

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

**Chamber Ref: FTS/HPC/EV/21/2344**

**Re: Property at 61 Montrose Road, Polmont, FK2 0YN (“the Property”)**

**Parties:**

**Mr Ian Hamilton, 43 Sir William Wallace Court, Larbert, FK5 4GA (“the Applicant”)**

**Mr Brian Whyte, 61 Montrose Road, Polmont, FK2 0YN (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The PRT in question was by the Applicant to the Respondent commencing on 24 February 2020.
2. The application was dated 23 September 2021 and lodged with the Tribunal shortly thereafter.
3. The application relied upon a Notice to Leave dated 25 June 2021 in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016, intimated upon the Respondent by Recorded Delivery (“Signed For”) post on 25 June (and delivered 30 June) 2021 in accordance with the provisions of the PRT. The Notice relied upon Grounds 13 and 14 of Schedule 3 Part 1 of the 2016 Act, being that the Respondent has “a relevant criminal conviction” and has

“engaged in relevant antisocial behaviour” respectively. In regard to Ground 13, the body of the notice referred to a “DUI conviction” on “16/06/2021” and in regard to Ground 14 reference was made to letters of complaint, police attendance at the property, and a report from the police of incidents. The Notice intimated that an application to the Tribunal would not be made before 27 July 2021.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Falkirk Council on 23 September 2021 was provided with the application.

## **The Hearing**

5. On 14 January 2022 at 10:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant and the Respondent. The Respondent was also represented by Ashley Holden, his Support Worker from Falkirk Council.
6. The Applicant addressed us on a further police report (sent to the Tribunal by email that morning), detailing a further incident on 27 December 2021 and an incident which was too recent for the report which occurred on 12 January 2022. He took us through his own diary entries, and noted a number of further incidents between June and November 2021. All of these were, in the Applicant’s submission, part of a pattern of anti-social behaviour. Though the Applicant conceded that many of the earlier incidents (listed in the police reports in the application papers) were related to the Respondent’s interactions with his former partner (with whom he no longer appeared in contact) the Applicant submitted that there were anti-social incidents not related to that partner through the full period. Consumption of alcohol appeared a common theme in the incidents, with at least two references to the Respondent driving under the influence of alcohol, with visits by the police resulting. These incidents were the basis for the Applicant’s desire to evict under Ground 14.
7. The Applicant’s case under Ground 13 relied solely to one conviction for driving under the influence of alcohol in the street on which the Property was located. The full details of the incident were not clear, but there was reliance on an article from the Falkirk Herald referring to the incident occurring on 11 April 2021 and the Respondent receiving a fine of £900 which, on 23 June 2021, he was told to pay by £20 per week (but had failed to do so). Subsequently, the Respondent was sentenced to 28 days in prison for non-payment of the fine (apparently on 21 October 2021). There was a further reference to breach of bail conditions on 21 September 2021, which appeared to be a breach relating to contact with his former partner and breach of a bail curfew. The news report appeared to connect the sentence of 28 days solely to the breach of the fine, and thus a criminal act outside the Property. The application papers contained the Applicant’s submissions that this amounted to a relevant criminal conviction under Ground 13.

8. The Applicant further stated that the Respondent had not paid rent since the service of the Notice to Leave and, though he had said he was leaving the Property on at least two occasions, had not done so.
9. The Respondent directly, and through his agent, dispute little to none of the incidents though sought to argue that they were, in context, less serious than the Applicant had portrayed them. The Respondent did not dispute the conviction or period of incarceration. Ultimately, however, the Respondent made clear that he did not wish to remain at the Property and his Support Worker intended to assist him with obtaining alternative housing. As homelessness support required the Respondent to be directly under the threat of eviction, the Respondent was – further to the guidance of his Support Worker – willing to consent to the order for eviction on a normal 30 day notice. We asked the Respondent to confirm he understood the position and he confirmed his willingness to consent to an order for eviction.
10. No motion was made for expenses.

### **Findings in Fact**

11. On 26 February 2020, the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
12. In terms of clause 4 of the Tenancy Agreement, the parties agreed that hard copy by personal service or recorded delivery, or by email, could be used for communication of notices in terms of the Tenancy.
13. On 25 June 2021, the Applicant drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondents with notice, amongst other matters, that eviction was sought in regard to a relevant criminal conviction and relevant anti-social behaviour.
14. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior 27 July 2021.
15. The Applicant served a copy of the Notice to Leave on the Respondents by recorded delivery on 25 June 2021.
16. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Grounds 13 and 14 of Schedule 3 Part 1 of the 2016 Act.
17. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Falkirk Council by the Applicant.
18. Prior to 25 June 2021, and in the period following through to 12 January 2022, relevant anti-social behaviour was committed by the Respondent and persons visiting him at the Property.

19. On 23 June 2021 the Applicant was convicted of driving under the influence of alcohol in an incident occurring in the street on which the Property was located. This was a conviction for an offence that is punishable by imprisonment. The Respondent initially received a fine for the offence but was subsequently imprisoned on 21 October 2021 for 28 days due to non-payment of the fine.
20. On 9 December 2021, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 14 January 2022 and the details for dialling into the conference call.

### **Reasons for Decision**

21. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly served upon the Respondent.
22. We were satisfied, especially in light of the Respondent's consent to the order, that both Grounds 13 and 14 were satisfied in the circumstances without the need for further evidence. We were further satisfied in all the circumstances that it was reasonable to grant the order. The information provided to us regarding the anti-social incidents was far greater than we have detailed in this Decision as we do not see it as appropriate to detail the incidents in full where the order is of consent.
23. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

### **Decision**

24. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to grounds 13 and 14 of Schedule 3 of that Act.

### **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.**

# J. Conn

14 January 2022

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**Legal Member/Chair**

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**Date**