

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/19/2503

Re: Property at 17 Thurston Road, Glasgow, G52 2JH (“the Property”)

Parties:

SAVU Properties Ltd, 276 Glasgow Road, Eaglesham, G76 0EW (“the Applicant”)

Miss Danielle Park, 17 Thurston Road, Glasgow, G52 2JH (“the Respondent”)

Tribunal Members:

Lesley Johnston (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 the order for eviction of the Respondent from the property at 17 Thurston Road, Glasgow, G52 2JH should be granted.

Background

1. By application dated 6 August 2019 (received by the Tribunal on 9 August 2019) the Applicant sought an order for eviction of the Respondent from the property at 17 Thurston Road, Glasgow, G52 2JH on the following grounds:
 - i. Ground 11: Tenant has breached a term(s) of the tenancy agreement
 - ii. Ground 12: Tenant is in rent arrears over three consecutive months;
 - iii. Ground 14: Tenant has engaged in relevant antisocial behaviour.

2. Lodged with the application were:

- i. Notice to Leave dated 4 July 2019;
 - ii. Notice under section 11 of the Homelessness etc (Scotland) Act 2003
3. Following a request by the Tribunal administration on 12 August 2019, the Applicant produced the copy Tenancy Agreement dated 5 June 2019 in which the Landlord was named as "Savu". The Appellant also produced 'tenant notes' noting the Letting Agent's interaction with the tenancy.
4. The Tribunal wrote to the Applicant on 8 October 2019 and requested the following:
 - i. Confirmation as to the discrepancy between the Application having been made in the name of Savu Properties Limited; and the tenancy in which the name of the Landlord was stated as being 'Savu'.
 - ii. Confirmation of the ownership of the property and an explanation of the manner in which the two companies are involved in the tenancy;
 - iii. The basis upon which ground 12 could be relied upon in light of the fact that the Notice to Leave was served during the three-month period from when the rent arrears first arose;
 - iv. Proof of the method of service of the Notice to Leave.
5. In response the Applicant emailed the Tribunal administration and lodged:
 - i. Form MR01 (registration of a charge) by Savu Properties Limited in respect of the property;
 - ii. Certificate of Registration of a charge certifying that a charge dated 18 February 2019 and created by Savu Properties Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18 February 2019;
 - iii. An explanation as to the name of the Landlord and a copy of the revised Lease naming Savu Properties Limited as the Landlord (unsigned and undated)
 - iv. An explanation as to why ground 12 was relied upon despite the date of service of the Notice to Leave
 - v. Confirmation that the notice to leave was sent recorded delivery, however, no recorded delivery slip was attached.
 - vi. Copy revised lease in the name of Savu Properties Limited
6. On 29 October 2019 the Tribunal accepted the application.

7. The application was served on the Respondent on 4 November 2019 by Sheriff Officers.

The CMD

8. On 5 December 2019 the application called for a Case Management Discussion. The Respondent was neither present nor represented.
9. At the CMD the Tribunal noted that at the time the Notice to Leave had been served on the Respondent, the Respondent had not been in rent arrears over three consecutive months in respect of ground 12 of the application. In light of the Upper Tribunal's decision in *Majid v Gafney* (UTS/AP/19/0037) in which the UT held that a notice to leave under ground 12 was invalid if it was served before the tenant had been in rent arrears for three consecutive months, the Tribunal found that it could not consider the application insofar as it related to arrears of rent/ground 12.
10. In that regard, this Tribunal notes that the Applicant has since lodged a new application in relation to rent arrears. That application is still at the stage of being sifted and is not therefore before this Tribunal for consideration. The Tribunal could not consider this application, a matter which the Applicant accepted at the hearing.
11. In relation to the remaining grounds 11 and 14, the Tribunal fixed a hearing and reminded the parties that documents would require to be lodged not less than 7 days prior to the hearing.
12. On 13 January 2020 the Applicant lodged a written representation (email) and the following documents:
 - i. Email from the Letting Agent of the Respondent's neighbour (Catherine Weir) in relation to Respondent's behaviour at the property dated 26 June 2019 and photographs attached;
 - ii. Letter from a neighbour (Catherine Weir) dated 8 January 2020 relating to the Respondent's behaviour at the property;
 - iii. Letter from Lawrence McGowan, Community Relation Officer of Glasgow City Council to the Applicant dated 8 January 2020 relating to Antisocial Behaviour investigations in relation to the Respondent;
 - iv. Report from a Neighbour re the Respondent's behaviour at the property
 - v. A handwritten letter relating to the Respondent's behaviour signed by four of the Respondent's neighbours (undated);

- vi. An email from Kathleen Mathers in relation to the Respondent's behaviour dated 12 January 2020;
- vii. A further note from the Letting Agents re the Respondent's interaction with the Letting Agents on 12 December 2019;
- viii. A note of rent arrears for the property as at 5 January 2020.

13. On the same date the Applicant advised that these documents had not been copied to the Respondent on the basis that the Legal Member at the CMD had advised that they would not be copied to the Respondent. On further enquiry by the Tribunal administration the Applicant advised that they did not want these documents copied to the Respondent due to concerns as to the Respondent's behaviour towards individuals named in the documents. The Tribunal asked the Applicant to redact any names and addresses from the documents in light of the Applicant's concern and to bring along redacted copies to the hearing if they so wished.

14. On 17 January 2020 the Applicant provided nine photographs showing the condition of the property. These photographs were lodged late.

The Hearing

15. The Applicant was present at the hearing. He was represented by Jeanette Harrison of Country Lettings.

16. The Respondent was neither present nor represented. The Tribunal noted that notice of the hearing was issued to the Respondent personally when she attended (late) the Case Management Discussion. Notice was also issued by first class post on 4 November 2019. The Tribunal was satisfied that the requirements of rule 24(1) had been complied with and accordingly decided to proceed in the absence of the Respondent in terms of rule 29.

Documents

17. At the hearing, the Applicant lodged the following additional documents:

- i. Photograph showing a hole in a wall;
- ii. Photograph showing a further hole in a wall;
- iii. Photograph showing a smoke alarm without any cover;
- iv. Recorded Delivery slip dated 5 July 2019 in respect of the Notice to Leave;

18. The Tribunal considered whether or not to allow the documents, together with the photographs lodged on 17 January 2020 to be lodged although late. The Applicant advised that the photographs lodged on 17 January were taken by a tradesman on around 8 January and had only recently been recovered from him. The three photographs submitted by him at the hearing had been lodged with the Tribunal previously. In relation to the recorded delivery slip dated 5 July, the Tribunal saw from the papers that the Applicant had attempted to send it as an attachment to an email in around October 2019 but it had not reached the Tribunal. The Tribunal administration contacted the Applicant in that regard in around 30 October 2019 but the Applicant did not respond. The Applicant's agent's position was that she thought the Recorded Delivery slip and the photographs had been lodged, as she had submitted a large number of documents already.
19. The Tribunal considered that the Applicant had a reasonable excuse for having failed to lodge the documents timeously and accordingly exercised its discretion to allow the documents to be lodged although late.
20. The Tribunal raised with the Applicant's representative whether they were content for the documents lodged with the Tribunal to be referred to in an unredacted form. The Applicant's representative confirmed that the individuals who provided the letters and emails of complaint were content for them to be produced to the Tribunal. The individuals were aware of the use to which they would be put. The Applicant's representative confirmed that she was content to rely on the documents in an unredacted form.

Evidence of Mr Savaliya

21. The Tribunal heard evidence from Mr Jayesh Savaliya. He gave evidence as follows.
22. Mr Savaliya is 39 years old. He resides care of Savu Properties Limited ('the company'). He is the Director of the company. The company bought the Property in February 2019 with a view to letting it out. The Respondent refurbished the property before letting it out. It was newly floored and decorated.
23. At the time the refurbishment was taking place he handed out his contact details to his neighbours so they could contact him in the event of any problems at the property. In March 2019 the Respondent appointed his Letting Agent, Country Lettings. The Respondent was the first tenant of the property. She entered into a lease on around 5 June 2019 through the Applicant's Letting Agent. The Respondent moved into the property on 5 June 2019.

24. Mr Savaliya advised that on 12 June 2019 he received a telephone call from the downstairs neighbour to the property to advise that there was water coming in from the property. The neighbour was without electricity due to the leak. The Respondent arranged for a plumber to attend the property, but he could not gain access to the property. His Letting Agent therefore arranged access and he and the plumber attended.

25. Mr Savaliya gained access to the property to check the position. He discovered damage to the walls. One wall had a hole in it. Mr Savaliya referred to the photographs lodged (again) on 22 January which showed a large hole in the wall.

26. Mr Savaliya also advised that there was damage to the bath and the waste pipe which was flowing into the downstairs property. The plumber said that the waste pipe hadn't come off the wall itself. Mr Savaliya advised that it appeared that the bath panel and the waste pipe had been removed by the Respondent.

27. In addition, the smoke alarms were all open and had the batteries removed. Mr Savaliya advised that he spoke with the Respondent about this. The Respondent was rude and abusive to the Applicant. She told him that there were too many smoke alarms in the house and that she had been told by the firebrigade that there shouldn't be that many fire alarms in the house. Mr Savaliya advised that there were two smoke alarms and one heat detector. In addition, there was a carbon monoxide detector near the boiler. Mr Savaliya advised her that she needed to keep the alarms there and that she could not move the alarms. Mr Savaliya also told her that it was better to speak to the Letting Agent about these issues

28. Mr Savaliya referred to the photographs lodged on 22 January which showed the smoke alarm without any back.

29. Mr Savaliya also spoke to his downstairs neighbour (Catherine Weir) who reported that the Respondent was harassing her. Mr Savaliya didn't think this could be correct because the Respondent had only just moved in and was still in the process of moving all of her possessions into the flat.

30. Mr Savaliya advised that the plumber repaired the bathroom.

31. In around the third week of June, Mr Savaliya received a further telephone call from his neighbour who lives downstairs (Catherine Weir) who advised that the tenant was throwing stuff from the window of her property. This followed a conversation with the tenant to advise that she had no right to use the driveway beneath her property because it was owned by the downstairs

neighbour. The Respondent's response was to throw items from her window damaging the downstairs' neighbour's car. The items thrown were pieces of skirting which the Respondent had removed from the walls.

32. Mr Savaliya was referred to the email dated 26 June 2019 from Catherine Weir's landlord. The email followed the complaint to Mr Savaliya and was forwarded to him from his Letting Agent. The email stated:

"As discussed on this morning on the phone regarding the new tenants above our flat at 15 Thurston Road.

Attached are photos from our tenant.

The complaints she has are,

-Rubbish being thrown out of the front and rear windows inc parts of blinds and tiles

-Damage to her car sunroof from something being thrown from a window

-Noise, banging and shouting late at night

-Dirty black water came through the bathroom ceiling

-Water through the light fitting and pull cord for shower

-Damage to floor from water from above

Can you please tell me how this is being deal with and can you arrange an electrician to repair the damage to the electrics in our bathroom as the light etc does not now work. How do we go about repairing the damage to the ceiling and paint, do you have tradesmen you can send out to repair this or do we claim on your insurance?

Can you send me a copy of your insurance supplier please?"

33. In light of the Respondent's behaviour he instructed his Letting Agent to remove the Respondent from the property.

34. Mr Savaliya advised that the police had been contacted about the Respondent's behaviour. The Antisocial Behaviour Team at the council had also been contacted.

35. In that regard, he was referred to a letter from Lawrence McGowan at Glasgow City Council dated 8 January. Mr McGowan was going to come to the hearing but had jury duty this week. The letter stated:

"Glasgow City Council's Community Relations Unit (GRU) investigate complaints of antisocial behaviour within the city.

This letter is to confirm that the Community Relations Unit has been carrying out an ASB investigation into the tenant of the above property. Investigations into the property and its tenant initially commenced in July of 2019, following a first complaint. This particular investigation carried on through until August of 2019 and concluded on 2nd August following the complainer vacating their property and the case was closed.

A secondary ASB complaint was received and a further investigation commenced on 16th August. During this investigation and as a result of information and evidence gathered a "First Written warning letter" was issued, dated 25 October 2019 to the tenant of 17 Thurston Road, Glasgow, G52 2JH. This letter was hand delivered by myself on 28th October 2019.

The case remains ongoing and continues to be monitored with CRU service engaging and communicating with respective complainer and other agency services. No further action or escalation in ASB process has been taken."

36. The letter was signed Lawrence McGowan, Community Relation Officer.

37. Mr Savaliya advised that Catherine Weir moved out of her property because of the Respondent's behaviour.

38. In that regard, Mr Savaliya referred to a handwritten letter from Catherine Weir signed and dated 8 January. The letter stated:

"My name is Catherine Weir. The information that I sent to Country Let regarding the tenant at 17 Thurston Road is accurate. I stayed at 15 Thurston Road up until 5 August 2019. I had to move house due to the tenant at 17 Thurston Road, and on more than one occasion I had to call the police on her and involve the antisocial behaviour team."

39. The Tribunal asked Mr Savaliya to explain the other letters lodged on behalf of the Applicant. In that regard, Mr Savaliya referred to a document entitled "Report from Neighbour". Mr Savaliya advised that the letter was drafted by Carol Love. Ms. Love lives next door to the Respondent with her husband, Richard Love, at 21 Thurston Road. The letter was provided to Mr Savaliya's letting agent for the hearing. It reported behaviour by the Respondent which post-dated the application to the Tribunal as follows:

"27th August – 12.30am – shouting, terrible banging, screaming on and off then again at 2.00am.

1st Sept – 6pm through till 12am shouting, swearing, banging – young girl screaming, then she started shouting, cursing and threatening to shoot Jim Haggerty in the head...shouting this out into the street.

5th September – 10pm -2am shouting, swearing and children getting verbally abused constantly... especially the daughter.

12th September – 8.45pm shouting, swearing and ranting in street to no one, just anybody who can hear.

14th September – shouting, swearing on and off – 10pm – shouting, swearing in the street at no one in the rain.

20th September – locked her daughter out of the house and wouldn't let her in, girl was crying and screaming... opened her door and shouted

Pakis and niggers are treated better than us in Scotland... I hate Scotland is a common thing she shouts.

24th September – dragging her son along the road by the scruff of the neck, shouting – “you bastards want my son, take him, I don’t want him” – her daughter throwing bottles, food, cans etc into our garden, this happens almost every day, and making rude gestures at window.

30th September 10.30am shouting and swearing in street about bin men not taking away her trash, she has tons of it everywhere.... Slagged off Richard and I for being bastards!

4th October – shouting and swearing and threatening everybody from her open window, every 5 to 10 minutes ... so sick of this!

10th October – singing very loudly for hours, and around midnight she started ranting and screaming at her daughter, who also screamed and started banging and thumping about really loudly, this went on until the early hours – comments she made to her daughter where “why don’t you kill yourself, you are dead anyway” and “I don’t want you anymore.”

Friday 11th into Saturday 12th – singing loudly and playing music for hours.

Mon 14th October – 11pm – ranting and swearing about paedophiles etc out of her window, she opens her window, shouts obscenities then closes it, then repeats! Extreme anger.

Friday 19th throwing food at car and into garden, a regular occurrence.

Thursday 23rd usual food into garden.

Friday 25th – she came to our door and accused us of reporting her to Social Services and ranted and raved at Richard... she returned shortly after and di the same, while Lawrence was on the phone to Richard... threatening me with reports to police about drink driving...

This just can't go on as I feel my mental health is not good... I am on medication, and I am feeling tearful a lot of the time. It has ruined our enjoyment of retiring to a nice wee house with a lovely garden... Richard is 69 and I am 64, and recovering from a brain haemorrhage, and I get frightened when I get too stressed.

*Kindest regards
Carol*

40. Mr Savaliya advised that the Respondent's daughter (aged 17) resides at the property with the Respondent, but that her son who is aged about 9 years is no longer living at the property. The Respondent's neighbours had confirmed that the Respondent's son was no longer living at the property.
41. Mr Savaliya referred to a further handwritten note which stated, "between Christmas and New Year she started again, loud music, singing, opens windows, screams abuse and threw a bottle of bud at neighbours car."
42. The letter was signed by Carol and Richard Love.
43. Mr Savaliya was referred to an email from Kathleen Mathers to the Applicant's Letting Agent dated 12 January 2020.
44. Mr Savaliya advised that he does not know Ms Mathers, but she had submitted a complaint to the Letting Agents, and they had ingathered this email from her in advance of the hearing.
45. The email stated:

"With regard to your tenant at the above address.

Although I have had no direct contact with your client, it has become obvious in the last few months, that there have been several altercations with the other neighbours. Your client has been seen outside her home shouting abuse to everyone and anyone that passes by. She accuses them of making life difficult for her and being paedophiles and screaming at the top of her voice. There does not appear to be any reciprocation from others concerned.

In the last few weeks she has taken to bringing her stereo system to the front door and playing it very loud. Even with my windows shut I could still hear it.

At present the lady in question appears to be using the downstairs neighbours front garden as her bin area. There are numerous rubbish bins in the garden and at this moment there is a fridge outside on the pavement. This property is vacant at present and has been for several months. I understand that the previous tenant in the lower property had to leave due to this behaviour.

As a point of interest, I believe that the children that live there are disabled and may be on the Autistic Spectrum. It must be difficult for their mother and she must be under considerable stress. I am not in any way condoning her behaviour. I am unsure if there is some form of social work involvement with this family and it may be worthwhile finding out if this is the case. They may be able to assist to ensure this family unit is given the appropriate care going forward."

Damage to the property

46. As well as the damage reported to him on 12 and 26 June 2019, Mr Savaliya also gave evidence about the general damage to the property. Mr Savaliya advised that he instructed a plumber (Mr Alex Craig) to attend the property last week. The photographs he took are those lodged on 17 January 2020. He reported that there was a door missing in the bathroom. A lot of plaster has been taken off the walls. A lot of wallpaper has been removed. There is

damage to radiators. Mr Savaliya referred to the photographs which demonstrated this.

47. Mr Savaliya advised that the vinyl in the kitchen has been removed. The carpet in the property is damaged and soaking wet.

48. There were a couple of rooms in the property that could not be accessed because the tenant wouldn't allow the plumber access to those rooms. There were no photographs of those rooms.

49. In the bathroom, a lot of tiles have been taken off the wall.

50. The plumber has reported that the Applicant will need to refurbish the whole property. The toilet is blocked due to items having been thrown into it. Mr Savaliya referred to the photographs lodged on 17 January in that regard.

51. In addition, Mr Savaliya advised that he had already engaged an electrician (Mr Craig Brown) to fix the alarms hanging from the walls. Brown reported that the property was in a bad state and badly damaged.

52. He also advised that the Respondent has piled her household waste in the garden. As well as the complaints from neighbours referred to above, Mr Savaliya also referred to the photographs lodged on 17 January which showed the rubbish piled up outside.

53. Mr Savaliya was asked how much it might cost to repair the property. He advised that the property will require a new full bathroom costing around £2000. It will require a new kitchen at around £2,500. New flooring will be needed at a cost of £1800. Plastering the property may cost around £3000. New paintwork will be around £1400 to £1500. The alarms and electrics will cost around £400 to £500. The radiators will need to be repaired at around £80 to £90 per radiator.

54. Mr Savaliya advised that he has been running his property business for around two years and has tried to buy good properties for good tenants. However, he has been let down by this tenant. She is not paying rent and is damaging the property. In addition, her remaining in the property is not fair on the neighbours. As a result of the initial complaints in June 2019 he instructed his Letting Agent to remove the Respondent from the property.

Submissions by Ms. Harrison

55. Ms Harrison advised that the Respondent signed the lease and moved into the house on 5 June 2019. At some point it was realised that the name of the Landlord in the lease ("Savu") was incorrect due to a typographical error omitting 'Properties Limited'. A second lease was issued with the name corrected to "Savu Properties Limited". Ms Harrison advised that the revised lease was issued to the Respondent showing the correction of the name of the Landlord, but she couldn't recall the date.
56. Ms Harrison advised that the complaint from Ms Weir's Landlord and the damage to the property up to and around that time (26 June) a Notice to Leave was issued on 5 July 2019.
57. After a short adjournment, Ms Harrison produced the Recorded Delivery slip in respect of the Notice to Leave. She was asked whether the date in the Notice to Leave was correct according to section 54(2), section 62(4) and 62(5) of the Private Tenancies (Scotland) Act 2016. Ms Harrison advised that she considered the dates were correct and that the Scottish Association of Landlords had confirmed that to her. In any event, if they were not correct, she sought to rely upon the terms of section 73 to excuse it as a minor error in the document.
58. Ms Harrison referred to the letters and emails submitted to her office and which were spoken to by Mr Savaliya in evidence. She advised that prior to steps being taken to evict the Respondent from the property, Ms Harrison told the Respondent that they had received allegations about her behaviour and that if it continued it would lead to eviction action being taken. The Respondent advised that she intended to leave the property but that has not yet happened. Ms Harrison referred to letters having been issued to the Respondent but none had been lodged with the Tribunal.
59. Ms Harrison advised that in her submission, the Respondent had breached clauses 17, 21 and 32 of her lease as a result of her behaviour as follows.

"Clause 17: Reasonable Care

The Tenant agrees to take reasonable care of the Let Property and any common parts, and in particular agrees to take all reasonable steps to:

Avoid danger to the Let Property or neighbouring properties by way of fire or flooding

Ensure the Let Property and its fixtures and fittings are kept clean during the tenancy

Not interfere with the smoke detectors, carbon monoxide detectors, heat detectors or the fire alarm system."

"Clause 21: Respect for Others

The Tenant, those living with him/her, and his/her visitors must not engage in antisocial behaviour to another person. A person includes anyone in the Let Property, a neighbour, visitor, the Landlord, Agent or contractor.

"Antisocial behaviour" means behaviour in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person; or which amounts to harassment of any person. Harassment of person includes causing the person alarm or distress.

"Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person; or which amounts to harassment of any person. Harassment of a person includes causing the person alarm or distress. Antisocial behaviour includes speech.

In particular, the Tenant, those living with him/her, and his/her visitors must not:

Make excessive noise. This includes, but is not limited, to the use of televisions, CD players, digital media players, radios and musical instruments and DIY and power tools;

Fail to control pets properly or allow them to foul or cause damage to other people's property;

Allow visitors to the Let Property to be noisy or disruptive;

Vandalise or damage the Let Property or any part of the common parts or neighbourhood;

*Leave rubbish either in unauthorised places or at inappropriate times;
Allow any other person (including children) living in or using the property to cause a nuisance or annoyance to other people by failing to take reasonable steps to prevent this;*

Harass any other Tenant, member of his/her household, visitors, neighbours, family members of the Landlord or employees of the Landlord or Agent, or any other person or persons in the house, or neighbourhood, for whatever reason. This includes behaviour due to that person's race, colour or ethnic origin, nationality, gender sexuality, disability, age, religion or other belief, or other status;

In addition, the Tenant, those living with him/her, and his/her visitors must not engage in the following unlawful activities:

[...]

Threaten or assault any other Tenant, member of his/her household, visitors, neighbours, family members of the Landlord or employees of the Landlord or Agent, or any other person or persons in the house, or neighbourhood, for whatever reason."

Clause 32:

"The Tenant agrees to dispose of or recycle all rubbish in an appropriate manner and at the appropriate time. Rubbish must not be placed anywhere in the common stair at any time. The Tenant must take reasonable care to ensure that the rubbish is properly bagged or recycled in the appropriate container. If rubbish is normally collected from the street, on the day of collection it should be put out by the time specified by the local authority. Rubbish and recycling containers should be returned to their normal storage places as soon as possible after it has been collected. The Tenant must comply with any local arrangements for the disposal of large items."

60. Ms Harrison asked for the application to be granted.

Findings in Fact

61. The Tribunal makes the following findings in fact:

- i. The Applicant is Savu Properties Limited.
- ii. The Applicant is the heritable proprietor of 17 Thurston Road, Glasgow, G52 2JH.
- iii. By lease dated 5 June 2019 the Applicant and the Respondent entered into a Private Residential Tenancy at the Property with the Applicant.
- iv. The Respondent is the tenant at the property.
- v. The date of entry was 5 June 2019.
- vi. The Respondent took possession of the property on 5 June 2019.
- vii. On 12 June 2019 the Applicant received a complaint from Catherine Weir (an immediate neighbour of the Respondent) Thurston Road.
- viii. Catherine Weir was the Respondent's downstairs neighbour.
- ix. Catherine Weir complained of water ingress to her property caused by the Respondent and of antisocial behaviour by the Respondent towards her.
- x. On 12 June 2019 the Applicant inspected the property.
- xi. On 12 June 2019 on inspection by the Applicant the property had a hole in the wall; the covers on the smoke alarms had been removed; the waste pipe in the bathroom was damaged and was leaking into Catherine Weir's property.
- xii. The photographs lodged with the Tribunal on 22 January 2020 show the damage to the property as at 12 June 2019.
- xiii. On around 12 June 2019 the Respondent was verbally abusive to the Applicant.
- xiv. On 26 June 2019 the Applicant and his agent received a further complaint from Ms Weir that:

- items had been thrown by the Respondent from her property, damaging Ms Weir's car;
 - That the Respondent was making noise, banging, shouting, late at night;
 - That the Respondent was throwing rubbish from her property to the ground below.
- xv. On 5 July 2019 a Notice to Leave dated 4 July 2019 was issued by the Respondent's Letting Agents to the Respondent by first class delivery post.
- xvi. On 9 August 2019 an application was lodged with the Tribunal.
- xvii. Between August and 25 October 2019 the Respondent has repeatedly shouted and screamed in and around the property at all times of the day and night, shouted abuse in and around the property at all times of the day and night; sworn loudly in and around the property, played loud music, threatened her neighbours (including Catherine Weir and Carol and Richard Love) and those passing by the property all at all times of the day and night; thrown rubbish from the property; stored waste and rubbish outside the property.
- xviii. Between Christmas and New Year the Respondent was playing loud music in and around the property; singing, opening the windows and screaming abuse from her property; threw a bottle of beer at a neighbour's car.
- xix. Catherine Weir has moved out of her property due to the behaviour of the Respondent.
- xx. The Respondent's behaviour has frightened and caused stress to Carol and Richard Love.
- xxi. The Antisocial Behaviour Unit of Glasgow City Council have issued a warning letter to the Respondent in respect of her behaviour.
- xxii. The Respondent has caused damage to the property by removing a door in the bathroom; taking plaster off the walls; removing wallpaper; blocking the toilet; removing the vinyl flooring in the kitchen; damaging the carpet in the property.
- xxiii. The Respondent is storing rubbish outside her property.

- xxiv. The photographs lodged with the Tribunal on 17 January 2020 show the damage at paragraph (xxii) and (xxiii) above as at around 8 January 2020.
- xxv. The Applicant has carried out repairs to the property.
- xxvi. The Applicant will require to carry out further extensive repairs to the property on taking possession of the property.
- xxvii. The Respondent continues to reside at the property.

The evidence

62. The Tribunal found Mr Savaliya to be straightforward and honest in his evidence to the Tribunal. Where he did not know the answer to a question, he made that clear to the Tribunal. He did his best to assist the Tribunal. His evidence was supported by the documentation lodged on his behalf. The Tribunal found him to be a credible and reliable witness.

63. The Tribunal made the above findings in fact based on Mr Savaliya's evidence, supported by the documentation referred to by him during the hearing.

The 2016 Act

64. In terms of section 51 of the 2016 Act, the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on application by the Landlord, it finds that one of the eviction grounds named in Schedule 3 applies.

65. The grounds on which the Applicant relies are grounds 11 and 14 of Schedule 3. The Applicant relies upon grounds 11 and 14 of Schedule 3 of the 2016 Act.

66. In terms of section 52 of the Act, the Tribunal is not to entertain an application for an eviction order unless it is accompanied by the Notice to Leave; and unless it is not made in breach of any of sections 54 to 56; unless the eviction

ground applied for is stated in the notice to leave accompanying the landlord's application.

67. It is therefore first necessary to consider the Notice to Leave.

Notice to Leave

68. Part 2 of the Notice to Leave issued by the Applicant states the eviction grounds are that the Respondent has breached a term of the tenancy agreement and that the Respondent has engaged in relevant antisocial behaviour. The grounds therefore mirror the grounds stated in the application.

69. The detail provided in Part 3 of the Notice to Leave provides the details and evidence of the eviction ground. It states that:

"You have behaved in an antisocial way to another person by causing them to be distressed. Damaged the Let Property. Left rubbish in unauthorized places. Allowed any other person (including children) living in the property to cause nuisance to other people by failing to take reasonable steps to prevent this.... These have been arisen to us by receiving complaints by telephone and email from your neighbour, the Landlord and the neighbor's Landlord."

70. The Tribunal is therefore satisfied that the Notice to Leave complies with the requirements of section 52(5); namely that the application is proceeding in accordance with the grounds set out in the Notice to Leave.

71. In terms of section 54(1) of the Act, the Landlord may not apply to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

72. Section 54(2) provides the 'relevant period'. It states:

(2) "The relevant period in relation to a notice to leave –

- (a) Begins on the day the tenant receives the notice to leave from the landlord, and
- (b) Expires on the day falling –

- i. 28 days after it begins if subsection (3) applies,
- ii. 84 days after it begins if subsection (3) does not apply.”

73. The relevant provisions of section 54(3) provide that it applies if the eviction grounds are that the tenant has failed to comply with an obligation under the tenancy (s 54(3)(b)(ii)) and that the tenant has engaged in relevant anti-social behaviour (s 54(3)(b)(v)).

74. Therefore, the relevant period of notice in respect of this application is 28 days beginning on the day the tenant receives the notice from the landlord and expires on the day falling 28 days after it begins.

75. The Notice to Leave must “specify the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal” (section 62(1)(b)).

76. The day to be specified on the Notice to Leave is the day falling after the day on which the notice period defined in section 54(2) will expire (see section 62(4)). For the purposes of section 62(4) “it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.”

Timescales in the Notice to Leave

77. The Notice to Leave served on the Respondent set out at Part 4 that:

“An application will not be submitted to the Tribunal for an eviction order before 4/8/2019. This is the earliest date that Tribunal proceedings can start and will be at least the day after the end of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).”

78. Upon questioning from the Tribunal, the Applicant’s representative produced the Recorded Delivery receipt showing that the Notice had been issued by first class recorded delivery post on 5 July 2019 at 10.50am.

79. Applying section 62(4) and (5), it is therefore to be assumed that the Respondent received the Notice to Leave on 7 July 2019 at 10.50am. That is the date the Notice can be taken to have been served.

80. As outlined above, the relevant notice period is 28 days (section 54(3)(b)(ii) and section 54(3)(b)(v)).

81. Consequently, the notice period in this case began on 7 July 2019 and expired on 4 August 2019.

82. The date to be stated on Part 4 of the Notice to Leave is “the day falling after the day on which the notice period defined in section 54(2) will expire.” Since the notice period expired on 4 August 2019, the date that ought to have been in the Notice to Leave was 5 August 2019.

83. The Tribunal raised with the Applicant’s representative the possibility that the Notice to Leave was not valid in light of the date specified in Part 4 of the Notice being one day short. The Applicant’s representative submitted that she considered the dates to be correct. However, if they were not, she would seek to rely upon section 73 of the 2016 Act to excuse any error in the Notice to Leave. Section 73 provides:

“73 Minor errors in documents

(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2) This section applies to –

[...]

(d) a notice to leave (as defined by section 62(1)).”

Is the Notice to Leave valid?

84. The Tribunal is of the view that the date on the Notice to Leave ought to have been 5 August 2019, rather than 4 August 2019. The question for the Tribunal is therefore whether the error in the date specified in the notice invalidates the Notice, and in turn, whether that affects the competency of this application.

85. A 'Notice to Leave' has the meaning afforded to it by section 62, namely it is one which:

- (i) Is in writing
- (ii) Specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal
- (iii) States the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b) and
- (iv) Fulfils any other requirements prescribed by the Scottish Ministers in regulations.

86. A Notice to Leave executed correctly will fulfil the above requirements. In this case, there is an error as to the date specified on which the landlord under the tenancy expects to become entitled to make an application for an eviction order to the First-tier Tribunal. That error is an error by one day.

87. The Tribunal next considers whether this a minor error in a document which may be saved by section 73. In doing so, it is helpful to consider the terms of the explanatory note to section 73:

“105. Section 73 provides that any errors in specified documents do not invalidate the document if they are sufficiently minor that they do not materially alter the effect of the document. Of necessity, there are a number of documents which the Act requires the use of at certain times. This section ensures that a common-sense approach can be taken to meeting these requirements, and a party is not penalised for an obviously minor error. The protection applies equally to landlords and tenants.”

88. In the view of this Tribunal, the error is a minor error which does not materially affect the effect of the document for the following reasons.

89. The Notice tells the Respondent that the Applicant intended to lodge an application with the Tribunal on the grounds and for the reasons set out in the notice, if the respondent failed to remove from the property. The Respondent did not remove from the property.

90. While the date stated on Part 4 of the notice was incorrect, the application was submitted to the Tribunal taking account of the correct relevant notice period. The application was lodged on 9 August 2019. It was made after the

expiry of the relevant notice period in terms of section 54. In light of the fact that section 73 was intended by the legislator to allow a “common-sense approach” to be taken in meeting the formal requirements of a document, this Tribunal considers that it would be contrary to a common-sense approach to conclude that the mistake, by one day, in the date specified in Part 4 of the Notice should invalidate the notice and render this application incompetent. To do so would penalise the Applicant for an obviously minor error.

91. That is particularly the case when one considers that the notice prescribed by the regulations (and which was adopted by the Applicant in this case) is misleading. The notice as prescribed by the regulations requires the Landlord to complete the date in Part 4 by reference to sections 54(2) and (3) and section 62(4) only (i.e. that the date to be inserted is the day after the 28 or 84 day notice period, whichever is relevant) but **not** section 62(5) (the assumption that the tenant will receive the notice to leave 48 hours after it is sent, thereby adding two further days to the calculation of the notice period). This disconnect was recently considered in *Holleran v McAlister* (Tribunal ref: FTS/HPC/EV/18/3231). While the Tribunal in *Holleran* came to a different view from this Tribunal as to whether an error in the date shown in Part 4 of the Notice may be corrected by section 73, the Tribunal noted in that case, that the Notice as currently prescribed by the regulations “sets a trap for unwary landlords”. In the view of this Tribunal, it cannot have been the intention of parliament to set a trap in the completion of the Notice to Leave.

92. The Tribunal therefore considers that the error in the date did not materially affect the effect of the Notice, and accordingly the Notice is valid.

93. The Tribunal next considers whether the grounds for eviction have been established.

The grounds for eviction

94. The Tribunal deals first with the ground for antisocial behaviour (ground 14)

Ground 14

Ground 14 of schedule 3 of the Act states:

“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 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, and
- (c) either –
 - (i) The application for an eviction order that is before the Tribunal 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.”

95. The Tribunal has found the evidence of Mr Savaliya to be credible and reliable and supported by the documentary evidence lodged in support of the application. His evidence, supported by the documents, was that the Applicant had, prior to the service of the Notice to Leave and afterwards, was verbally abusive to her neighbours, threatening, and caused a disturbance during all times of the day and night. The behaviour has caused the Respondent's neighbour such distress and nuisance that she has moved from her property. The Respondent's behaviour continues to cause her other neighbours alarm, distress, nuisance and annoyance. In any event, the Tribunal concludes from the evidence presented to it that the Respondent's conduct is conduct that is likely to cause the other person alarm, distress, nuisance or annoyance.

96. The behaviour on both 12 June and 26 June comprised conduct on two or more occasions and therefore comprises a 'course of conduct'. That course of conduct has continued since these proceedings have raised, with the most recent reports of antisocial behaviour having taken place between Christmas and New Year.

97. In considering whether it is reasonable to issue an eviction order as a consequence of the respondent's antisocial behaviour the Tribunal takes into account that the behaviour has taken place in and around the property. The Respondent has displayed anti-social behaviour towards a number of people, all of whom are individuals connected to the tenancy namely, her neighbours and her Landlord. The Tribunal also takes into account that the behaviour has been repeated and sustained throughout the tenancy and that there has been no improvement in her behaviour.

98. Taking all of those circumstances into account, the Tribunal finds that it is reasonable to grant the order for eviction on the basis of ground 14.

99. In any event, the Tribunal also finds that ground 11 is satisfied.

Ground 11

100. Ground 11 of schedule 3 states:

"11 (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 that 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.”

101. The Tribunal is satisfied that the Respondent's antisocial behaviour is a breach of clause 21 of the lease (outlined above), namely that the tenant must not engage in antisocial behaviour to another person (including neighbours and visitors).

102. In addition, the Tribunal accepts the evidence of Mr Savaliya as to the damage caused by the Respondent to the property. Mr Savaliya's evidence in this regard was supported by photographic evidence. The Respondent has caused significant damage to the property comprising holes in the wall; damage to a waste pipe in the bathroom causing a leak to the downstairs property; tampering with the smoke detectors in the property; removing the flooring in the property; removing the wallpaper in the property; blocking the toilet and tampering with radiators, all of which are contrary to clause 17 of the lease in which the Respondent undertook to take reasonable care of the Let Property and its common parts.

103. Lastly, the Tribunal accepts the evidence of Mr Savaliya, supported by the documentary evidence, that the Respondent has failed to adequately dispose of rubbish from the property, leaving it piled in the garden below the property. The Tribunal finds this to be in breach of clause 32 of the lease in terms of which the Tenant undertook to dispose of or recycle all rubbish in an appropriate manner and at the appropriate time.

104. In considering whether or not it is reasonable for the Tribunal to grant the order for possession, the Tribunal has a wide discretion.

105. The Tribunal considers that it is reasonable to issue an eviction order on account of the fact that the tenant has failed to comply with these terms of her tenancy. The damage caused by the Respondent to the property is extensive and will require extensive refurbishment by the Applicant. It has been caused in a short period of time by the Respondent, to an already newly refurbished property. The damage has been wilfully caused. The Respondent's antisocial behaviour has necessitated the involvement of Glasgow City Council and has caused one of her neighbours to move out of their home. The damage to the property, antisocial behaviour, and stockpiling of waste outside her property is having an adverse impact on the Respondent's neighbours. The breaches of the tenancy agreement

commenced almost immediately on the Respondent moving into the property and have continued throughout the tenancy.

106. In all the circumstances, the Tribunal considers it is reasonable to grant the order for eviction based on Ground 11.

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.

Lesley Johnston

Legal Member/Chair

18 / 2 / 20

Date