



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

Chamber Ref: FTS/HPC/EV/21/1380

Re: Property at 7E Neilson Court, Blackburn, West Lothian, EH47 7NA (“the Property”)

Parties:

Mr David Dempsey, 52 Mavis Bank, Bathgate, EH48 4GZ (“the Applicant”)

Miss Vineeta Whyte, 7E Neilson Court, Blackburn, West Lothian, EH47 7NA (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) 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) and (c) of Schedule 5 of the Housing (Scotland) Act 1988 and that it was reasonable to make such an order.

The Decision of the Tribunal was unanimous.

Background

1.This application for a possession order in terms of Rule 65 of the tribunal rules of procedure was first lodged with the tribunal on 7 June 2021. The application was accepted by the Tribunal on 24 June 2021 and a case management discussion was fixed to take place by audio teleconference on 6 August 2021 at 10 am.

2.This case management discussion was attended by Mr Bryan, solicitor on behalf of the Applicant. There was no appearance by or on behalf of the Respondent at the case management discussion on 6 August 2021.

3. At the first case management discussion the tribunal noted that although the Respondent had not attended she had contacted the tribunal to advise that she was forwarding evidence to suggest that her landlord was lying to the tribunal about her and had been arranging for neighbours to stalk, harass and abuse her. The tribunal took the view that this information from the Respondent amounted to denials of at least some part of the information being put forward in support of the application by the Applicant. In the circumstances the case management discussion was continued to allow her to attend or put her position to tribunal.

4. The tribunal also raised with the Applicant's solicitor issues around the validity of the notice to quit, the relevance of some photographs which had been lodged and the tribunal requested sight of an execution of service in relation to a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003. The case management discussion was continued to 24 September 2021 at 10 am.

5. The Tribunal issued a direction to parties ahead of the case management discussion on 24 September 2021. The Respondent was required to provide confirmation by email of her position on each of the allegations set out in email submitted by the Applicant, confirmation as to whether she would attend the case management discussion on 24 September 2021 and whether she would attend with a supporter or representative. The Applicant's representative was required to confirm to the tribunal how the Section 11 notice had been submitted to the local authority and to provide written representations regarding the relevance of colour photographs having been lodged by him.

6. At the second case management discussion on 24 September 2021 the Applicant was again represented by Mr Bryan and the Respondent did not attend. The tribunal had received written representations from the Respondent setting out allegations in relation to a number of neighbours, medical information, and representation to the effect that her landlord was trying to evict her due to her disability.

7. Given that the Respondent appeared to be denying some of the matters alleged by the Applicant and raising as an issue the possibility that she was being evicted on the basis of disability the tribunal felt it appropriate to fix a hearing on the matter.

8. After this case management discussion on 24th September the Tribunal issued a further Direction to parties. In this direction the Applicant's representative was required to provide contact details for witnesses intended to be called at the hearing, confirmation as to whether extract convictions lodged on behalf of the Applicant related to incidents relevant to the application and written confirmation of the Applicant's position in relation to the ongoing nature of the tenancy after its initial term.

9. The Respondent was required to provide written confirmation as to whether she would attend the hearing fixed in the matter and if she would be represented at the hearing by any advice organisations such as CAB or Shelter. The Respondent was also advised that if she wished to argue that the application for a possession order was being made due to discrimination on the grounds of any disability she should provide written information setting out the nature and degree of any impairment, written information as to whether this impairment had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities, written information setting out what it is arising from the disability which is said to have caused the landlord to take steps for the purposes of securing a possession order and medical reports addressing these issues if these were available. The Respondent was also required to lodge contact details for any witnesses she intended to call at the hearing.

10. A hearing was set down for 15 October 2021.

11. At the hearing on 15th October the Applicant again was represented by Mr Bryan solicitor and the Respondent attended the hearing without a representative.

12. At the Hearing on behalf of the Applicant the tribunal had sight of the application, a paper apart, a tenancy agreement, Form AT5, a notice to quit, a form AT6, a certificate of posting, a notice in terms of section 11 of the homelessness etc (Scotland) Act 2003, a number of photographs, a screenshot of a social media message, excerpts from a Mail Online article ,a series of emails, a number of affidavits, extract convictions and email correspondence between the Applicant's solicitor and West Lothian Council and written representations in response to the tribunal's Directions. On behalf of the Respondent the tribunal had sight of a picture of medication, a series of of text exchanges and a number of written representations.

13. At the start of the Hearing the Respondent was asked if she wished to obtain representation but she indicated that she had made efforts to obtain representation but had been unable to do this and wished to go ahead. Both Mr Bryan and the Respondent confirmed that they had seen all the documents and representations lodged by each party and were ready to proceed.

14. The first witness for the Applicant was Margaret Dempsey, the landlord's mother who managed the leasing of the property for him. The property had been advertised through a letting agency in 2016 and she had been approached by the Respondent's mother and social worker to ascertain if the Respondent could move into the property. There had been no problems initially with the tenancy and Mrs Dempsey knew that the Respondent had " her problems " with mental health but no more than that. After the first two years of the tenancy there were problems in that the Respondent refused to allow access for maintenance and the property condition deteriorated. There were many emails between them and she felt that she could deal with any problems but did not know of issues with neighbours until 2021. She had not met or had direct contact from neighbours previously but learned that people were trying to find out who the landlord was in order to complain about the Respondent.

15. In early March 2021 Mrs Dempsey became aware of complaints from neighbours involving behaviour on social media, issues around a parking space with one neighbour Donna McGinty and behaviour which was described as denigrating and abusive towards neighbours. Mrs Dempsey was contacted by a number of the neighbours directly or by email and acted quickly. She had contacted a Jack Abercrombie to see if the Housing Department would contact the Respondent to speak to her about her behaviour but the Respondent would not speak to anyone when contacted.

16. Mrs Dempsey indicated that she had contact with the Respondent directly. They had had a very good telephone conversation some several weeks before the first day of the hearing. Despite that when Mrs Dempsey got home later after the telephone call she received what she described as a nasty email from the Respondent indicating that if she didn't drop the tribunal proceedings the Respondent was stopping paying the rent. She said that to receive an email of this nature from the Respondent was not unusual. Mrs Dempsey also advised that the Respondent had called her all sorts of names and told her she was a dreadful person. She referred to a YouTube video which she had seen on the morning of the hearing in which she said the Respondent was calling the neighbours by what she described as terrible names and had sent abusive nasty and unpleasant emails.

17. Mrs Dempsey said that she was aware that the Respondent had been arrested for antisocial behaviour and had discovered this from articles in the newspaper. She had received complaints from six neighbours, two of them had been in touch with her directly. Mrs Dempsey's position was that once as she described "the floodgates opened", some neighbours became a little braver and contacted her. She explained that she received texts from Donna McGinty and Kirsty McLaughlin. She had spoken to Donna and Kirsty but not to others who had simply sent emails.

18. The complaints which Mrs Dempsey received by email related to harassment of the neighbours, posting information and comments on social media about them, making allegations about the neighbours, some of which were serious allegations, filming neighbours and their children and verbally abusing them.

19. As a result of the complaints that she received Mrs Dempsey wrote to the Respondent serving her with a statutory notice of the landlord's intention to seek a possession order.

20. The Respondent asked a number of questions of Mrs Dempsey when she gave her evidence. The Respondent suggested that the Walker family had targeted her with racist names, a person she named as Margaret and John shouted and screamed at her, Kirsty shouted racist abuse at her and the same family were abusive to her. She said that the neighbours subjected her to abuse because of the way she dressed as well as racist and sexist abuse. She said that the landlord's perspective was one-sided and that the information she (Mrs Dempsey) had been given was a "fake news story". She said the neighbours were backward and uneducated people who were judging her. Mrs Dempsey's reaction to this was to indicate that she had heard this from the Respondent before in an email and understood that the Respondent felt she was being targeted and she was the victim of abuse and Mrs Dempsey felt that the Respondent had no empathy or sympathy for the neighbours whom she was abusing. The Respondent mentioned an email in which she accused Mrs Dempsey of discrimination and called her a negative hostile bully. Mrs Dempsey did not accept that she had ever behaved in that way to the Respondent and indicated if the neighbours had not complained she would have allowed her to stay at the property or would have evicted her a year ago using different grounds. Mrs Dempsey's position was that the behaviour towards the neighbours had to stop and the only way that she felt she could achieve this was to have a possession order requiring the Respondent to leave the property.

21. The second witness to give evidence for the applicant was a Donna McGinty. She described herself as a former neighbour of the Respondent who had lived at Neilson court for more than 14 years but did not live there any longer.

22. Ms McGinty gave evidence to the effect that she had met the Respondent who had lived two doors down from her in Neilson Court. She first encountered her 4 to 5 years before the hearing. The Respondent had introduced herself to Ms McGinty. She told her that local children had been harassing her and Ms McGinty advised her to ignore them. She had perceived that the Respondent didn't like this advice as she had slammed the door of her house after the two had spoken.

23. Ms McGinty first became aware of difficulties with the Respondent around 2019. She referred to these as "dirty looks" which she was just ignoring. Ms McGinty described herself as a former mental health support worker and she believed that she had heard the Respondent state that she had a personality disorder. Ms McGinty diarised the encounters that the parties had had and the Tribunal had sight of her dated notes. She referred to an incident in September 2019. She said the issue started when she was out gardening. She described the residents in the street as having

communal grounds and each homeowner had a responsibility in relation to the communal grounds. She referred to an occasion when she was putting chip stones down when police arrived and asked why she been threatening the Respondent. She had been building a wheelbarrow at the back of the property at the time and had not been near the Respondent who she said had clearly made a false allegation about her.

24. Ms McGinty said that one of the major difficulties she had with the Respondent was when she was getting in and out of her car. She explained that the Respondent was constantly filming her with her phone and making homophobic remarks to her. She said she was living in fear and was stressed out by the situation. She started to use the visitors parking space so that she wouldn't be seen by the Respondent leaving or arriving at her own parking space. She explained that the Respondent filmed her covertly using the phone in her camera under her sleeve. She referred to being filmed almost every time she went out in the street and their paths crossed. She said she would run to her car and run back to her house at night. She had to stop her exercise routine as comments were thrown at her frequently. She said the these would come by way of an outburst and that there were constant false allegations. She said that she felt the Respondent was trying to get arrested. She asked the Respondent not to put her personal details online. She said she had moved to the street to get away from a very violent ex-partner and it was a quiet area. The Respondent accused her of having raped her on a daily basis. Ms McGinty said there were hundreds of incidents when the Respondent approached her car when it was in her allocated parking space. She made constant threats to damage the car and she had on one occasion approached the car and referred to her as a paedophile and said that she knew what she was doing with children. She said that Ms McGinty was part of something called the Eastern Star and said that she attacked and raped people every day. Ms McGinty said that the Respondent could not be reasoned with because she was so unapproachable and so volatile.

25. She referred to the Respondent shouting things at her and calling her "fat, butch like lesbian" and using quite inappropriate and hurtful words. She said that as a result of this behaviour she had collapsed and had to take time off work because of it. She said it was part of the reason she had moved away from the street. She explained that car and house details were posted on social media by the Respondent and the Respondent had accused her of "gangstalking" her and hurting her. Ms McGinty said that she had great compassion for the Respondent and hoped that she could sort herself out but that she could not go around destroying people's lives like this.

26. Ms McGinty referred to a particular incident in June 2020. She said she had been outside her house painting the door and was aware of her next-door neighbour with some of his family members putting down decking in their back garden. She said that they were talking back and forward with another neighbour. She heard the Respondent calling her neighbour a "gangstalker", a "paki nut" and the Respondent had come round and started screaming abuse at the neighbour's father whom Ms McGinty named as Kevin. Ms McGinty said she had not reported matters to the police or told anyone else because she thought it wouldn't go anywhere. She was aware that the police were involved in the incident in June 2020 with the neighbour and his father Kevin. This incident was referred to in her notes and these notes covered the period from September 2019 to March 2021.

27. She further referred to the Respondent leaving rubbish in the street and not using a bin. She cleaned up the rubbish herself and had cleaned the the whole area. She

had once seen a rat in the area of the rubbish left out by the Respondent. She had to have her car valeted. She said for over a year rubbish was being left and a smell was coming from the rubbish. She said she would clean this up and had done this up to 14 times.

28. The whole situation had impacted on her and as she had said previously she collapsed with stress and was coming into work every day nearly in tears. She said that she was constantly checking that the Respondent wasn't around. She said she stopped having visitors and she had to warn workmen and she said she hoped that the Respondent would get herself "sorted out".

29. Ms McGinty said that she was not aware who the landlord of the property was but she knew that the Respondent had rented privately. She obtained a title search in order to find the name of the landlord and then approached a letting agent and was passed on to the landlord and ultimately spoke to Mrs Dempsey on 3rd March 2021.

30. The Respondent did not ask any questions of Ms McGinty. The Applicant's solicitor Mr Bryan wished to call a witness Kirsty McLaughlin. The Respondent indicated she had uploaded certain videos including a video of Kirsty McLaughlin but neither the tribunal members nor Mr Bryan had seen these videos as they had not been uploaded on the correct platform to allow these to be considered. The Respondent was adamant that she had a video which showed Miss McLaughlin being abusive towards her and the tribunal members felt it appropriate that this video should be seen by all the parties in advance of Miss McLaughlin's evidence. In addition the Respondent wished to rely on a defence that she was being evicted on the grounds of disability. Her position also was that her neighbours were lying about her and she had not done what was being suggested or if she had done some of these things she could not remember doing these things. It was suggested to her that she might wish to bring to the tribunal's attention medical evidence to support her contention regarding her disabilities. The tribunal reiterated the terms of the Direction which it had made earlier and indicated that she may wish to obtain a letter from her GP or health professional setting out whether she had a disability in terms of the Equality Act 2010, the nature of any impairment and its effect on her day-to-day life and anything arising from the disability which might relate to the behaviour being relied upon in support of the possession order by the landlord.

31. In order to obtain medical evidence and to lodge videos upon which she wished to rely the Respondent required an adjournment of the hearing to a later date. This was opposed by the Applicant's solicitor Mr Bryan but after consideration and having regard to the Tribunal's overriding objective to ensure that the proceedings are fair to parties, the Tribunal agreed to continue the hearing to a later date in order that the Respondent could lodge video evidence and a letter from a GP or health professional.

32. The hearing was continued until 3 December 2021.

33. On that date the Applicant was again represented by Mr Bryan solicitor and the Respondent joined the teleconference call. She had lodged with the tribunal 14 short videos and both the Tribunal members and Mr Bryan had had sight of these. No letter from the respondent's GP or another medical professional had been lodged but the Respondent indicated she was content to proceed on the basis of the videos she had lodged.

34. Shortly after attending for the teleconference call Hearing the Respondent asked if she was being evicted or not. She indicated she was due to have a visit on the morning of 3rd December from her family including her young son and did not want to be on the telephone when they were in attendance at her home. The tribunal chair

indicated that the Hearing had not yet concluded and asked when the Respondent's visitors were due to be attending her home and was told that they would be attending 'soon'. Before any further discussion could take place regarding the Respondent's ability to attend the teleconference hearing that day she indicated that she did not wish to listen to any more of the evidence to be considered as on the last occasion attending the teleconference had caused her emotional and psychological abuse. The Respondent left the Hearing by dialling off the teleconference call at 10:20am on 3rd December 2021.

35. The Applicant's solicitor Mr Bryan requested that the tribunal proceed to conclude the hearing in the absence of the Respondent whom he said had made it clear she simply did not wish to continue to attend further. After considering the matter the tribunal members felt it appropriate to proceed with the hearing as the Respondent had indicated that she no longer wished to take part and the Tribunal was aware of her position and evidence lodged as regards the allegations.

36. The tribunal heard evidence from Kirsty McLaughlin, a resident of Neilson Court. She was asked regarding a video lodged by the Respondent which appear to show her holding a camera phone near to someone who could be heard speaking and was thought to be the Respondent. Miss McLaughlin's position was that this was a short video with the two were effectively filming each other. She said she had been fed up of the Respondent's filming and thought she would film her. Miss McLaughlin said the Respondent had come to the back window of her home and said that she and her family were "gangstalking" her. She said that her children were upset and she had told the Respondent she was not comfortable with her upsetting her children in this way.

37. Miss McLaughlin indicated that the Respondent had moved into the street sometime in 2016. She said that she had met her at the ice cream van and she had suggested that Miss McLaughlin's son then aged 4 had been abusive to her and had called her half caste, and that Miss McLaughlin and her family were "Ku Klux Klan" and "gangsters". Miss McLaughlin explained her son was friendly with her neighbour's children who are mixed-race. The Respondent had told those neighbours that they should not allow their children to play with Miss McLaughlin's children as they were "racist". Miss McLaughlin said that the Respondent filmed them daily and was filming her children in their back garden. She was aware the Respondent had been involved with the police. She was aware the Respondent shouted at her kitchen window. She said that there were times when the incidents reached a peak and then they would fall back and then they would build back up.

38. Miss McLaughlin referred to the dumping of rubbish by the Respondent. She recalled a time when 12 black bags were lying as the bins had blown over. She said that she had seen the Respondent put rubbish in other people's bins. On three occasions Miss McLaughlin had required to move the rubbish. She had requested additional bins and she recalled an occasion when rubbish left at the front of the Respondent's house had burst open and scattered about. She had been walking her dog through the rubbish. She knew it was the Respondent's rubbish because she saw a package with her address on it. She moved the rubbish and put it by the Respondent's bins. The Respondent later came to her doorstep and started shouting and throwing rubbish. The Respondent had picked up the rubbish later and Miss McLaughlin said this had occurred in the summer of 2020.

39. When asked regarding the video where Miss McLaughlin had filmed the Respondent she said that she reacted to the behaviour of the Respondent and filmed

her. She said she wanted her to know how it felt like. Although she said she had engaged in social media that she never engaged in anything unpleasant. She had put two posts on Facebook and her Twitter account was no longer active. She said that the neighbours looked on the Respondent's social media pages to see if she was posting their addresses, their car details and registration numbers. Miss McLaughlin's view was that the Respondent would put a summary of what she thought of the neighbours on social media and she didn't want her address or her full name put on the internet. She had contacted the police regarding the Respondent putting information online, her abusive behaviour and her behaviour towards her children. She said the main issue was the constant abuse and the filming. She was aware that then Respondent had filmed outside her child's nursery. Her children had mentioned at school that the Respondent filmed them when they are at PE or break. Miss McLaughlin had told the police but had been advised that she was entitled to film if she wanted. Miss McLaughlin also mentioned that the Respondent had told her on occasions that her children would be raped and stoned to death.

40. Miss McLaughlin explained that the back side of her house looked onto the exit of the Respondent's property and the communal car park. She said that the filming had carried on and that she had had a conversation with the Respondent asking her how she would like to be filmed all of the time. She was asked regarding whether neighbours had been abusive to the Respondent or if she was aware of anyone stalking the Respondent with a vehicle but she was not aware of any such behaviour.

41. Miss McLaughlin had contacted Mrs Dempsey early in 2021. She found it difficult to find out who to speak to and had to approach to letting agent and leave a phone number and Mrs Dempsey phoned her back. She said they had contacted the police, the council social work department and she herself had phoned council community care but they had said it was nothing to do with them. She had phoned the social work department but was told the Respondent wasn't "on their books".

42. The Tribunal also had sight of emails from other residents of Neilson Court and affidavits from witnesses who gave evidence. One email from a neighbour called Stacey indicated that the Respondent had accused her boyfriend of stalking her, posted photographs of her car on social media and accused her online of "gangstalking" her. She had seen the Respondent putting rubbish in her bin and had removed it and put it back at the Respondent's door but this had resulted in an online accusation posted by the Respondent that she had been harassing her and if she did not stop the Respondent would publish her address.

43. Another resident of Neilson Court, a neighbour called Margaret, emailed Mrs Dempsey to advise of verbal abuse from the Respondent suggesting that she had been part of a paedophile ring which had raped the Respondent. This resident also reported that the Respondent had posted photos of her car on social media and could not hang her washing out as the Respondent would shout abuse at her.

44. The Tribunal heard submissions from the Applicant's solicitor who requested that the Tribunal take account of all of the representations and submissions before it and grant the possession order on the basis of then Respondent's anti-social behaviour, it being reasonable to do so. He indicated that if the Tribunal did not find that the Notice to Quit was valid and the contractual tenancy had not been terminated that he was seeking a possession order on the basis of the agreement being irritated and pointed to the fact that the possession ground was set out in full in the agreement itself. His position was that the tenancy agreement had continued beyond the initial six month

period as neither party had given notice to terminate it. He asked the Tribunal to accept the evidence and representations made for the Applicant. On the issue of disability discrimination he submitted there was no medical evidence as to a disability and no evidence that the Respondent had been discriminated against in any way. Mr Bryan's position was that if the Tribunal took the view that disability discrimination had been made out that the Landlord's actions were proportionate in order to enforce the tenancy agreement and to stop the neighbours having to endure the Respondent's behaviour. He asked that the Tribunal take account of all the extract convictions lodged by him even if they did not appear to be connected to the street concerned as these he said demonstrated the behaviour was not just limited to the Respondent's neighbours.

45. Findings in Fact

46. The Applicant and Respondent entered into a tenancy agreement at the property with effect from 9 May 2016 for a period of six months.

47. The tenancy agreement provided for either party to end the tenancy by giving not less than two months notice in writing expiring at any time after the full term of the agreement.

48. The tenancy agreement continues by way of tacit relocation.

49. Notice in terms of section 19 of the Housing (Scotland) Act 1988 dated 4th March 2021 was served on the Respondent giving notice of the Intention to seek a possession order for the property at the First Tier Tribunal on the grounds of Anti-social behaviour as set out in Ground 15(b) and (c) of the Act and details of the behaviour were included with the notice.

50. The Tenancy agreement between the parties set out that possession of the property could be recovered by the landlord in terms of the Grounds set out in Schedule 5 of the 1988 Act and in particular set out the full terms of possession Ground 15 of the Act

51. A Notice to quit dated 4 March 2021 was served on the Respondent but this did not contain all the information required by law.

52. A Notice dated 7 June 2021 in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 was sent by the Applicant's solicitor to West Lothian Council.

53. No proof of delivery of the S11 notice was seen by the Tribunal but an e mail dated 9th August 2021 from West Lothian Council acknowledged receipt of the Notice and indicated that it had been acted upon.

54. Over a period of some years and in particular since 2019 the Respondent has been involved in behaviour towards neighbours and a visitor to Neilson Court, Blackburn West Lothian which included direct verbal abuse, including allegations that at least one neighbour was part of a paedophile ring that gang raped her, advising a neighbour that her children would be raped and stoned, other behaviour involving posting comments regarding neighbours on social media platforms and taking pictures of motor vehicles belonging to at least one neighbour suggesting that vehicles have been watching her.

55. Other comments made by the Respondent to neighbours at Neilson Court have included allegations that a neighbour was racist, a member of the Ku Klux Klan, filming of neighbours and online accusations of harassment and stalking.

56. The Respondent's behaviour over a prolonged period of time to a number of neighbours and a visitor to Neilson Court caused alarm and distress to them and contributed to at least one of the neighbours moving to a different address.

57. In March 2021 a number of neighbours at Neilson Court spoke to Margaret Dempsey who manages the property behalf of the landlord and complained to her regarding the Respondent's behaviour. A number of neighbours sent emails with their concerns regarding the respondent.

58. Over a period of years and in particular since 2019 the Respondent has engaged in antisocial conduct towards persons residing in or visiting in her locality at Neilson Court, Blackburn West Lothian and further has pursued a course of antisocial conduct towards persons residing in or visiting the locality at Neilson Court, Blackburn, West Lothian.

59. On 5 January 2021 the Respondent was convicted of an offence in terms of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 at Livingston Sheriff Court in relation to an incident at Neilson Court on 23 June 2020 whereby she behaved in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that she did shout swear and shout racist remarks. The conviction was noted as being racially aggravated and the Respondent was sentenced restriction of liberty order for 20 days starting on 4 February 2021. This is the incident referred to by witness Donna McGinty referred to at paragraph 26 of this Decision.

60. As of 25th August 2021 the Respondent was in receipt of prescribed medication.

61. The Respondent has issues with her mental health the exact nature of which is not known.

62. The Tribunal considered it was reasonable to grant a possession order in all of the circumstances.

63. Reasons for Decision

64. The Tribunal accepted the affidavits, email complaints and evidence of the witnesses presented during the hearing and found the witnesses to be credible and reliable. The tribunal accepted that Respondent had over a lengthy period subjected those living in the neighbourhood and at least one visitor to abuse, harassment, unwanted filming, unpleasant remarks on social media platforms, and had made allegations that they were abusive to her, stalking her and in some cases suggestions that their children would be raped and murdered or that they were part of a paedophile ring. It was clear that those neighbours who gave evidence and provided affidavits had suffered high levels of concern and distress over the incidents and indeed one neighbour had moved out of the street partly because of the behaviour. The tribunal was satisfied on the basis of the evidence that not only had the Respondent engaged in antisocial behaviour towards persons living in the street and at least one visitor but that this had amounted to a course of conduct over a lengthy period of time. One of the incidents described by the neighbours in June 2020 had been the subject of conviction at Livingston Sheriff Court. The Tribunal did not take into account other convictions lodged on behalf of the Applicant in making its decision as some of these did not appear to relate to Neilson Court or its locality or this could not be determined.

65. As the Respondent had chosen not to engage with the proceedings to any great extent before the first day of the hearing and had dialled off the teleconference call very soon into the second day of the hearing and had been unrepresented throughout the proceedings, the tribunal was careful to consider her position in relation to all matters. The Tribunal considered the videos that she had lodged and whether these disclosed any abuse, harassment or stalking of her. In one video one of the neighbours who gave evidence was seen filming but there was no abuse or threatening behaviour visible in this video. In some of the other videos there was footage of the Respondent confronting a youth, filming a dog which was barking, picking up rubbish but none of the videos showed any apparent abuse or stalking or threatening behaviour towards the Respondent.

66. The tribunal considered that the tenancy agreement was a short assured tenancy and considered a number of factors in relation to the tenancy agreement, the eviction procedure the Respondent's position regarding disability discrimination and whether it was reasonable to grant a possession order.

67. In relation to the tenancy agreement this was a short assured tenancy with a term of six months. The tenancy agreement indicated that tacit relocation would not apply to the agreement but in another clause indicated that either party could bring the agreement to an end by giving two months' notice expiring at any time after the six-month period of the agreement. There was no clause in the agreement suggesting that in the absence of notice that the parties agreed that the tenancy would continue on after its term e.g. a monthly basis. The tribunal therefore took the view that the lease contained contradictory clauses regarding how it was to continue, in particular whether tacit relocation applied. The lease contained a clear clause suggesting that either party could give two months' notice to terminate after the expiry of the six months and it was clear from this that it was intended that the lease could continue. In the absence of any provision setting out how the lease would continue the tribunal formed the view that tacit relocation did apply to this lease and it continued on a six monthly basis after the initial term. The Applicant's witness Mrs Dempsey had understood that the lease continued on a monthly basis and at no point did the Respondent ever suggest that the lease had terminated at any time during the tenancy to date.

68. The Tribunal considered the notice to quit served on the Respondent and took the view that it was not in the appropriate terms as it did not contain all the information required within the schedule to the Assured Tenancies (Notices to Quit) Prescribed Information (Scotland) Regulations 1988. As the tribunal considered the notice to quit to be invalid it found that the contractual tenancy continued despite service of the Notice on the Respondent.

69. The Applicant relied on the service of the notice in terms of section 19 of the 1988 Act and the tribunal accepted that this was in the proper form and gave sufficient notice to the Respondent of the grounds on which the possession order was requested. The tribunal formed the view that the Applicant could proceed to seek a possession order in terms of section 18 of the 1988 Act by relying on the relevant clause of the tenancy agreement. The tenancy agreement between the parties made provision for the lease to be brought to an end on the basis of Ground 15, antisocial behaviour and set out the ground in full. The circumstances here are similar to those in ***Royal Bank of Scotland v Boyle 1999 Hous L.R 43***. The Tribunal was satisfied in the current application that the Applicant did not require to terminate the lease given that there was an irritancy clause within it that reproduced the entire terms of Ground 15 in Schedule 5 of the 1988 act.

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.

71. In relation to the Form AT6 lodged by the Applicant the earliest date given in the notice as the date when the Applicant landlord could apply to the tribunal was later than the date required. The Tribunal considered this and took the view that this was a minor error in the document which did not affect its validity. The date given was later than the date required given the need for 28 days' notice, but the tribunal took the view this did not invalidate the notice because it still fulfilled its purpose under section 19(3)(b) of the Act, to inform the tenant that proceedings would not be raised before expiry of the relevant period of 28 days.

72. The tribunal required to consider the issue raised by the Respondent which was that she was being evicted on the grounds of her disability. The tribunal noted that it cannot make a possession order if to do so would amount to unlawful discrimination in terms of section 35(1)(b) of the Equality Act 2010, following the decision in **Astor Communities Ltd v Ackerman – Livingstone [2015] UKSC 15**. In this case it was said that the proper approach for the tribunal to take in a claim for possession against a disabled person is to consider whether the landlord's treatment of the tenant is a proportionate means of achieving a legitimate aim for the purposes of section 15(1)(b) of the Equality Act 2010. In particular in that case Baroness Hale noted that "no landlord is allowed to evict a disabled tenant because of something arising in consequence of the disability, unless he can show eviction to be a proportionate means of achieving a legitimate aim".

73. In order for the Respondent in this case to advance the disability discrimination defence the tribunal required to know the nature of the impairment which was the basis for the defence and required evidence confirming the nature and degree of impairment, whether the impairment had a substantial and long-term adverse effect on the ability of the individual to carry out normal day-to-day activities and that something arising from disability had caused the landlord to take steps for purposes of securing the eviction under section 35(1)(b) of the Equality Act 2010.

74. In relation to this application the Respondent had indicated that she suffered from a personality disorder and had lodged a photograph of prescribed medication along with text exchanges with the universal credit service centre confirming she was in

receipt of what was described as the maximum amount that can be paid for disability. She had queried by text message what had been registered as her disability and whether this was a borderline personality disorder or also pulmonary embolism. No information was contained in the text messages confirming the nature of the disability for which universal credit was received. The Respondent had been directed to provide further information regarding her medical conditions, and in particular written information setting out the nature and degree of impairment whether the impairment had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities and written information setting out what it was arising from that disability which was said to have caused the landlord to take steps for the purposes of securing a possession order. She was also required to lodge medical reports addressing these issues if these were available. The Respondent did not respond to this direction and on the first day of the hearing one of the reasons why the hearing was continued to a later date was to allow the Respondent to obtain information from her GP or another medical professional in line with the information which had previously been requested by the tribunal. No such information was ever lodged by the Respondent. As a result of that the tribunal could not determine whether the applicant was suffering from a disability within the terms of the Equality Act 2010 and this was crucial in the view of the tribunal in order to advance the disability discrimination defence. In the absence of this information the tribunal came to the view that it had insufficient information upon which to properly consider the Respondent's defence on the basis of disability discrimination. In particular even if the tribunal had accepted that she suffered from a borderline personality disorder amounting to a disability under the Act, without medical evidence to substantiate that, there was still a complete lack of information before the Tribunal to suggest that there was something arising from any disability which was causing the landlord to take steps for the purposes of securing an eviction. Although the Respondent had lodged a picture of medication it was not proper for the tribunal to make its own enquiries as to what that medication might be for and the tribunal had regard to the case of **Swan Housing Association Ltd v Gill [2014] HLR 18** where it was suggested that in the absence of medical evidence the mere likelihood that a person suffered from a disability is insufficient to establish the existence of a protected characteristic.

75. Given the lack of evidence to support the defence of disability discrimination the Tribunal could not determine that it could apply in relation to this application and did not go on to consider proportionality in terms of the Equality Act test.

76. The possession order ground relied on in this application is discretionary and the tribunal had to consider the question of reasonableness. The tribunal noted that Mrs Dempsey had moved very quickly to serve a statutory notice of the intention to seek a possession order on the Respondent after complaints were made to her by residents of the street. She did indicate that attempts had been made to engage with the local council to ascertain if help could be given to the Respondent but she, (the Respondent) would not engage with them. Given the nature of the antisocial behaviour the Tribunal found proved and the fact that this had taken place over an extensive period of time the tribunal felt it was reasonable to grant a possession order in all the circumstances.

Decision

77. The tribunal granted a possession order for the property in terms of ground 15(b) and (c) of Schedule 5 of the Housing (Scotland) Act 1988 as the tribunal was satisfied that the Respondent had acted in an antisocial manner to persons residing in the locality and one visitor and had pursued a course of antisocial conduct in relation to those persons.

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.

V. B

Legal Member/Chair

3.12.21

Date