



**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/21/2570**

**Re: Property at 3E Thomson Avenue, Johnstone, PA5 8SS (“the Property”)**

**Parties:**

**Mr Kevin McElhinney and Mrs Anita McElhinney, 5 Moray Place, Linwood, PA3 3QX (“the applicants”)**

**Mr Mark McKenna, 3E Thomson Avenue, Johnstone, PA5 8SS (“the respondent”)**

**Tribunal Members:**

**David Preston (Legal Member) and Linda Reid (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted in favour of the applicants.**

**Background**

1. By application dated 15 October 2021 the applicants sought an order for eviction and possession of the property on the basis of Ground 14 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).
2. The papers before the tribunal comprised:
  - a. Application form dated 15 October 2021;
  - b. Private Residential Tenancy Agreement between the parties dated 15 July 2020;
  - c. Notice to Leave dated 14 September 2021;
  - d. Notice under section 11 of the Homelessness etc (Scotland) Act 2003;
  - e. Chains of numerous emails between the parties between August and November 2021;
  - f. Screenshots of Instagram messages posted by the respondent;

- g. Further chains of numerous emails between the parties between January and March 2022;
  - h. Written representations from the respondent dated 3 March 2022;
3. By Notice of Acceptance dated 25 November 2021, a convener of HPC having delegated power for the purpose, referred the application under Rule 9 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to the tribunal.
  4. Case Management Discussions (“CMD”) were scheduled for 20 January and 8 March 2022. On each occasion prior to the scheduled CMD the respondent asked for postponements to which the applicants submitted no opposition or objection. On each occasion the postponement application was granted.
  5. Having granted the postponement of the CMD scheduled for 8 March 2022 the tribunal issued a Direction dated 2 March 2022 to the effect that the postponed CMD would be dealt with as a full hearing on a date and at a time to be advised to the parties. The Direction was issued to the parties by email on 2 March 2022. On 11 March 2022 a notification that the hearing would take place at 10:00 on 20 April 2022 was sent to the parties by email.
  6. The Direction required the respondent to lodge, no later than 31 March 2022: such documentary evidence as may be available to him (other than evidence that has already been lodged by the applicants) to counter the allegations made by the applicants; and a list of names of witnesses who will speak on behalf of the respondent to enter said allegations. Beyond the written representations of 3 March 2022, the respondent submitted neither any further documentary evidence nor a list of the names of witnesses.
  7. In response to said Direction, the applicants lodged the chains of emails between the parties between January and March 2022 as additional documents, photographs, emails or text messages which demonstrate the alleged antisocial behaviour engaged in by the respondent. No list of names and witnesses was submitted.

## **Hearing**

8. On 20 April 2022 the hearing was convened by telephone at 10:00 in terms of the notification of 11 March 2022. The applicants attended by telephone on their own behalf. There was no appearance by or on behalf of the respondent. The start of the hearing was delayed until 10:10 to provide an opportunity for the respondent to attend. He failed to do so. The tribunal was satisfied that due notification of the date and time of the hearing had been given to the respondent. It considered that the respondent had voluntarily waived his right to attend or be represented at the hearing and it was accordingly content to proceed in the absence of the respondent. The respondent made no effort to join the call throughout its progress.
9. The tribunal acknowledged the chains of emails and other evidence submitted by the applicants and asked for any further information which they wished to place

before it. It was pointed out that the application before the tribunal referred to ground 14 of schedule 3 to the Act and not directly to the issue of arrears of rent. It reminded the applicants that the current legislation surrounding eviction actions requires that the tribunal be satisfied that it is reasonable for an eviction order to be granted. It also pointed out to him that as things stood and unless further evidence of physical incidents which were alleged to have occurred between the parties was to be presented, the tribunal was unable to take these asserted incidents into account. Similarly, the tribunal was not in a position to consider alleged incidents between the respondent and neighbours without supporting evidence being presented.

10. Mr McElhinney referred to the nature and tone of the email correspondence from the respondent and to the Instagram posts, all of which have been lodged with the tribunal. He submitted that they were abusive to himself and his wife and called their status as landlords into question. He said that these emails demonstrated a course of antisocial behaviour which should entitle him to recover possession of the property. He acknowledged that the respondent had asserted that he has mental health issues, but he did not agree that this should prevent the recovery of the property. He explained that the difficulties had arisen as a result of the respondent falling behind with his rent and whenever he had attempted to address this with the respondent a further tirade of abusive emails had followed. Both Mr and Mrs McElhinney explained that they had made efforts to put a payment plan in place to address the arrears, but these efforts had been rejected by the respondent. They also referred to efforts they had made over the past 12 – 18 months to provide assistance and support to the respondent, all of which had been to no avail and the respondent had brought matters to this point in relation to the recovery of possession.

### **Reasons for Decision**

11. The tribunal had due regard to the evidence and representations submitted by both parties.
12. The tribunal was satisfied that the nature and tone of many of the emails from the respondent to the applicants was abusive and inflammatory and it was satisfied that as such it constituted relevant antisocial behaviour by sending abusive emails and posting derogatory social media messages which have caused or are likely to have caused alarm, distress, nuisance or annoyance to the applicants and amounted to a course of conduct to this effect.
13. In his representations of 3 March 2022, the respondent acknowledged that he had sent "...bad text messages with bad language and social media posts showing his incredulity at the situation...". He also stated that "I am not saying my behaviour at times with the complainers was acceptable, however it isn't black and white which they want you to believe". He presented no evidence in support of this assertion. He referred to his vulnerable status and mental health issues.
14. The tribunal was required to be satisfied that the granting of an eviction order is reasonable in all the circumstances and in had particular regard to the respondent's

alleged mental health issues. The tribunal noted that the respondent's course of conduct had taken place over a prolonged period which had caused distress to the applicants.

15. The tribunal was also conscious that this application has been before the tribunal for a number of months and had been scheduled to be dealt with at two previous CMD's, both of which had been postponed at the request of the respondent and the applicants had made no objection or opposition to such postponements. It accepted the applicants' position that they had attempted to come to payment plans in respect of the arrears of rent as evidenced within the email correspondence, but it was clear to the tribunal that the respondent was making no effort to clear the arrears and was depending upon the DWP to pay his rent. However, the tribunal noted that DWP were making payments of £350 per month whereas the agreed rent in terms of the Private Residential Tenancy Agreement between the parties was £420 leaving an ongoing shortfall in rent of £70 per month. Whilst the tribunal did not take account of the arrears in determining the application it did note the position as being connected to the ongoing correspondence between the parties.
16. The tribunal was of the view that the respondent's mental health condition had been taken into account by the applicants in their dealings with him. It considered that mental illness could not amount to a block on the ability of a landlord to recover possession of his property. Based on the evidence presented to it, it was satisfied that the applicants had acted reasonably throughout, notwithstanding the nature and tone adopted by the respondent. They had also progressed the application without attempting to impose undue stress on the respondent by acceding to his requests for postponements, notwithstanding that this significantly delayed the progress of the application.
17. The tribunal determined that the evidence before it as contained within the chains of emails and social media posts satisfied the terms of ground 14 of Schedule 3 of the Act and that in all the circumstances and in the absence of any evidence to support of the respondent's position, it was reasonable that an eviction order be granted to the applicants.

### **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.**

**David Preston**

20 April 2022