



**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 2016**

**Chamber Ref: FTS/HPC/EV/23/2091**

**Re: Property at 7 Bridgend Cottages, Inverkip, PA16 0AN (“the Property”)**

**Parties:**

**Trustees of Sir Houston Mark Shaw Stewart Testamentary Trust, Ardgowan Estate, Ardgowan House, Inverkip, PA16 0DW (“the Applicant”)**

**Mr Mark McPherson, 7 Bridgend Cottages, Inverkip, PA16 0AN (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted.**

**Background**

1. This was a hearing set down to hear evidence in the application made by the Applicant dated 26<sup>th</sup> June 2023 for an order for possession of the Property in terms of Rule 109 of the Tribunal Rules. A case management discussion took place previously by teleconference on 9<sup>th</sup> October 2023 and the notes of that CMD are referred to for its terms.
2. The Applicant is the owner of the Property and Landlord in a Tenancy with the Respondent who is the tenant, which commenced on 14<sup>th</sup> February 2020.
3. The Applicant originally lodged and the Tribunal had sight of and considered the following documents:-
  - a. Application for eviction dated 26<sup>th</sup> June 2023
  - b. Copy Tenancy Agreement between the Applicant and the Respondent in respect of the Property dated 5<sup>th</sup> February 2020
  - c. Copy Notice to leave dated 26<sup>th</sup> May 2023

- d. Copy certificate of posting dated 26<sup>th</sup> May 2023 and track and trace receipt.
  - e. Copy section 11 notice to Inverclyde Council and evidence of posting
- 4. The Applicant was originally represented by Stanley Wright Limited but since 21<sup>st</sup> September instructed legal representation and are now represented by Ms Kirsty Adams of Kennedy's Law.
- 5. The Respondent is also legally represented by LSA Ltd.
- 6. The Applicant is seeking an order of eviction based on ground 14 Anti-social behaviour and lodged written representations and submissions on 20<sup>th</sup> September 2023, including a behaviour log, minutes of meetings, copy emails, photographs and a rent log. The Applicant also requested and was granted permission to lodge video evidence relating to the incident in May 2023 involving the Respondent and a neighbour which involved the Respondent holding and brandishing a knife in front of a neighbour.
- 7. The Respondent's representative Ms Anderson from LSA lodged written representations on 19<sup>th</sup> September 2023 giving details of the Respondent's medical history and confirmed he suffers from PTSD, has previously taken drugs and is engaged with the Inverclyde Drug and Alcohol Service and reported a deterioration in his mental health as a result of these proceedings. The representations note that the Respondent admits he was involved in "various incidents which may have caused nuisance and annoyance to neighbours" and that police have been called but alleges he was provoked and another neighbour has also been charged with assault. The Applicant lodged further submissions on 4<sup>th</sup> October reiterating the Applicants concern about safety of other tenants, and requesting that the Tribunal consider making a decision without a full hearing. In addition a further written representation was lodged later by the Respondent namely a copy of a letter from Inverclyde Drug and Alcohol Recovery Service.
- 8. At the CMD the Tribunal noted the question of whether or not it would be reasonable to grant an order of eviction was in dispute, the Respondent wished to lodge medical evidence supporting his position it would not be reasonable to grant an order for eviction although he admitted that incidents had occurred which were of an anti-social nature his position was he had been provoked. The Tribunal agreed it would be appropriate to hold a hearing where evidence would be led and the hearing was set down to be held at Glasgow Tribunal Centre at 10 am on 16<sup>th</sup> January 2024.
- 9. On 8<sup>th</sup> January 2024 the Applicant's representative lodged a further and final set of productions in advance of the hearing including video evidence, diary entries from a neighbour noting incidents of shouting, threats and anti-social behaviour from the Respondent; 4 written statements, (2 signed 2 unsigned) confirming the Respondent had acted in an anti-social manner by carrying a knife, shouting and intimidating other tenants; threatening to harm neighbours and causing fear and alarm to them. In addition there were logs of complaints made by neighbours of the Respondent to the landlord's agents and details of emails from the agents to the Respondent which supported the fact allegations of anti-social behaviour had occurred caused by the Respondent.
- 10. On 11<sup>th</sup> January 2024 the Respondent's solicitor wrote to the Tribunal advising that the Respondent would not be attending the hearing set down as he required to accompany his father to hospital but that he was consenting to

an order of eviction being granted as he had received an offer of alternative accommodation although it was awaiting repairs being completed.

11. On the morning of the hearing the Tribunal received an email from the Applicant's solicitor dated 15<sup>th</sup> January 2024 advising that the parties had reached an agreement and confirming that "*parties have now agreed a joint position whereby parties agree to the eviction order being granted with a two-week delay in enforcement. For the avoidance of doubt, parties have agreed to the below timescales in the enforcement of the eviction order following tomorrow's Hearing: 15 February – expiry of 30-day appeal period, 29 February – expiry of 2-week delayed enforcement period/earliest date on which the Applicant can serve a Charge for Removal if the respondent has not yet vacated the property, 14 March – expiry of Charge for Removal/Sheriff Officers entitled to use reasonable force to remove Mr McPherson from property if he has not vacated the property by this date.*"

## **The Hearing**

12. The hearing commenced at 10am in person at the Glasgow Tribunal Centre and Ms Kirsty Adams solicitor for the Applicant was in attendance along with Ms Luisa Fidelo solicitor for the Respondent. Ms Adams confirmed that given the parties have reached agreement then none of her witnesses were now going to attend. Ms Fidelo also noted that she did not have any witnesses to bring as her client the Respondent was agreeable to the eviction order being granted provided there was a delay in execution of the order.
13. The Tribunal noted it had the recent lengthy submissions and productions lodged by the Applicant and noted that this included details of anti-social behaviour as described by 4 other tenants. Ms Adams confirmed that further incidents had been reported but she was not lodging any further details of these in light of the recent agreement between the parties. Ms Fidelo confirmed that the Respondent was agreeing that he had conducted himself in a manner that involved anti-social behaviour and was agreeable to an order of eviction based on Ground 14.
14. Ms Fidelo confirmed he has received an offer of accommodation from a housing association following on from interaction from the homeless team at the Council, he has a formal offer although the Property still requires some repairs and this is why he wished for a delay to the eviction order and it has been agreed 2 weeks would be sufficient.
15. The Tribunal notes that the written evidence and video evidence lodged by the applicant shows the Respondent engaging in shouting, carrying a knife and threatening other tenants in the area of the Property. It is noted several reports have been made to the police and the Respondent was charged over the incident with the knife. The evidence is referred to for its terms.

## **Findings in Fact**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 14<sup>th</sup> February 2020.
2. The Applicant is the owner of the Property and has title and interest to bring this action.
3. The Respondent is still occupying and in control of the Property.

4. A notice to leave dated 26<sup>th</sup> May 2023 confirming that no proceedings would be raised before 26<sup>th</sup> June 2023 was served on the Respondent by recorded delivery.
5. These proceedings were raised on 26<sup>th</sup> June 2023 and the application included a copy of the Notice to Leave.
6. A Section 11 notice has been served on Inverclyde Council
7. The Respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months, namely he has shouted at other neighbours, threatened them and been arrested for carrying a knife during an argument with a neighbour.
8. The behaviour has caused significant fear, alarm, distress, nuisance or annoyance to another person.
9. The Respondent has arrears of rent, the current arrears are £1188.
10. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

1. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 14 of Schedule 3 of the Act as the relevant ground of eviction.
2. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Respondent has engaged in anti-social behaviour at the Property, by threatening another person or persons in the vicinity of the Property and carrying a knife.
3. Ground 14 requires 28 days' notice under the rules. The Notice to Leave was served by recorded delivery on 26<sup>th</sup> May 2023. The Notice sets out the notice period as expiring on 26<sup>th</sup> June 2023.
4. The Application being lodged on 26<sup>th</sup> June 2023 is timeous .
5. Ground 14 of Schedule 3 of the Act states:-
  - i. It is an eviction ground that the tenant has engaged in relevant anti-social behaviour
  - ii. The First Tier Tribunal may find that the ground named by subparagraph (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 the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring or the tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period
  - iii. 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 or amounts to harassment of the other person

iv. In Sub paragraph (iii) 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

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

in a case where two or more persons are the tenant under a tenancy the reference in sub- paragraph 2 to the tenant is to any of those persons.

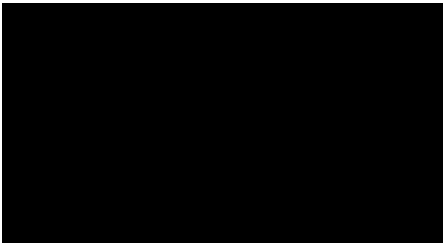
6. The Tribunal accepted the written statements of 4 other tenants living in adjacent properties to the Respondent, diary entries and the log submitted by the Applicant. The statements are consistent in their evidence that the Respondent has acted within the last 12 months in a manner which has intimidated and frightened other neighbours. Particularly that the tenant has shouted at various neighbours, threatened to do harm to them, called one a paedophile and there was an incident with one neighbour where the Respondent went to his Property and collected a knife and was then holding it while engaged in a shouting match with another tenant. The Respondent was arrested by the police as was the other neighbour.
7. The Respondent is consenting to an order of eviction under Ground 14. The Tribunal finds in light of the significant amount of written evidence and from the Respondent's own acceptance that an order should be granted that he has acted in a way that caused others distress and alarm. This anti-social behaviour is relevant behaviour as it has caused annoyance, alarm and distress to at least 4 neighbours and caused them to make a complaint to the police. The events have occurred within 12 months and as the Respondent now has an offer of another tenancy and is consenting to this order it is reasonable that an order of eviction is granted.
8. So the Tribunal is satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application, namely Ground 14 is met, and that it is reasonable for the Tribunal to grant the application. The Respondent has been represented by his solicitor and it has been agreed between the parties that the order of eviction should be delayed by 2 weeks to allow the Respondent time to move into his new tenancy which requires some repairs to be carried out.

## **Decision**

The Tribunal determined that the order for eviction sought by the Applicant should be granted with a delay of two weeks to 29 February 2024 for enforcement of the 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.**



**Legal Member/Chair**

**16<sup>th</sup> January 2024**  
**Date**