

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 (1) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/24/0969**

**Re: Property at 120 Kingsbridge Drive, Glasgow, G44 4JS (“the Property”)**

**Parties:**

**Staffa Rock plc (formerly Carduus Housing plc), registered address c/o DWF  
LLP, Sentinel, 103 Waterloo Street, Glasgow, G2 7BW (“the Applicant”)**

**Mr Martyn John Curran, 120 Kingsbridge Drive, Glasgow, G44 4JS (“the  
Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

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

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

**Background**

1. By application dated 28 February 2024 the applicant seeks an order for possession relying on ground 15 (anti-social behaviour) in schedule 5 of the Housing (Scotland) Act 1988.
2. The applicant lodged with the application a number of documents including
  - Tenancy agreement
  - Form AT6 with proof of service
  - Section 11 notice
  - Copy correspondence between parties

- Correspondence between the applicant and the respondent's neighbours
- Written notice from Lisa McCabe
- Details of police incidents

### **Case management discussion ("cmd") – 3 September 2024 – teleconference**

3. A case management discussion ("cmd") took place on 3 September 2024. Both parties attended. The applicant was represented by Val West, Director at Indigo Square Property Limited. The respondent attended on his own behalf.
4. Ms West sought an order for eviction. She advised that originally the applicant had entered into a tenancy agreement with the respondent and Lisa McCabe as joint tenants. Ms McCabe had given written notice that she wished to move out of the property on 29 September 2021. From then on Ms West stated that the respondent was the sole tenant. Ms West explained that she sought to establish ground 15 based on the conduct of the respondent towards his neighbours, herself when she had visited the property and also in his conduct towards contractors and tradespeople visiting the property.
5. The respondent confirmed that the tenancy had originally been a joint tenancy however, he became the sole tenant after his partner Lisa McCabe gave written notice that she was leaving the property. He stated that he and Ms McCabe had since resumed their relationship however he did not dispute that he was the sole tenant. The respondent disputed all allegations of antisocial behaviour and stated that if he had become frustrated it was due to the applicant's failure to address the considerable repairs issues in the property. The respondent stated that he lived in the property with Lisa McCabe and their 4 children aged, 8, 6, 4 and 2.
6. The respondent stated that he suffered from mental health problems including depression for which he received medical attention. He also had epilepsy and issues with his back. He advised that one of his children had been diagnosed with autism. He explained that there was social work involvement with the family and that health visitors also worked with the family.
7. The respondent confirmed that the property had 2 bedrooms and the family were overcrowded in the accommodation. The Tribunal enquired as to whether

the respondent was actively seeking alternative accommodation. He advised that he had viewed 2 properties recently, however he did not have any information about how those viewings had been arranged. He did confirm that there had been contact with the homeless team at the local authority however he seemed to have limited information on the status of any application.

8. Ms West confirmed that the local authority homeless team had made contact with her regarding the present proceedings, and she had confirmed to them that eviction proceedings had been raised.
9. The respondent advised that he had not received legal advice in relation to defending the present application. The Tribunal advised the respondent that he should seek legal advice if possible. The respondent stated that he was unhappy with the conduct of the applicant since the commencement of the tenancy and did not accept that he was in any way at fault.
10. Ms West stated that evidence in the form of recordings of phone calls between the respondent and her staff had been submitted in the criminal proceedings to which the respondent had pled guilty. She wished those recordings to be submitted to the Tribunal.
11. Given the dispute on the facts of the case and the reasonableness of granting an order a hearing was fixed. Parties were requested to lodge any additional material they sought to rely on in advance of the hearing.

#### **Hearing – teleconference- 10 December 2024**

12. Prior to the hearing on 10 December 2024 Ms West submitted updated written representations, copy text messages and copy email correspondence. She also submitted recordings of 2 telephone calls between the respondent and staff at her office. The respondent did not lodge any documents or information.
13. Ms West attended the hearing. The respondent did not join the teleconference. The Tribunal clerk attempted to telephone the respondent to check whether there was any reason for his non-attendance however the mobile number provided was not answered. The Tribunal was satisfied that the respondent had been properly notified of the hearing and proceeded with the hearing in his absence.
14. As the application was disputed, albeit that the respondent was not in attendance the Tribunal heard evidence from Ms West. She also called 2

witnesses, Lynne Auld, Director of SA Plumbing and Gas services and John Townsley Baillie, Director of a carpet warehouse. A summary of the evidence is set out below. For the avoidance of doubt this is not a verbatim record of the evidence heard.

15. Evidence of Lynne Auld: Ms Auld stated that her company carried out compliance checks for the applicants. This involved carrying out a gas safety check within the property. Ms Auld advised that her role was administrative – she arranged visits and spoke with tenants directly to make arrangements. She recalled that the respondent had been very difficult to deal with. She stated that he was very awkward about allowing access for no clear reason. She stated that he used rude language and had sworn at her on telephone calls. She stated that he had become very difficult to speak to so she had moved to using text messages. Copy text messages had been lodged which showed the difficulties with communicating with the respondent. Ms Auld stated that engineers had found it difficult when they went into the property. She stated that on one occasion the respondent had behaved aggressively – following a gas engineer around the property and telling him he was being recorded. Ms Auld stated that the behaviour was intimidating. She stated that the most recent visit to the property had been an improvement and as far as she was aware there were no complaints from her or the engineer about the respondent's behaviour on that occasion.
16. Evidence of John Baillie- Mr Baillie confirmed that he is the Director of a carpet fitting company. He was engaged by the applicant to arrange for carpet to be installed in the property. This involved employees attending at the property to measure for carpet and a second visit for installation. Mr Baillie stated that the carpet was to be installed in or around August 2024. Mr Baillie stated that the carpet fitters had told him that the respondent was threatening towards them. He became agitated and used abusive language. Mr Baillie stated that the fitters thought the respondent had expected more than a stair carpet to be fitted which may have led to his frustration however his behaviour was such that one of the carpet fitters requested not to be sent back to the property.
17. Evidence of Val West: Ms West is the Director of Indigo Square Property Ltd. She stated that there had been numerous occasions when the respondent

had been verbally abusive towards her or her staff. She stated that the respondent's behaviour towards her was a source of great stress and had impacted her personally for a significant period of time. Ms West advised that the property is an ex local authority flat. It is one of 4 flats in the same block. She referred to an inspection report relating to an inspection on 7 July 2022. She confirmed that the tenant had used foul language towards her when she been in the property for the inspection. She stated that the respondent had asked her about a wall issue in the lounge. While she was there he called his solicitor which she thought was intended to intimidate her and directed abusive language at her.

18. Ms West also referred to an email that had been lodged which referred to verbal abuse by the tenant during a visit in December 2020 which led to her leaving the property with a contractor. Ms West also referred to the 2 audio recordings of telephone calls to her office. She stated that as was evidenced in the documents lodged, the respondent had pled guilty to threatening and abusive behaviour as result of those calls.
19. Ms West referred to an invoice that had been lodged for the sum of £811.40 payable to the Glasgow City Council for removing refuse from the back court at the property and disinfecting the area. The invoice related to work carried out in February 2024 following environmental health issuing an abatement notice. The notice was issued due to the unsanitary items placed in the area by the respondent and the hazard caused by the respondent's failure to dispose of refuse in the proper manner. She stated that this had caused distress to neighbours and was a nuisance.
20. The Tribunal noted that there had been previous Tribunal cases between parties and there had been a Repairing Standard Enforcement Order (RSEO) granted against the landlord. Ms West stated that a previous application had been raised against the joint tenants on the grounds of rent arrears. She stated that Ms McCabe had legal representation and defended the action on the basis that there were repairs issues within the property. An order for compensation in relation to the repairs issues made by the Tribunal was off set against the outstanding arrears and the application for eviction on that basis did not proceed. The Tribunal enquired as to whether the respondent's behaviour arose due to frustration at the landlord's failure to carry out repairs.

This was something that was mentioned frequently in emails from the respondent. Ms West stated that the RSEO had been complied with in full. She accepted that there had been a breach of the repairing standard at that time but her position was that repairs were carried out promptly where required. She did not accept that repairs issues were an explanation for the respondent's conduct.

21. Ms West stated that she had been contacted by the local authority in relation to a homelessness application that had been received from the respondent. She confirmed that the respondent currently lived with his partner and their 4 children. She stated that the family were overcrowded and the property was unsuitable. She stated that there were currently rent arrears outstanding. She advised that the applicant had multiple rented properties. She stated that she dreaded having to deal with the respondent but as her organisation was very small she had no alternative.

### **Findings in fact and law**

22. The applicant entered into an assured tenancy agreement with the respondent and Lisa McCabe as joint tenants commencing 27 January 2017.
23. On 16 December 2021 Lisa McCabe wrote to the applicant's agents advising that she had left the property on 29 October 2021 as a result of relationship breakdown and asking to be removed from the tenancy agreement.
24. The respondent is the sole tenant.
25. A valid notice of proceedings for possession dated 11 December 2023 was served on the respondent.
26. The lease agreement makes provision for it to be brought to an end relying on ground 15, schedule 3 of the Housing (Scotland) Act 1988.
27. A section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 was intimated to Glasgow City Council.
28. The respondent behaved in an anti-social manner in relation to Val West on a number of occasions including during property inspections in December 2020 and on 7 July 2022.
29. The respondent behaved in an anti-social manner towards employees of Stewart Auld plumbing and gas when they attended the property to carry out compliance checks.

30. The respondent behaved in an anti-social manner towards employees of John Baillie carpets when he attended the property to measure and fit carpets.
31. The respondent's failure to properly dispose of refuse constituted a nuisance and falls within the definition of anti-social behaviour.
32. The respondent's behaviour has had a negative impact on Val West in her role as letting agent.
33. The respondent did not attend the hearing to oppose the application and did not lodge any written representations or documents opposing the application.
34. The respondent has made an application as a homelessness person to the local authority and has viewed properties offered by them.
35. The respondent's behaviour has had a negative impact on his neighbours and professionals engaging with him as a result of their employment.
36. The respondent resides with this partner and their 4 young children.
37. It is reasonable that an order for eviction is granted.

## **Reasons for the decision**

38. The Tribunal was satisfied that it had sufficient information before it to establish the facts and to make a determination.
39. The Tribunal took into account the various documents lodged by the applicant together with their written representations. The Tribunal took into account the oral submissions made by both parties at the hearing on 3 September. The Tribunal took into account the evidence from Ms West, Mr Baillie and Ms Auld at the hearing.
40. Ground 15 in schedule 3 of the Housing (Scotland) Act states that it is a ground for recovery of possession if:
  - 15. The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—*
    - (a) been convicted of—*
    - (i) using or allowing the house to be used for immoral or illegal purposes; or*

*(ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or*

*(b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or*

*(c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.*

*In this Ground “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, “conduct” includes speech and a course of conduct must involve conduct on at least two occasions and “tenant” includes any one of joint tenants.*

41. The Tribunal was satisfied that the respondent acted in an anti-social manner on the basis of the documentary and oral evidence provided. The Tribunal accepted the evidence of all 3 witnesses that the respondent used verbal abuse toward staff who engaged with him in their course of work in the locality of the house. The respondent had been verbally abusive to Ms West, carpet fitters and gas engineers at the property. The Tribunal found all 3 witnesses to be credible and straightforward. The respondent had stated that he had not behaved anti-socially at the time however, he had taken no further steps to oppose the application and did not attend the hearing to challenge the evidence.

42. The Tribunal also accepted the documentary and oral evidence in relation to the respondent's failure to properly dispose of refuse at the property. The Tribunal determined that this constituted a nuisance and fell within the definition of anti-social behaviour in ground 15.

43. Section 18 of the Housing (Scotland) Act 1988 states:

*Orders for possession.*

*(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*

*(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*



(3). . . . .

(3A). . . . .

*(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so....*

*(6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.*

44. Section 19 of the 1988 Act states:

*19 Notice of proceedings for possession.*

*(1) The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*

*(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or*

*(b) the Tribunal considers it reasonable to dispense with the requirement of such a notice*

45. The Tribunal was satisfied that a valid notice in terms of section 19 setting out the relevant ground and complying with the statutory notice period was served on the respondent.

46. The Tribunal considered whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.

47. The Tribunal took into account the frequency, severity and impact of the respondent's anti-social behaviour. The Tribunal gave weight to the fact that the behaviour had been an issue since December 2020 when an incident was

recorded in the applicant's agent's records. The Tribunal noted that the incident involving the carpet fitters was in August 2024 which was fairly recently. The Tribunal took into account that much of the anti-social behaviour was verbal abuse. This had an impact on individuals in regular contact with the respondent however, it was less impactful than other forms of anti-social behaviour. The Tribunal also noted that most of the evidence led at the hearing related to professionals or employees engaging with the respondent as part of their employment rather than neighbours. The Tribunal gave weight to Ms West's evidence that the respondent's behaviour left her dreading work and fearful of contact with the respondent. The Tribunal also gave weight to the fact that the respondent had no remorse or insight into the impact his behaviour may have as was evidenced by the tone of email, phone and text correspondence that had been submitted.

48. The Tribunal gave weight to the abatement notice served by the local authority. This provided independent evidence of the nuisance which was at a level serious enough to result in an abatement notice. The Tribunal determined that this issue would have had a significant impact on neighbours.
49. The Tribunal considered the impact that granting an order or not would have on the parties. The applicant's representative had not provided any specific information on the impact of not obtaining an order on the applicant. They were a landlord of multiple properties. There had been expense and inconvenience arising from the behaviour of the respondent however little information was provided as to the direct impact on the application. The Tribunal did note that there was an impact on the applicant's representative who had ongoing engagement with the respondent which was a source of significant stress.
50. The Tribunal gave some weight to the fact that there had been repairs issues in the property resulting in an RSEO. The Tribunal gave weight to the fact that the applicant's failure to carry out repairs may have led to the respondent feeling frustrated. However the Tribunal accepted Ms West's evidence that the RSEO had been complied with and there were no repairs issues at present. The Tribunal considered that even if there had been repairs issues

this did not provide a justification for the tone of the respondents' communication and the language used.

51. The Tribunal considered the impact of granting an order on the respondent. The Tribunal gave considerable weight to the fact that the respondent resided in the property with his partner and 4 young children. Had the respondent attended the hearing and sought to advance a defence on reasonableness this factor may have been decisive. However, in the absence of any attendance by the respondent the Tribunal referred to the information provided by the respondent at the cmd. He had stated that the property was overcrowded. He stated that his children were aged 8, 6, 4 and 2. He had stated that there was social work involvement with family. The respondent had also stated that he had applied for assistance from the local authority who had offered alternative accommodation by the date of the cmd – although that had not been accepted as suitable. Given the vulnerabilities in the household the Tribunal considered that a possible reason for the respondent's failure to attend the hearing may be that the family were receiving some assistance to access more suitable accommodation.
52. The Tribunal gave considerable weight to the fact that the respondent did not attend the hearing to oppose the application. He had also failed to lodge and written representations or documents which may have assisted the Tribunal on the question of reasonableness.
53. Taking the foregoing factors into account the Tribunal found that on balance it was reasonable to grant an order for eviction.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Mary-Claire Kelly  
**Legal Member/Chair**

**9 December 2024**  
**Date**