

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“The Act”)

Chamber Ref: FTS/HPC/EV/21/2574

Re: Property at 53 Maxwell Avenue, Bearsden, G61 1NZ (“the Property”)

Parties:

Arnloss Management Company (AMC) Limited, 3 Hillcrest Street, Milngavie, Glasgow, G62 8AH (“the Applicant”)

Ms Lynn Craig, 53 Maxwell Avenue, Bearsden, G61 1NZ (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application is granted and made an Eviction Order.

Background

The Applicant seeks an Eviction Order based on Ground 14 of Schedule 3 of the Act in that the Applicant alleges that the Respondent has engaged in relevant anti-social behaviour within the meaning set out in the Act.

The Application is accompanied by a copy of the tenancy, the Notice to Leave relied upon which was served on the Respondent together with accounts from neighbours and details of the alleged anti-social behaviour.

The Respondent has submitted certain short emails indicating an opposition to the substance of the Application.

Statutory Notices

The Applicant had served a Notice to Leave by email and personal delivery on the Respondent on 13 September 2021. The Notice to Leave had specified that the eviction was founded upon Ground 14 and called upon the Respondent to vacate the Property by 13 October 2021. The Applicant had also complied with s 11 of the Homelessness Etc. (Scotland) Act 2003. The Tribunal was satisfied that all necessary statutory notices had been competently served.

The Hearing

The Application called for a Hearing by conference call at 10 am on 29 April 2022. The Applicant was represented by Ms Bruce of Complete Clarity Solicitors. The Respondent was once again neither present nor represented. The details of the Hearing and information about how to join the conference call had been competently intimated to the Respondent. The Respondent also clearly knew about the Hearing as she intermittently emailed the Tribunal with short emails challenging the basis of the case. The Respondent had also failed to comply with the terms of the Directions made obliging her to set out a detailed response to the Application.

Despite the Respondent not being present, the Tribunal wished to hear evidence in order to determine whether the ground was established and also whether it would be reasonable to grant the eviction order. There were no preliminary matters and so the Tribunal began hearing evidence.

Mr Jan Burnett

Mr Burnett is the Respondent's immediate neighbour. Mr Burnett has lived at his address for 18 years and resides with his wife and 15-year-old daughter. Mr Burnett's evidence was that the Respondent was a terrible neighbour who made everyone's life a living hell.

Mr Burnett described countless incidents of the Respondent and her daughter shouting unprovoked and obscene abuse at him and his family over the last few years. He described how his family lived in fear of encountering the Respondent, as she would just shout vile insults at them on every occasion.

He described the Respondent blasting out loud sectarian music and having loud social gatherings which constantly ended up in drunken shouting. He described the police, ambulance and fire services regularly having to attend at the Property to manage

various crises unfolding in the Respondent's life. Mr Burnett described constant screaming matches between the Respondent and her daughter at all hours of day and night. Mr Burnett and his family could not use their garden because of the Respondent's aggressive and unpleasant behaviour. Mr Burnett even struggled to work from home as a result of the constant noise from next door. There was also constant, out of control, barking from two large dogs. Mr Burnett also described how his wife and daughter had been badly affected by their neighbour's behaviour.

The Tribunal considered Mr Burnett to be an entirely credible and reliable witness. Mr Burnett appeared genuinely affected by the Respondent's behaviour and clearly showed some courage in speaking out despite the clear risk of reprisals.

Mr Alastair Ewan

Mr Ewan is the chairman of the *Westerton Garden Suburb Association*. This is a local group that appears to act as akin to a residents association. Mr Ewan described how many neighbours had approached him to voice concerns about the Respondent's behaviour. Many wanted to remain anonymous out of fear of reprisal. Mr Ewan had himself heard the Respondent and her daughter screaming at each other on one occasion when he was walking past the Property. Mr Ewan's evidence was credible and reliable. The Tribunal had no reason not to believe his account that many residents were living in fear of the Respondent and were deeply affected by the impact of her behaviour.

Ms Rhona Walker

Ms Walker is a Director of the Applicant and spoke to her reasons for bringing the Application. Ms Walker also described occasions when she had met the Respondent and the Respondent had apologised and promised to change her ways. Ms Walker spoke to a document signed by the Respondent in which she appeared to acknowledge she had been given her "*final warning*" regarding her anti-social behaviour. Ms Walker also described a serious fire at the Property which the Respondent had caused. A report from the fire service confirmed that this fire was caused by the Respondent being unconscious whilst using matches or candles. Ms Walker also explained how the Property was still significantly fire damaged and did not have gas or electricity. Despite this the Respondent continued to live there and refused to let Ms Walker or anyone else in to carry out repairs or assess the Property. Ms Walker also spoke to a chronology lodged with the Tribunal that detailed the incidents of alleged anti-social behaviour. Ms Walker also confirmed having engaged with the Local Authority's Anti-Social Behaviour team throughout. Ms Walker's evidence was credible and reliable and was consistent with the other evidence heard.

Having heard evidence from witnesses and having considered the documentary evidence, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The Applicant and the Respondent entered into a Private Residential Tenancy agreement in respect of the Property which commenced on 22 October 2018;*
- II. *The Applicant was the landlord and the Respondent was the tenant;*
- III. *Since moving into the Property in 2018, the Respondent has continuously harassed and intimidated her immediate neighbours;*
- IV. *The Respondent verbally abuses neighbours without justification and uses foul language with an intent to insult both adults and children alike;*
- V. *The Adult and a daughter who appears to reside with the Respondent from time to time, frequently scream at each other in a manner that disturbs the neighbours;*
- VI. *The Respondent frequently has loud parties which involve drunken screaming and loud music. The Respondent also frequently plays sectarian music including "The Sash" loudly in her back garden which upsets her neighbours;*
- VII. *The Respondent shows no sign of moderating her behaviour which is becoming ever more disruptive;*
- VIII. *The Respondent signed a document acknowledging that her behaviour was inappropriate and that she was on her "last chance";*
- IX. *Despite this, the Respondent continues to subject all around her to abuse, excessive noise and extreme disruption.*
- X. *The Police, Fire Brigade and Ambulances frequently attend at the Property to assist the Respondent with various crises which appear to be occasioned by the Respondent's excessive drinking of alcohol. These incidents are hugely disruptive to all those who live in the vicinity of the Property.*
- XI. *The Respondent has two large dogs who bark at all hours of day and night and which appear to be poorly treated. These dogs cause significant disruption to those who live around the Property.*

Decision

Having made the above findings in fact, the Tribunal considered the test set down in Ground 14 of the Act and also assessed the reasonableness or otherwise of granting the Application. Ground 14 is in the following terms.

Anti-social behaviour

14(1) *It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.*

(2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

(a) *the tenant has behaved in an anti-social manner in relation to another person,*

(b) *the anti-social behaviour is relevant anti-social behaviour, and*

(c) *either—*

(i) *the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or*

(ii) *the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

(3) *For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—*

(a) *doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,*

(b) *pursuing in relation to the other person a course of conduct which—*

(i) *causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or*

(ii) *amounts to harassment of the other person.*

(4) *In sub-paragraph (3)—*

- *“conduct” includes speech,*
- *“course of conduct” means conduct on two or more occasions,*
- *“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*

(5) *Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—*

(a) *who it was in relation to, or*

(b)where it occurred.

(6)In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

Having done so, the Tribunal considered that there was an overwhelming body of evidence in support of the Application and that the tests set out in Ground 14 were met.

The Tribunal determined that the Ground was established and that it was reasonable to grant the Eviction 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.

A McLaughlin

29th April 2022

Legal Member/Chair

Date