



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

Chamber Ref: FTS/HPC/EV/21/2851

**Re: Property at 79 Langholm Crescent, Colthess, Wishaw, ML2 7HB (“the
Property”)**

Parties:

**Mr Kenneth Stewart, 1 Barrachnie Grove, Garrowhill, Glasgow, G69 6SS (“the
Applicant”)**

**Courteney Sleith, 79 Langholm Crescent, Colthess, Wishaw, ML2 7HB (“the
Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member) and Eileen Shand (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
FTT”) determined that a possession order for the property be made against the
Respondent and in favour of the Applicant in terms of Ground 15 (b) of
Schedule 5 of the Housing (Scotland) Act 1988 and that it was reasonable to
make such an order.**

A: Background

The application for an order for possession under S 18 of the Housing (Scotland Act 1988 (the Act) was made by the Applicant on 15 November 2021.

The following documents were lodged to support the application:

1. Tenancy agreement commencing 1.9.2016
2. Form AT5
3. Copy form AT6 served on the Respondent on 6.10. 2021 stating as the date when proceedings could first be raised 4 November 2021

4. Copy execution of service of same together with form S33 Notice and Notice to Quit by Sheriff Officers on 6.10.2021
5. S 11 Notice to Local Authority
6. Test message exchange between Natalya from NKK Lettings and Respondent from 9.8.2021 to 29.9.2021
7. Letter from Applicant to Respondent dated 28.8.2021
8. Statement Pat Kennedy 11.11.2021 re 27.8.2021
9. Statement Pat Kennedy 11.11.2021 re 29.9.2021
10. Statement Natalya Knewstubb 11.11.2021
11. Statement Ken Stewart 11.11.2021 re 27.8.2021
12. Statement Ken Stewart 11.11.2021 re 19.8.2021
13. Statement Peter Mundie 11.11.2021 re 19.8.2021
14. Statement Peter Mundie 11.1.2021 re 2.9.2021
15. Letter NKK Lettings to Respondent dated 22.7.2021
16. Email from Applicant to FTT dated 19.11.2021
17. Email from Applicant to FTT dated 2.12.2021 re role of the Applicant in NKK Asset Company Ltd.
18. Email from Applicant to FTT dated 19.12.2021 re authorisation of the Applicant by NKK Asset Company Ltd.

A Case Management Discussion took place on 24 February 2022 and the FTT issued directions to both parties on that day.. The Case Management Note is referred to for its terms.

The following further documents were lodged by the parties:

1. Email Ms Rylatt 18.2.2022 making representations on behalf of the Respondent together with photographs of consent form and notice to quit and S 33 notice photographs.
2. Email Ms Rylatt asking for further time for answer to direction dated 7.3.2022
3. Email Ms Rylatt resigning from acting 21.3.2022
4. Email from Respondent asking for further time 22.3.2022
5. Email Submissions from Applicant dated 23.3.2022 together with 5 photographs showing damage to the property and 2 photograph of the letter of North Lanarkshire Council to the Applicant dated 22 February 2022 regarding antisocial behaviour at the property
6. Copy decision in case FTS/HPC/EV/21/1380 ..
7. Email submissions from Respondent dated 31.3.2022 with 7 photographs showing partial repairs to the property.

These are referred to for their terms and held to be incorporated herein.

The case was adjourned to a hearing, which took place on 7 April 2022 at 10 am by teleconference. Notification had been sent to both parties.

B The Hearing

Both parties attended and gave evidence and evidence was also heard from the two witnesses on behalf of the Applicant Ms Natalia Knewstubb (NK) and Mr Pat Kennedy (PK).

The legal member read out the wording of ground 15 to the parties and set out the order of evidence to be given. The Case Management Note was accepted by both parties as an accurate reflection of the proceedings, under amendment of the date of 21.1.2021 on page 3, 7th line from the bottom being amended to 21.1.2022. Both parties confirmed they had received the submissions of the respective other party.

1. Summary of the evidence of Mr Stewart (KS) :

Mr Stewart the Applicant explained that he had set out his views and representations in his written representations. His evidence at the hearing was that the tenancy had been mainly without problems until summer 2021.

The events in 2018 described by the Respondent were conflated and there were some issues but he had afterwards even offered her a larger 3 bedroom property and the relationship was intact in the summer of 2021. On 19.8.2021 the electrician, who had been asked to carry out EICR inspections on KS's properties, telephoned NK to say that he had not been able to gain access to the property in question. KS called the electrician who then gave the account stated in the statement signed on the electrician's behalf by NK dated 11.11.21. The statements had been taken by NK and authorised by the electrician, Mr Mundie (PM) because of Covid restrictions having prevented personal signatures. The EICR was legally required and the visit had been arranged with the tenant Ms Sleigh (CS).

PM had told KS on the telephone that when he arrived at the property, he saw someone at the window who then ran away out the back and climbed over the fence at the back. Someone else who KS now thinks was Mr Sim appeared at the door and told PM in expletives to leave. KS was very surprised at this description of the events and called CS, who stated she would investigate the matter and get back to him, which she then did not do.

He, PK and NK carried out an inspection of the property on 27 August 2021, which had been prearranged. The initially suggested time had been brought forward to suit the Respondent who had childcare issues later that day. Although they arrived somewhat early, they had contacted the Respondent who agreed to come home from work so the inspection could go ahead. KS described the inspection incidents as stated in his witness statement of 11.1.21 MB's behaviour had displayed disconcerting behaviour, which KS described as "animalistic" and very anxious He particularly emphasised that after MB had used expletives to explain to him what he thought was wrong with a floorboard upstairs and had pushed past KS and NK to rush downstairs. MB had shouted at KS, who by then was in the garden, about the 2018 boiler issue and had then disappeared into the house.

KS and CS discussed that a further EICR appointment would be arranged and KS stated he had warned CS clearly that further behaviour of MB of that nature would be detrimental to the tenancy, in particular threatening, foul and abusive language to people attending for a legitimate reason and this could not continue as KS stated he could not send anyone else to attend the property. KS described the behaviour of

MB towards PK as especially concerning. PK was an elderly gentleman who had some mobility issues. When MB shouted at PK inside the house to get out PK had to use the back stairs into the garden with MB standing right behind him. KS stated this was unsafe. MB proceeded to call KS "f..ing stupid" and to shout expletives at all 3 visitors telling them "get out now ya bunch of bams". A few days after this event MB called PK and swore at him over the telephone and threatened him and others not to come back to the property "or I'll do you". KS stated this was the point of no return and he contacted a lawyer to get legal advice on how to proceed.

The Council then wrote to him as per the letter lodged stating there had been complaints from neighbours and he contacted the Council and was told that he as a landlord had a responsibility to do something about the antisocial behaviour at the tenancy and if he did not do that it could ultimately result in the revocation of his landlord registration. A S 38 charge had apparently been made by the Police and the Council had issued a written warning to MB.

He stated that as a landlord he required to comply with legislation and not being able to get an EICR, not being able to complete the inspection and to have people attending for a legitimate reason treated in this way made it unsafe to attend and made it impossible for him to comply with his landlord obligations. He referred to his written submissions for his full argument on reasonableness of an order in these circumstances.

He confirmed this inspection was the first inspection as Covid had delayed a long due inspection until the summer of 2021. The tenancy started in 2016 with only the Respondent and her child and he had never been formally advised that MB had moved in. He stated that he had wanted to work with the Respondent to preserve her tenancy and had advised her that the antisocial behaviour causing fear and alarm and the threats could not continue. He had not started proceedings sooner to try to work with her, but the antisocial behaviour continued and still continues, as per the Council's letter, and thus he had to act. He himself had received one further verbal complaint from a neighbour who did not wish their identity to be disclosed.

With regard to the damage to the property he surmised that the front door damage had been caused by people kicking the door and throwing missiles made up of screws and bearings at the door and this caused pinprick damage. He thought the item shown on one of the photographs lodged, which were taken at the inspection, was one of these missiles. His view is that MB is involved in drugs and the damage to the door and the fence and bins was caused either by MB's associates or his enemies. He was unsure if the damage had actually by now been fully repaired. The text messages and photograph regarding the EICR did not confirm the EICR front page, which was all that was sent, related to the property, and the full document had not been produced by CS. He had managed to get the gas certificate on 6 September 2021 but he also stated he was aware he should not have sent anyone to the property and he stated he may have broken the law having done so and putting them at risk. He just overlooked that by accident. He stated he cannot send anyone else because of the level of danger from MB.

2. Summary of evidence of Natalia Knewstubb (NK)

NK referred to her written statement and added to this that she had taken statements from the electrician and PK and then sent them to both for their approval before she signed them on their behalf. She works for KS's company. She had arranged the electrician visit and the inspection with CS as per the text messages lodged. The time of the inspection had been brought forward to suit CS and although they were early she had called CS, who had agreed to come from work to let them carry out the inspection. She noticed the damage to the door and fence and gate and bins and smoke alarm. She tried to introduce herself to MB, who did not engage in any conversation initially and was sitting with his leg shaking. The inspection started upstairs because of the dog barking downstairs. She and KS and MB were upstairs with KS inspecting a floor board when MB started to call KS "stupid" and behaved in a way that made her quite uncomfortable.

CS said she would sort the fire alarm and asked MB to deal with the dogs. MB got annoyed at CS when he was asked to get the dogs out of the kitchen He swore at CS and "banged about the place", slamming doors so that the house shook, which again NK stated made her feel very uncomfortable. Outside in the back garden KS and CS were talking and MB came to the rear door and started shouting at KS. Then MB went back inside and NK could hear him shouting at PK to get out of the house. PK had to get down steep stairs whilst being shouted at. MB shouted "get out you bams". CS said sorry. They had to leave not having finished the inspection. KS and she came back in briefly to test the fire alarm in the kitchen and then left. The inspection incident had lasted less than an hour. She stated she had a clear recollection of the incident because it was so unusual. She stated that all 3 visitors at the inspection had felt intimidated as MB was shouting and bawling and when he was behaving in a threatening manner to PK. she had felt frightened. She had never met MB before and had only known of him after the electrician had called her to report the first incident. The electrician had telephoned her after each visit. CS had advised her later that she had arranged an EICR.

3. Summary of evidence of Mr Pat Kennedy:

PK stated he had given a statement to NK and KS had given it to him to confirm, which he had done. He does not have email. He had told NK what MB had said to him and he read it soon after and authorised her to sign the statement. He was at the property for the purpose of the inspection on 27. 8.21. He noticed the damage to the door when they arrived. Because of his mobility problems he remained downstairs where MB initially was. MB was agitated. PK stated he asked him if he was ok and MB stated he was "not f..ing ok!". When the others went into the back garden PK remained in the living room. PK stated he heard a lot of shouting and then he was about to go to the back door when MB came in and was angry and started shouting at him to "get out of his house" and followed him out. PK stated MB remained "right at my back when I left". PK stated MB was "not very good to us" and told them not to come back. PK stated he was annoyed how MB spoke to him because he had known him such a long time. PK explained he had known MB since MB was in school because MB would come to PK's ice cream van and buy sweets. PK stated he even offered a puppy to CS's mother some time ago and he knew CS and her mother. There was a longstanding connection.

On 29.9.21 MB called him out of the blue and PK did not recognise the number. He was talking about not paying rent and not paying for the EICR and was very

unpleasant, told PK to "f..k off". He was saying he was not "f..ing paying for it and called PK a "dick" and used other swearwords. He told PK to "better not come back" or he would "do you". PK stated he understood this to mean that if he did come back MB would attack him . MB was very angry.

4. Summary evidence of Ms Courtney Sleith (CS)

CS stated for the first visit of the electrician she had forgotten to pass the message on to MB that the electrician would be coming. and MB had gone to work KS contacted her to say the electrician had not been able to get in and what he had said and asked her to look into it. She was at work and got home much later. MB said to her he had been at the gym. She stated one cannot see into the property from the front door and there was a 6 foot high fence and the description given by the electrician could not be right. Sometime later she found out that MB's friend Mr Chris Sim had been at the property to look for MB. Chris said the electrician was at the side looking to get in and words were exchanged. She stated MB used to smoke weed and after he left maybe the smoke lingered. He does not smoke now. There were other people round about who did. This would explain the smell the electrician had described. She stated that there would only have been one person there, not two.

She had not gotten back to KS as promised in the telephone call about this incident as she did not find out about Chris being there until the next day.

With regard to the damage, the fire damage was caused by a van, belonging to someone in the next street, having been set on fire. Police and fire brigade attended and spoke to neighbours but not to her as she had moved her car and then was looking after her young children in the back garden. She got the bins replaced and is in the process of repairing the fence and gate. This had happened some time ago and the fire was extinguished quickly and had only affected 2 bins. They did not know whose van it was and who set it on fire. She had met the person one time when she had asked them why they parked their van outside her house and the man had said it was because someone kept attacking it so they did not park it where they lived. The police never gave them the incident number , although she stated there was an incident number, or said who had done it. She stated she did not follow it up and did not report it to KS as she thought she would just deal with it herself. She stated she then found out the cost of a new bin and thus had left it.

She disputes there are pinprick holes in the door and the damage to the lower left panel stems from moving in the couch. There had been a misunderstanding about the first inspection and she had thought that the inspection would be much later. She just wanted it to finish around 3pm. That was why the dog was not in the cage and the screw on the kitchen cupboard had not been fixed. She stated she had a lot going on at the time and this had slipped her mind. She has since repaired the fire alarm and the fence and the gate but still needs to paint these. The scuff marks could be washed off the door and there were no missiles thrown at the door. The packet in the photographs was an old cardboard box of nails which she thinks were used when putting together some play equipment in the garden.

She stated she did not remember MB being aggressive during the inspection. Upstairs she recalls MB saying "it clearly fell through mate" regarding the floor board.

and saying to PK "just you leave you go out the back as well". She said PK did not sense the same aggression as the others and he knew MB and her from when they were quite young. She did not hear MB shouting at PK. PK just came out and left to go to the car. All MB said was "you can go out with them". She stated she could not remember what MB said to KS regarding the previous incident.

She stated she could not comment on the 2nd electrician visit or the call from MB to PK as she knew nothing about this. She stated the 2nd incident of the electrician visit must be fabricated. She had arranged for her mother to be there for the electrician at the arranged time as she would have been at work. She stated that although KS had said in evidence he could not send people out, he had made arrangements for the electrician and the gas engineer to attend after the inspection. The second visit MB was about to leave and said "you'll have to come back".

She confirmed she had received a letter from the Council but she thought MB had not been charged. She stated the complaint came from the neighbour diagonally opposite. There was an issue about a paedophile having been moved back into the area although there are lots of children there and people have issues with this. As MB walked past the man shouted at him he knew where he lived and called the police. The Council letter was because of a disturbance with that neighbour.

She stated MB and CS are having relationship problems and he was not available to give evidence at the hearing. He had been there on and off because he was the father of her children, 3 and 5, but had only moved in during the summer of 21 when she had lost her brother in July of that year, maybe a bit sooner. They had been staying apart for about 3 weeks and he was in the house and sometimes staying with friends and she at her mother's as there was too much going on.

She stated she would be gutted if she had to leave as it was her family home. The inspection had "got her back up!" as she thought it was done because KS wanted the house back. They had been good tenants all this time. She stated she did not think KS would want her in the house and if they stayed it would be hard to get repairs done. She stated she wanted to stay and have a home. She had contacted the Housing Department and they said to her to keep them updated but they could not help until she was homeless. She referred to her representations regarding the issue of reasonableness.

C Findings in Fact

Based on the written and oral evidence the FTT found the following facts proved or admitted:

1. The parties entered into a short assured tenancy commencing on 1.9.2016 over the property.
2. The tenancy was uneventful until August 2021.
3. CS is the sole tenant of the property.
4. There are two children in the property aged 5 and 3.
5. CS's mother resides nearby and to visit is only a short walk for the children.
6. MB resides with the Respondent at the property and has done so since about July 2021.
7. CS had not notified KS that MB had moved into the property permanently.

8. Prior to that time MB only attended the property as a visitor as the partner of the tenant and father of the tenant's children.
9. There were two visits by the electrician Mr Mundie to the property on 19.8.2021 and 2.9.2021 respectively.
10. These were arranged by the Applicant's company in order for the EICR to be prepared.
11. The Respondent had arranged for her mother to provide access to the electrician on the second visit during the agreed time between 1 and 2 pm.
12. At the first visit the electrician did not gain access.
13. MB ran away when the electrician arrived.
14. Another person, Mr Sim, was in the property and told the electrician he was not getting access to the property, telling him to "f..ck off out of here".
15. There was a smell of "weed" lingering around the property when the electrician arrived.
16. At the second visit on 2.9.21 there was an incident between the electrician and MB and the electrician did not gain access to complete the EICR.
17. MB denied the electrician entry when he attended the second time on 2.9.21.
18. MB swore at the electrician on 2.9.21 he "wasn't f...ing getting in the house and to f..k of and don't come anywhere f...ing near the house again or I swear to f..k".
19. The Respondent arranged for an electrician to visit to complete the EICR.
20. An inspection of the property took place on 27.8.2021. In attendance were KS, NK and PK, MB and CS.
21. The inspection could not be completed because of MB's aggressive behaviour.
22. There was fire damage to the bins and the fence.
23. The gate and parts of the fence are missing.
24. The smoke alarm was partially disassembled.
25. There is damage to the front door frame.
26. Various matters were identified in the letter dated 28.8.2021 as requiring repairs as set out above with regard to the smoke alarm, the bins, the door, the fence and the gate.
27. The smoke alarm has since been repaired by the Respondent. The fence has been partially repaired.
28. The Respondent did not report the damage to the Applicant.
29. At the inspection on 27.8.21 MB shouted at KS, called him "stupid", pushed past NK and KS to get downstairs, was abusive to CS when she asked him to deal with the dog.
30. MB shouted at PK to "get out of the house" and aggressively remained right behind PK as PK was in the process of leaving and using the back stairs.
31. PK has mobility issues and is an elderly gentleman.
32. MB's behaviour towards PK at the inspection was threatening and aggressive.
33. MB swore and shouted at all 3 visitors when they were in the garden "get out now ya bunch of bams".
34. MB's behaviour was agitated, aggressive and made the visitors attending uncomfortable.
35. KS had offered CS to work to save the tenancy.
36. The behaviour of MB at the inspection caused NK to be frightened.

37. On 29.9.21 BM telephoned PK and shouted abuse and swearwords at him, stating he would not pay the rent or pay for the electricity certificate. He raised his voice.
38. During that telephone call MB threatened PK that if he came back to the property he "would do him".
39. The Council has issued a first warning letter to Mr Blair on 21.1.2022 due to complaints about anti-social behaviour based on " ongoing noise disturbance within the home"
40. A complaint was made to the Police about MB.
41. A further verbal complaint to KS was made by a neighbour who did not wish to disclose their identity.
42. KS runs a property business which rents out properties. KN is his employee, PK now a person who does odd jobs for the company.
43. PK was previously a business partner of KS.

D Reasons for Decision

Relevant legislation:

Housing (Scotland) Act 1988

18Orders for possession.

(1)The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2)The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

...

(4)If the First-tier Tribunal is satisfied that any of the grounds in Part I or Part II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

...

(6)The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 ... Ground 10, Ground 15 or Ground 17; and

(b)the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A)Nothing in subsection (6) above affects the First-tier Tribunal 's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

SCHEDULE 5 Grounds for Possession of Houses let on Assured Tenancies

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

(a) been convicted of—

(i) using or allowing the house to be used for immoral or illegal purposes; or

(ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or

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

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

In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants

In terms of the legislation the FTT has to decide three distinct matters.

1. The first matter is whether or not the formal requirements for an order under S 18 of the Act are met.

- a) The FTT had initially raised with the parties the question whether the FTT has the authority to consider an order for possession without the tenancy having been terminated by a Notice to Quit. It is not in dispute that the Notice to Quit served by the Applicant has to date not terminated the contractual tenancy as it does not expire until 1.5.2022. It is agreed that an AT6 document was served on the Respondent by Sheriff Officers on 6.10.2021 with the correct notice period of 28 days and that the tenancy agreement set out ground 15 in full in the tenancy text. Both parties had been invited to make submissions on the application and wording and meaning of S 18 (6A) of the Act. The Applicant had lodged and referred the FTT to a previous decision in case EV/21/1380 in which the FTT held "70. The Tribunal noted that the terms of section 18(6) of the 1988 Act have been amended to indicate the grounds under the Act to which the section does not apply and this includes Ground 15. The section reads as though an order for eviction cannot be made in an ongoing tenancy where the ground being used is Ground 15. Section 18(6)A states that nothing in subsection 6 of section 18 affects the tribunal's power to make an order for possession of a house that is for the time being let on an assured tenancy, not being a statutory tenancy where the possession ground is Ground 15 (amongst other grounds). The tribunal reads this section as conveying a power to order recovery of possession in Ground 15 cases even though the tenancy is ongoing and section 18(6)A presumes that the power already exists. The tribunal took a purposive approach to the interpretation of these sections of the Act and took the view that the purpose of section 18(6) A was to allow the tribunal to make a possession order under Ground 15 where a contractual tenancy continued. In this application the Respondent had full notice of the possibility of a possession order being granted under Ground 15 in terms of the tenancy agreement and the procedure to apply for an eviction order had been followed in terms of the notice under s19 of the Act.. The tribunal's view was that to take this approach was what

was intended by the legislation and was satisfied that the Act allowed a possession order to be made in the circumstances of this application."

- b) The FTT agrees with that interpretation of S 18 (6A) stated above and further supported by the historical description of the development of the changes to S 18 in A Stalker, Evictions in Scotland 2nd edition p 236, P Robson Residential Tenancies 3rd edition p 321 and P Robson and M Combe Residential Tenancies, 4th Edition, A1-03.
- c) In this case the certificate of service lodged confirms that an AT6 document was served on the Respondent on 6 October 2021. Said document stated as the ground for the notice ground 15 and specific antisocial behaviour, which is stated in detail on the notice, is given as the reasons for the notice. The notice states that proceedings will not be raised before 4 November 2021. In terms of S 19 (4A) (a) a 28 day notice period applies to notices under ground 15 of schedule 5 of the Act. The correct notice period was applied. The necessary AT6 document was served with the correct notice period and thus the formal requirements to consider such an order were met.

2. The second test is whether or not the FTT finds that antisocial behaviour as defined in ground 15 of schedule 5 of the Act has been evidenced.

- a) The FTT has carefully considered the behaviour which occurred at the property and over the telephone on the telephone call by MB to PK on 29.9.21. The test applicable in this case is as follows:
- b) A..person residing or lodging in the house with the tenant or a person visiting the house has—
- c) acted in an anti-social manner in relation to a person ... visiting or otherwise engaging in lawful activity in the locality. "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, "conduct" includes speech
- d) The Applicant relied on the 4 incidents described and the damage to the property.
- e) The FTT considered that the onus of proof is on the Applicant seeking the order.
- f) The FTT considered that the evidence contained in the written statements of the electrician, KS, NK and PK and spoken to at the hearing by KS, NK and PK were credible and evidenced 3 distinct actions in an anti-social manner by a person residing in the house with the tenant to persons engaged in lawful activity in the locality, namely MB and one occasion of verbal anti-social conduct by a visitor to the property, Mr Sim.
- g) The FTT considered that, although it was hearsay evidence and the electrician was not available to give evidence at the hearing, the incident of the second visit on 2.9.2021 as described in the evidence given by the witness NK at the hearing and set out in writing in the statement from the electrician showed that the electrician, who was sent to ensure that the EICR certificate could be completed, which is required for a rented property, could not carry out that task. The FTT accepts the narrative set out in the two

statements by the electrician dated 11.11.21. With regard to the first visit both NK and KS had spoken to the electrician shortly after the first visit and had both reported the same content of his narration and the electrician had thereafter approved the statement lodged, with regard to the second visit .NK had spoken to the electrician immediately after the incident and he again made a statement and authorised this to be lodged. Based on this evidence and the evidence of NK of the conversations with the electrician the FTT is satisfied that on the first visit the electrician was shouted at to "f..ck off out of here" by Mr Sim and denied access and on the second visit the electrician, who was sent to carry out a lawful activity at the property was shouted and sworn at in a threatening manner by MB and that the behaviour was intimidating. The demeanour of MB was described as "jittery, harassed and extremely agitated". The electrician was denied access to the property for a legitimate purpose on two occasions and subjected to threatening behaviour and verbal abuse on the second visit. This qualifies as antisocial behaviour. The Respondent had not been present at the two incidents. Mr Sim did not give evidence. MB was not available to give evidence.

- h) On balance the FTT considered the description of events in the electrician's statements and the narration of the electrician's telephone calls to KS and NK after the incidents as more credible and likely. The FTT considered that although on both occasions the electrician had arrived earlier than the arranged time, this did not detract from the lawfulness of the activity he was sent to carry out and if he had arrived at an inconvenient time this should have been conveyed in a polite manner, not in aggressive behaviour and verbally abusive speech.
- i) The FTT considered that at the inspection visit on 27.8.21 all three visitors, who were engaged in the lawful activity of carrying out a pre arranged inspection of the property, were subjected by MB again to threatening and verbally abusive behaviour. He swore at all three visitors and acted in a threatening and aggressive manner towards KS and PK. He followed PK, who is an elderly gentleman with mobility problems, right at his back shouting at him to "get out" and then shouted at all three visitors "get out ya bunch of bams". He was again showing agitated behaviour and was verbally abusive to the visitors. The FTT found the statements from KS, NK and PK mutually corroborating and noted that all three described the incidents from their own perspective and location within the house at various times. The FTT noted that in her written statement the Respondent specifically stated that she did not "remember word for word what was said" whereas the other witnesses KS and NK had made notes about the inspection incident on the day. On balance the FTT accepted that MB had sworn and behaved in an aggressive manner to KS upstairs when the floorboard problem was discussed, that he had sworn at and behaved in an aggressive manner to PK whilst both PK and MB were in the living room and that he had behaved in an aggressive and threatening manner towards PK when he shouted at him to get out and then followed the elderly gentleman with mobility problems very close, forcing him to use the back stairs. MB then again swore at all three visitors and shouted at them when they were in the back garden. NK was intimidated by his behaviour and PK and KS found the behaviour annoying and inappropriate. Because the inspection could not be finished, this caused KS further concern.

- j) The FTT further found the evidence of PK with regard to the description of events on 29.9.21 contained in his statement of 11.11.21 and spoken to at the hearing entirely credible. As confirmed by KS, PK carries out work for the company at times and has a local connection with the area where the property is situated. He introduced the Respondent as a potential tenant. He had been present at the property during the inspection and would have been a person used to visit the property if the necessity arose. The FTT thus considers that he can be found to be a person engaging in lawful activity in the locality as the telephone call was clearly in connection with PK's role in the business with regard to the property. The Respondent denies all knowledge about the telephone call and could thus not comment on this. PK credibly described that he had been threatened by MB that if he came to the property again MB would "do him" and PK clearly had perceived the telephone call as alarming and causing concern.
- k) The FTT thus concludes that on 4 separate occasions anti-social behaviour as defined in ground 15 of schedule 3 had taken place towards people engaged in lawful activities regarding the property, on one occasion by a visitor and on 3 occasions by MB, who resides with the Respondent.
- l) Based on the letter sent to the Applicant and the letter the Respondent confirmed was sent to MB by the Council in January 2021, the FTT is further satisfied that separately from the above occasions further antisocial behaviour in the form of "ongoing noise disturbance within the home" was reported and has resulted in a formal warning to MB from the Council.
- m) The FTT is thus satisfied that ground 15 of schedule 5 of the Housing (Scotland) Act 1988 applies in this case.
- n) With regard to the damage to the property stated as one of the reasons the Applicant considered antisocial behaviour occurred, the FTT did not find that there was sufficient evidence produced to support the Applicant's position on all aspects. The Applicant surmised that the front door damage was caused at least in part by an attack on the door and by missiles made out of nails and duct tape thrown at the door. He referred to pin holes, which neither the Respondent nor the tribunal members could detect on the photograph lodged and surmised these would have been caused by enemies of MB. However, the Respondent credibly stated the broken lower left panel had been damaged moving in a couch and the scuff marks would wash off and could have been caused by her kids or other activities. The photograph referred to by the Applicant as showing a missile was in fact a cardboard box of nails, which had been held together by duct tape and may have been used when putting together equipment for the children in the garden. This on balance seemed to be a much more likely explanation.
- o) The tribunal members also considered that whilst there was clearly damage to the bins, fence, garden gate and pailings observed at the inspection, the Applicant did not have any evidence that this was caused either by MB, the Respondent or someone linked to MB as either an associate or an enemy.

The Applicant stated he thought that the damage was vandalism linked to MB. However, the Respondent stated that the damage had occurred in connection with a van having caught fire outside the fence. The fire brigade and police attended at the time, spoke to residents and the fire was quickly put out. There were still marks on the road which could be seen, which the Applicant denied. However, neither party had provided photographs of the road surface outside the house. The Respondent stated that she had not reported the matter to the Applicant as she was going to be able to continue to use the bins and would just repair and paint the fence. Whilst this had only partly been repaired to date, the tribunal members did not consider that the damage of and by itself proved that it had occurred in connection with the tenant or her partner but that it was at least as likely that there may have been a van catching fire in the neighbourhood without this being in any way linked to the residents of the property. On balance the FTT did not consider that the damage indicated that it had been caused by vandalism or actions related to the tenant or her partner.

- p) The damage to the fire alarm had been rectified and the tribunal members accepted that the evidence of the Respondent that this had arisen out of the battery having set off the alarm and her removing the battery to replace it. Whilst this would be a breach of the tenancy agreement, it was not deemed to be antisocial behaviour as set out in ground 15.

3. The third test is whether it would be reasonable in all the circumstances to grant an order for possession.

- a) The FTT took into account in particular the antisocial behaviours alleged, when they commenced, whether they continue and for how long they continued, the origin of that behaviour, the circumstances of the Respondent and her family but also the Applicant's and Respondent's attempts to address the antisocial behaviour alleged and the concerns and legal position of the Applicant. It had regard to the length of the tenancy and the personal circumstances of the Respondent, the nature, duration and persistence of the antisocial behaviour, the tenancy history, the actions taken by Applicant and Respondent to deal with the matter and the legitimate interest of the Applicant to comply with his landlord obligations. There was clearly an overall change in the nature of the tenancy relationship when MB moved into the property and the FTT noted the overall attitude of the Applicant to the tenancy and to the behaviour of MB.
- b) It is accepted that none of the anti-social behaviour described was carried out by the Respondent. In fact both PK and KS stated that she was a nice person and good tenant initially and that the tenancy had not led to any problems as long as she was living there alone with her children. There is, however, ample case law that it is not necessary that the anti-social behaviour is committed by the tenant and the wording of the ground makes it clear that anti-social behaviour by third parties, those residing with the tenant and even visitors to the property, can lead to the ground being met.

- c) The FTT took into account that there are two small children residing at the property and that the property location is particularly convenient for the Respondent and her children because it is close to where the Respondent's mother lives and close to her place of work. There appears to be a close relationship between the Respondent and her mother and both suffered an unexpected bereavement when the Respondent's brother died in the summer of 2021, which still emotionally affects the Respondent. However, there was no medical evidence provided which would document a specific diagnosis of mental health issues for the Respondent, as initially pled by the Respondent's former legal representative or of a specific impact on the Respondent's mental health of any order granted.
- d) The FTT concluded that very shortly after MB, the father of the children, moved permanently into the property in or around July 2021, the anti-social behaviour started. The FTT also noted that although clause 11.3 of the tenancy agreement clearly states that "The tenant agrees not to ... allow other persons to share the occupation of the premises, whether or not for payment, without the prior written consent of the Landlord", no such consent was sought or granted when MB moved into the property.
- e) CS stated at the CMD that she disputed the level of aggression by MB towards the visitors for the events she witnessed directly and for those when she was not present. The impression formed by the FTT of the relationship between MB and CS was that MB's agitated and aggressive behaviour appeared not to be limited to visitors but that MB also behaved in that manner to the Respondent when she asked him to deal with the dogs in the property during the inspection. It seemed to the tribunal members that CS to some degree appears to accept that this is just the way MB behaves generally and that there was nothing particularly noteworthy about his behaviour at the inspection. The complaints to the Council were for continued noise disturbance. She blames the anti-social behaviour complaints made to the Council on there being problems with a paedophile, who had been returned to the area. This did not appear to the FTT to be a credible explanation. It did create the impression that CS is minimising the concerns others have about the behaviour of MB in the location and that she is either not willing or not able to keep said anti-social behaviour by MB under control.
- f) The Respondent was given the opportunity at the hearing to state whether MB would continue to reside at the property and although she stated she was spending time at her mother's because there have been relationship problems since the Case Management Discussion date, at no point did she state that she planned or was taking steps for MB to leave the property for good and for her to then occupy it solely with the children. The FTT considered that the continued problems with anti-social behaviour emanated from MB rather than from CS. The FTT thus considered it likely that problems would continue as long as MB was allowed to reside at the property.
- g) The FTT also took into account that with regard to the electrician visits, these were early although on the agreed dates and that the timing meant that the electrician at the specific arrival times was not expected by MB. On the first

occasion this was because CS had forgotten to inform MB of the electrician visit completely. The FTT took into account that CS clearly had tried to arrange for her mother to be around at the second visit of the electrician to avoid any problems but on the other hand also took into account that at the inspection CS had not intervened and not tried to stop the verbally aggressive behaviour of MB towards the landlord and the other staff members.

- h) Another factor considered by the FTT was the damage to the property that had been noted at the inspection. The damage was not disputed. There were differing accounts as to why, how and when the damage had occurred but there was no suggestion that either the Respondent or MB had deliberately damaged the door, fence and gate. However, what was clear from the evidence was that the Respondent, again, had disregarded the duty she has under the tenancy agreement. Clause 15.8 obliges the tenant to immediately notify the Landlord...of the need for any repair... . Clearly the damage to the door panel will require repair and the fire damage to property fence, gate and bins was extensive and had not been notified to the Landlord whenever it may have taken place. The Applicant was unable to deal with the damage and to take steps to investigate how it occurred close to the time as the Respondent had not made him aware of it. Even if one agrees that there was no deliberate vandalism by either the tenant, her visitors or lodgers and that the majority of the damage occurred as set out in the Respondent's version of events, she should have notified the Landlord so that the Landlord in turn could have made appropriate enquiries and if necessary gathered evidence for any insurance claim. It is of particular concern that the Respondent had left the fire alarm disabled for some time. This created a significant risk to the safety of the occupants and the Applicant's property.
- i) The Applicant had set out very succinctly that he was a professional landlord and that he had been reminded by the Council that continued anti-social behaviour at the property without him taking appropriate steps would put his landlord registration at risk. He is aware of his landlord obligations such as regular tests of the gas and electricity installations at the property. He is aware of the important requirement to ensure the fire alarms in the property are in good working order. And he explained, which the FTT accepted as credible and understandable, that following the incidents with the electrician, the inspection and the telephone call to PK, he would be very concerned about the safety of any person he sent to the property to carry out tasks necessary to comply with his landlord duties. There have been explicit threats to PK and the electrician if they were to return to the property. The behaviour of MB prevented the inspection to be completed and the EICR to be obtained. Whilst the FTT recognises from the text messages submitted that CS had then tried to deal with the EICR herself and had also re-instated the fire alarm, she had only done so once she had no alternative because all these matters had been put in writing to her following the inspection and she was aware that further legal steps would otherwise follow.
- j) On the other hand the Applicant had tried to work with the Respondent, had asked her to investigate the first incident with the electrician without her then providing a reply to this. He had warned her again after the inspection that no

further such behaviour must occur. Shortly thereafter the second incident with the electrician followed, as did the telephone call to PK by MB and the warning letter from the Council about noise complaints. Only after the two further incidents on 2 and 29 September 2021 did the Applicant finally take steps to instigate the end of the tenancy. He sought legal advice and acted on this. He then issued the AT6 notice on the basis of anti-social behaviour and at the same time a Notice to Quit and S 33 document.

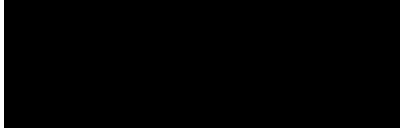
- k) Whilst the FTT feels that it is particularly unfortunate that a tenant with two young children should be in this position, it also recognises that this is a position that she has created herself by allowing a third party to move into the property without the landlord's consent and by not stopping that person from acting in an anti-social manner over a matter of months. Whilst she did take some steps to mitigate this by trying to get her mother to let the electrician in on one occasion and whilst she did apologise once at the inspection, she continued to allow that person to reside in the property and to continue that conduct even after the inspection visit, when she would have been in no doubt that her tenancy would be at risk unless things improved. At the hearing she minimised the behaviour of MB at the inspection and sought to put all blame for the other later complaints to the Council on an unnamed third party without providing any evidence on the matter. Again she did not take on board that there appears to be ongoing anti-social behaviour and complaints from third parties and that it would be for her to remove the source of this behaviour since it was her who allowed the person causing the complaints to remain in the property. Overall she did not appear to be willing to follow the obligations and undertakings made with regard to the tenancy in the tenancy agreement. Had she done so, the Applicant might have been able to prevent MB from moving in. There is no suggestion that MB would be leaving the property and thus the prognosis for further anti-social behaviour remains likely. The Applicant has a legitimate interest to look after his property and to comply with statutory obligations as a registered landlord. This is his business. Ultimately it cannot be tolerated for the steps taken to comply with statutory obligations for a landlord to be prevented by a person residing at the property and for staff to be repeatedly threatened and made subject to verbal abuse. In the FTT's view, on balance and taking all relevant factors into account, the landlord's interest not to have to tolerate anti-social threatening and verbally aggressive behaviour towards himself and his employees and to stop and prevent further anti-social behaviour emanating from the property with all the consequences set out above outweighs the tenant's interest to remain in the property with her partner and children in all the circumstances.

E Outcome

The First-tier Tribunal for Scotland (Housing and Property Chamber) makes an order for possession of the property against the Respondent and in favour of the Applicant in terms of Ground 15 (b) of Schedule 5 of the Housing (Scotland) Act 1988 and concludes that it is reasonable to make such an order. The decision was unanimous.

F 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.



**Petra Hennig McFatrige
Legal Member/Chair**

**20 April 2022
Date**