



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/23/1717

Re: Property at 34 Suilven Way, Inverness, IV3 8PD (“the Property”)

Parties:

Mr Raymond Walder, 34 Balnafettack Crescent, Inverness, IV3 8TG (“the Applicant”)

Mr Bartosz Zawitaj, 34 Suilven Way, Inverness, IV3 8PD, Mrs Patrycja Zawitaj C/O 34 Balnafettack Crescent, Inverness, IV3 8TG; (“the Respondents”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

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

Background

1. The Applicant seeks an eviction order in terms of Sections 51 and grounds 11, 12 and 14 of the 2016 Act. The Applicant lodged a tenancy agreement, Notice to leave with post office certificates of posting, track and trace reports, a Section 11 notice with an email to the Local Authority, Text/WhatsApp messages, a rent statement and a letter from the Procurator Fiscal’s office in support of the application.
2. The application was served on the Respondents by Sheriff Officer. Both parties were advised that a CMD would take place by telephone conference call on 14 November 2023 at 10am. Prior to the CMD the Second Respondent requested a postponement to obtain legal advice. He also submitted detailed submissions

and documents. The Tribunal refused the request on the grounds that the case was likely to proceed to a hearing and that the Respondent would have time to seek legal advice before the hearing took place.

3. The CMD took place on 14 November 2023. The Applicant was represented by Mr Smith, solicitor. The Respondents both participated.
4. Mr Smith advised the Tribunal that an eviction order is sought on grounds 11, 12 and 14. The breach of tenancy (ground 11) is that Mr Zawitaj has changed the locks at the property. In relation to ground 12, no rent has been paid since 31 Oct 2022. Ground 14 is based on abusive telephone calls from Mr Zawitaj to the Applicant, text and WhatsApp messages and an incident which took place in November 2022 when Mr Zawitaj forced entry to the Applicant's home and assaulted him and Mrs Zawitaj. He pled guilty to the offence, but the Applicant has been unable to obtain an extract conviction from the court. A non-harassment order was granted against Mrs Zawitaj but not the Applicant.
5. In response to questions from the Tribunal, Mr Smith said that the Notice to leave was served by recorded delivery post at the property, in relation to both Respondents. It was also sent to the Applicant's home address in relation to Mrs Zawitaj, as she was living there at the time. The Section 11 notice lodged with the application was sent by email from his office, by his secretary. In response to questions about the Applicant's landlord registration status, Mr Smith said that he had failed to register, through error. He attempted to rectify the position and has paid the registration fee. However, he has been unable to provide a current gas safety certificate for the property because Mr Zawitaj has refused access. As a result, his registration has not been granted.
6. Mrs Zawitaj told the Tribunal that she moved out of the property on 22 July 2022. She had lived at the Applicant's property since then. She has no objection to the eviction order being granted as she no longer lives there. She confirmed that she has not paid rent for the property since she moved out.
7. The Tribunal noted that Mr Zawitaj has raised several issues in his submissions.
 - (a) **Mr Zawitaj denies that the Notice to leave was served on him.** The Tribunal noted that the post office certificates of posting and track and trace reports which were lodged with the application appeared to establish that two Notices were sent to the property on 6 April 2023 and were delivered on 8 April 2023. The track and trace reports indicate that the notices were delivered at 12.25pm. There is a separate post office certificate and track and trace report for the Applicant's address, indicating that it was delivered on the same date at 8.08am. Mr Zawitaj told the Tribunal that the signature on the track and trace report for the property is not his and that he was not at home at the relevant time. He did not sign for them.
 - (b) **Signature of the lease.** Although the submissions appeared to indicate that Mr Zawitaj denied that he had signed the tenancy agreement lodged by the Applicant, he told the Tribunal that he had signed it. However, after he had been paying the rent for a period of time, he discovered that the lease is fake as the

landlord is not registered. He told the Tribunal that he is not obliged to pay rent to a fake landlord and that the Applicant is not entitled to let out the property without being registered. Mr Zawitaj told the Tribunal that the second Respondent has stolen documents from the house and taken money from him, which he believes she then used to purchase the property from the Applicant. The Tribunal noted that the title deeds for the property obtained by the administration when the application was first lodged, appear to confirm that the property is owned by the Applicant. Mr Zawitaj was advised that he could contact Registers of Scotland to establish if the property has changed hands.

- (c) **Letter from Highland Council.** In the submission, Mr Zawitaj said that he received a letter which appears to be from the Council, which is fake. He said that he called them, and they were unable to pass him to the relevant person or department because they did not recognise the name on the letter and had no record of his case. The Tribunal noted that the letter appears to have been issued to the Respondents following receipt of the section 11 notice. The person named in the letter is David Goldie, the Head of Service for Housing. However, the letter indicates that if the recipient of the letter is calling, they should ask to speak to a housing options officer. Mr Zawitaj had made a written request to lodge an audio recording of a phone call to the Council and submitted a transcript of the call. The Tribunal advised him that the audio recording could only be lodged if he could provide evidence that he had obtained permission to record the conversation. In any event, the transcript was very difficult to follow and only appears to establish that the staff member had difficulty understanding Mr Zawitaj and that David Goldie was not on the list of people to whom his call could be transferred. The Legal Member suggested that Mr Zawitaj should contact the Council, perhaps by email, to seek confirmation that they had been notified of the application by the Applicant and that the Applicant might also want to obtain and lodge evidence that the section 11 notice had been received by the relevant department.
- (d) **Rent Arrears.** Mr Zawitaj told the Tribunal that he stopped paying rent in November 2022 when he discovered that his landlord is fake. He said that he does not require to pay because the landlord is not registered. Furthermore, the Applicant owes him for things he has installed at the property which belong to him. He referred to a built-in dishwasher and gas hob. These belong to him, and he is owed money for them. In response to questions from the Tribunal, Mr Zawitaj was unable to say whether he got permission in advance from the Applicant to carry out any refurbishment at the property or whether there was an agreement that he would do work instead of paying rent. However, he maintained that he is owed money by the Applicant. Mr Smith told the Tribunal that the Applicant did allow the Respondents to do work at the property but that he never agreed to waive the rent or re-imburse them for any money spent on the property. Mr Zatiwaj told the Tribunal that the Applicant told him that if he finished the refurbishment work which had been started, he would be given a tenancy in his sole name. He did not do so although the work was finished.
- (e) **Ground 11 and 14.** Mr Zawitaj advised the Tribunal that he had changed the locks. This was because both the Applicant and Mrs Zawitaj were going into the property when he was not there, and money and documents went missing. In

relation to the complaints of antisocial behaviour, Mr Zawitaj said that his telephone calls all related to valid enquiries and were not abusive. When asked about the copy text and WhatsApp messages lodged by the Applicant, he did not think all were from him although he would need to look through them. In response to questions about the incident in November 2022, Mr Zawitaj said that he told his ex-wife that he was going to the Applicant's home, and she should not be there. When he went, she wasn't there. There was a heated discussion with the Applicant. He was convicted of an assault on his ex-wife but not the Applicant, even though she wasn't there. He denies antisocial behaviour toward the Applicant. Any behaviour is due to the mental cruelty by the Applicant towards him. The Tribunal noted that they would require to see evidence of the conviction.

8. The Tribunal noted that the application would require to proceed to a hearing which should take place in person in Inverness. The Tribunal noted the following matters require to be determined at the hearing.

- (a) Is the Applicant the current owner and landlord of the property?
- (b) Is the Applicant entitled to seek an eviction order against the Respondents, although he is not registered?
- (c) Was the Notice to leave validly served on Mr Zawitaj?
- (d) Did the Applicant notify the Local Authority of the intention to seek an eviction order in terms of Section 56 of the 2016 Act?
- (e) What is the current level of rent arrears?
- (f) Are the arrears of rent lawfully due to the Applicant?
- (g) Does the Applicant owe the Respondents money in connection with the refurbishment of the property and purchase of items for use in the property?
- (h) Are the Respondents entitled to offset the refurbishment costs against all or part of the arrears of rent?
- (i) Has Mr Zawitaj failed to comply with the tenancy agreement by changing the locks?
- (j) Has Mr Zawitaj engaged in relevant antisocial behaviour?
- (k) If any of the grounds are established, would it be reasonable to grant an order for eviction?

9. The parties were notified that a hearing would take place at Inverness Justice Centre on 9 February 2024 at 10am. Prior to the hearing, the parties lodged further documents.

10. The hearing took place on 9 February 2024. The Applicant attended and was represented by Mr Smith solicitor, who also gave evidence in relation to the service of the Notice to leave and sending a section 11 notice to the Local Authority. Both respondents attended and gave evidence.

The Hearing

11. At the start of the hearing, the Tribunal noted that the Applicant had not lodged an extract conviction as this had not been provided by the Sheriff Court for GDPR reasons. The Tribunal advised the parties that they had made enquiries with the relevant department of SCTS who has confirmed that the document

could be released if it was requested under the correct provisions of the legislation. The Tribunal noted that the Applicant may make a further attempt to secure a copy of the document and submit it after the hearing. The Tribunal also advised the parties that they had considered the correspondence which both had lodged from Royal Mail. Given the contradictory nature of both letters, the Tribunal indicated that they might seek further information from Royal Mail in terms of Rule 21 of the Procedure Rules. If so, this information would be circulated to the parties for comment before a decision is made on the application.

Summary of Mr Smith's evidence

- 12.** Mr Smith told the Tribunal that he is 53 years of age and a partner with Smith Forrest. He deals with civil court matters. He referred to the Notice to leave lodged with the application and said that this was prepared and issued by his firm. The signature on the notice is the firm's name, signed by him. Three copies were sent. Two to the property – one for each of the Respondents – and one to the Applicant's address for Mrs Zawitaj, as that is where she was living. All three were sent by recorded delivery post. He checked them and signed them, and a clerk took them to the Post Office. The Post Office provided a printout with the tracking number. A few days after they were sent, the website was checked. It confirmed that the Notices sent to the property had been delivered at 12.25 on 8 April 2023 and were signed for by "Zawitaj". Mr Smith also told the Tribunal that the section 11 notice was also prepared by his office and sent to the Council by Debbie Putman, a secretary. Mr Smith referred to a series of WhatsApp or text messages lodged with the application and confirmed that these were given to him by the Applicant, with a letter from the Procurator Fiscal's office. These were sent with the Notice to Leave to the Respondents. Mr Smith then referred the Tribunal to email correspondence with the Local Authority regarding the section 11 notice. He had contacted them to confirm that they had received the notice after this was challenged by Mr Zawitaj at the CMD.
- 13.** Mr Smith referred the Tribunal to his correspondence with Royal Mail. He also spoke to them on the phone on 26 January 2024. They said that they could not provide the GPS for the delivery location, due to GDPR, but stated that it was "adjacent" and then "at" the property address. They told him there is sometimes a time lag between the delivery and the signature registering and sometimes the postman might be back at his van before it registers. However, in their email the Royal Mail said that the proximity to the property meant that they consider the item to have been delivered.
- 14.** Ms Smith referred to the rent statement which he had prepared and lodged. He said that he understands that it is accurate to November 2023 – a balance of £5200. In response to questions from the Tribunal, Mr Smith said that he did not sign for the Notices to leave at the property and disputes that the signature on the track and trace resembles his signature. He stated that he and the Applicant are only solicitor and client, and not connected in any other way. He said that his firm has acted for the Applicant in relation to other legal matters. He also said that Mr Zawitaj phoned his firm (possibly after the CMD) and left several messages. He also spoke to him, and he was aggressive, talking about

a fake signature and threatening the Police.

15. In response to questions about previous experience of Royal Mail deliveries, Mr Smith said that sometimes the website doesn't provide delivery information or says it's not delivered. He has never known it to say the item is delivered and for this not to be the case. The Notice was not "returned to sender".
16. In response to questions from Mr Zawitaj, Mr Smith said that he did not know who had signed for the Notice, he assumed it was Mr Zawitaj. He said that any similarity between the signatures was coincidence, although he disputes that they are similar.

Summary of Mr Walder's evidence.

17. Mr Walder told the Tribunal that he is 79 years of age. He identified the tenancy agreement which had been lodged with the application and confirmed it was signed by both Respondents in 2018. When asked about the text messages which had been lodged, he said that he transferred them from his phone to Mrs Zawitaj's phone and she took a screenshot. The messages were sent by Mr Zawitaj, he knows his mobile number. In relation to the letter from the Procurator Fiscal, he said that Mr Zawitaj plead guilty to the charges.
18. Mr Smith asked Mr Walder about the tenancy agreement. He said that the rent is £400 per month, and it has not been paid since 31 October 2022. He said that the rent statement was accurate to November 2023 and that the sum currently owed is £6000. In response to questions about item 8 on the Applicant inventory, he said that it was an email from Mrs Zawitaj when she asked if they could re-decorate and move the TV and put it on another wall to create a feature wall. It was agreed that it was at their own cost, he asked if they could afford it. It was not agreed that they would do the work instead of paying rent.
19. In response to questions about phone calls from Mr Zawitaj, Mr Walder said that he started calling the landline when he blocked calls to the mobile in May 2023. The calls were highly abusive, and the Police told him to keep a record. He referred to item 9, a record of phone calls from 5th August 2023. They continued until yesterday. He was referred to item 11, a schedule of sale particulars in relation to the property before he bought it. He said that the fitted kitchen units – oven, hob, fridge freezer, dishwasher – were already installed at the property when it was purchased. The only item supplied by the Respondents was the washing machine. When asked about the property he said that the gate and back door are on Suilven Way. There is a number 34 on the gate. He said that the shed in the garden of number 36 is a few metres away from the gate to 34.
20. Mr Walder was asked about how he got to know the Respondents. He said that his wife was discharged after a long stay in hospital in 2008. A care package was arranged, and Mrs Zawitaj was a regular carer. They became friendly. His wife had to go into a care home in 2010. He stayed in touch with Mrs Zawitaj

and they went hill walking. In 2011 he met Mr Zawitaj. In March 2018 Mrs Zawitaj told him that they were going to be evicted from their Housing Association tenancy for rent arrears. She asked him if he could help them store furniture. He had some inherited money and suggested that he could buy a house for them to live in at a more affordable rent. In the meantime, he said that they could stay with him, and they did so for three months. When he purchased the property, he charged £400 per month, about 30% less than the market rent. He was trying to help them to get back on their feet. The tenancy began in June 2018.

- 21.** Mr Walder said that he visited the property in June 2022, concerned that the work planned for the living room had not been completed. He was told that it would be finished. He also asked about repayment of a loan of £1500 he had made. In July 2022, Mrs Zawitaj contacted him to say that she had left her husband due to fears of violence and was staying with a friend. She asked if she could stay in a house he had recently purchased, his current home. He had not moved in yet because he had not sold his previous house. She also asked if he would go with her to the property to collect belongings. When they went, Mr Zawitaj was there. He wasn't violent but was upset, shouting and swearing. When asked about his relationship with Mrs Zawitaj, Mr Walder said that they are friends. There has never been an affair. When his previous house was sold, he moved into his current house in October 2022. Mrs Zawitaj had her own room.
- 22.** Mr Walder told the Tribunal that his doorbell went at midday on 16 November 2022. It was Mr Zawitaj. He asked if his wife was there and if there were a couple. Mr Walder said no and that she was there for protection. Mr Zawitaj ran to his car. Mr Walder followed him and stood in the road so that Mr Zawitaj would need to stop. However, Mr Zawitaj drove toward him and accelerated. Mr Walder had to jump out of the way. They had an argument before Mr Zawitaj drove away. He later accused Mr Walder of jumping on his bonnet. Mr Walder said that he started getting a lot of abusive and threatening texts on 20th November 2022, 40 by 9pm. He contacted the Police who went to see Mr Zawitaj but didn't manage to speak to him. On 21 November he received a number of texts which said that he was coming at 12 to sort him out. He arrived at 2pm. Mr Walder said that he naively thought they could discuss the tenancy. However, the bell blasted. The door was on the chain, but Mr Zawitaj smashed into the door and broke the chain. Mrs Zawitaj was there and together they tried to hold the door, but he managed to get in. He demanded to see the bedrooms. Mr Walder showed him. In the meantime, Mrs Zawitaj left the property through another door. Mr Zawitaj then started grappling with Mr Walder and pushed him onto the living room couch. He started making punching gestures at Mr Walder, got up and walked away and then did the same thing again. He then left the house. Mr Walder said that he was very upset and had never experienced such rage before. The Police attended and returned the next day when he reported receiving further texts. A call came through when the Police officer was there, he spoke to Mr Zawitaj and told him to go to the Police station. He did so and later appeared in court and pled guilty to threatening and abusive behaviour toward Mr Walder and Mrs Zawitaj.

- 23.** Mr Walder referred to the text messages lodged with the application which make reference to 12 o'clock. He confirmed that these were sent prior to Mr Zawitaj coming to the house to intimidate him. He said that the text messages filled up his phone and were disgusting.
- 24.** Mr Walder was asked about the lock change. He said that Mrs Zawitaj went to the property and could not get in because the locks had been changed. He thinks it was September 2022. Permission had not been sought. Prior to this he had been at the property with Mrs Zawitaj on a few occasions to get her possessions from the property. Mr Walder said that Mrs Zawitaj no longer lives in his house. She moved out in October 2023. She did not pay rent when she lived there. She was a guest. She had offered to pay but he refused. In response to questions about the inventory of items in the house, Mr Walder said that this had been suggested by the solicitor who represented him in relation to the purchase of the property. The purpose was to allocate maintenance responsibility for some of the items – some he was responsible for and some the Zawitaj's were to deal with. All the furniture in the house belonged to them so was not included. When it was put to him that it would not be usual for tenants to be responsible for fixtures and fittings, he said he was unaware of that, and it was because of the low rent that they agreed.
- 25.** Mr Walder said that there was no contact between November 2022 and February 2023, then the texts and calls started again. In April 2023, PC Ross told Mr Zawitaj to stop, and they stopped for a while. When they started again, he had to change his number. From 23 May 2023, Mr Zawitaj started to call the landline. Sometimes the calls were silent, with a female laughing in the background. There were also abusive calls. When he blocked the calls, Mr Zawitaj was still able to leave messages. He also made demands. He wanted Mr Walder to pay him £6000 for work in Suilven Way and to get out of his life.
- 26.** In relation to the issue about the notice to leave, Mr Walder said that he does not know if number 36 is unoccupied. In relation to landlord registration, he said that he had never been a landlord before and does not own other rental properties. He registered online and thought it had gone through. He later discovered that he was not registered. He has paid the fee, but they have not processed his registration because he hasn't obtained a gas safety certificate. In response to questions from the Tribunal he said that he has not been served with a rent penalty notice by the Council. He said that the tenancy agreement was drawn up by Rhona Simpson at Smith Forrest.
- 27.** In response to questions from Mr Zawitaj, Mr Walder denied that he had waited 2 days to call the Police and said that they attended on both 20 and 21 November. He denied that he had lied to Police and Procurator Fiscal.

Summary of Mrs Zawitaj's evidence

- 28.** Mrs Zawitaj told the Tribunal that she got to know Mr Walder through being a carer for his wife. She was the main carer until Mrs Walder went into a care home. She said that she can't remember when her husband first met Mr Walder. Possibly when Mrs Walder moved to the care home as he worked

there. Mrs Zawitaj told the Tribunal that she and her husband had rented a property from a Housing Association. Rent arrears were incurred because her husband was off work all the time and had tried being self employed. They didn't have enough money. They were served with a notice by the Housing Association. Mr Walder offered to let them stay in his house until they found something to rent. He then suggested that he would buy something to rent out to them. It was impossible to resist the offer. Mrs Zawitaj said that the tenancy agreement lodged with the application is the agreement they signed in June 2018. She told the Tribunal that she left her husband in July 2022 because of his aggressive and abusive behaviour. She stayed with a friend for a few days then asked Mr Walder if she could stay in his new house which was empty at the time. She lived there alone until October 2022, when Mr Walder moved in when he sold his previous house. They have only ever been friends. The accusations made by Mr Zawitaj are false.

- 29.** When asked about the events November 2022, Mrs Zawitaj said that there had been a lot of phone calls and text messages when he threatened to come to the house. He then arrived at 2pm and broke the chain forcing the door. She and Mr Walder tried to hold the door but were not strong enough. When Mr Zawitaj entered, she managed to get out of the kitchen door to a neighbour and phone the Police. She left within 10 minutes of him getting in. She thinks that Mr Zawitaj was in the house after that for about another 20 minutes. She didn't see what happened during that time. She then saw Mr Zawitaj driving away. When asked about what happened when she was still in the house, she said that Mr Zawitaj shouted and demanded to see where they both slept. Later she was told that he had been charged with threatening and abusive behaviour. A non-harassment order was granted in her favour. He has breached that, and it has been reported.
- 30.** Mrs Zawitaj was referred to an email exchange lodged with the application and told the Tribunal that she and her husband wanted to redecorate the living room and make some changes. Mr Walder wasn't happy initially. She explained what they wanted to do, and he agreed on condition that all costs would be covered by them. There was no agreement that there would be a deduction from the rent to cover the work. She was asked about the fitted appliances in the kitchen and said that everything was built in - cooker, dishwasher, fridge freezer - when the property was rented to them. They only had to buy a washing machine. They agreed with Mr Walder that they would be responsible for the maintenance and servicing of certain appliances, and this was noted on the inventory. When asked about the boiler, she said that there was a boiler in the property when it was purchased. It was working then and was not replaced.
- 31.** Mrs Zawitaj told the Tribunal that the only items she removed from the property were her clothes and her own documents. She did not give Mr Walder any money except for the rent for the property before she moved. Mr Walder went with her to collect her belongings on 2 or 3 occasions. On the last occasion she couldn't get in and she realised that Mr Zawitaj had changed the locks as he had threatened to do. She thinks it was September 2022. She confirmed that she received the Notice to leave that was delivered to, Balnafettack Crescent

although she can't remember signing for it.

32. In response to questions from Mr Zawitaj, Mrs Zawitaj denied that she had stolen documents and receipts for the dish washer, cooker and fridge from the property. She said that there were no such receipts. When asked about why her name was on documentation relating to the gas servicing before they moved into the property, she said that she did not know why this would have been the case. She denied that the house was unfinished when it was purchased. She denied taking instruction documents relating to the appliances.

Summary of Mr Zawitaj's evidence

33. Mr Zawitaj told the Tribunal that they did not lose the housing association tenancy because he did not pay the rent. It was because "this guy" (Mr Walder) helped cover a criminal offence. He came home from work and needed a rest. Mrs Zawitaj would not let him rest. She shouted at him. He took videos of her behaviour. It got worse and worse. She hit him on the face. He tried to sleep, and she put the TV on loud and then the laptop on maximum volume. She put the washing machine on. This went on for 3 ½ hours. She ripped his t-shirt and scratched his face and back. The Police came and arrested him, and Mr Walder helped Mrs Zawitaj write a plan of accusation. His lawyer told him that he faced 5 to 7 years in jail. The Police confiscated his phone for 6 months. The accusation was false, but he had to live in the garage, in his car. Then Mrs Zawitaj came to him and said that it was not her, it was the Police. She said that she had written to the Court, but it had not worked. Because of the time it was taking he pled guilty, and a fine was imposed. He moved back home and then there was a letter from the Housing Association saying they owed £450 in rent. Then there was a letter from Harper McLeod saying they had to leave the property. They lost their house for the sake of £200. They moved to Mr Walder's house, and he said that he would buy a house. He went with Mr Walder to look at a few properties. This was in April 2018. The last one was 34 Suilven Way. His wife was in Poland at the time. Mr Walder purchased the property. They did not move in until June 2018 because they were waiting for the first of the refurbishments to be finished. Stuff was still being fitted. It was an ongoing project. They did not move in for 2 and a half months.

34. Mr Zawitaj told the Tribunal that in 2010 he and his wife bought her mother's flat for her. The money for this came from their joint account. After she passed away, the flat was sold. He told his wife to open a special account for the sale proceeds of £38,000 or £39,000. This money is gone. Mr Walder recommended RBS. In 2020, he asked his wife for some of the money. She said that it is all gone. He opened his own account and asked her to show him a statement. He referred to a statement which he thinks is from August 2022. It shows a balance of £12000. He thinks that is what is left. Mr Zawitaj told the Tribunal that his wife left him because they argued about the money, not because he had been violent. He stated that he finished the work at the property. It was not just redecoration. He installed LED lights and did some electrical wiring and put plasterboard on the wall. He built a TV wall and replaced flooring. He has been unable to get access to his money because the Bank changed the address of the joint account without his agreement and his PayPal was blocked. His wife

took the instructions and receipts for appliances in the house. The inventory shows what they owned and what the landlord owned. In response to questions from the Tribunal about whether there were appliances in the house when it was purchased, Mr Zawitaj said that he could not remember. He said, why is his wife's name on the boiler documents on 19 April. He said that he has found a lawyer and that he wanted a separation because he was getting the silent treatment. He tried to contact her about the separation, but she would not answer. He went to the house because she would not answer, she shut the door. He called the Police who told him that he could not talk to his wife. He went to the Police station to deal with the false accusations. He was accused of assaulting his wife.

- 35.** Mr Zawitaj said that he told Mr Walder that he would only finish the refurbishment if he was paid £6000, since he was being kicked out. Mr Walder refused. He said that he would come and sort it out. Mr Zawitaj thought he was coming to sort out the £6000 but he didn't come and gave him the silent treatment. Then he got a letter from his wife's solicitor about the separation. When he found out that she had taken the receipts and instructions, he said that she had to give advance notice if she came to the house and could only come when he was there. However, she came when he was not in with Mr Walder. He was sitting in a friend's car in the street and saw them. They took some black bags then he saw Mr Walder with documents in his hand. That is why he changed the locks.
- 36.** Mr Zawitaj said that the Applicant is not on the landlord register for the property but has applied to be a registered landlord for Balnafettack Crescent. It's on the Government website, but not for 34 Suilven Way. He applied in 2023 after 6 years of illegally renting, there are no details on the register, only evidence of payment.
- 37.** Mr Zawitaj told the Tribunal that he was working as a delivery driver in April 2023. He no longer has the rota for his working hours but believes that he was working at the time the Notice to leave was said to have been delivered. He did not receive it. He said that when something is delivered, the delivery person asks for the name of the person taking the item. He believes Mr Smith signed for it. Three documents came to his home. None have his signature. He went to the delivery office to find where it was delivered. He had not been left a card. He spoke to a manager who agreed it was not Mr Zawitaj's signature. While he was there, he could see the managers screen and he saw where the item was delivered. It was 20 metres from his door. He asked the manager how to complain. He was referred to the website but was told that the process was for the sender, not for him. However, he put in a complaint. He handed it into the office. The response was late – they blamed the Christmas period - and he had to escalate it. He had a conversation with Shala. She said that it was delivered 112 ft from his house.
- 38.** In response to questions from the Tribunal Mr Zawitaj confirmed that he was still living there and has not paid the rent. He said that he is still waiting for an answer. He confirmed that he sent the text messages which had been lodged

but there were many others when he was asking questions, legitimate enquiries.

- 39.** When asked about the events of November 2022, Mr Zawitaj said that he texted his wife to say that they needed to finish the situation and speak about money. He had been given the silent treatment for 5 months. He called and got no answer on the Monday and Tuesday. On the Wednesday he called Mr Walder instead. When asked what had happened when he went to the house, he said that he had shouted at Mr Walder. She wasn't there. The lawyer twisted it, and he was accused of assaulting his wife. The charges only related to his wife, but she wasn't there.
- 40.** Mr Zawitaj said that he only found out about the Notice to leave when he got the documents from the Tribunal. He said that he is not working at present as he has mental health problems. He is not claiming benefits as he does not know how to do so and has sold his car to live. He is waiting to get mental health support. He said that he wants his money. He has been subjected to financial and mental abuse. The address on the account was changed without his knowledge. The landlord cannot be a landlord if not on the register. There is no application for the property. The contract is not valid.
- 41.** In response to questions from Mr Smith, Mr Zawitaj said that the tenancy he signed is the one he has produced, not the one lodged by the Applicant, he does not know if they are the same one. The agreement he signed said that rent of £400 was to be paid and that Mr Walder was the landlord. He and his wife were the tenants and the tenancy started in June 2018. When asked about the text messages he said that he does not have them on his phone but that he had sent some of them and had used swear words and said that he was going to come to the house. That was after he had been waiting for an answer since August. He confirmed that he had said "ten minutes to go". When asked about phone calls he said that he did not get an answer, he got the silent treatment. When asked if he had sent the message "answer the fucking phone" he said probably. When asked whether he thought these messages would have been welcomed by Mr Walder, he stated that Mr Walder had told him he would come over to talk about the refurbishment. This was emotional abuse. When asked the question again, he said that didn't know, Mr Walder could have texted him back. He said that he didn't know if his messages were a nuisance. He confirmed that he had called Mr Walder a "bonnet jumper" because he had jumped on his bonnet. He had not driven his car at Mr Walder, Mr Walder had jumped on his bonnet. He had pulled on the handle to try to open the door. Through the window Mr Zawitaj told him to go on to the pavement. He denied accelerating the car at Mr Walder as it was a 20-mph limit, does not know if this would have caused alarm. In relation to the incident on 21 November 2022, he said that he had pushed the door. He had lost control. He shouted at Mr Walder. He did not grapple with him or hold him down. He was told by a Police officer on the phone to go to the station, so he did so. When he was in the cells they got him a lawyer, it was Mr Walder's friend. He had seen the lawyer at Mrs Walder's funeral. He said that he only agreed to plead guilty to the damage to the door. A non-harassment order was granted in relation to his wife. He sent

in a 27 page complaint about his lawyer, they lost it.

42. When asked about the signature on the track and trace Mr Zawitaj said that they have to ask for a name when they deliver. He accepted it was not signed by a neighbour because it's his name. However, it was not delivered to him. When asked about the GPS coordinates, he said that "Mike" had not given them to him, but he had looked over his shoulder. When asked about the distance, he said Royal Mail told him it was 112 feet. Shala told him it was 112 feet. Mike told him it was 20 meters.
43. It was put to Mr Zawitaj that the fence in number 36 is in close proximity to the gate to number 34. He agreed. It was put to him that he had not told the truth about the various things he was told by Royal Mail, he said that he was told different things by different people. He said that the property at 36 has been unoccupied for 2 years.

Further procedure

44. Following the hearing the Tribunal issued a request to the Royal Mail in terms of Rule 21 for clarification of the conflicting information given to the parties about the delivery of the notice to leave on 8 April 2023. On 19 February 2024, the Tribunal received a response from the Service Model Support Centre of Royal Mail. This states " When delivering any Royal Mail signed for, special delivery or tracked item, we will scan the item to show it has been delivered. Where GPS is available, this will only tag the general area and can have a variance of up to 50 meters. We also may not necessarily scan the item on the doorstep, but it would be scanned in the immediate vicinity of the correct property." The email goes on to comment on the item in question, saying " the scan shows as tagged to 36 Suilven Way, ...but actually shows as number 32 Suilven way on the map. Since the correct address is number 34 Suilven Way, it is within 50 meters of the property and would be considered as delivered correctly. This will explain why there has been conflicting information provided when the 2 enquiries were submitted." The email goes on to say that if the item had been delivered to a neighbour, a card would have been left at the property. Also, the fact that the item was not returned to sender indicates that it was delivered correctly. The email then provides the GPS coordinates, stating that the property for these is 32 Suilven way."
45. A copy of the email was issued to the parties for their comments. They were also invited to provide final submissions on the application. The Applicant's final submissions were to be lodged first, with the respondents having the opportunity to consider these before submitting their own. The parties both lodged a response and some documents in relation to the Royal Mail email. The Applicant also lodged final submissions. The Respondent then lodged his submissions and additional documents unrelated to the Royal Mail issue. He also stated that these were not to be crossed over to the Applicant. He was notified that these would only be considered if the Applicant had the opportunity to consider them. He was also advised that the Tribunal was not prepared to consider the other additional documents as the time for these to be lodged was

prior to the hearing. The Applicant confirmed that his submissions could be crossed over.

Findings in Fact

46. The Applicant is the owner and landlord of the property.
47. The Respondents are the tenants of the property in terms of a private residential tenancy agreement dated 8 June 2018.
48. In terms of the tenancy agreement the Respondents are due to pay rent at the rate of £400 per month.
49. The Applicant's solicitor prepared a Notice to leave on the instructions of the Applicant.
50. The Applicant's solicitor signed three copies of the Notice to leave on 6 April 2023. He signed the firm's signature, not his own name.
51. On 6 April 2023, a member of staff took the Notices to the Post Office and sent them by recorded delivery (signed for) post. Two copies (one addressed to each Respondent) were sent to the property. The third was sent to the second Respondent only at the Applicant's address.
52. The Applicant's solicitor checked the Royal Mail website and carried out a search against the tracking numbers. The search confirmed that all three notices had been delivered and signed for by someone named "Zawitaj".
53. The Notices to leave sent to both Respondents at the property were delivered on 8 April 2023. They were signed for by the first Respondent.
54. The Notice sent to the second Respondent at the Applicant's address was delivered on 8 April 2023.
55. The second Respondent resided at the Applicant's home from July 2022 until November 2023.
56. The Applicant did not register with the Local Authority prior to letting the property to the Respondents.
57. The Applicant's application to register in 2023 was not approved as he failed to provide documentation required by the Local Authority in relation to safety inspections at the property.
58. Prior to lodging the application with the Tribunal, the Applicant's solicitor sent a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 to the Local Authority.

59. The first Respondent changed the locks at the property without the Applicant's knowledge or consent.
60. The Respondents owe the sum of £6000 in unpaid rent to the Applicant. No rent has been paid since November 2022.
61. The Applicant did not agree to pay the first Respondent for work carried out at the property.
62. The Respondents did not purchase a cooker and hob, dishwasher, and fridge freezer for the property. These appliances were installed by the previous owner of the property prior to the purchase by the Applicant.
63. The property was habitable and ready for occupation from the date of purchase and start of the tenancy.
64. The first Respondent decided to stop paying rent in November 2022.
65. The Respondents failure to pay rent is not due to financial difficulties or a delay or failure in the payment of a relevant benefit.
66. The Applicant did not comply with the Rent Arrears Pre Action Protocol prior to making the application.
67. The first Respondent sent abusive and threatening messages to the Applicant.
68. The first Respondent made threatening and abusive phone calls to the Applicant.
69. On 21 November 2022, the first Respondent forced entry to the Applicant's home and threatened the Applicant and the second Respondent.
70. The first Respondent was convicted of a contravention of Section 38 of the criminal Justice and Licensing (Scotland) Act 2010 in relation to the incident on 21 November 2022.

Reasons for Decision

Credibility and Reliability

71. The Tribunal found the Applicant and his witnesses (including the second Respondent) to be generally credible and reliable. The Applicant's solicitor, Mr Smith, gave evidence in relation to the notice to leave and the section 11 notice because his firm had drafted and sent the notices, and both had been challenged by the first Respondent. His evidence was consistent with the documents lodged – the notices themselves, copies of emails with the Local Authority, and the Royal Mail certificates of posting. He was unable to give direct evidence in relation to the delivery of the notice to leave other than to confirm that he carried out an online track and trace which confirmed delivery

and that he had arranged for this report to be printed from the website and lodged with the application. He denied being present when the Notices were delivered to the property and stated that he had not signed for them. There was no evidence to support the allegation that he had done so.

72. The Second Respondent's evidence was also generally credible and reliable. She does not oppose the application as she moved out of the property in July 2022 and now lives elsewhere. She has separated from the First Respondent. Much of her evidence was corroborated by the Applicant particularly in relation to the first Respondent's behaviour to the Applicant, the offence that took place on 21 November 2022, and the circumstances leading to the offer of the tenancy in 2018. While the Tribunal noted that she is grateful to the Applicant for the offer of the tenancy and the assistance he provided when she moved out of the property, there was no evidence to support the allegation that they are or were in a relationship. There was also no indication that her evidence was influenced by her friendship with the Applicant. In any event, her evidence is also consistent with some of the documentary evidence submitted. This included paperwork from Inverness Sheriff Court indicating that a non-harassment order had been granted in her favour following the first Respondent's conviction for a breach of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. The Tribunal is satisfied that this establishes that she was present when the offence was committed, a fact disputed by the first Respondent. Her evidence regarding the condition of the property and the ownership of the fitted units and the property itself, was also consistent with the title deeds and the property sale schedule.

73. The Applicant's evidence was also largely consistent with the documents lodged and the second Respondent's evidence. It would have been useful for the Tribunal to have been provided with an extract conviction in relation to the offence. However, the letter from the Procurator Fiscal establishes that the Respondent convicted of threatening or abusive conduct in relation to both the Applicant and second Respondent. The Tribunal found the Applicant to be credible and reliable.

74. The Tribunal did not find the first Respondent to be credible or reliable for the following reasons:-

(a) Much of his evidence was based on unsubstantiated theories, beliefs, and speculation. For example, he stated that Mr Walder had colluded with the second Respondent to have him convicted of a criminal offence in 2017. There was no evidence of this and (by his own admission) he pled guilty to the offence in question. His claim that there was (or is) a relationship between the Applicant and second Respondent was unsubstantiated. He also provided no evidence that the Second Respondent gave the Applicant money, that the solicitor who represented him was a friend of (and colluded with) the Applicant, or that the firm of solicitors who served notice to quit on the Respondents in relation to their former tenancy were in any way associated with the Applicant. It was clear from the evidence and submissions that the first Respondent is convinced that his wife left him for the Applicant. This has caused anger and resentment toward the Applicant and influenced the evidence he gave to the Tribunal. It is

also significant that, although he alleges that he stopped paying rent because the Applicant is a “fake” landlord, the rent was paid until his October 2022, when the Applicant moved into the house he had purchased and where the second Respondent was already living.

- (b) His evidence on key issues was not supported by the documents lodged. For example, his account of the incident on 21 November 2022 not only differs from that of the Applicant and the second Respondent but is not consistent with his plea of guilty to a breach of section 38 and the granting on a non- harassment order against him. His claim that he paid for appliances at the property before he moved in is not consistent with the schedule of particulars of the property provided by the seller which shows and refers to a fully fitted kitchen in place at the property. His claim that the second Respondent is the owner of the property is not consistent with the title deeds which show that Mr Walder purchased the property and is the sole owner. His statement that the property was purchased several months before the tenancy started is also not consistent with the documents – the title deeds show a date of entry of 6 June 2018, the tenancy was signed on 8 June 2018. His claim that he was to be paid or reimbursed for work carried out at the property conflicts with the email exchange between the Applicant and second Respondent which clearly states that they are to be responsible for the associated costs. The Tribunal also noted that the first Respondent contradicted himself in relation to this matter. At the CMD he stated that the Applicant had arranged to come to the property to check that the work had been finished, in exchange for which he would be given a sole tenancy. At the hearing, he stated that the visit was to arrange for payment for the work.
- (c) The first Respondent gave extensive evidence about an incident that took place in 2017. He told the Tribunal that this incident was when the Applicant and second Respondent first colluded against him. However, he failed to demonstrate any involvement by the Applicant in the matter. By his own admission, the incident led to him being convicted of an assault against his wife. The only apparent relevance to the matter before the Tribunal is that it appears to support the second Respondent’s evidence that she separated from her husband because of domestic abuse.

Service of the Notice to Leave

75. Section 52(3) of the 2016 Act states “An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant”. Section 52(2) states, “The Tribunal is not to entertain an application for an eviction order if it is made in breach of – (a) subsection (3)...” It therefore follows that the Tribunal can only entertain the application if the Applicant has submitted a notice to leave which has been “given” to both Respondents.
76. The application was submitted with a Notice to Leave dated 6 April 2023, together with a copy of a Post Office certificate of posting dated 6 April and a track and trace report dated 8 April 2023. The Notice states that an application

to the Tribunal is to be made on grounds 11, 12 and 14. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 7 May 2023. The notice is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and complies with Section 62 of the 2016 Act. The format and content of the notice were not disputed by the first Respondent.

77. At the date of service of the Notice to leave, the second Respondent was residing in the Applicant's home. The Notice was served on her by recorded delivery post and a track and trace report produced to evidence that it was delivered. The Second Respondent told the Tribunal that she had received the notice, although she could not recall signing for it. The Tribunal is satisfied that the application was accompanied by a notice to leave that had been given to the second Respondent.
78. The 2016 Act does not specify how a notice to leave is to be served or given. As a result, the provisions of the Interpretation and Legislative Reform (Scotland) Act 2010 apply. Section 26(2) indicates that documents "may be served on the person" by personal delivery, registered or recorded delivery post or email. Section 26(5) states, "Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown".
79. The documents submitted by the Applicant with the application (post office certificates of posting and track and trace reports) would usually be sufficient to establish that the Notice to leave had been served on the first Respondent. They constitute prima facie evidence of service, when taken with oral evidence from the Applicant's solicitor, which confirmed that the documents sent by post on 6 April 2023 included the Notice to leave. The Tribunal is of the view that the words "unless the contrary is shown", should be interpreted to mean that it is for the Respondents to show or establish that the Notice to leave was not received or delivered. The Tribunal is satisfied that, if the evidence establishes that the notice was not delivered or received by the first Respondent, then it had not been "given". If so, the Tribunal cannot entertain the application.
80. The first Respondent told the Tribunal, in submissions lodged before the CMD, at the CMD and during his evidence at the hearing, that he did not receive the Notice to leave on 8 April 2023. He stated that he was not at home that day as he was working and could not have signed for the document. He also claims that the signature on the track and trace is not his signature although it is his name that is shown. The Respondent makes the following further claims about the service of the notice:-
- (a) Number 36 Suilven Way is unoccupied. It may have been delivered there, as the Royal Mail GPS coordinates relate to this address.
 - (b) The signature on the track and trace resembles the signature on the Notice to Leave. This suggests that Mr Smith was waiting at the property for the postman

to arrive and signed for it to provide false evidence that it had been delivered.

(c) He believes that he was at work at the relevant time. No evidence of this was provided.

(d) The notice was not signed for by the occupant of number 32 as it is his name that is on the track and trace so the recipient must have given his name to the postman.

81. Except for the first Respondent's letter from Royal Mail, the only evidence that the notice to leave was not delivered came from the First Respondent himself. As previously indicated the Tribunal did not find the first Respondent to be a credible or reliable witness and are not persuaded by his evidence on this issue. That does not necessarily mean that that he was lying, although it may be the case. The Notice was served more than 6 months before the application paperwork was served on the Respondents by the Tribunal in October 2023. The first Respondent may not have looked at the notice immediately. He might have put it aside, forgotten about it or lost it. The second Respondent said at the hearing that she could not specifically recall signing for her copy, although she confirmed that she had definitely received it.

82. The Tribunal heard evidence and received lengthy submissions regarding the track and trace report, the correspondence from the Royal Mail and the implications of the GPS coordinates. The first Respondents evidence and submissions were confusing and at times contradictory. He referred to the letter he received from Royal Mail which appears to establish that the notice was delivered to a different, unspecified address. However, he also refers to discussions he had with various staff members. If his account of these discussions is accurate, they gave conflicting information regarding the delivery location. At the hearing, he had difficulty recalling what he was told and by whom. He also referred to GPS coordinates which he claims to have noted from looking over a staff member's shoulder at their laptop, after he had been told that they would not provide that information.

83. The Applicant's submissions on this issue are more logical but seem to over complicate the matter. The Royal Mail response to the Tribunal's notice in terms of Rule 21, clearly establishes that GPS coordinates for the delivery location of mail are not exact. They are only accurate up to a distance of 50 meters. Furthermore, the scan of the place of delivery might not be the doorstep of the property. The email states that the item was delivered to a location within 50 meters of 34 Suilven Way. As the properties are terraced and in close proximity to each other, the scan of the delivery could have been taken at 32, 34 or 36 or in the street outside the property. However, the signature on the track and trace is the name "Zawitaj". If it had been delivered to a neighbour, a different name and signature would have been shown. If it had not been delivered, it would have been returned to the sender and the website would have confirmed that delivery had been unsuccessful.

84. The Tribunal is satisfied that the Notice to Leave was sent by the Applicant on 6 April 2023 and delivered to the first Respondent on 8 April 2023. It follows

that the application was accompanied by a copy of the Notice to leave which had been “given” to the Respondents. The application to the Tribunal was made after expiry of the notice period in the Notice to Leave. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act.

Ownership of the property, the Applicant’s entitlement to let out the property and the validity of the tenancy.

- 85.** The first Respondent challenges the validity of the tenancy on the grounds that the property is actually owned by the Second Respondent and the Applicant is not a registered landlord. Prior to the hearing, he also claimed that the tenancy agreement lodged by the Applicant had not been signed by him, although he did not dispute that he had signed a tenancy document. He later lodged a copy of the document he signed. This appears to be the same as the one lodged by the Applicant. The first Respondent’s copy seems to be a photograph of the original document, taken after it was signed by all three parties, with yellow stickers indicating where it was to be signed. The Applicant’s appears to be a photocopy of the signed document, made after the stickers were removed, but otherwise identical. The Tribunal is satisfied that the tenancy agreement lodged by the Applicant is a copy of the agreement signed by the parties and that the Respondents agreed to rent the property from the Applicant and to pay rent of £400 per month. Even if this was not the case, it is not disputed that the Respondents occupied the property, paid rent from June 2018 and that the first Respondent continues to live there.
- 86.** As previously indicated, there is no evidence that the Second Respondent is the true owner of the property or that she purchased it from the Applicant. The title deeds which are a public record show the Applicant to be the owner. The date of entry is 6 June 2018, and the tenancy started two days later. The first Respondent produced a bank statement which, he stated, shows that a large sum of money had been removed from the account. He claims that this missing sum must have been paid to the Applicant. However, there is no evidence to support this allegation which appears to be based solely on the first Respondent’s belief that the Applicant and second Respondent are in a relationship and have been conspiring against him for a number of years. The document lodged is part of a bank statement, with no name at the top, showing a balance of about £12000 and various payments to retail outlets. It does not establish any financial dealings between the Applicant and second Respondent.
- 87.** It is not disputed that the Applicant is not a registered landlord. However, that does not mean that he is not the landlord of the property. Although the failure to register is an unsatisfactory situation, the explanation is a credible one. The Applicant had not been a landlord before he purchased the property and did not know he was supposed to register. When he tried to register to rectify his omission, his application was not approved as he failed to provide evidence of compliance with certain repairing standard obligations in relation to safety inspections. The Tribunal is aware that many Local Authorities insist on

landlords providing safety certificates, before they will approve an application. The Applicant said that they had not been provided because he cannot get access to the property, due to the lock change and the first Respondents refusal to allow access. He has not made a right of entry application to the Tribunal (although is aware that this is an option) because he is seeking eviction. In terms of the relevant legislation, failure to register is an offence. However, it does not preclude a landlord from collecting rent from a current tenant (unless a rent penalty notice has been issued by the Local Authority) or from seeking an eviction order from the Tribunal.

88. The Tribunal is satisfied that the Applicant is the owner of the property and is entitled to seek an eviction order, notwithstanding his failure to register as a landlord with the Local Authority. The Tribunal is also satisfied that the Respondents are the tenants and that they are due to pay rent at the rate of £400 per month.

Section 11 Notice

89. The Applicant provided a copy of the Section 11 notice with a copy of an email to the Local Authority. It is disputed by the first Respondent that the section 11 notice was sent.
90. Prior to the CMD, the First Respondent produced a letter from the Council's homelessness prevention team and a transcript of a conversation he says that he had with a member of Council staff. He stated that the letter was a "fake" because when he called, the staff member said that she could not transfer him to the sender of the letter because he did not work there.
91. The Tribunal noted that the letter appears to have been sent out in the name of the head of service, David Goldie. However, the letter stated that the Respondent should ask to speak to a housing options officer if he wished to telephone. He did not do this, demanding to speak to David Goldie, and the transcript (if authentic) only establishes that the member of staff had difficulty understanding his request. The letter appeared to be genuine, sent out in response to the section 11 notice which alerted the Council to the eviction application being made. Prior to the hearing, the Applicant provided further evidence that the section 11 notice had been sent to the Council in the form of an email from the Council that confirmed the notice was received on 25 May 2023. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

Eviction grounds – Ground 11.

92. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

93. Ground 11 states “ (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if – (a) the tenant has failed to comply with a term of the tenancy, and (b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.” Subsection (3) states that ground 11 does not apply to the obligation on a tenant to pay rent.
94. There is no specific provision in the tenancy agreement regarding lock changes. However, there is a prohibition against unauthorised alterations and the Tribunal is satisfied at this clause covers a lock change carried out without the consent of the landlord. The first Respondent does not deny that he changed the locks. This ground is therefore established. However, the Tribunal also requires to be satisfied that it is reasonable to grant an eviction order and the reason for the lock change is material to that assessment. The Respondents had separated, and the Second Respondent had moved out of the property and was living elsewhere. On several occasions, she returned to the property when the first Respondent was out and removed items from the property. As the lawful tenant of the property, she may have been entitled to do this. However, she was accompanied on these visits by the Applicant, who did not have the first Respondent’s consent to be there. He had not given notice that he required access, as required by the tenancy agreement and the 2006 Act. It is understandable that the first Respondent wanted to take steps to prevent visits by the Applicant when he was not there.
95. In the circumstances, the Tribunal is not persuaded that it would be reasonable to grant an order for eviction on ground 11.

Ground 12

96. Ground 12 of Schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022 states “(1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months. (3) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if – (a) for three or more consecutive months the tenant has been in arrears of rent, and (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.”
97. Sub-Paragraph (4) states, “In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider - (a) whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Minister in regulations.” Relevant benefits are defined in sub-paragraph (5) and include housing benefit and universal credit. The Pre Action-Requirements Regulations include the provision of clear information relating to the terms of the tenancy agreement, the level of the arrears, the tenant’s rights in relation to eviction proceedings and how the tenant can access information and advice.

98. The Respondents do not dispute that there has been no rent paid since November 2022 and that the sum outstanding at the date of the hearing was £6000. The second Respondent also admits that the rent is due.

99. The First Respondent claims that the rent specified in the tenancy agreement is not due. Some of his reasons are addressed in paragraphs 68 to 71 and relate to the ownership of the property and validity of the tenancy. However, he does not dispute that he has continued to occupy the property. During his evidence at the hearing, he claimed that the rent is not due because he is owed the sum of £6000 by the Applicant for work carried out at the property and appliances he purchased for the property, such as a dishwasher and cooker.

100. As previously indicated, there is no evidence that the parties agreed that the First Respondent would carry out work for which the Applicant would pay. The only documentary evidence on this subject is an email exchange that makes it clear that changes to the living room were only allowed if the Respondents could afford to do the work. The Applicant and second Respondent also gave oral evidence that this is what was agreed. The Tribunal was told that the Applicant was reluctant to agree to the work and had to be persuaded. The first Respondent claims that other work was carried out before they moved into the property, but he was vague as to the nature of the work and the claim was not supported by any evidence. He also failed to provide any vouching for the costs incurred, the value of work or the alleged purchases. The claim about the fitted kitchen appliances, such as cooker and hob and dishwasher, was disputed by both Applicant and second Respondent. They referred to the schedule of particulars of the property. This has pictures of a fitted kitchen and states, "The kitchen/diner comes with an integrated gas hob, electric oven and extractor, fridge/freezer and dishwasher and has plumbing for a washing machine." The Applicant confirmed that the only item in the kitchen that he did not supply was the washing machine. The Applicant and first Respondent also referred to the property inventory signed with the lease. On the face of it, this suggests that the appliances did belong to the Respondents. However, the Tribunal was told that the Respondents agreed to be responsible for the maintenance of these appliances because they were paying a reduced rent for the property. The first Respondent alleged that the second Respondent had removed receipts for the items but there was no evidence that these receipts existed, and he was unable to provide any details of the alleged purchases.

101. The Tribunal is satisfied that the unpaid rent is due and that there was no agreement that the Applicant would pay the First Respondent for work carried out or that he agreed to waive rental payments in exchange for work.

102. The Tribunal is also satisfied that the rent arrears are not due (in whole or in part) to a failure or delay in the payment of a relevant benefit. The second Respondent made no payments to the rent account after she moved out of the property. It appears that the Applicant has not expected her to pay, although she is still a tenant. The first Respondent told the Tribunal at the CMD that he

had stopped paying rent because the landlord was a fake and because he was owed money for work carried out at the property. It was not until the hearing that he stated that he had financial problems. He said that he was not working but that he had not claimed benefits as he did not know how to do so. However, he did not offer this as an explanation for his failure to pay rent, maintaining that he is not liable to pay it.

Reasonableness in relation to ground 12

103. The Tribunal had regard to the following factors in relation to Ground 12:-

(a) As no rent has been paid since November 2022, the arrears are now substantial.

(b) The failure to pay rent was not due a failure or delay in the payment of a relevant benefit.

(c) Although there was oral evidence from the first Respondent at the hearing that he has no income at present, this was not supported by any documentary evidence. If it is the case that he is unable to find work (or is unfit for work) he is entitled to make a claim for benefits which would usually include his housing costs. If he is already in receipt of benefits, he has not passed on the housing cost element to his landlord.

(d) It was clearly established at the hearing that the first Respondent made a deliberate decision to stop paying rent. it was not due to financial reasons. He believes the Applicant to be a “fake” landlord and that the second Respondent has some financial stake in the property or owns it. He made it clear that he intended to continue to live there and not pay rent.

(e) As the failure to pay rent was deliberate and not due to financial hardship, the failure to comply with the pre action protocol is not material.

(f) The Applicant is not experiencing financial hardship because of the arrears, but it is his only rental property, and he is entitled to expect to receive a return on his investment.

(g) The second Respondent does not oppose the application. She moved out of the property and has her own accommodation elsewhere.

(h) The first Respondent has threatened and sent abusive messages to the Applicant.

104. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant an order for eviction on ground 12.

Ground 14

105. Ground 14 states, “(1) It is an eviction ground that the tenant has engaged in relevant antisocial 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 antisocial manner in relation to another person, (b) the antisocial behaviour is relevant antisocial behaviour, (ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and (c) either the application for an eviction order that is before the Tribunal was made within 12 months of the antisocial 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 antisocial manner in relation to another person by – (a) doing something which causes or is likely to cause other people alarm, distress, nuisance or annoyance, or (b) pursuing in relation to the other person a course of conduct which (1) 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) Antisocial behaviour is relevant antisocial 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 antisocial 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.

106. The Tribunal notes the following:-

(a) There are two aspects to the antisocial behaviour that it alleged. The Tribunal was provided with a series of text messages from the first Respondent to the Applicant. The Applicant was vague about when these were received, but they appear to have been sent in the run up to the incident that took place on 21 November 2022. The messages were abusive and threatening. They included the following – “Answer the fuckin phone”, “You think maybe you can do whatever you want in my life and go unpunished”, “You are a con man and a lying bastard”, “You are a conman, and your time is up”, “Fucking idiot” and “Fucking coward”. There are also various references to the first Respondent coming to the Applicant’s home to settle matters. These were also threatening. The Tribunal was also told that the first Respondent has made numerous threatening phone calls. From the evidence it appears that these occurred between February and August 2023, although the Applicant was again unsure of exact dates. He provided a handwritten list of calls from August 2023. The messages and calls caused the Applicant alarm and distress. His evidence was corroborated by the second Respondent, who had been present when some calls and messages were received. The first Respondent did not deny that he had made the calls or sent the messages. However, he stated that there were also many calls and texts where he was only asking for information. He also argued that he had been entitled to make the calls and texts because the

Applicant was refusing to speak to him. He demonstrated no remorse for his actions and appeared to believe that his conduct was justified. The Tribunal is satisfied that the messages, when looked at individually, were incidents of antisocial behaviour in terms of Ground 14(2)(a) and 3(a). The Tribunal is also satisfied that the messages and phone calls, when taken together, amounted to a course of conduct in terms of ground 14(3) (b)(i).

- (b) The second element is the offence that took place on 21 November 2022. Following a series of threatening messages, the first Respondent attended at the Applicant's home. He forced entry. He behaved in a threatening manner. The second Respondent fled to a neighbouring property and contacted the police. The first Respondent then threatened the Applicant. The Applicant was alarmed and distressed. The first Respondent was later arrested and pled guilty to a breach of Section 38 of the Criminal Justice and Licensing Scotland Act 2010. – threatening or abusive behaviour. Although an extract conviction was not produced, the letter from the Crown Office and Procurator Fiscal Service dated 23 November 2022, confirms this outcome. As it was sent to the Applicant, and the letter confirms that bail conditions remained in place in relation to both the Applicant and second Respondent, the Tribunal infers that the conviction related to both. The Tribunal is satisfied that the incident on 21 November amounts to antisocial behaviour in terms of Ground 14(2)(a) and 3(a).
- (c) The Tribunal heard evidence about one other incident. The first Respondent came to the property on another occasion, looking to speak to the second Respondent. When told that she was not there he went back to the car. For reasons which were not made clear, the Applicant followed him and stood in the road to try to stop him driving away. He claims that the first Respondent accelerated toward him, and he had to jump out of the way. The second Respondent said that the Applicant jumped on his bonnet. Whatever the circumstances, the Applicant appears to have deliberately placed himself on the road in front of the second Respondent. The Police do not appear to have been called. The Tribunal was not persuaded that this incident constitutes relevant antisocial behaviour for the purposes of Ground 14
- (d) The application to the Tribunal was made on 25 May 2023. As the antisocial behaviour took place between November 2022 and August 2023, the Tribunal is satisfied that the Applicant has complied with Ground 14(2)(c)(1), as the application to the Tribunal was submitted within 12 months of the behaviour occurring.

Reasonableness in relation to Ground 14

107. The Tribunal noted the following:-

- (a) The evidence established that the first Respondent has subjected the Applicant to protracted periods of antisocial behaviour that has caused alarm and distress. His continued antagonism toward the Applicant was evident during the hearing. He demonstrated no remorse for his behaviour and there were no

promises or undertakings with regard to future conduct.

- (b) The incident that took place on 21 November 2022 was a serious one resulting in a criminal conviction.
- (c) The first Respondent's conduct appears to be due to his belief that the Applicant and second Respondent were (or are) in a relationship. There was no evidence that this is the case but even if it was true, the first Respondent appears to believe that the alleged relationship and the refusal of the Applicant and second Respondent to respond to his calls, justified his behaviour.
- (d) The first Respondent's behaviour has caused a complete breakdown in the landlord and tenant relationship. Even if there were no rent arrears, it would not be reasonable to expect the Applicant to continue to let the property to the first Respondent.
- (e) The second Respondent does not oppose the eviction order and is not prejudiced by it. She has also been the victim of antisocial and threatening behaviour on the part of the first Respondent.

108. In terms of Ground 14(5) the Tribunal, the Tribunal is satisfied that the antisocial behaviour was serious. It related to the landlord of the property and occurred at the landlord's own home and also at the property address as the first Respondent is likely to have been there when some of the messages and calls were made.

109. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the eviction order on ground 14.

Expenses

110. The Applicant seeks an award of expenses in terms of Rule 40 of the Tribunal Procedure Rules. This states that the Tribunal can award expenses against a party, "but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unreasonable expense". The Tribunal is not persuaded that an award should be made. The first Respondent was entitled to defend the application. There were no unnecessary delays in the progress of the case. Neither the CMD nor the hearing were postponed. Documents were lodged timeously. The Applicant chose to instruct a solicitor to make the application, although this is not required. The first Respondent was entitled to challenge the evidence and argue his case. The request for an award of expenses is refused.

Decision

The Tribunal determines that an eviction order should be granted against the Respondents.

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.

J. Bonnar

Josephine Bonnar, Legal Member

24 April 2024