



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/1987**

**Re: Property at 74 Montreal Park, East Kilbride, G75 8LB (“the Property”)**

**Parties:**

**Mr Gregor Cameron, 6 Newlands Wynd, East Kilbride, G75 8RN (“the Applicant”)**

**Mrs Lesley Martin (Nee Allan), 74 Montreal Park, East Kilbride, G75 8LB (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Ms E Munroe (Ordinary Member)**

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

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

**Background**

1. This is an application made on 29<sup>th</sup> April 2024 for an eviction order under grounds 11 and 14. The Applicant representative lodged a copy of a private residential tenancy agreement between the parties in respect of the Property commencing on 3<sup>rd</sup> June 2021, a notice to leave dated 11<sup>th</sup> and served 12<sup>th</sup> March 2024 with evidence of service, correspondence with the Respondent, photographs and evidence from Environmental Health.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 13<sup>th</sup> November 2024. The Applicant was not in attendance and was represented by Mr John Lorimer, Letting Agent. The Respondent was in attendance and was supported by her husband.
3. Mr Lorimer explained the background to the application. The Respondent said it was not reasonable to grant an eviction order. The garden was cleared up in mid-September. She had received lots of letters addressed to ‘the occupant’ and she had not opened them. The Respondent accepted there had been an issue in respect of bins. One bin had been stolen and she had to buy another one. She said it took a while to clear the rubbish. The Respondent accepted

she had not received permission to keep a dog, and said the dog fouling issue was due to her going through some health issues. The Respondent had made the Applicant's agent aware of her health issues. Her health is still affected, but she is trying to get by. The Respondent said she has not taken advice, but could do so. Responding to questions from the Tribunal concerning discussions with the local authority, the Respondent said she had been told they could not assist as she would be deemed to have made herself intentionally homeless in the circumstances. The Respondent said she had not been told if assistance would be made available if an eviction order was granted.

4. Mr Lorimer said the Respondent had been given a lot of time to sort out the issues. The Applicant had rented a skip, which the Respondent and her family had filled. On a visit to the Property on 4<sup>th</sup> September 2024, the state of the Property was worse. On a visit on 31<sup>st</sup> October 2024, there continued to be issues. Mr Lorimer referred the Tribunal to photographs taken on these dates. Mr Lorimer said neighbours were affected by the situation, with a rat infestation, which was referred to by Environmental Health.
5. The Respondent said the garden was cleared on 19<sup>th</sup> September 2024. There are items in the garden that require to be removed. The Respondent said her neighbour had mentioned a rat problem connected to an old tumble drier in his shed. The Respondent has never seen a mouse or a rat in her garden. Responding to questions from the Tribunal, parties confirmed there are rent arrears, with assistance being given to the Respondent by Poppy Scotland.
6. The Tribunal considered ground 11 is met, given the fact that the Respondent did not dispute matters relating to the unauthorised dog, the dog fouling, and the bin and refuse situation.
7. The Tribunal confirmed the matter would require to proceed to an evidential hearing on whether ground 14 is met, and on reasonableness.
8. The Respondent was advised to seek advice on the hearing and on her housing position going forward from a suitable advice agency such as CAB, Shelter Scotland or a law centre. The Respondent was told she should be in a position to update the Tribunal as to the position of the local authority if an eviction order is granted. The Tribunal indicated it would expect to see medical evidence in respect of the Respondent's health conditions, and encouraged the Respondent to consider lodging photographic evidence of the condition of the Property.
9. On 21<sup>st</sup> and 31<sup>st</sup> October 2024, the Applicant representative lodged 10 emails with photographs and documents.
10. On 6<sup>th</sup> February 2025, parties were notified of a hearing to take place on 6<sup>th</sup> March 2025 by telephone conference.

11. On 17<sup>th</sup> February 2025, the Applicant lodged an inventory of productions (101 pages).
12. On 19<sup>th</sup> February 2025, the Applicant lodged further photographs by email (20 pages).

### **The Hearing**

13. A hearing took place by telephone conference on 6<sup>th</sup> March 2025. The Applicant was not in attendance and was represented by Mr John Lorimer, Letting Agent. The Respondent was not in attendance. The start of the hearing was delayed to allow the Respondent to join.
14. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent.
15. As a preliminary issue there was some discussion about a witness statement within the Applicant's productions in which it was indicated that the witness did not want their identity disclosed. This had not been brought to the attention of the Housing and Property Chamber when the productions were lodged, and the productions had been shared with the Respondent. Mr Lorimer said the witness was aware of the situation, and was content for the statement to be considered, although they would have preferred if it was not shared.
16. Mr Lorimer explained that he was in attendance to represent the Applicant and give evidence as letting agent. Mr Lorimer said there had been no recent contact with the Respondent, but he had been in touch with the Respondent's guarantor around two months ago to discuss rent arrears. It was Mr Lorimer's understanding that the Respondent is no longer receiving assistance from Poppy Scotland. The arrears are £2120 They were previously £4000. The guarantor paid a lump sum of £1800 in or around January 2025 and the guarantor is now paying £100 per month towards the arrears.
17. Mr Lorimer said he had visited the Property twice since the CMD. On 25<sup>th</sup> January 2025, the garden was not in a good condition. On 26<sup>th</sup> February 2025, it was clear and tidy to an acceptable level. This is a common pattern, whereby the Respondent reacts to pressure, whether from Environmental Health or an approaching Tribunal hearing, and tidies up. It was Mr Lorimer's position that matters would deteriorate again. Mr Lorimer referred to a letter from Environmental Health dated 11<sup>th</sup> September 2024 (production 16 – p90/101) which referred to a visit on 2<sup>nd</sup> September 2024, when there was waste and dog fouling. Mr Lorimer said the garden was cleaned up after this. There was a summary from Environmental Health (production 18 – p101/101) which showed a history of complaints in regard to waste and dog fouling from December 2023 to February 2024.

18. Mr Lorimer referred to various photographs of the situation which had been taken in March, April, September and October 2024. Mr Lorimer referred to three further photographs (pp16, 18 and 20/20) which he said were taken by a neighbour and sent to him on 11<sup>th</sup> February 2025.
19. Mr Lorimer referred to other issues that had arisen since the application was made, some of which were referred to within the witness statement. There has been police involvement. There are rumours of criminality. Neighbours are feeling intimidated and are afraid to give evidence.
20. In discussing reasonableness, Mr Lorimer said he accepted the Respondent has health issues, but she lives with her partner and three teenage children. The burden of ensuring the Property is tidy and the dog looked after does not rest on her alone. The behaviour of the Respondent and her partner is affecting all the neighbours, many of whom are elderly. Neighbours are talking about moving away. This was a lovely neighbourhood previously. The Respondent was previously a model tenant. Mr Lorimer said he has never seen an issue as bad as this in all his years as a letting agent. It was his position that it was not going to get any better. The dog mess is not going to go away.
21. Asked by the Tribunal what the impact upon the Applicant is, Mr Lorimer said he is watching his previously beautiful house going downhill. The Applicant cannot get access for inspections and the gas safety certificate is now overdue – it was due in December 2024. Mr Lorimer confirmed he was aware that access for inspection and certification could be sought through the Tribunal. The Applicant and letting agent are at the end of their tether with this. The fact that the Respondent did not turn up to the hearing sums up how things are.

### **Findings in Fact and Law**

- 22.
- (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 3<sup>rd</sup> June 2021.
  - (ii) The Applicant has served a Notice to Leave upon the Respondent.
  - (iii) The Respondent has accrued rent arrears.
  - (iv) The Respondent's guarantor is making payment towards the rent arrears.
  - (v) Following complaints from neighbours, the garden was found by Environmental Health to be in a poor state with overflowing bins, waste and dog fouling in December 2023.

- (vi) By letter dated 4<sup>th</sup> January 2024, Environmental Health wrote to the Respondent concerning the issues, which included a complaint from a neighbour that the Respondent's dog was fouling in the neighbour's garden and communal areas.
- (vii) The garden was found by Environmental Health to be in an acceptable state in January 2024.
- (viii) A complaint was made regarding dog fouling, overflowing bins and contaminated recycling bins to Environmental Health in February 2024. The complaint was substantiated by Environmental Health.
- (ix) Environmental Health wrote to the Respondent requiring her to address the situation by letter dated 28<sup>th</sup> February 2024.
- (x) On 3<sup>rd</sup> March 2024, the Applicant representative wrote to the Respondent requiring her to address the issues at the Property.
- (xi) At a visit by Environmental Health to the Property on 14<sup>th</sup> March 2024, the situation had not improved.
- (xii) A formal notice was served on the Applicant by Environmental Health on 26<sup>th</sup> March 2024 requiring the Applicant to clear the land of all waste liable to attract and provide harbourage for rodents.
- (xiii) A skip was provided to the Respondent by the Applicant to dispose of rubbish in or around April 2024.
- (xiv) The formal notice was closed down on 10<sup>th</sup> April 2024 as the issues had been dealt with by the Respondent.
- (xv) On 7<sup>th</sup> July 2024, Environmental Health visited the Property and found substantial waste, including dog faeces, in the garden.
- (xvi) On 2<sup>nd</sup> September 2024, Environmental Health visited the Property and found the situation had deteriorated with the additional issue of household waste bags within the garden. A letter was issued to the Respondent.
- (xvii) On or around 19<sup>th</sup> September 2024, the Respondent cleared the rubbish and dog faeces from the garden.
- (xviii) On or around 31<sup>st</sup> October 2024, there were issues with rubbish, overflowing bins, and dog fouling in the garden of the Property.
- (xix) The garden was in a poor state in January 2025, with rubbish and dog faeces present.

- (xx) The garden was in an acceptable state on 26<sup>th</sup> February 2025.
- (xxi) The Respondent has breached clause 17 of the tenancy agreement by failing to take reasonable care of the Property by allowing rubbish and dog faeces to accumulate in the garden area.
- (xxii) The Respondent has breached clause 21 of the tenancy agreement by failing to control their pet and allowing them to foul other people's property.
- (xxiii) The Respondent has breached clause 32 of the tenancy agreement by failing to dispose of rubbish in an appropriate manner.
- (xxiv) The Respondent has breached clause 35 of the tenancy agreement by keeping an unauthorised pet in the Property and allowing the dog to cause nuisance to neighbours.
- (xxv) Ground 11 is met in that the Respondent has breached terms of the tenancy agreement.
- (xxvi) Ground 14 is met in that the Respondent has engaged in relevant anti-social behaviour towards neighbours by allowing her dog to foul in neighbours' gardens and communal areas, and causing nuisance or annoyance to neighbours.
- (xxvii) It is reasonable to grant an eviction order.

### **Reasons for Decision**

23. The Tribunal found that grounds 11 and 14 were met. There were accepted breaches of the terms of the tenancy agreement in respect of the unauthorised pet, the accumulation of rubbish, dog fouling and the state of the garden of the Property. In respect of ground 14, the Tribunal was satisfied that the Respondent has engaged in relevant anti-social behaviour by allowing her dog to foul in the garden of neighbours and common areas, causing nuisance or annoyance to neighbours. This was also not disputed by the Respondent at the CMD. The application for an eviction order was made within 12 months of the anti-social behaviour occurring, as substantiated by the letter from Environmental Health dated 4<sup>th</sup> January 2024 which reports claims of dog fouling in neighbouring gardens and common areas.
24. In considering reasonableness, the Tribunal weighed the circumstances carefully, looking at the implications for both parties of granting and not granting an eviction order.
25. The Tribunal was mindful of the fact that the Respondent has, on occasion, and recently, attended to the issues in the garden, returning it to an acceptable condition. However, it has required the repeated intervention of Environmental Health, the actions of the Applicant in providing a skip, and the

threat of eviction to make this happen. The Respondent has not sustained the improvement, with further complaints and repeated intervention required.

26. The Respondent allowed the situation to deteriorate again in January 2025, despite the ongoing Tribunal application. Although the situation had improved by February 2025, the Tribunal considered there was merit in the Applicant representative's conclusion that matters are only attended to when there is external pressure on the Respondent, and that, in the absence of such pressure, the situation will deteriorate again. Environmental Health previously considered the situation serious enough to warrant a formal notice, which was served on the Applicant. The Tribunal took into account Environmental Health's reference to the waste issue leading to harbourage of rodents, which situation could have a significant impact upon neighbours. The Tribunal took into account the witness statement from the neighbour, which reiterated the poor condition of the garden in January 2025 and the previous fouling of the neighbour's garden by the Respondent's dog. The Tribunal noted that the Respondent had not disputed the photographic evidence provided by the Applicant representative. The Tribunal considered certain of the photographs, particularly those showing overflowing bins and a significant volume of black bags of rubbish in the garden, substantiated the concerns of Environmental Health and neighbours that a rodent infestation may occur. The Tribunal took into account the impact of the Respondent's behaviour upon neighbours in a neighbourhood described as good prior to the occurrence of these issues, and the evidence that neighbours are now considering moving away, in part because of the Respondent's behaviour.
27. The Respondent did not attend the hearing to put forward any arguments in respect of reasonableness. The Tribunal had regard to the arguments put forward at the CMD, which included claims from the Respondent that health concerns had contributed to the situation. This was not disputed by the Applicant representative, however, the Respondent did not provide any medical evidence to substantiate her claims or to assist the Tribunal in assessing the impact of eviction upon her, given her health issue. The Tribunal considered there was merit in the Applicant representative's submission that the burden of ensuring the garden of the Property is tidy, and the dog faeces lifted, should not rest on the Respondent alone. She has a partner and there are three teenage children living in the Property, all of whom could assist in keeping the Property in an acceptable state if the Respondent's health does not allow her to do so.
28. The Tribunal took into account that the children living in the Property may be affected by the granting of an eviction order. However, the Respondent did not attend the hearing to put forward any further information in this regard, including the proximity of schools attended or any medical or social issues that might affect the children.
29. The Tribunal took into account that the Respondent was said to have previously been a model tenant. It was unfortunate that the Respondent was

not present to provide any further information that the Tribunal could take into account in this regard, as to why her circumstances have changed.

30. The Tribunal considered the Applicant's circumstances and his concerns that the Property is deteriorating. Without access to the Property, it was impossible to ascertain whether this is a real concern, however, the situation in respect of the garden would not give the Applicant much comfort that the Property is being well maintained inside. The Applicant does, however, have the opportunity of applying to the Tribunal for access for inspection and safety certification purposes.
31. The Tribunal considered the rent arrears, which had been substantial in the past. They are being addressed by the guarantor, and the Applicant has the comfort of a payment plan now to cover the arrears.
32. The Tribunal considered it unsatisfactory that the Applicant had to be served with a formal notice from Environmental Health when he was not responsible for the issues that arose, which necessitated the arrangement by the Applicant of a skip for disposal of waste. The Tribunal considered, on the balance of probabilities, that, if no order was granted, there was a likelihood that the Respondent would continue to behave in the same manner, necessitating further involvement from Environmental Health and causing further distress and annoyance to the Applicant and the neighbours, with a risk of rodent infestation.
33. The Tribunal did not give any weight to the three undated photographs provided by the Applicant representative and said to have been taken by a neighbour on 11<sup>th</sup> February 2025, as there was insufficient evidence to indicate when they were actually taken.
34. The Tribunal made no findings in respect of the recent and very serious allegations of anti-social behaviour and criminality, as these had not formed part of the application, and there was an insufficiency of evidence to substantiate them.
35. Having considered all the circumstances of both parties and the implications of granting or not granting an eviction order, the Tribunal considered it was reasonable to grant an eviction order.

## **Decision**

36. An eviction order is granted in favour of the Applicant. The order is not to be executed before 12 noon on 10<sup>th</sup> April 2025.

## **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.**

# H. Forbes

**Legal Member/Chair**

**Date 6 March 2025**