necessarily mean that an incident has occurred. The Police did not attend in relation to (c), (g) and (h). However, they note that there were no further calls which suggests that other neighbours were not affected and/or the disturbance had ceased. On only three occasions did the Police note a concern. In (d) they noted that the television was on loud, although no disturbance. In (e), the Respondent admitted that she was shouting on her phone. In (j) they told the Respondent to keep the noise down. The disclosures do not indicate that the Respondent was warned or arrested in connection with any report. She was arrested on 2 February 2023, but only because there was a warrant outstanding.

71. As the Police records only establish that a male was present in the house on one occasion and do not establish that a male engaged in antisocial behaviour at the property (as stated by the Applicant), the Tribunal is satisfied that ground 15 is not established.

72. Based on the evidence presented to it, the Tribunal is satisfied that there have been a few, minor incidents of noise disturbance at the property. Only one of the disclosure incidents relates to a complaint that the Respondent shouted at the neighbour, and the Police were satisfied that no crime had taken place when they attended. The Applicant's evidence of people requesting management transfers and complaining of ongoing problems was of very limited evidential value. There was no detail (dates, times, type of incident, who was involved etc) and the evidence at the hearing came from people who had not witnessed the alleged behaviour or even, for the most part, been the person to whom it had been reported. The applicant also only provided records of two complaints by Mrs Adams to the housing association. The Tribunal also notes that there appears to have been very little action by the housing association. Generally, a Local Authority or Registered Social Landlord would view an eviction application in relation to antisocial behaviour as the last resort, once other

measures to tackle the behaviour had been tried and failed. Other options might include warnings, acceptable behaviour contracts and applications for an antisocial behaviour order. Aside from two warnings issued in 2021, no further action appears to have been taken by the Association and it is not clear why this is the case. The Applicant also seems to believe that an asbo should only be considered if an eviction order is not obtained.

73. The Tribunal is therefore satisfied that the Respondent has engaged in relevant antisocial behaviour on a few occasions, that the behaviour was at the lower end of the spectrum and has not occurred since June 2023.

Ground 11

74. The Tribunal is satisfied that the tenancy agreement requires the Respondent engage with housing support provided by the Applicant. Clause 2(b) states, "The occupant agrees to engage with Positive Steps Partnership support and if engagement ceases their entitlement to live in the accommodation will be revoked".
75. The Applicant's evidence (both oral and documentary) in relation to ground 11 was far more convincing. The Applicant is a charity that provides housing support and supported tenancies. Based on the information and evidence provided at the CMD and hearing, the Applicant became a private landlord by accident. The agreement signed by the Respondent is described as an occupancy agreement. The Respondent was offered the property when she was homeless and had been assessed as requiring support. Had the property been offered to her by the Council, it would have been classed as temporary accommodation. If it had been provided by the Housing Association, it might have been a secure or short secure tenancy. Either way, it would not have been a private residential tenancy and would not have been subject to the jurisdiction of the Tribunal. Following an unsuccessful court action in relation to another property (and some legal advice) the Applicant accepted that they had, inadvertently, created private residential tenancies, and that the Respondent's tenancy was subject to the terms of the 2016 Act. This meant that they had to apply to the Tribunal for an eviction order which can only be granted on one or more of the grounds specified in schedule 3 of the 2016 Act.
76. Ground 11 of the 2016 Act states, "It is an eviction ground that the tenant has failed to comply with an obligation of the tenancy." Eviction is to be granted on this ground if the tenant has failed to comply with a term of the tenancy and "the Tribunal considers it to be reasonable to issue an eviction order on account of that ground". The legislation does not prescribe the type of tenancy conditions which might give rise to eviction on this ground. Usually, applications to the Tribunal involve behaviour on the part of the tenant which is prohibited - keeping pets, causing damage, smoking, making unauthorised alterations, refusing access for inspection and repair. However, there is no reason why any contractual term should not form the basis of an application on ground 11, even if it is not a statutory term or one which would be found in the model tenancy agreement. The requirement to engage with support is clearly set out in the agreement. The Respondent signed the agreement, and the Tribunal accepted

the evidence of the Applicant representatives that it was made clear to her when she signed that support was not optional.

77. Although the Tribunal did not hear evidence from the support workers, it was evident that they work closely with the representatives who attended the hearing. There was convincing oral evidence, which was consistent with the written reports and records, which established that the Respondent has often refused support or failed to answer the door when workers attended at times which had been agreed. This has been an issue since the start of the tenancy. In recent times she has refused or failed to engage in all the Applicant's attempts to support her. The Tribunal is satisfied that the Respondent breached her tenancy agreement by failing to engage with support.

Reasonableness

78. The Tribunal noted and had regard to the following:-

- (a) The rent arrears are minimal and are likely to have been caused by the failure by the Respondent to notify the DWP that her rent has increased. If this is the case, it can be easily rectified. There was no evidence that arrears at this level are having or could have an adverse impact on the services provided by the Applicant or their ability to continue to support tenants. The Applicant representatives indicated that the current rent arrears are not a major concern.
- (b) The antisocial behaviour established by the Applicants is relatively minor and historical. While any noise disturbance is likely to cause nuisance and annoyance to other residents, the evidence only established that one resident has been sufficiently affected to make complaints and reports and she has not done so since July 2023. There are only a handful of incidents reported and the Housing Association appears to have taken no action since 2021 (when two warnings were issued) although they own the whole block and almost all the occupants are their tenants.
- (c) The Respondent has lived in the property for 4 years. It is the first stable home that she has had since becoming homeless following the break-up of an abusive relationship.
- (d) The evidence regarding the issue of housing support was at times confusing and contradictory. On one hand, Ms Reid stated that she believes that the Respondent still requires support. This belief appears to be based on the rent arrears and antisocial behaviour. However, the most recent report from the support worker assigned to the Respondent's case states that when she visited, support was not required. The explanation offered for this discrepancy is that the support must be client led. If a tenant says that she does not require support, then that is accepted as the position. That may well be the correct approach for the Applicant (as charity providing support) to take, but it makes it very difficult to determine whether the Respondent is refusing support because she doesn't need it, or for some other reason. It appears that the Respondent required a lot of support when she first became the tenant. Her

own medical and other documentary evidence indicate a highly chaotic lifestyle and substance misuse issues. At that time, it appears that she engaged with the support at least some of the time although often it was because she had lost her job or needed a food parcel. In recent times, she appears to have needed less support and has always refused it. This may be because she has ongoing support from Social Work and TCA, with whom she does engage, and her solicitor who helped sort out her benefit problems. The Tribunal concludes that although she is contractually obliged to take housing support, her need for this has decreased significantly since the start of her tenancy. .

- (e) The evidence clearly establishes that the effect of becoming homeless could have a catastrophic impact on the Respondent. Reports were submitted from her GP, a clinical psychologist, an addiction support worker, and her Social Worker. These reports and the Respondent's own evidence about her ongoing recovery from drug addiction and engagement with Social Work and TCA were not challenged by the Applicant, although Ms Reid speculated that her engagement would cease when the Community Payback Order came to an end. The Tribunal noted that the Respondent has a history of depression and chronic pain due to an injury in 2017. Her long-term substance misuse is documented and the clinical psychologist states that she has cognitive impairment which is probably due to drug use. However, her addiction support worker and Social Worker both confirm a recent, major improvement in her presentation and engagement. They also state that she is making progress with addiction issues. This has led to an improvement in her lifestyle and management of her finances. Her Social Worker expresses the view that eviction would be detrimental to her recovery and wellbeing.
 - (f) The Applicant is a charity which provides an important and valuable service to tenants and potential tenants who require housing support. The Respondent would not have been offered the property if she had not agreed to the support. If they were to recover possession of the property, it could be offered to another individual who requires their support and is willing to engage with it.
79. During the hearing, the Applicant representatives stated that, when a tenant in one of their properties progresses to a stage where they can live independently, the Housing Association might take over the tenancy from the Applicant. Although this was the plan for the Respondent's tenancy, the Housing Association are not currently willing to take the Respondent on as a tenant. The reason given by Ms Reid is the antisocial behaviour. The Tribunal did not hear evidence from the Housing Association regarding this arrangement and the Tribunal noted that it appears to be subject to factors outwith the control of the Applicant. The Tribunal also noted that the Association appear to have taken very little action in relation to the alleged antisocial behaviour which apparently is the reason for their refusal. For these reasons, the Tribunal is not persuaded that this matter can or should be taken into account in relation to assessing the reasonableness of the eviction order.
80. During the hearing, the Applicant's representative also said that she could give an undertaking that an eviction order would not be enforced until a network flat

(ie a homeless unit) was made available to the Respondent. Ms Reid said that they work closely with the Local Authority, and this would be obtained. Again, this arrangement appears to be dependent on factors which are outwith the control of the Applicant. Furthermore, the recent information submitted that the Council have now discharged their duty in terms of the homelessness legislation to the Respondent suggests that an offer of temporary accommodation of this nature is highly unlikely. The Tribunal is not satisfied that this “undertaking” can be relied upon.

81. Having weighed up the factors listed in paragraph 78, the Tribunal is satisfied that it would not be reasonable to grant an eviction order against the Respondent. The Tribunal notes that the refusal of the eviction order may mean that an organisation which provides support and supported accommodation will have a tenant who no longer receives support. However, the low level of arrears, the minor antisocial behaviour issues established, the doubt over the Respondent’s need for housing support at the present time and the detrimental effect of eviction on a vulnerable person outweigh the Applicant’s interests in this matter.

Decision

82. The Tribunal determines that an eviction order should be not be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

24 February 2024