



**Statement of Decision under Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (contained in Schedule Part 1 of the Chamber Procedure Regulations 2017 (SSI No 328), as amended) (“the Procedure Rules”) in relation to an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/0461**

**Re: Property at 208 Braehead, Alexandria, West Dunbartonshire, G83 9ND (“the Property”)**

**Parties:**

**Mrs Tracey McKernan, 127 Strathleven Drive, Alexandria, West Dunbartonshire, G83 9PG (“the Applicant”)**

**Ms Joanne Rundell, 208 Braehead, Alexandria, West Dunbartonshire, G83 9ND (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Linda Reid (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application in terms of Rule 29 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

### **Background**

1. The Applicant submitted an application under Rule 109 for an eviction order against the Respondent.
2. A case management discussion (CMD) took place on 23 June 2022 and reference is made to the Note and Notice of Direction issued following that CMD.

3. The Tribunal assigned a Hearing to take place in person at the Glasgow Tribunals Centre on 17 October 2022. Intimation of that Hearing was given to both parties' representatives by email on 2 September 2022.
4. On 14 October 2022, the Tribunal received an email from the Respondent's representative advising amongst other things that the Respondent was unable to participate in a Hearing in person. The Tribunal converted the Hearing to take place by conference call and intimated the joining details to the parties' representatives by email on 14 October 2022.
5. On 17 October 2022 at 10:05, the Hearing was convened by conference call. The Respondent participated and was represented by Ms Sharp. Neither the Applicant nor her representative joined the conference call. The Respondent's representative moved to adjourn the Hearing on the basis that criminal proceedings are outstanding, and it was advanced that the Respondent would be prejudiced if the Hearing proceeded. The Respondent confirmed that she did not have a date on which she is required to attend Court in connection with criminal proceedings.
6. The Hearing adjourned briefly to enable the Tribunal members to consider matters. The Tribunal was not persuaded that the proceedings should be delayed because of pending criminal proceedings. However, the Tribunal was mindful that there are fundamental issues which the Applicant has not yet addressed. In the absence of the Applicant, or a response to the Notice of Direction, those matters remain unresolved. On the basis of the information currently available, the Tribunal members were of the view that the application cannot succeed. On that basis, the application was dismissed. The conference call remained open until 10:25. Neither the Applicant nor her representative joined the Hearing and neither of them attended at the Glasgow Tribunal Centre.

### **Reasons for Decision**

7. Rule 29 of the Rules provides:-

*If a party or party's representative does not appear at a hearing, the First-tier Tribunal, on being satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been duly complied with, may proceed with the application upon the representations of any party present and all the material before it.*

8. The Tribunal was satisfied that the requirements of rule 24(1) had been fulfilled in respect that the Tribunal notified the Applicant's representative of the Hearing date by email on 2 September 2022. Further, the change to the mode of the Hearing was intimated to the Applicant's representative by email on 14 October 2022.

9. The first issue identified at the CMD related to service of the Notice to Leave. It was for the Applicant to establish when and by what means the Notice to Leave was served on the Respondent. In circumstances where there was no acceptance by the Respondent that the Notice to Leave was sent by email on 21 August 2021, the Tribunal expected to hear evidence from the Applicant on that matter.

10. The next two issues identified at the CMD related to whether the Respondent behaved in an antisocial manner or associated with a person who had a relevant conviction or engaged in antisocial behaviour, as defined by the 2016 Act.

11. Ground 14 of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”) provides:-

*(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.

12. The Applicant has not provided any information about the Respondent behaving in an antisocial manner ***in relation to another person***. The Applicant has not identified another person who has been affected by antisocial behaviour at the hands of the Respondent.

13. Ground 15 of the 2016 Act provides:-

(1) It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or 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) a person who falls within sub-paragraph (4)—

(i) has received a relevant conviction as defined by paragraph 13(3), or

(ii) has engaged in relevant anti-social behaviour,

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and

(c) either—

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the conviction or (as the case may be) the occurrence of the anti-social behaviour, or

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

*(3) In sub-paragraph (2)(a)(ii), “relevant anti-social behaviour” means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.*

*(4) A person falls within this sub-paragraph if the person—*

*(a) resides or lodges in the let property,*

*(b) has sub-let the let property (or part of it) from the tenant, or*

*(c) has been admitted to the let property by the tenant on more than one occasion.*

*(5) In a case where two or more persons jointly are the tenant under a tenancy, the references in sub-paragraphs (3) and (4) to the tenant are to any one of those persons.*

14. The Applicant has not provided any information about the Respondent associating with a person who has a relevant conviction or has engaged in relevant antisocial behaviour. This ground relates to the Respondent’s association with a person. There is no information before the Tribunal about any person that the Respondent associates with.

15. The Tribunal was mindful that, in order for the Applicant to be in a position to succeed with her application, she required to persuade the Tribunal that the grounds were established at the time the Notice to Leave was served (*Majid v Gaffney* [2019] UT 59 and *Rafique v Morgan* [2002] UT07). There was no material before the Tribunal demonstrating that the grounds were established when the Notice to Leave is said to have been served.

16. In the absence of information or evidence from the Applicant, the Tribunal members were of the view that the application is unlikely to succeed.

## **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.**

Nicola Irvine

Legal Member/Chair

Date: 17<sup>th</sup> October 2022

