



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

**Chamber Ref: FTS/HPC/EV/21/2042**

**Re: Property at 7 Pannell Farm Cottages, Kilbarchan Road, Bridge of Weir, PA11 3RN (“the Property”)**

**Parties:**

**Mr Cameron McIntyre, C/O Lind Letting, 1 Kirkinner Place, Main Street, Bridge of Weir, PA11 3AA (“the Applicant”)**

**Mr Enzo Serapiglia, 7 Pannell Farm Cottages, Kilbarchan Road, Bridge of Weir, PA11 3RN (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction against the Respondent and in favour of the Applicant in terms of Ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 should be made, having found that the tenant has engaged in relevant anti-social behaviour towards other persons, that an application for an eviction order was made within 12 months of the anti-social behaviour occurring and that it is reasonable to grant the order.**

The decision of the tribunal was unanimous.

**Background**

2. This decision relates to an application dated 20<sup>th</sup> August 2021 for an eviction order lodged in terms of Rule 109 of the Tribunal rules of procedure. This application was accepted by the Tribunal on 8th November 2021.
3. A case management discussion took place on 22 December 2021 at 10 am. The Applicant was not present but was represented by Ms Iona Young. The Respondent was present and was represented by Mr Montgomery of Renfrewshire CAB.
4. At the case management discussion, the Tribunal had sight of the application, a tenancy agreement, a Notice to Leave, a postal delivery slip, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email in connection with that notice, abstract crime report documentation and an email regarding an incident said to have taken place. On behalf of the Respondent the tribunal had received representation regarding a postponement, a doctor's letter, and representations on the issues in the application.

### **Case Management Discussion**

5. The initial discussion took place around the reasons for the application.
6. Ms Young indicated that an incident had taken place in May 2021 near to the rented properties at Pannell Farm which was a family farm. Her position was that the Respondent, the tenant at 7 Pannell Farm Cottage, had purposely pulled his car out into the access road at the properties to block access by a Mr McLellan who runs a small business from a shed on the farm property and needs to use the access road to drive round to his place of business. The Respondent had refused to move his car when asked politely by Mr McLellan to do so. He had also been aggressive to Mr McLellan and said that he was going to "get his family up". When asked by Mr McLellan what they would do, he had said 'I'll show you what they are going to do'. Ms Young indicated that the Respondent's body language and tone were aggressive, and she and Mr McLellan had felt threatened by the behaviour.
7. Ms Young advised the Tribunal that the police had not been called at the time by her but had been called by the Respondent. She said at the time of the incident the Respondent had been flailing his arms and making what was described as a figure of eight movement. Ms Young indicated there were ongoing troubles on the farm and she had started the eviction process because of these and this incident. She had arranged for a Notice to Leave to be served on the Respondent and she regarded the incident as being one of antisocial behaviour.
8. Mr Montgomery on behalf of the Respondent indicated that the Respondent had moved into one of the cottages at Pannell Farm because he believed they were quite quiet. He had issues in relation to mental health because of previous trauma. He had received assurances regarding the noise level and once he moved in had found there was a lot more noise than he been given to expect. He had involved Environmental Health as a result. He had what was described as a fractious relationship with persons at the farm. He denied having been involved in any arguments. The incident described by Ms Young he said was a situation where his words had been misconstrued. He pointed to the fact that the matter had not been reported to the police by the Applicant or anyone on his behalf for some two months after the incident. He said that the Respondent did not realise he been charged by police in relation to the incident. Mr Montgomery said he had written twice to obtain confirmation of this in writing but was yet to receive it. Mr

Montgomery pointed to the fact that there was no conviction arising from the matter referred to by Ms Young and in the realms of seriousness this was one incident not a course of conduct. He indicated that whilst there was some disagreement between the parties the Respondent denied the severity of the disagreement and said that the words he had used had been taken out of context. He also denied moving his vehicle to block Mr McLellan from being able to access his business.

9. Two other issues arose in the context of the discussion. One related to the Notice to Leave which had been submitted by the Applicant. The Respondent did not appear to be able to find this in amongst his paperwork and did not remember receiving it. The tribunal had sight of a postal slip which appeared to confirm this had been signed for. Ms Young for the Applicant had advised the Tribunal that she had met the Respondent after the service of the Notice to Leave and he had indicated to her that he had not received it. When she had been advised of this, she had printed off another one for him and provided it to him.
10. The Tribunal also raised the issue of the date in Part 4 of the Notice to Leave and whether the date was correct given the requirements of the 2016 Act and whether this affected the validity of the Notice. Discussion on this point did not continue as neither the Respondent nor his representative appeared to have access to the documentation during the case management discussion.
11. It was clear that the facts which were said by the Applicant to amount to antisocial behaviour and to give rise to an eviction ground were in dispute and that the tribunal would require to fix a hearing in relation to the matter. The Tribunal issued a Direction for parties to confirm the details of witnesses they intended to call at the hearing and seeking written representations regarding their position on the validity or otherwise of the Notice to Leave.

## **The Hearing**

12. The Hearing in respect of this application commenced on 10<sup>th</sup> February 2022.
13. The Applicant was represented by a Mr Ben Brown, a solicitor who confirmed his position during the second day of the Hearing and indicated that he was acting in a personal capacity for the Applicant who was a family friend. The Respondent was present and represented by Mr Kevin Montgomery of Renfrewshire CAB.
14. The parties were agreed that the issues for consideration related to the Notice to Leave served and whether it had been received as suggested and whether any anti social behaviour had taken place and if so whether it was reasonable to evict the Respondent on the basis of any such behaviour which may be proved at the Hearing.
15. Both parties had lodged information after the case management discussion. On behalf of the Applicant Mr Brown had lodged statements of the witnesses he intended to call some 7 days before the Hearing. These had not been crossed over by the Tribunal to the Respondent's representative and a short adjournment was granted so that Mr Montgomery could see these and take instructions on their contents.
16. Mr Montgomery had lodged a Direction response and copy emails to COPFS sent by him.
17. Mr Brown indicated that he was seeking to lead evidence of more than the one incident which had formed the basis of discussion at the case management discussion in order to support the application and set out the dates of incidents

upon which he wished to rely as being 6/5/21,1/7/21,5/7/21 and 7/7/21 as referred to in the witness statements.He pointed to the fact that the application had been prepared by a Letting Agent and the case management discussion had been attended by Ms Young , now a witness, who had tried to represent the Applicant's position.This request was opposed by Mr Montgomery who indicated that the introduction of this material was unfair and that he had prepared for the hearing on the basis that the Applicant was relying on one incident of alleged anti social behaviour which was denied.The Tribunal adjourned to consider whether it would allow the evidence and indicated that as the additional information did not add a new eviction ground and appeared relevant to the Applicant's position that this evidence could be lead.

18. Mr Montgomery indicated that he would require additional time to prepare in the light of this and requested an adjournment of the Hearing.Mr Brown did not formally oppose this request and indicated that it seemed reasonable in the circumstances.
19. The Tribunal then dealt with issues which could be discussed before any adjournment of the Hearing took place.The question of the date in part 4 of the Notice to Leave was raised by the Tribunal Chair in that it appeared to give an extra day beyond the correct date in part 4 of the Notice, as being the earliest date when proceedings could be commenced.Mr Montgomery indicated that he was not making an issue of this date and Mr Brown asked the Tribunal to regard this as a minor error in terms of s 73 of the Private Housing (Tenancies)(Scotland) Act 2016 which would not affect the validity of the notice.The Tribunal took the view that this was a minor error which did not affect the notice as the date in Part 4 was a date after the earliest date when the application could be made, as discussed in another decision of the Tribunal, Holleran v McAlister EV/18/2321.
20. Mr Montgomery had not received the Applicant's productions and in particular had not seen the post office delvery slip being referred to by parties and Mr Brown e mailed this to him to allow this to be considered by him.
21. The parties agreed that it was appropriate to hear evidence on the single issue of service of the Notice to Leave at this stage.Mr Brown took evidence from Ms Young who explained the background to the Notice to Leave being issued and how she had gone to check with the Respondent in August 2021 as she had heard nothing from him regarding the Notice and at that stage he had said he had not received it so she had printed off a copy for him, signed it and handed it over.She was sure that the Notice must have been served in July as suggested and said that the postman was a regular at the farm and knew the properties.
22. The Respondent gave evidence strongly denying that he had received the Notice to Leave on 10<sup>th</sup> July 2021 as stated in the postal delivery slip.He denied signing for it.He doubted that he would even have been at home at the time and indicated he would probably have been at his girlfriend's house at the time as he was in the habit of going there at 1030 am each Saturday morning.
23. The postal slip referred to a signature "XPI " or "XP1" and there was anecdotal information received from one of the represetnatives after the evidence was given to suggest this was a form of signature adopted by the postal service during Covid 19 restrictions when a recipient of a signed for letter could not sign that a letter had been received due to restrictions.
24. The Tribunal took the view that this information was important in the context of its consideration of the postal slip which appeared to indicate that the letter had

been signed for by the Respondent and indicated that it would continue consideration of this point to allow parties to make enquires as to the letters in the signature box on the postal slip and would issue a Direction in this regard. The Tribunal also indicated that the Direction would set out that any further productions or representations would require to be received by the Tribunal at least two weeks before the date of the next Hearing.

25. The Hearing was continued to 24<sup>th</sup> March 2022 and on that date both representatives were present as well as the Respondent.
26. Both parties had lodged information regarding the signature on the delivery slip for the Notice to Leave. Parties agreed that the signature appeared to have been added by the postman in terms of the signature protocol during the Covid 19 restriction period. On behalf of the Respondent it was suggested that it was not unusual for items to be misdelivered and it was still his position that the item had not been delivered on the date stated on the postal delivery slip. For the Applicant it was suggested that further evidence might require to be led in the light of that suggestion and the Tribunal indicated that it would reserve any decision on the issue of service of the Notice to Leave to the end of the Hearing to allow parties to give further evidence on this matter as required.
27. As well as information on the delivery slip the Respondent's representative had lodged email correspondence regarding the status of the matter referred to the police which had resulted in a Police Recorded Warning and this was received by the Tribunal without objection.
28. The Applicant led evidence from Ms Iona Young the sister of the Landlord who worked on the farm. She gave evidence to the effect that if a letter meant for the property where the Respondent lived did not arrive there it might have gone into the vacant property next door, the only property nearby, or into the farmhouse itself. She said there were 2 regular postmen who did the round and they knew the properties. She was regularly in the property next door to the one occupied by the Respondent cleaning and her mother lived at the farm itself. She had no reason to believe that the Notice to Leave was delivered anywhere other than the property occupied by the Respondent.
29. Ms Young gave evidence about incidents involving the Respondent during his tenancy which had started in February 2020. She referred to her statement which had been lodged before the Hearing. She referred to point 17 in her statement and referred to 29 April 2021 when a Mr McLellan who occupied a shed on the farm which he used as a workshop for agricultural welding had told her he needed to move some metal from the shed. Ms Young had asked the Respondent to move his car. He had agreed to do this previously when Mr McLellan needed to move metal. On this occasion the Respondent had refused and was not willing to move the car. He said he was waiting for someone to come up but did not give further detail. Ms Young and Mr McLellan decided to move the metal in the workshop anyway and she walked between the forklift and the Respondent's car to ensure that his car was safe during the process. She was aware that his car was very important to him and that he washed it several times per week and parked it where he could see it from his property. As the metal was being moved on the forklift Ms Young indicated that the Respondent was aggressive and videoing what they were doing. She said he was often in a bad mood and she was concerned about the unpredictability of his nature. She said that there was plenty of space to move the metal and she tried to keep out of his way so that she did not annoy him.

30. Ms Young indicated that there were plenty of places to park at the farm and there was no reason to block the road or cause aggravation. The Respondent had said that he was not going to move his car that day even though she said she had asked him nicely, but he was unwilling to reconsider.
31. Ms Young said that she felt intimidated by the Respondent whom she found frightening and said that he circled about throwing his hands in the air and taking videos which she found to be what she called an "alien environment" at the farm.
32. Ms Young referred to an incident on 5<sup>th</sup> May 2021 when she said that the Respondent had moved his car into the middle of the passageway at the farm which was used by others living and working on the farm including Mr McLellan who accessed his workshop at the back of the rented properties using this passageway. The Respondent's car was blocking Mr McLellan's access to the workshop for his van and forklift truck. She heard raised voices and went to find out what was happening as she was concerned matters might escalate.
33. Ms Young said that the Respondent was in a bad mood with Mr McLellan and was shouting in an aggressive manner, circling round saying that he was going to get his family up to the farm. He was asked by Mr McLellan what his family would do, and he replied by saying that he would "show us what his family was going to do". Ms Young thought he meant that the Respondent's family was going to attend the farm and hit them, and she perceived this as a threat. She mentioned that the Respondent had told her that in the past he had worked on ice cream vans and had mentioned seeing guns and drugs as a younger man and this frightened her. She referred to serious violence in the past in Glasgow associated with persons working in the ice cream trade but later indicated that she should not have mentioned that and was not trying to suggest that the Respondent was in any way involved in that. She had formed the view that the Respondent had believed that he had said too much and had upset them, and he had run into the property he was renting, without moving the car which remained in the middle of the access road. Ms Young said that this incident had left her feeling "shook up" and she had been going to call the police, but they arrived apparently having been called by the Respondent. She spoke to the police that day.
34. Ms Young referred to an incident on 6<sup>th</sup> May 2021 when the Respondent's sister had attended to discuss a few points. She had asked if there was anywhere else the Respondent could stay on the site but there was nothing else available right away. During this meeting Ms Young said that the Respondent was aggressive and shouting and kicking plant pots and throwing tulips. She described him as angry, "busting with anger". She said that the Respondent's sister had said that this was "just the Italian in him".
35. Ms Young said that she was really shaken up by his actions but decided to leave the situation as she was so upset. She described how the Respondent fell out with neighbours, shouting at everyone collecting caravans. She said he got "so angry" when wound up. She said this was no way for a mature man to react and that she had never had to deal with that from someone the same age as she was. He had indicated he wanted to live somewhere else and the letting agent had told her he had made enquiries about other properties. Ms Young believed that he would sort himself out and move on.
36. Ms Young referred to 1<sup>st</sup> July 2021 when she was cleaning at a property near to the one occupied by the Respondent when he rang the doorbell repeatedly and when she answered he told her he was not going to pay rent and asked her to

phone the council. He wanted the e mail address for the landlord Ms Young's brother, but she had already given this to him. She felt flustered by the way he spoke to her, asking repeatedly for the e mail address, and she was really frightened. She provided the email address and said that her hands were shaking as she did this. She indicated that the Respondent knew that new tenants would be arriving at the property, and he said that at that time that he would "jeopardise" anyone coming in.

37. After this incident Ms Young felt that she could not put a single woman in to live next door to the Respondent and she felt intimidated by him.
38. Ms Young indicated that after this incident she no longer felt comfortable being on her own at the farm. she did not live on the farm and did not want the pressure on her family, in particular her elderly mother who lived at the farm and she phoned the police on 5<sup>th</sup> July 2021 and gave a statement regarding the Respondent's actions. She said that others were quite alarmed, and the police marked the address as one where a rapid response would be made to any calls made to police.
39. Ms Young initiated eviction proceedings with the letting agent by phoning them on 7<sup>th</sup> July 2021. She mentioned that since the last incident she tried to avoid the Respondent "at all costs" and that she struggled to speak to him. She said that no one was happy, and she did not understand why he did not leave the property. She said that the situation was not resolved by any manner of means. She was referred to a diary she had kept which had been lodged on behalf of the Applicant. She read from Pages 59, 60 and 61 of the Applicant's bundle which referred to 5<sup>th</sup> and 6<sup>th</sup> May 2021 and referred to abusive behaviour by the Respondent and him shouting and kicking plant pots. She said she had made these notes immediately afterwards. She read out a passage she had written on 6<sup>th</sup> May which indicated she had gone home early and was "all shook up". She described someone called Fiona checking the CCTV that day and she said, "wow was mad". She said that she was frightened and alarmed. She had noted that the day the Respondent's sister attended (6<sup>th</sup> May 2021) the Respondent was running wild in front of the farmhouse and his sister had told him to go for a walk. She said he was spinning around, angry and was causing mayhem.
40. Ms Young described her diary entry of the incident on 1<sup>st</sup> July 2021 when the Respondent tried to speak to her and she was on her own, frightened, and flustered and she had noted how he had asked for the landlord's email address. She had noted on 2<sup>nd</sup> July 2021 that she felt alarmed and fearful of his next move and had described the Respondent as being a bit unpredictable.
41. On being questioned Ms Young described other altercations when the Respondent was washing his car and this was creating water at the corner of the road. She said there was always a man who would walk his dog along the road who mentioned to the Respondent that the water from the daily car washing was forming ice and was a hazard in bad weather. She said they had "fallen out" over it. She further mentioned that the Respondent had been annoyed by some people putting dogs' dirt in certain bins. She was aware he had been abusive to a neighbour and had "fallen out" with some people who were living there and were South African.
42. Mr Robert McLellan gave evidence to the Tribunal based on his witness statement. He said that Ms Young had made him aware that the Respondent had a problem with him operating his business and having to move the car for him. He said that the Respondent seemed willing to move his car at the start and

would do this generally when requested but that on 29<sup>th</sup> April he had “point blank” refused to move it. Ms Young had asked him to move it around the corner for her sake, but he would not do it and had gone into his house at that time. He said they moved the steel out from the shed anyway and Ms Young had stood in between the car and the forklift to make sure nothing happened to the Respondent’s car. He said there was plenty of space. He said that the passageway was around 8 metres wide and the car around 2.5 metres so there was no risk to be caused to the car. On that day they had carried on using the forklift truck. He said the Respondent was in a rage or a tantrum and had said it was illegal to take the truck past an Alfa Romeo and was videoing them. They ignored him and carried on. The police had arrived. Mr McLellan said that his impression was that the Respondent was angry and intimidating in his behaviour.

43. Mr McLellan described an incident on 5<sup>th</sup> May 2021 when he was working and heard a car start. He said he thought this was the Respondent going away and he gave a sigh of relief, as he was expecting a delivery that day. He said that when the Respondent was away, he does not feel fear of what he will do next. He said that on that day, he was disappointed to find that the Respondent had not gone out but had moved his car into the middle of the passageway, and he needed to be able to get his forklift truck out for a delivery. He thought the Respondent had moved the car to wash it and he asked him to move it. He said that he refused to move the car and said he was going to “get his family up”. Mr McLellan asked what they were going to do and he said “I will show you what they are going to do”. At this stage he went back into his house and shut the door and closed the curtains. He discussed the matter with Ms Young and they were going to the phone the police, but they arrived anyway. His impression was that this was a threat and he said he had no idea who the Respondent is and who his family are. He said he felt threatened, and it was a threat towards him working there. He said that the Respondent had caused issues and he felt he could not bring clients up to the workshop as he did not know when the Respondent would just “kick off” and was concerned this would happen in front of a customer.
44. When questioned Mr McLellan indicated that the incident on 5<sup>th</sup> May 2021 had also involved a policeman who attended telling the Respondent that his car was “blocking in” Mr McLellan and that he needed to move the car. Mr McLellan was told by police at this time that the Respondent had a quote for damage to his car which had allegedly been caused by Mr McLellan. Mr McLellan advised the Tribunal that the Respondent had never told him that his welding operations had caused damage to the car. He said in his statement that he felt the situation with the Respondent was impeding his business at the farm.
45. The Respondent gave evidence on his own behalf. He said that he had been looking for peace and quiet as he had lost both of his parents and was going through a trauma. He described a trauma he had suffered and how this was featuring in an ongoing inquiry. He indicated that Miss Young had said the only noise at the property was from tractors or animals.
46. The Respondent described his love of certain cars and how important the car was to him that had been described in the evidence. He said that it had sentimental value for him as his father had helped him pick it but he had not lived to see it delivered.
47. The Respondent described the peace and quietness on the farm and his good relations with neighbours who had given him cookies and his efforts to assist on



- the farm. He said that he had raised the issue of dog dirt as it ought to be disposed of separately and that he had tried to clean things up.
48. He described that Ms Young had given him tablet and how he had tried to help her with calving. He said that helping others helped him with his emotions.
  49. The Respondent's position was that he was advised about Mr McLellan's business coming in and that Ms young had said that if there was any problem to let them know and he would withdraw. He referred to the damage which he said had been caused to his car by Mr McLellan welding and splinters affecting the paintwork on his car. He said this had caused splinters in the bodywork and he had taken a photo of this. The quote for the damage was over £ 6000 but he could not afford to have it fixed currently.
  50. The Respondent denied receiving the Notice to Leave by recorded delivery and said he had received it in August when he told Ms Young he had not received it.
  51. He referred to getting on with everyone at the farm other than someone who lived behind him who smoked cannabis which created a smell in his bathroom.
  52. He referred to Mr McLellan grinding and drilling and welding and spray painting every day and those neighbours he referred to as Ryan and Jenna having come to him about the noise from Mr McLellan's workshop. He described good relations with these neighbours and how he had dealt with an issue where both properties had no gas or electricity and how he had sorted this out. He said he had a positive relationship with Ms Young from the start of his tenancy until Mr McLellan moved in. He said that his relationship with most neighbours was quite positive apart from the person who smoked cannabis.
  53. The Respondent was asked regarding the incident where it was suggested that he would "get his family up" and he agreed that he said this, but his intention was to have them up for a barbecue to see what was going on. He said he had told his sister Silvana about being wakened up by hammering and grinding. He had not said the words in a threatening way. He meant that he would have his family over for a coffee. He had set up a table and umbrella for this purpose. He said that witnesses were mistaken regarding what he had meant, and he felt threatened due to his vulnerability.
  54. He said that several times he had been called a "Tally" and he had said to his sister that he needed to address this. He said that Maureen and Iona Young had apologised for this. It was not clear who Maureen was, and this was not explained by the Respondent.
  55. The Respondent was adamant that his car was damaged by Mr McLellan welding outside, and sparks had damaged it. He described receiving a quote for the respray of the whole car from a company he named and that the quote was for £6294. He said he did not want to claim on his insurance policy, but he was going through court proceedings currently and would likely have the car painted after these were concluded.
  56. The Respondent was asked why he could not park his car elsewhere at the farm and he indicated that there was a family behind him with a number of children and they might throw stones and hit the car. He said he would need to install a camera if he moved the car. He said that he had raised the issue of children throwing stones with Iona Young and she had said she would speak to them, and he had also raised the severity of damage that would ensue if the forklift came out and children were playing.
  57. The Respondent repeated that he believed Mr McLellan had damaged his car. He explained the age and value of his car and when he had bought it.

58. He said that welding work was going on in the main passageway where he parked his car. He said that he had seen Mr McLellan welding in front of the sheds in the main passageway. It was suggested to him that this was effectively around the corner from where his car was parked but the Respondent's position was that sparks could travel from any direction, and it depended on the way the wind was blowing.
59. As far as the incident on 29<sup>th</sup> April 2021 was concerned the Respondent said he was concerned for Ms Young when she was standing so close to the forklift. He said he felt that the metal on the forklift which was overhanging was pointing towards his car and he did video them and raised his voice to address them. He said he was not angry but was upset and was outnumbered. He said he felt they were trying to get on without sorting the problem and he felt he had not been listened to since the business had opened. He said he felt ignored and that the incident was frustrating. He said he had explained to both Ms Young and Mr McLellan that he was going through an enquiry at the time but he felt that they did not listen.
60. The Respondent agreed that he had felt some anger at the time as he felt he was being ignored and he felt frustrated. He said that people were taking advantage of his vulnerability knowing the trauma he had suffered. He denied that he had been aggressive on 29<sup>th</sup> April 2021.
61. The Respondent agreed that on 5<sup>th</sup> May 2021 he had said he was going to get his family up and said that he meant he would bring his family up so they could see what was going on. He said this had been misinterpreted by Iona Young and Mr McLellan. He did not accept that this could be said to be an escalation of matters and said that this could have been for pasta, coffee, or a chat. He said he did not know what had made them feel fearful.
62. The Respondent said that he felt victimised and was having sleepless nights. He could not move as he needed a guarantor and did not have one. He said he tried to remain friendly with everyone at the farm except the person who smoked cannabis.
63. The Respondent denied kicking over plant pots on 6<sup>th</sup> May 2021 and said he had placed them over by a wall. He said that they had been given to him, but he no longer wanted them, and he felt obliged to give them back as the relationship between him and Ms Young had broken down and because of the way she had treated him. He reiterated that she had called him a "Tally".
64. As far as the 1<sup>st</sup> of July 2021 was concerned, he explained that he had gone to tell Ms Young that the rent would be a day late to make her aware. He said he did not notice Ms Young shaking and any shaking would have been from him. He said he had approached her for the landlord's email address which she had given him before, but he had lost his phone which had the address in it. He said the encounter had been civil and not out of the ordinary.
65. The Respondent indicated that he stayed with his partner once a week but did not know what he would be doing in a few years.
66. The Respondent was asked regarding the dogs' dirt he had mentioned, and he said that he expected people to put this in small back bags and not just put it in any bin. He was asked why he had not submitted a photo of the damage to his car, but he said this had been on the phone which was lost. He was asked why Mr McLellan would weld so close to his car and he indicated that he did not know why he did this and not in the garage. He indicated that he believed the welding

- had taken place on 29<sup>th</sup> April 2021. He was asked why he had not said anything, but he said it had happened before.
67. As regards the incident on 29<sup>th</sup> April 2021 when it was suggested he had refused to move his car he said he had asked them to move before for a delivery and they had refused to do it.
  68. On 5<sup>th</sup> May 2021 he said that he did not know a delivery was coming and described what he termed a catalogue of different interruptions “turning morning into night and night into day”. He said it was happening every 5 minutes. He said there was plenty of space for the delivery to go by on the other side and that Mr McLellan was just being awkward. He said he was not blocking the passageway.
  69. The Respondent said he had learned that old neighbours had moved out because of the noise and another neighbour wanted to move out for the same reason. He said that Mr McLellan should move his business and it was not right that he operated in a residential area. He said that the business was the issue and that matters would stop if Mr McLellan moved his business. He said he intended to stay put until his court case was finished.
  70. Both representatives then made submissions to the Tribunal.
  71. On the issue of the service of the Notice to Leave Mr Brown for the Applicant submitted that the evidence suggested that the Notice had been served and not misdelivered. He said that the postmen were known to the parties and each address was numbered and the Letting Agent appeared to have used the correct address. He said there was a presumption that the notice had been effectively served which had not been rebutted.
  72. Mr Brown addressed the issue of Ground 14, the eviction grounds and whether there had been anti-social behaviour which he described as conduct likely to cause nuisance or annoyance. He pointed to the evidence of alarm and distress. He said the police had given a formal warning. He referred to the farm diary records and how they detailed abusive behaviour and the evidence of fear and alarm. He submitted that the evidence for the Applicant given was credible and reliable and had given a clear chronology of events. The witnesses believed the behaviour was threatening and aggressive. He said there was a difficult background but there was evidence of the effect this behaviour was having and the direct impact on the business at the farm and that of Mr McLellan.
  73. Mr Brown submitted that it was reasonable to grant an order as the witnesses had been impacted personally and professionally by a series of anti-social acts and there was evidence, they now gave the Respondent what he described as a “wide berth” and avoided engagement with him. He said that based on the evidence that matters cannot be resolved in any other way than by some form of eviction.
  74. Mr Brown pointed to the Respondent’s wider circumstances and said that he clearly had a support network around him although the Respondent had said there were limitations in him finding other accommodation and it was reasonable that an eviction order be granted in the circumstances of the anti-social behaviour.
  75. Mr Montgomery made submissions on behalf of the Respondent and said that as far as the Notice to Leave was concerned the Respondent was adamant, he had not received this in July 2021 despite the evidence regarding delivery.
  76. Mr Montgomery submitted there had clearly been a breakdown of the relationship between the parties but there had not been anti-social behaviour. He discussed the incidents being relied upon and said that the workshop run by Mr McLellan

was clearly causing significant problems for the Respondent. The witnesses had taken two months to bring matters to the attention of the police, after the fact and it was a minor matter having been given a recorded police warning. He pointed to the fact that there had been no suggestion in the evidence of any incidents in the last 7-8 months. He pointed to the Respondent's personal issues and although the Respondent might have other options in the longer term were he to receive compensation he did not have other options meantime given his lack of a guarantor.

77. He submitted that with more accommodation between the parties, things might not have reached the stage they had. It was clear that the Respondent felt aggrieved that what he thought was a peaceful location had turned out not to be. He submitted that the situation had improved in that there had been no incidents for a period of several months and no involvement by police. He requested that the Tribunal take all of the circumstances into account when considering whether it would be reasonable to evict the Respondent and highlighted the lack of incidents over the period since July 2021.

### **Findings in Fact**

78. The Applicant and Respondent entered into a tenancy agreement at the property with effect from 1<sup>st</sup> February 2020 and this tenancy continues.
79. On 10<sup>th</sup> July a Notice to Leave dated 9<sup>th</sup> July 2021 was delivered by recorded delivery post at the property.
80. The letter containing the Notice to Leave indicated that it had been signed for by the Respondent, but the delivery slip was signed by the post person to confirm delivery as this is the procedure adopted by the post office during the Coronavirus period.
81. The Notice to Leave indicated that eviction was being sought on the grounds of anti-social behaviour and referred to a charge which had been made by police.
82. The Notice to leave contained an error in the date in part 4 which is the earliest date when the Applicant could apply to the Tribunal for an eviction order and gave a date one day after the earliest date.
83. A Notice in terms of s11 of the Homelessness etc (Scotland) Act 2003 was sent to the local authority in relation to this application.
84. The Respondent suffered a trauma early in his life and he has long standing difficulties with mood and anxiety.
85. Between 29<sup>th</sup> April and 1<sup>st</sup> July 2021, the Respondent was involved in incidents at Pannell Farm Kilbarchan Road Bridge of Weir which were likely to cause and did cause alarm, distress, nuisance, or annoyance to persons there including Iona Young and Robert McLellan.
86. These incidents included shouting, being aggressive, refusing to move a motor vehicle when requested, videoing persons carrying out work at the farm premises, flailing his arms around, circling around persons there, making comments which amounted to a threat to the safety of persons there, suggesting that new tenants at the farm would be "jeopardised" by him and kicking plant pots and throwing flowers around.
87. This behaviour amounts to anti-social behaviour within the meaning of Ground 14(3) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

88. This behaviour is relevant anti-social behaviour as described in Ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that the behaviour was behaviour towards Iona Young, the sister of the landlord, who works at Pannell Farm and deals with the tenancy on behalf of the landlord and Robert McLellan, a person who runs a business at the farm, and the behaviour took place near to the property rented by the Respondent at the Farm.
89. The application to the Tribunal for an eviction order was dated 20th August 2021.
90. As a result of the previously mentioned anti-social behaviour Ms Young is fearful of the Respondent and avoids him where possible. She will not place a single female tenant in the property next to the one he occupies, and the business of the farm is affected by the behaviour and her fear of the Respondent.
91. As a result of the previously mentioned anti-social behaviour Mr Robert McLellan who runs a workshop in shed space at Pannell Farm will not bring customers to the workshop premises he occupies for fear of the Respondent's unpredictable behaviour.
92. In the light of these facts, it is reasonable to grant an eviction order.

### **Reasons for Decision**

93. The first issue the Tribunal dealt with was the service of the Notice to Leave on 10<sup>th</sup> July 2021 which the Respondent indicated he had not received. The evidence was clear on this point in the form of the Post office delivery slip and the explanation as to the signature added by the post person and the tribunal was satisfied that the Notice to Leave had been properly and timeously served.
94. The Notice to leave appeared to have the wrong date in Part 4 and had given a day one day later than the earliest date when proceedings could be raised but the Tribunal regarded this as a "minor error" in terms of Section 73 of the 2016 Act following the decision in Holleran v McAlister, referred to in the body of the decision at paragraph 19 above.
95. The Tribunal heard evidence regarding the behaviour of the Respondent over a number of incidents between 29<sup>th</sup> April and 1<sup>st</sup> July 2021 at Pannell Farm, very close to where the property which is rented by the Respondent is situated. He denied these incidents or suggested that his words had been misconstrued by either of the witnesses, Ms Iona Young or Mr Robert McLellan. The Tribunal found them both to be credible and reliable witnesses and preferred the version of events given by them to that of the Respondent.
96. They gave evidence of an incident on 29<sup>th</sup> April 2021 when the Respondent refused to move his car and circled around taking videos of them as they moved metal from the workshop saying it was illegal to move a forklift truck past his car. On 5<sup>th</sup> May 2021 the Respondent blocked the passageway which gave access to Mr McLellan's workshop with his car and said that he would "get his family up" in a way which the witnesses reasonably perceived as a threat in the context in which the comment was made. This was compounded by the Respondent saying that he would show them "what they would do" which the witnesses again understood to be a threat that some harm would come to them. The Respondent's position was that he intended to mean that he would bring his family up to see what was going on, but this version appeared to the Tribunal to be unlikely in the context of the aggressive behaviour of the Respondent at the time.

97. The witness Iona Young gave evidence of a conversation on 6<sup>th</sup> May 2021 when the Respondent's sister was present. She described him as angry and kicking plant pots and throwing plants and tulips. She further described an incident on 1<sup>st</sup> July 2021 and whilst the Tribunal accepted that the Respondent had reason to approach her for an email address and had lost the address previously, the remark he made about jeopardising new tenants appeared intended to cause fear and alarm to Ms Young and operated as a "last straw" for her as she called the police shortly after this incident.
98. The Tribunal did not accept the Respondent's account of the incidents which were either denied or explained by him. The Tribunal did not find his explanation for the remarks regarding getting his family up to the farm to be at all likely in the circumstances in which the remark was made. The Tribunal accepted that the Respondent had suffered very traumatic events in his earlier life and that this had had a lasting impact on him.
99. The Tribunal was satisfied that the incidents on 29<sup>th</sup> April, 5<sup>th</sup> and 6<sup>th</sup> May and 1<sup>st</sup> July 2021 (to the extent of the remark made about jeopardising tenants) amounted to relevant anti-social behaviour and the application had been made within 12 months of the behaviour occurring.
100. Having found that the incidents referred to constituted relevant anti-social behaviour within the meaning set out in the 2016 Act, the Tribunal had then to consider whether it was reasonable to issue an order for eviction in the circumstances.
101. The Tribunal noted its duty to consider the whole of the circumstances in which the application is made and anything which might dispose the tribunal to grant or decline the order is regarded as relevant. The Tribunal considered the approach set out in ***Manchester City Council v Pinnock [2011] UKSC 45***. It was put forward on behalf of the Respondent that the behaviour was at the minor end of the scale in that one incident had attracted a police warning only. It was also suggested that there had been no incidents since July 2021 and that the Respondent had no access to a guarantor and therefore could not find somewhere else to live at this time.
102. The Tribunal considered all the relevant facts including the Respondent's past trauma, the fact that he had no current guarantor, the fact that there had been no incidents since July 2021, the nature of the incidents themselves and their effects.
103. The Respondent's position was that he did not currently have a guarantor and could not rent another property until he did. He was expecting compensation but there was no timescale in which that was expected. There was nothing in the information given to the tribunal to suggest that there was nowhere else suitable where the Respondent could live and there was evidence he stayed with a partner once a week. The only evidence that he had tried to find another property related to the summer of 2021 when the Letting Agent involved with the property had advised Ms Young that he had been enquiring about other properties. There was no evidence to suggest he had been unable to find another suitable property due to his lack of guarantor but rather that he intended to remain at the property for a while until court proceedings were concluded. The Respondent's view appeared to be that he should not be required to leave but that the witness Mr McLellan should leave the property. No evidence was presented to suggest any effect that an eviction order might have on the Respondent's well-being.

104. The tribunal considered the nature of the incidents themselves and although not at the most serious end of the scale the Tribunal considered that these amounted to a course of conduct and had caused fear and alarm to those involved, both of whom were closely connected to the property rented by the Respondent. The lack of incidents since July 2021 appeared from the evidence not to be because the situation had resolved but because active steps were being taken by Ms young to avoid the Respondent and there was evidence that Mr McLellan was concerned there could be other incidents due to the Respondent's unpredictable nature. There was evidence that the witnesses had adopted certain practices in relation to their businesses due to the Respondent's behaviour with Ms Young not feeling able to put single female tenants in the property next to the Respondent and Mr McLellan not bringing customers to the workshop space in case anything happened with the Respondent. The Tribunal considered that these were lasting consequences of the anti-social behaviour.
105. This was a difficult decision for the Tribunal and the matter was finely balanced. Having considered all of the factors the Tribunal was just persuaded that the ongoing effects on the business of the farm and property work carried out by Ms Young and that of Mr McLellan which involved continued close proximity to the Respondent and the fact that they had to adjust their some of their practices as a result of the Respondent's behaviour was the factor which tipped the balance in favour of it being reasonable to grant an eviction order in this application and the Tribunal makes an order for Eviction.

## **Decision**

106. The Tribunal made an order for eviction against the Respondent and in favour of the Applicant in terms of Ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 having found that the tenant has engaged in relevant anti-social behaviour towards other persons, that an application for an eviction order was made within 12 months of the anti-social behaviour occurring and that it is reasonable to grant the order.

## **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.**

Valerie Bremner

24<sup>th</sup> March 2022

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Legal Member/Chair

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Date