

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/24/2861

Re: Property at 118 Forthill Road, Broughty Ferry, Dundee, DD5 3DR (“the Property”)

Parties:

Mrs Otilie Anderson, 28 Ballinard Gardens, Broughty Ferry, Dundee, DD5 1BZ (“the Applicant”)

Miss Marsha Reid, 118 Forthill Road, Broughty Ferry, Dundee, DD5 1ED (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Melanie Booth (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 20 June 2024 the applicant seeks an order for possession relying on ground 14 (anti-social behaviour) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged with the application a number of documents including
 - Tenancy agreement
 - Notice to leave with proof of service
 - Section 11 notice
 - Correspondence between the applicant and Dundee City Council
 - Text messages between parties
 - Photographs of the property

Case management discussion (“cmd”) – 4 April 2025 – teleconference

3. A case management discussion (“cmd”) took place on 4 April 2025. The applicant was represented by her husband, Mr Anderson. The respondent was not present or represented. The respondent had been served with papers by Sheriff Officers on 3 March 2025. The Tribunal was satisfied that that she had been properly notified of the cmd and proceeded in her absence in terms of rule 29.
4. Mr Anderson sought an order for eviction. He stated that the respondent continued to behave in antisocial manner. He stated that his wife had purchased the property as an investment. The property was their first and only rental property. He stated that the respondent resided alone in the property. The tenancy had commenced on 3 September 2018. There had been no issues with the respondent for the first 5 years. Problems with the respondent’s behaviour began in 2023. Mr Anderson stated that the last 2 years had been extremely difficult. He stated that the respondent’s behaviour has been very volatile and there had been a large number of incidents involving her screaming and shouting in the garden and making banging noises from within the property. Approximately 18 months previously the police had been called out due to the respondent’s behaviour. Mr Anderson stated that she had been detained under mental health legislation. An email from Andrea Ross, Investigation Officer (Community Safety & Protection) at Dundee City Council had been submitted. Ms Ross had detailed 10 complaints of incidents anti-social behaviour received by Dundee City Council since July 2022. She also confirmed that she was aware of 13 occasions when the police had been contacted regarding anti-social behaviour. Mr Anderson stated that the respondent’s behaviour was having a devastating impact on her neighbours. Mr Anderson stated that the property is a small semi-detached cottage with a back garden. The respondent has a number of elderly neighbours. Mr Anderson stated that the respondent had made distressing comments to her neighbours, including stating that they had been engaged in sexual violence. This had led to them not using their garden. Mr Anderson stated that there were 4 or 5 properties that were particularly

affected. The respondent frequently referred to distressing topics when she is shouting outside the property which is frightening and upsetting for her neighbours. Her behaviour is unpredictable and Mr Anderson stated that it was clear that she needed medical assistance. Mr Anderson said that there were incidents at the property 4 or 5 times a week. Mr Anderson stated that he had also had distressing conversations with the applicant where she referred to sexual violence.

5. Mr Anderson stated that the neighbours knew that it was not the applicant's fault but they were having to live with the issue. Mr Anderson said that he lived in dread of the next call complaining about the respondent. He stated that it was extremely unsettling and that they received complaints multiple times a week. He stated that he and the applicant are both working.
6. Mr Anderson stated that they have tried to get support for the respondent. He stated that he and his wife contacted mental health services to ask if assistance could be provided. They were advised that any referral would have to come from the police. They also contacted the police to request a welfare check. Mr Anderson stated that the applicant had contacted the respondent's local GP practice to try and make them aware of the issue. He stated that due to data protection and privacy there was little they could do to ask the medical practice to intervene. In addition the applicant had been in regular contact with Ms Ross from the Community Safety and Protection department at Dundee City Council. Mr Anderson thought that Ms Ross usually dealt with anti-social behaviour in council properties. Mr Anderson stated that both the police and the council were aware of the issues but nothing was being done to help the respondent. Mr Anderson stated that the applicant had no alternative but to raise the application as there was no other way to address the anti-social behaviour which was frequent and distressing.
7. Mr Anderson stated that he and the applicant had approached the housing department at Dundee City council for advice. He stated that it was clear that the respondent needed support and to be moved to more suitable accommodation. He stated that the person they spoke to was helpful and as far as he was aware they had reached out to the respondent and put her name on the council waiting list.

8. Mr Anderson referred to photographs that had been submitted which showed issues with the condition of the property. He stated that the respondent had covered over the smoke and heat detectors in the property. He stated that this was connected with her mental health issues. He stated that there is a fire risk and he had spoken to Scottish Fire and Rescue Service to check if they could assist with the fire risk that was being posed.

Findings in fact and law

9. The parties entered into a private residential tenancy agreement with a commencement date of 3 September 2018.
10. The respondent resides alone in the property.
11. A valid notice to leave was served on the respondent on 14 February 2024.
12. The police have been called to the property at least 12 times between 24 May 2023 and 22 February 2025 in relation to anti-social behaviour.
13. Complaints were made to the anti-social behaviour team at Dundee City Council 10 times between July 2022 and August 2024.
14. The majority of the complaints made to the police and Dundee City Council relate to screaming and shouting in the garden and banging and shouting within the property.
15. The respondent has covered over the smoke and heat detectors in the property.
16. The applicant has made contact with the police, the respondent's GP practice and Dundee City Council to ask for support to be provided to the respondent in relation to her mental health issues.
17. The applicant has contacted Dundee City Council to make the housing department aware of the issues and to ask the council to contact the respondent regarding her housing situation.
18. The respondent has caused distress to her neighbours as a result of her outbursts and comments directed towards them.
19. The incidents of the respondent causing distress to her neighbours continue and occur multiple times every week.
20. The respondent has engaged in relevant anti-social behaviour in terms of ground 14 in schedule 3 of the 2016 Act.
21. The respondent has not lodged any opposition to the present application;

22. It is reasonable to grant an order for eviction.

Reasons for the decision

23. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

24. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

25. Ground 14 states:

14(1) It is an eviction ground that the tenant has engaged in relevant anti-social 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 anti-social manner in relation to another person,

(b) the anti-social behaviour is relevant anti-social behaviour,

(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and

(c) either—

(i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social 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 anti-social manner in relation to another person by—

(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,

(b) pursuing in relation to the other person a course of conduct which—

(i)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)Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—

(a)who it was in relation to, or

(b)where it occurred.

(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.

26. The Tribunal had regard to the application, the various documents submitted by the applicant and Mr Anderson’s oral submissions at the cmd.

27. The Tribunal found Mr Anderson to be genuine and truthful. The Tribunal accepted his evidence in full.

28. The Tribunal accepted Mr Anderson’s evidence which was corroborated by the email from Ms Ross at Dundee City Council that the respondent had engaged in anti-social behaviour. The Tribunal accepted the unopposed evidence that the respondent had cause nuisance and distress to her neighbours on many occasions since 2023. The Tribunal accepted that the behaviour was ongoing and frequent. The Tribunal had no doubt that the antisocial behaviour as described and recorded in the complaints to the council was extremely distressing and had a severe impact on her close neighbours and the applicant and Mr Anderson. The Tribunal was satisfied that the requirements of paragraph 14(2)(a)(b) and (c) were met.

29. 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.

30. The Tribunal took into account the frequency, severity and impact of the respondent’s anti-social behaviour. The Tribunal gave considerable weight to the fact that the anti-social behaviour has been ongoing since 2023. The

behaviour was frequent and ongoing with no sign of improvement. The Tribunal considered that the impact of the antisocial behaviour on the respondent's neighbours and the applicant had been relentless during this period. The Tribunal gave significant weight to the nature of the anti-social behaviour which had a severe impact on the respondent's neighbours. Mr Anderson had set out how the comments made by the respondent were distressing in their content and how the respondent's immediate neighbours no longer used their gardens. The Tribunal found that the respondents behaviour placed the neighbours in an intolerable situation. The Tribunal also took into account the fact that the respondent had covered over all the fire and smoke detectors which presented a considerable health and safety risk.

31. The Tribunal gave considerable weight to the fact that the applicant had tried to assist the respondent by contacting the police, the respondent's GP, and Dundee City Council. The Tribunal accepted Mr Anderson's evidence that the applicant had done what they could to try and resolve the issue before seeking an eviction order.
32. Against this the Tribunal gave weight to the respondent's personal circumstances. It was clear from the evidence presented that the anti-social behaviour complained of was as a result of the respondent's significant mental health issues. The Tribunal gave weight to the fact that the respondent's behaviour was likely to some extent to be out of her control. Against this the Tribunal took into account that the respondent was clearly not receiving adequate support. Despite the fact that a number of agencies were aware of the ongoing issues caused by the respondent's behaviour in the property no progress appeared to have been made in addressing her behaviour. The Tribunal took into account that the present accommodation was unsuitable for the respondent at present in light of her mental health issues.
33. The Tribunal gave weight to the fact that the respondent was not present and had not opposed the application.
34. The Tribunal had sympathy for all parties. It was clear from the evidence that the respondent has been struggling with significant mental health issues since 2023. However, set against that the impact of her behaviour had a devastating

impact on the daily lives of her neighbours. The Tribunal determined that on balance it was reasonable to grant an order.

Right of Appeal

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

Legal Member/Chair

4 April 2025_____
Date