



**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/22/3761**

**Re: Property at 21/8 Park Gardens, Musselburgh, EH21 7JY (“the Property”)**

**Parties:**

**Finniston Properties Ltd, 21 Victoria Road, Helensburgh, Dunbartonshire, G84 7RT (“the Applicant”)**

**Mr Paul Carnegie, 21/8 Park Gardens, Musselburgh, EH21 7JY (“the Respondent”)**

**Tribunal Members:**

**Karen Kirk (Legal Member) and Elaine Munroe (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Eviction Order against the Respondent.**

## **1. Introduction.**

This Case Management Discussion (CMD) concerned an Application for an Eviction Order in respect of a Private Residential Tenancy under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The CMD took place by teleconference. Those present were advised on the procedure of a CMD and the rules regarding them.

## **2. Attendance and Representation.**

The Applicants were represented by Mr Raphael Bar, DJ Alexander John Cotton Centre, 10 Sunnyside, Edinburgh, EH7 5RA.

The Respondent was not present and unrepresented. No written representations had been received. The Respondent was served by Sheriff Officer in regards the first CMD where the Respondent was not in attendance on 24<sup>th</sup> January 2023. He was then served by recorded delivery for this CMD and this was noted by the Tribunal Administration to be signed for by the Respondent personally. The Tribunal did not commence until 10.08am to allow any late attendance of the Respondent which did not occur by then or during the hearing.

### **3. Background.**

This case previously called and there was no attendance by either party. In the interests of justice and the overriding objective of the Tribunal the application was continued to this Case Management Discussion.

### **4. Preliminary Matters.**

On the matter of the non-attendance of the Respondent the Tribunal enquired with the Applicant's representative about any recent contact with the Respondent. He said that there was contact between parties with a Local Authority case worker relating to a leak in the property and seeking access for repair around 1 month to 6 weeks ago. He understood that the Local Authority may also be providing help to secure alternative accommodation for the Respondent.

There were no other preliminary matters discussed or raised by either party.

### **5. Case Management Discussion.**

#### *The Applicant*

The Applicant's representative set out that the Applicant's sought an Eviction Order against the Respondent on the ground 11 and there being a Breach by the Respondent of the terms of his tenancy mainly clause 23. He explained that the Applicants specifically sought an eviction order on the basis of the nature of the Respondent's activities, drug dealing, anti-social behaviour and criminal activity.

The Applicant's representative raised that the Applicants were relying on the emails from various neighbours and the corroborating newspaper article. He said that the neighbour's concerns about the property first came through the landlords and then to his company. There was a note of noise and disturbance in May 2022.

The Applicant's representative said that the newspaper article lodged corroborated direct neighbour statements and information from them as they witnessed the police raid happening and they knew of the behaviours concerned. He said further the newspaper report links the property address and the ages of the men they see involved including the Respondent's age and sex.

The Tribunal were told that the Respondent resides there with no other tenants and occupiers. The Applicants believe that there are individuals seen coming or going and at times the Respondent does not reside there full time. He has no known disabilities or vulnerabilities, no employment and is known to be involved in alleged drug dealing or criminal activities.

The Applicant's representative submitted that there is a significant impact on people around the property of the concerns and drug activity. The Applicants are responsible landlords and concerned about the police raid and ongoing complaints. It was submitted that this behaviour was detrimental to reputation and stressful due to direct complaints to them.

## **6. Findings in Fact**

- 1. The Tribunal was satisfied that a decision could be made at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The evidence was not in dispute and the Respondent had not engaged with the application against him. The Respondent has been served and intimated on appropriately.**
- 2. The Applicant sought an Order for Eviction on Ground 11, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 that the Respondent has failed to comply with an obligation of a term of the tenancy and that the tribunal considers it to be reasonable to issue an eviction order.**
- 3. The Tribunal was satisfied that the Applicant's were the heritable proprietors of the Property as a copy title was lodged with the Application.**
- 4. There was a PRT in place between parties dated 16<sup>th</sup> December 2020.**
- 5. A Notice to Leave was sent to the Respondent on 21<sup>st</sup> June 2022.**
- 6. In terms of the PRT clause 23 states that the Respondent must respect others in his behaviours and further that:**

***In addition, the Tenant, those living with him/her, and his/her visitors must not engage in the following unlawful activities:***

- 8. (h) use or carry offensive weapons;***
- 9. (i) use, sell, cultivate or supply unlawful drugs or sell alcohol;***
- 10. (j) store or bring onto the premises any type of unlicensed firearm or firearm ammunition including any replica or decommissioned firearms.***

- 11. (k) use the Let Property or allow it to be used, for illegal or immoral purposes;**
- 12. (l) threaten or assault any other Tenant, member of his/her household, visitors, neighbours, family**

***members of the Landlord or employees of the Landlord or Agent, or any other person or persons in the house, or neighbourhood, for whatever reason.***

- 7. A witness statement dated 23<sup>rd</sup> November 2022 from the Respondent's neighbour stated that the Respondent's property was raided in June 2022 where the police found £10,000 worth of drugs. The neighbour stated the drugs were Heroin, cocaine and diazepam tablets.**
- 8. An article was published in the East Lothian Courier stating that at a property at Park Gardens the police in execution of a warrant recovered quantities of heroin, cocaine, cannabis and diazepam thought to be worth £10,000. The article stated that 3 men were arrested in connection with drug offences.**
- 9. A witness statement dated on 15 May 2022 which had been sent to the police from another neighbour listed a number of events this neighbour saw at the property involving the Respondent. The events relate to numerous visitors to the property prior to the police raid in the month of May 2022.**
- 10. The Tribunal was satisfied on a balance of probabilities the Respondent was in breach of Clause 23 of the PRT he entered into as he on balance and/or his visitors were engaged in the use, selling, cultivating or the supply of unlawful drugs and that further the let property in balance was used or allowed to be used for illegal and immoral purposes.**
- 11. The Tribunal was also satisfied that in terms of Section 52 of the 2016 Act a valid Notice to Leave had been given to the Respondent by valid means and the Application had been raised after the correct notice period.**
- 12. The Tribunal noted the Local Authority under the 2016 had been notified.**
- 13. The Tribunal looked at reasonableness. The Respondent had no known dependents or vulnerabilities. The Applicants have encountered stress and reputational damage. There has been negative impact on the lives of others in the location of the property. The Tribunal found an Order in its discretion was reasonable. Accordingly, in terms of Section 51 of the 2016 Act the Tribunal granted an Eviction order against the Respondents.**

## **7. Reason for the Decision.**

The Tribunal considered on balance that a number of pieces of evidence linked the Respondent's tenancy and behaviour to on a balance of probabilities, drug activities and using the property for an immoral purpose. This on balance was a breach of the clause of the tenancy at clause 23. The Tribunal considered reasonableness looking at the Respondent's circumstances although he had not engaged in the process and the reputation of the Applicant's and the impact on those residing alongside the Respondent as neighbours. The Tribunal

considered Ground 11 to be satisfied in full and accordingly granted an Order for Eviction.

### **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.**

**Karen Kirk**

**Karen Kirk**

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**Legal Member/Chair**

**24<sup>th</sup> May 2023.**

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**Date**