



**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/24/3516**

**Re: Property at Flat 7, 1 Wide Close, Lanark, ML11 7LX (“the Property”)**

**Parties:**

**Mr Daniel Kelly, 39a Mary Street, Hamilton, ML3 6PX (“the Applicant”)**

**Mr Taylor Bigger, Flat 7, 1 Wide Close, Lanark, ML11 7LX (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property.**

**Background**

1. By application dated 31 July 2024 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Grounds 11 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, a Notice to Leave with proof of service, a Section 11 Notice with proof of sending, copy text messages and correspondence together with other documents in support of the application.
2. Following further correspondence between the Tribunal administration and the Applicant, by Notice of Acceptance dated 18 October 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 3 March 2025.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 10 April 2025. The Applicant attended in person supported by his wife Mrs Mary Frances Kelly The Respondent did not attend nor was he represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in his absence.
5. The Tribunal noted from the documents submitted with the application that although the parties purported to have commenced a Short Assured Tenancy on 21 July 2023 there was in fact a Private Residential Tenancy created at that time in terms of the provisions of the 2016 Act. The Applicant advised the Tribunal that he had been unaware of the abolition of Short Assured tenancies but was now using the correct agreements.
6. The Tribunal also noted that the Respondent had been served with a Notice to Leave under Grounds 11 and 14 of Schedule 3 of the 2016 Act by personal service on 25 April 2024 and that a Section 11 Notice had been sent to South Lanark Council by email on 31 July 2024.
7. The Applicant advised the Tribunal that the Respondent had pled guilty to a charge of threatening behaviour when the case against him had called in October 2024 but that he did not know what sentence had been imposed on the Respondent. The Applicant also advised the Tribunal that he had been advised by the police that they had attended at the property in about November last year with regards to an allegation that the Respondent had been dealing drugs at the property. The Applicant was unaware of the Respondent being arrested or charged with any drug offences.
8. The Applicant referred the Tribunal to the text messages received from a neighbour at the property raising concerns about the Respondent's anti-social behaviour and cannabis use. The applicant confirmed that the neighbour "James" had continued to make similar complaints after the date of the application.
9. The Applicant advised the Tribunal that the guarantor was no longer paying any rent for the property but he had not yet taken any steps to serve any further notice on the Respondent with regards to rent arrears.
10. With regards to Ground 11 of Schedule 3, the Applicant said that about three or four months after the Respondent moved into the property, he had received a call from the Council Environmental Health Department advising that the Respondent had reported some

issues as regards the property to them. The applicant referred the Tribunal to his written representations submitted with the application. He explained that the issues were minor and had not caused the reporting officer Mr Curry any concern. The Applicant went on to say that after he messaged the Respondent with a view to gaining access to the property to carry out the minor repairs the Respondent had become abusive and that due to the Respondent's threatening behaviour the Applicant was unable to access the property.

11. The Applicant advised the Tribunal that due to the stress associated with being a landlord he had decided to sell his portfolio of twelve rental properties as they became vacant. The Applicant told the Tribunal that despite the Respondent continuing to live in the property the Applicant had been served with a Summary Warrant for nonpayment of Council Tax for the property. The Applicant said this had caused him considerable worry and distress although he had managed to resolve the issue.

### **Findings in Fact**

12. The Respondent commenced a Private Residential Tenancy of the property on 21 July 2023.
13. A Notice to Leave under Grounds 11 and 14 of Schedule 3 of the 2016 Act was served on the Respondent on 25 April 2024.
14. A Section 11 Notice was sent to South Lanarkshire Council on 31 July 2024.
15. The Respondent has sent abusive text messages to the Applicant and has been convicted of threatening behaviour towards the Applicant.
16. The Respondent has engaged in anti-social behaviour at the property causing alarm and distress to a neighbour.
17. The Applicant has been unable to gain entry to the property to assess and carry out repairs due to the behaviour of the Respondent.

### **Reasons for Decision**

18. The Tribunal was satisfied from the documents submitted and the oral submissions of the Applicant that the parties entered into a Private Residential tenancy that commenced on 21 July 2023. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Grounds 11 and 14 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had

been given to South Lanarkshire Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that the Respondent has exhibited anti-social behaviour towards the Applicant by the use of threatening and abusive text messages that resulted in the Respondent receiving a criminal conviction. The Tribunal was also satisfied that the Respondent had exhibited anti-social behaviour at the property causing alarm and distress to a neighbour. The Tribunal was also satisfied that the Applicant was unable to gain access to the property due to the Respondent refusing to allow access and making threats to the Applicant. The Tribunal was therefore satisfied that the criteria for granting an order for eviction under grounds 11 and 14 of schedule 3 of the 2016 Act had been met subject to it being reasonable in the circumstances to grant the order.

- 19.. In reaching a decision on reasonableness the Tribunal noted that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. The Tribunal was satisfied that the behaviour of the Respondent had been a factor in the Applicant's decision to sell his portfolio of rental properties. The Tribunal also acknowledged that the Respondent's continued occupation of the property would be likely to have an adverse effect on neighbours. Although not part of the application the Tribunal was also aware that there were issues with regards to rent not being paid by the Respondent and that the Respondent's guarantor was also no longer paying any rent. The Applicant had also been served with a summary warrant for non-payment of Council Tax at the property despite the Respondent continuing to occupy the property and although this issue had been resolved it had caused him considerable worry and distress. Taking all of the circumstances made available to the Tribunal, the Tribunal was satisfied that it was reasonable to grant an order for the eviction of the Respondent from the property.

## **Decision**

20. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property.

## **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.**

Graham Harding

**Legal Member/Chair**

**10 April 2025  
Date**