



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

Chamber Ref: FTS/HPC/EV/24/0383

Re: Property at 2 Birch View, Milngavie, G61 2BT (“the Property”)

Parties:

Mr Norman Macleod, Ms Josephine Macleod, 6 Lynn Drive, Milngavie, G62 8HN (“the Applicant”)

Miss Eilidh Farrell, 2 Birch View, Milngavie, G61 2BT (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Gordon Laurie (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the application for an eviction order against the Respondent in respect of the Property be refused.

Background

1. This was a hearing held in Glasgow Tribunal Centre on 11 March 2025 in respect of an application for an order of eviction. The application is under Grounds 11 and 14 of Part 2 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was dated 23 January 2024 and was accepted for determination on 31 July 2024.
3. A case management discussion was held on 4 December 2024 when determination of the application was deferred to a hearing.

Preliminary Matters and Attendance

4. The Applicant was not present and but was represented by Ms Jill Barkley of Victoria Letting, the letting agent. She was assisted by Ms Sharon Cooke. Ms Cooke indicated that her company intended to takeover part of Victoria Lettings' business. Mr Ian Barkley of Victoria Letting was also present and gave evidence.
5. The Respondent was present and was accompanied by Mr Andrew Wright as a supporter and a representative. It was noted that, as well as providing support, it was intended for Mr Wright to provide evidence. Ms Barkley confirmed that she had no objection to Mr Wright being present for the whole hearing.
6. The Respondent explained that Mr Wright had formerly been a co-tenant and is the father of her son who resides with her.
7. The Respondent said that she intended to lead evidence from Mr Alan Wright, father of Mr Andrew Wright.
8. Mr Wright submitted that the hearing should be adjourned. He said that there had been an incident where police had been involved and he believed that a neighbour of the Respondent had been warned about his behaviour. He said that he had made a subject access request to the police for details of this and he said that he would want the information to be available for the tribunal. The tribunal considered matters and determined not to adjourn on the basis that such a subject access request can only be made by an individual in relation to information about themselves and what Mr Wright was seeking was information about someone else.
9. At the case management discussion, the Respondent had indicated that she was not opposed to the eviction. Her position had changed at the hearing and she said that she did not want the order to be granted.

Procedure

10. The tribunal sat until late in the afternoon when the hearing of evidence concluded. Because of the lateness of the hour, and to allow parties time to consider the evidence before making submissions, the tribunal ordered that written submissions would be prepared by each party and that they must be lodged with the Tribunal prior to 15 April 2025. Both parties complied with this and lodged written submissions.
11. Findings in Fact
 - 11.1 The Applicant is the proprietor of the Property.
 - 11.2 The Property is situated on the ground floor in a block of six flats.

- 11.3 The Applicants granted a private residential tenancy of the Property in favour of the Respondent and Mr Andrew Wright in May 2021.
- 11.4 The tenancy commenced on 17 May 2021.
- 11.5 Mr Andrew Wright ceased to be a tenant and a subsequent private residential tenancy agreement was granted in favour of the Respondent alone on 5 August 2022.
- 11.6 On 23 October 2023, a Notice to Leave was served on the Respondent requiring her to remove from the Property by 19 January 2024.
- 11.7 The Respondent continues to reside in the Property with her son.
- 11.8 Mr Andrew Wright is the father of the Respondent's son.
- 11.9 Neighbours of the Property have made complaints to the Applicants' letting agent about the condition of the Property and the actions of the Respondent.
- 11.10 A representative of the letting agent has spoken to neighbours about complaints they have raised with the letting agents about the Respondent's tenancy of the Property.
- 11.11 Neighbours of the Property have made complaints to the Applicant's letting agent about the actions of Mr Andrew Wright.
- 11.12 On 17 May 2023, the letting agents carried out an inspection. The report discloses that some paintwork was dirty, scuffed and marked, that there was evidence of mould and condensation to the windows and blinds, that floor coverings were dirty and that the Property was cluttered.
- 11.13 Further property inspections were carried out after the one in May 2023.
- 11.14 Inspection reports were issued in respect of inspections which were carried out in May 2024 and October 2024.
- 11.15 At the time of the notice to leave, there was evidence of condensation and mould within the Property.
- 11.16 Prior to the notice to leave, the Respondent asked the letting agents to provide expertise and assistance with regard to the existence of condensation and mould within the Property.
- 11.17 At the time of the notice to leave, there were signs of wear and tear within the Property.

- 11.18 Mr Andrew Wright frequents the Property notwithstanding that he is no longer a tenant. Mr Wright provides support and assistance to the Respondent and his son. He sometimes stays overnight.

Documents before the tribunal

- 12.1 Private Residential Tenancy Agreement dated 5 August 2022 between the Applicant and the Respondent showing the start date of the tenancy to be 1 September 2022 and the monthly rent to be £695.
- 12.2 Copy Notice to Leave dated 23 October 2023 and copy email confirming that it was served on that date.
- 12.3 Copy Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 and dated 4 October 2023.
- 12.4 Print of Title Sheet for DMB35786the Property).
- 12.5 Inspection Reports dated 17 May 2023, 22 May 2024 and 20 November 2024.
- 12.6 Various emails, text messages and Whatsapp messages between the Respondent and the letting agent.
- 12.7 Various emails and statements from proprietors of properties in the block of flats where the Property is situated.

The Law

The following provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

S.51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

Schedule 3, Part 3 Ground 11

Breach of tenancy agreement

11(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.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.

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.

Preliminary Determinations

13. The tribunal was satisfied that the notice to leave was in order and that the appropriate notice had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

14. The tribunal was satisfied that the Applicant is the owner of the Property, is the landlord in terms of the private residential tenancy agreement and is therefore entitled to make the application for an order of eviction.

15. The tribunal considered that it required to take a two stage approach in considering the application. It required to consider the grounds and, if either ground was found to be met, then to consider whether it would be reasonable to grant the order of eviction on account of that ground or those grounds being met.

Anti-social behaviour

16. Ms Barkley's position was that the Respondent had acted towards others in a manner which was anti-social and that, in relation to Mr Andrew Wright, was associating in the Property with a person who has engaged in anti-social behaviour.

17. Ms Barkley said that neighbours of the Property had reported behaviour of the Respondent and Mr Andrew Wright which she considers to be anti-social. She said that the neighbours making complaints had not wanted to attend the hearing to give evidence because they felt intimidated.
18. Ms Barkley referred to various emails which she had submitted.
19. An email of the letting agent to the Respondent dated 8 April 2022 referred to a complaint about dog fouling.
20. An email from the Applicant to Victoria Lettings dated 27 September 2021 referred to complaints intimated to him and concerning the Respondent: a paddling pool being left in the common area, a bed left in the common area, a large number of black rubbish bags left in the common area by the Respondent, slamming of the communal front door, a bike being taken through the communal front door causing damage, dog urination in the common area, a barking dog and annoyance caused to neighbours.
21. In an email to the Tribunal dated 11 March 2024, Victoria Lettings intimated that it had received several telephone calls regarding dog barking and fouling *"from neighbours who did not want to leave their names."* The email referred to *"the tenant's partner"* being verbally abusive, threatening and obstructive to staff including a member of staff who is visually impaired. The email refers to the member of staff being shouted at and reference made to her disability and for her to *"go and perform a 'specific sex act.'"*
22. Ms Barkley said that Mr Andrew Wright had been at her office in May 2024 and had behaved in an abusive manner and made reference to her disability. She said that the Respondent had telephoned her and apologised for the actings of Mr Andrew Wright.
23. Mr Wright accepted that he had spoken to Ms Berkley but denied making reference to her disability
24. Ms Berkley said that, on one occasion when Mr Andrew Wright had telephoned the letting agent, he had been aggressive and had used offensive language.
25. A neighbour, Mr Wilson, sent an email to the Applicant on 13 April 2024 in which he complained about the actings of the Respondent in allowing her dog to urinate on the grass, the slamming of exterior doors, piling rubbish in bags within the bin store and failing to control a dog.
26. A neighbour, Mr Gillespie, sent an email to the letting agent on 15 April 2024 in which he stated that he was unhappy with the *"general state"* of the Property

and referred to a smell and the common grass area being “in disrepair” due to the Respondent’s dog.

27. A neighbour, Mr Dingwall, emailed the Applicant on 12 and 13 April 2024 and stated that the Respondent often leaves her dog alone and it *barks “from the minute they leave until they return.”* The email states that the barking has kept him awake at night and that the dog has bitten him twice. The email refers to piles of black bags containing rubbish being outside the door of the Property *“for weeks.”* It states that *“one of the parents”* has been moving “putrid rubbish” from the Property.
28. Mr Barkley said that other residents had reported an inordinate number of rubbish bags having been kept in the Property and in the bin store. The Respondent did not accept this to be the case.
29. Mr Alan Wright said that he had moved black bin bags from the Property, which for a short time may have been in the common area. He said that these contained toys, clothing and other belongings, not rubbish. Mr Alan Wright and the Respondent said that this was because they were taken from the Property to facilitate the Respondent’s removal as a consequence of service of the notice to leave.
30. Mr Dingwall, a neighbour, emailed the Landlord on 9 March 2025 and stated: *“This is getting ridiculous dog barking for hours on there return he’s learning to play the electric guitar loudly and badly they need gone.”*
31. A neighbour, Mr Fairlie, emailed the Applicant on 17 April 2024 and referred to the Respondent’s dog not being on a lead and attacking his dog.
32. The Respondent did not accept that her dog had bitten anyone. She said that it was very friendly.
33. The Applicant had lodged a medical report dated 5 February 2025 concerning Mr Robert Wilson of 4 Birch View. It states that Mr Wilson’s health is suffering as a result of *“the ongoing domestic situation regarding his neighbours.”*
34. The tribunal had a document signed by Mr Robert Wilson, a neighbour, which stated that on 3 February 2025, Mr Andrew Wright stood in front of a car being driven by him, refused to get out of his way and gestured to him and shouted. The document states that Mr Wilson was *“in a state of fear and alarm.”* The document states that Mr Wilson then slowly drove around Mr Wright. Mr Wilson submitted two photographs of Mr Wright standing in front of his car which he stated he had taken at the time.

35. Mr Andrew Wright disputed the version of events set out in the document signed by Mr Wilson. He said that he had been outside the Property with the dog on a lead. He said that Mr Wilson had deliberately locked him out of the building in which the Property is situated and that he had then driven his car towards him. He said that he had concerns that the dog could have been run over. Mr Wright said that police were called and he understands that Mr Wilson may have been warned about his conduct.
36. Ms Barkley said that there had been reports about Mr Andrew Wright smoking cannabis in the precincts of the common areas. He said that neighbours had complained about the smell. Mr Wright said that he did not smoke cannabis. He said that he smokes rollup cigarettes and occasionally cigars. He denied smoking in the common areas and said that he smokes on the public footpath outwith the common areas.
37. Ms Berkley said that there were “*constant emails*” from neighbours complaining about Mr Wright’s behaviour towards them. She said that she understands that, on one occasion, the Respondent and Mr Andrew Wright had a disagreement which led to the Respondent climbing out a window to get away from him. Ms Berkley said that, because of what had been reported by neighbours, she had concerns about the Respondent’s wellbeing.
38. Ms Berkley said that, according to what neighbours reported, Mr Wright is at the Property “*all the time.*” Mr Wright disputed this. He said that, since he separated from the Respondent, he has a new partner and that he only is at the Property to provide support to the Respondent and to visit his son. He said that he has occasionally stayed overnight. The Respondent said that Mr Wright does provide support and assistance to her. She explained that, for periods, she had been unwell and needed support.
39. Ms Berkley said that she had received reports that the dog had been left unattended in the common areas and had caused fouling. The Respondent did not accept this.
40. Ms Berkley said that there had been a number of complaints from neighbours about incessant barking from the Respondent’s dog. The Respondent accepted that her dog sometimes barked. She said that, for a short period after the dog has been left, the dog may bark but thereafter it calms down. The Respondent said that the landlord knew about the dog at the commencement of the tenancy.
41. Ms Berkley said that she was unaware of any reports being made to the local authority dog warden.

42. Ms Berkley said that other residents in the development had agreed to attend the hearing to provide evidence but had then declined to do so because they felt intimidated by Mr Andrew Wright.
43. Mr Berkley said that the letting agents had received numerous complaints from neighbours about the condition of the Property and the actions of the Respondent and Mr Andrew Wright. He said that things seemed to get worse when the tenancy changed in 2022 to be in name of the Respondent alone. He said that Andrew Wright frequented the Property after the private residential tenancy was in name of the Respondent alone. Mr Berkley said that, in the last six months, he spoke to the other residents about the concerns they had.
44. The Respondent said that she did her best to get on with neighbours and that it is only comparatively recently that there has been what she described as an “acceleration” of complaints.
45. Mr Andrew Wright said that “ the neighbours had just taken a dislike to him.”

Breach of tenancy agreement

46. Ms Berkley and Mr Berkley said that the Respondent had not complied with the terms of the private residential tenancy agreement with regard to keeping the Property in good condition.
47. Mr Berkley said that the letting agents had received reports from other residents about the Respondent leaving excess rubbish bags outside the Property and in the bin store.
48. Mr Berkley referred to an inspection which had been carried out on 17 May 2023 and to the report of it which had been submitted to the Tribunal. Mr Berkley said that, prior to the inspection, there had been a phone call to the letting agent about the state of the windows in the Property.
49. The inspection report of 17 May 2023 dealt with the rooms in the Property in turn and gave a view on various items. It stated that, in relation to general cleanliness, the Property was cluttered and untidy and that bedroom 1 was “*really cluttered.*”
50. The report stated the condition of individual items as follows:

Walls- marked scraped and dented in the entrance/hallway
Walls- marked with damp in the lounge
Walls- good in bedroom1, bedroom 2 and the kitchen.
Walls- fair in the kitchen.

Walls- good and clean in the bathroom.

Doors- fair throughout with the exception of the kitchen which was described as scuffed and marked.

Carpets -fair in the hallway, lounge and bathroom.

Carpets - very dirty and marked in bedroom 1 and in need of hoovering.

Carpets - dirty and marked in bedroom 2 and in need of hoovering.

Floorcovering- grubby in kitchen.

Floorcovering- fair in bathroom.

Windows- suffering with damp and deterioration in lounge.

Windows- good in kitchen.

Windows good and glass clean in bedrooms 1 and 2.

Cooker- fair condition.

Oven- dated, but fair.

Curtains- fair in lounge and bedroom 1.

Blinds- dirty and damaged with mould and damp.

51. Mr Berkley said that the Respondent had been provided with leaflets with regard to prevention of condensation mould and he referred to an email of Annette Hannah from his company which had been sent to the Respondent on 18 May 2023. It states that *"you are clearly not looking after the property in line with the terms and conditions of the lease. We require the property to be brought back into line by carrying out the following:*

Deep clean of window frames, cills and windows

Deep clean of bathroom including grout and seals around the bath area

General tidy and clean of all rooms

Please ensure you are ventilating the property regularly as the window frames indicate that condensation mould is being allowed to build up to a level where the damage is caused, you as tenants are responsible for this. I have attached a condensation leaflet for your guidance to minimise damage caused by this."

52. The Respondent replied to the email by Annette Hannah on the same date and stated *"the issue with mould has been ongoing and mentioned and viewed in the previous inspections and only now you're emailing me to raise it as a concern..... happy to clean mould as I have done previously. I even spent money on a dehumidifier to reduce this."* The email states that the issue had been mentioned in previous inspections *"however, nothing has been done about this. As the tenant, I understand that it is my responsibility to clean this but that doesn't resolve the problem and stop it reappearing within 1 to 2 weeks."* The email goes on to refer to what the Respondent considers a landlord's obligations with regard to condensation and potential health and safety matters. The Respondent confirms in her email that she endeavours to ventilate the Property but references that this is difficult, particularly in winter months, when all that can be done is to open the windows. In her email, the Respondent states that she had spoken to the owners of the other ground floor flat in the building who told her that they had *"the same issues with dampness and mould."*

53. Annette Hannah replied to the Respondent's email and stated *"hopefully the leaflet will help alleviate some of the condensation along with ventilation and your humidifier."* It states that the issue would be reviewed in three weeks after

a further inspection and that any work required will be arranged with the landlord. The email suggests opening the windows for an hour a day and wiping condensation from the glass.

54. Mr Berkley's evidence was that he did not do the inspection on 17 May 2023 but that he did the follow up ones. He said that, on the first inspection after the one in May, he observed that window frames were damaged, window blinds were "*black*" and that there was mould present. He said that the flat was cluttered and that there were two large bikes in the hallway. Mr Berkley confirmed that there was no drying green for the Property.
55. Mr Berkley confirmed that the inspection reports which had been submitted to the Tribunal are in respect of those carried out in May 2023, May 2024 and November 2024.
56. Mr Berkley said that Mr Macleod, one of the landlords, wanted to inspect the Property and did so on 4 October 2023. Mr Berkley's evidence was that the landlord was dismayed at the condition of the Property and decided that he wanted to evict the Respondent because of the condition of the Property and also because of antisocial behaviour.
57. The tribunal was referred to an email which Mr Macleod received from the Respondent on 9 October 2023 in which she apologised for the untidiness and damage to the Property. In the email, the respondent asks for a chance to tidy up and repair any damage incurred.
58. The Respondent said that there were issues in the Property with condensation and mould. She said that she had asked the letting agent for assistance and referred to her email of 18 May 2023. She said that she had bought her own dehumidifier. The Respondent referred to her email to the letting agent of 14 September 2023 which she sent prior to the inspection by Mr Macleod. The email states: "I have repeatedly brought this matter to your attention, but unfortunately, there hasn't been any action taken by yourselves or the landlord to address this problem properly. It would be beneficial to involve a specialist to assess and remedy this ongoing issue."
59. The Respondent said that she and her son had suffered from respiratory issues and that she believed that the environment in the flat had contributed to these. She said that it had led to a hospital admissions. She said that Mr Alan Wright had helped to clean mould from the walls. In evidence, Mr Wright confirmed this to be the case. He said that he used sugar soap which had been quite effective.
60. The Respondent and Mr Andrew Wright said that, when the issue of condensation was raised, they were unaware that the windows had trickle vents and that the letting agents also appeared not to realise this. The Respondent

referred to an email by Annette Hannah to the landlord dated 2 October 2023 which was sent two days prior to the landlord's inspection and which dealt with the issue of condensation, damp and mould. It states: *"The windows do not have trickle vents which while not the main cause of the issue is adding to it."*

61. The Respondent said that she had repeatedly raised the issue of condensation with the letting agent. She said that she felt that *"she was being ignored."* She said that she had not been told about the trickle vents and only realised that they existed after Mr Macleod had inspected the Property in October 2023. She said that the mould was so bad that a mattress had been affected. She said that she had been advised to use anti-fungal paint but had expected a longer -term solution to be proposed.
62. The Respondent submitted a copy of a text message which she had sent to Annette Hannah after the notice to leave had been served. It is undated. The message includes the following: *"I still live here and despite doing everything I can to mitigate the dampness and mould, it has returned yet again even after being sprayed with anti mould cleaner and washed, my main concern is that it is in Malcolm's bedroom again at the top of the window and I worry about how that could be impacting his health and also my own, previously I posited a solution where someone could come out and paint over these areas with an antifungal paint, which seems to have been acknowledged in the past as a potential solution but never followed through with. I'd like to look at this further as I could still be here until the eviction date."*
63. In response, Annette Hannah sent an information leaflet on condensation mould and she stated that anti fungal paint would not resolve the problem of mould but only delay its return.
64. On 9 October 2023, the Respondent emailed Mr Macleod and said that she wanted "to save her home." In the email, the Respondent undertook to have carpets shampooed, remove mould from a wall and ensure that the window vents are always open. It also referred to the Respondent's intention to continue use of the dehumidifier.
65. Mr Berkley's evidence was that he had carried out numerous inspections on the Property and that each one showed the condition of the Property to be worse than in the previous one. He said that, in the inspection of May 2024, he found some things dirtier, damage to walls and a lot of clutter. Mr Berkley said that, in the November 2024 inspection, the kitchen appliances were *"filthy"* and there were bikes stored in bedrooms. He said that the bathroom was not clean and the toilet was stained. He referred to the bath seal having deteriorated somewhat.

66. In relation to the issue of condensation mould, the tribunal was referred to Annette Hannah's email to Mr Macleod on 2 October 2023 where she stated that, in her opinion, condensation mould is *"due to the tenants not ventilating the property adequately and not taking corrective measures to keep condensation to a minimum, for example drying and opening windows."* The email refers to mould and the condition of blinds. Mr Berkley's evidence was that the mould and condensation issues were as a result of the Respondent's failures to properly ventilate the property and to deal with mould when it appeared.
67. Mr Alan Wright said that he had been a Guarantor in the original joint private residential tenancy agreement. He said that he had concerns because the letting agent, without his consent, prepared the new lease in favour of the Respondent and continued to include him as Guarantor. The tribunal explained that this was not a matter which could be dealt with in determination of the current application.
68. Mr Alan Wright said that he provided support to the Respondent and Malcolm, his grandson. He said that, in relation to the mould in Malcolm's bedroom, he had been expecting the letting agent to send someone to deal with it. He said that the sugar soap had been effective. He said that the trickle vents are now used.

Submissions

69. Both parties had submitted helpful written submissions.
70. The Applicant's submissions addressed each ground in turn.

Breach of Tenancy Conditions

71. In relation to Ground 11, it was submitted by the Applicant that there is evidence that the Respondent has not complied with obligations under the tenancy agreement in relation to maintaining the condition of the Property, allowing access for repairs and inspections and maintaining hygiene and cleanliness standards.
72. The Applicant's submission refers to the contents of the inspection report of 18 May 2023. It states that, despite advice from the letting agency, including an email to the Respondent issued on 19 May 2023, matters did not improve. The submissions refer to further inspections being carried out in September, October and November 2023 which showed no meaningful improvement.
73. The Applicant's submission states that Mr Macleod had inspected the Property on 4 October 2023 and that the Respondent had emailed the letting agent on 9 October 2023, in which she admitted responsibility, apologised for the mess and

confirmed that damage had been caused to the Property. The submissions stated that, despite a promise to rectify the issues identified, subsequent inspections showed that this had not been actioned by the Respondent.

74. The Applicant's submission stated that the inspection on 20 November 2024 confirmed "*continued deterioration and poor cleanliness, with no signs of compliance.*"
75. The Applicant's submission states that the Respondent had denied access to contractors and referred to a failure to allow access to a heating engineer in February 2024.
76. In relation to Ground 11, the Respondent's submission addressed issues raised by the Applicant.
77. The Respondent states that the issue with dampness and mould had not sufficiently been taken into account. The submissions state that the Respondent had asked for help "*multiple times.*" They state that the Respondent cleaned the mould as best she could and bought a dehumidifier as well as keeping windows open where possible. The submissions state that the mould returned "*again and again*" and that no proper repairs were done. The Respondent stated that she felt that her complaints were not taken seriously.
78. The Respondent's submissions refer to she and her son becoming seriously ill which led to them both being admitted to hospital with chest infections. She said that she was diagnosed with pneumonia, pleurisy and asthma. The Respondent acknowledged that she could not prove that these issues were caused by the conditions in the flat but that she considered it "*hard to ignore the connection.*"
79. The Respondent's submission states that, in connection with photographs in the inspection report, further explanation is needed. The submission state that the photographs in the two later inspection reports were taken after the notice to leave had been served. The Respondent states that her mental and physical health had not been good and that she was struggling to cope with the uncertainty of perhaps losing her home. She states that this affected her ability to keep things clean all the time.
80. In relation to clutter, the Respondent's representations are that some of this is due to the original packaging for items which had been kept to facilitate a move from the Property. The submission states that the Property is small and does not have a lot of storage and that the Respondent's son has a lot of toys.

81. The Respondent's representations state that the photographs before the tribunal were from later inspections and that photographs from earlier inspections would have showed the flat to be clean and well kept.
82. The Respondent's representations state that she considers "damage" referred to is no more than wear and tear and the kind of things expected after several years of living in a home with a child and a pet. The representations state that any marks on walls etc are not major and not irreversible.

Anti-social Behaviour

83. In respect of Ground 14, the Applicant's submissions state that the Respondent's behaviour, and that of Mr Andrew Wright, has caused "*ongoing disturbance, concern and fear among neighbours.*" The representations state that concerns were raised as early as 21 September 2021 when Mr Macleod received an email from a resident stating that the flat appeared run-down and that the then tenants (Ms Farrell and Mr Wright) "were not respecting common areas."
84. The Applicant's submission cites concerns raised by residents: on 11 April 2024, Mr Gillespie complained about odours, damage to the communal grass caused by the Respondent's dog and having being bitten by the dog; on 12 April 2024, Mr Dingwall complained about being bitten by the Respondent's dog and a putrid smell in the communal area; on 7 June 2024, Mr Fairlie complained about Mr Andrew Wright smoking cannabis in the common area outside Mr Fairlie's bedroom window and in the communal hallway and he also complained about his dog being attacked by the Respondent's dog who was not on a lead.
85. The Applicant's submission referred to a Police Scotland crime incident and provided the reference number. The submission states that this was logged in May 2024 and was regarding ongoing anti-social issues at the Property and which the Applicant states supports the neighbours' concerns.
86. The Applicant's submission states that, on 15 May 2024, Mr Andrew Wright "*verbally assaulted*" a member of staff at the letting agency, including offensive remarks about her disability. The submission states that, during the hearing, Mr Andrew Wright admitted that he sometimes stayed overnight at the Property and that the Respondent accepts responsibility for his behaviour.
87. The Respondent's submission in relation to Ground 14 state that a number of matters raised by the Applicant concerns Mr Andrew Wright who does not stay at the Property but helps out because he is the father of her son. The submission states that he assists with childcare and has done so during periods of the Respondent's ill health.

88. The Respondent's submission states that Andrew Wright smokes roll-up cigarettes and cigars and does so either on the pavement or away from the building. She said this is never done in the common areas or below windows of residents of the building.
89. The Respondent's submission states that, when she first moved into the Property, her dog barked more but now does less. She said that it barks when she leaves the house but then settles down after a short period.
90. The Respondent submitted that we wanted to work with the landlord and with neighbours. She did not accept that she had ever refused access for an inspection and that she has always reported issues with the flat, such as mould.
91. The Respondent stated that some matters of concern were not immediately brought to her attention but were "collected and then shared all at once." Ms Berkley agreed that not all concerns had been shared immediately with the Respondent as they had been "building a case."

Reasonableness

92. The Applicant and the Respondent each made submissions with regard to the reasonableness test.

Discussion and Determination

93. As stated previously, the tribunal required to take a two stage approach. It considered the two Grounds separately and, for convenience dealt first with Ground 14 and then went on to consider Ground 11.

Ground 14-Anti-social behaviour

94. The notice to leave was served on 23 October 2023. The tribunal considered first the evidence in respect of the period prior to that date. The Applicant submitted that concerns about anti-social behaviour had been raised as early as 27 September 2021 and referenced an email from that date. The Applicant had also submitted an email dated 8 April 2022 which referred to a complaint about dog fouling.
95. The tribunal had regard to Ground 14 (2) (c) (i) which refers to any relevant anti-social behaviour occurring within 12 months of the application being made. The tribunal determined that evidence of behaviour in September 2021 and April 2022 was irrelevant.

96. In relation to allegations of anti-social behaviour, the tribunal considered that it was important to consider evidence prior to the notice to leave. In any application, evidence after the notice to leave may be relevant if it was supportive of a course of conduct but the primary consideration must be of conduct prior to the notice to leave - in other words, is this conduct sufficient to warrant a notice to leave?
97. The position advanced by the letting agent was that it had received numerous complaints from neighbours about the Respondent and Mr Andrew Wright. The complaints were far ranging and included issues with the Respondent's dog, banging of doors and the conduct of Mr Andrew Wright. Mr Berkley's evidence was that the anti-social behaviour got worse after the tenancy changed to be in the sole name of the Respondent.
98. The submissions of the Applicant are in relation to an incident in 2021 and incidents in 2024. The Applicant had also submitted an email relating to a complaint on dog fouling from April 2022.
99. The Respondent's submissions are that the complaints about anti-social behaviour are not mainly about her but about Mr Andrew Wright. She disputes that the dog has caused significant issues and that the behaviour of Mr Andrew Wright constituted anti-social behaviour.
100. It is unfortunate that the Applicant did not lead evidence from the Applicant or any other witnesses to the alleged anti-social behaviour. The tribunal had to therefore evaluate the quality of the evidence before it without being able to hear direct evidence from the Applicant or neighbours.
101. The tribunal considered whether the actings of Mr Andrew Wright, if found to be anti-social, would be relevant in considering whether the ground for eviction is met.
102. Paragraph 21 of the private residential tenancy agreement states: *"The Tenant, those living with him/her, and his/her visitors must not engage in antisocial behaviour to another person. A person includes anyone in the Let Property, a neighbour, visitor, the Landlord, Agent or contractor."*
103. In terms of the tenancy agreement, the conduct of Mr Andrew Wright would be relevant. However, Ground 14 appears to restrict the consideration of anti-social behaviour to the tenant alone. The tribunal decided to take a wide approach when considering the conduct of Mr Andrew Wright because the application is also in respect of Ground 11. If it was determined that Mr Wright had engaged in anti-social behaviour, there would be a breach of paragraph 21 of the tenancy agreement.

104. The tribunal noted the evidence with regard to the incident in the letting agent's office involving Mr Andrew Wright. It came to no view on the matter because it did not consider it to be relevant because it did not occur at the Property and, in any event, was after the date of service of the notice to leave.
105. Prior to the notice to leave, Ms Berkley's evidence was that the letting agent had received complaints about the conduct of the Respondent's dog. There was reference to it barking and to it fouling common areas. The Respondent's evidence was that the dog did bark, but not to excess and she did not accept that it fouled the common areas. The tribunal had no direct evidence to the contrary and could make no finding in this regard.
106. Mr Andrew Wright's evidence with regard to smoking was that he did so on the pavement outwith the common areas. The tribunal had no direct evidence to the contrary and could make no finding in this regard.
107. The tribunal determined that there was insufficient evidence to support a finding that either the Respondent or Mr Andrew Wright had engaged in anti-social behaviour prior to 23 October 2023, which was the date of the notice to leave. Having determined this, the tribunal did not consider any evidence relating to after that date.

Ground 11-Breach of tenancy conditions

108. The overarching position of the Applicant is that the condition of the Property prior to 23 October 2023, the date of the notice to leave, was such to support Ground 11 and that the Respondent had breached the tenancy agreement.
109. Paragraph 17 of the private residential tenancy agreement states: "*The Tenant agrees to take reasonable care of the Let Property and any common parts, and in particular agrees to take all reasonable steps to....*" The tenancy agreement then lists a number of things the tenant is to do. This includes keeping the Property adequately ventilated and heated and to ensure that it is kept clean during the tenancy.
110. Paragraph 33 of the private residential tenancy agreement refers to pets and obliges a tenant to ensure that any pet is kept under supervision and control to ensure that it does not cause deterioration in the condition of the Property or common areas or nuisance to others.
111. The notice to leave stated that, in relation to Ground 11, the Applicant was relying on the Respondent's failure to keep the Property adequately ventilated and heated and ensure that the Property and its fixtures and fittings are kept clean during the tenancy.

112. At the hearing, Ms Berkley relied on the inspection report of May 2023 and on the evidence of Mr Berkley. It was clear that a decision to serve the notice to leave had been taken after Mr Macleod had inspected the Property on 4 October 2023. Mr Berkley's evidence was that, between May and October 2023, the letting agent had inspected the Property on a number of occasions.
113. The tribunal considered it unfortunate that the only inspection report available to it prior to 23 October 2023 was that of the May 2023 inspection and that the Applicant was not present to provide evidence in relation to his inspection of October 2023.
114. In considering the condition of the Property, the tribunal considered it appropriate to deal first with matters other than those relating to condensation and dampness.
115. The May 2023 inspection report lists a number of items which the letting agent considered to be defects. There is reference to marked and scraped walls and to a dented wall in the entrance/hallway, a scuffed and marked door in the kitchen, dirty and marked carpets in the bedrooms and the floorcovering in the kitchen being grubby. The report refers to the Property being cluttered and untidy.
116. Mr Berkley had not carried out the inspection in May 2023 but had carried out subsequent ones. He said that he found the Property to be cluttered and that there were two large bikes in the hallway.
117. Mr Berkley said that Mr Macleod inspected the Property in October 2023 and decided that, partly because of the condition of the Property, he wanted to evict the tenants.
118. Mr Berkley's evidence was that, subsequent to the notice to leave, he inspected the Property and found that its condition had deteriorated. He referred to the inspection reports of May and November 2024.
119. The inspection report of May 2023 referred to dampness in a wall, windows suffering with damp and deterioration in the lounge and blinds dirty and damaged with mould and damp.
120. As soon as the Respondent received the inspection report of May 2023, she communicated with the letting agent who had sent a leaflet about condensation. The Respondent raised concerns about mould and dampness. She stated that she had purchased a dehumidifier and that she had previously raised the issue

with the letting agent but that nothing had been done about her concerns. The Respondent's email then goes on to state what she considered a landlord's obligations in relation to such issues.

121. The submissions of the Applicant are that the tribunal should rely on the inspection report of May 2023 but then went on to include items from inspection reports subsequent to 23 October 2023. The submissions refer to the Respondent taking no steps to deal with condensation.
122. The submissions of the Applicant refer to access being denied for repairs and inspections.
123. The submissions of the Applicant refer to the Respondent having accepted responsibility for the damage caused to the Property and its general condition.
124. The submissions of the Respondent state that she does not consider that enough attention has been paid to the *"ongoing issue with dampness and mould."*

Discussion and Determination

Ground 11

125. The tribunal had insufficient evidence to determine that the Respondent had denied access for inspections or contractors.
126. The tribunal had no evidence that the Applicant had taken any significant steps to address the issue of condensation in the Property. It considered it significant that, on 2 October 2023, the letting agent had stated to the Applicant that the windows in the Property did not have trickle vents when they did. The Respondent's evidence was that she did not know that there were any. Although we heard no evidence on the matter, it is reasonable to assume that, having received his letting agent's email on 2 October 2023, the Applicant informed it of the existence of the trickle vents. The Respondent's evidence is that they are now used.
127. In considering Ground 11, the tribunal recognised the obligation of a landlord to maintain a let property to the repairing standard in terms of the Housing (Scotland) act 2006. Condensation and dampness were noted in the Property by the letting agent. The only steps which the letting agent took, on behalf of the Applicant, was to issue advice and provide a leaflet. The Respondent asked for help and for someone with expertise to look at the Property. This was not done.

128. The tribunal did not consider that it had evidence that the Respondent had failed to adequately ventilate the Property and, as a consequence allow condensation mould and dampness to develop.
129. The tribunal considered the alleged failure of the Respondent to maintain the Property in a clean condition and free of damage. There was evidence supporting this in the inspection report of May 2023. This disclosed that there were scraped walls, a dented wall in the entrance/hallway, a scuffed and marked door in the kitchen, dirty and marked carpets in the bedrooms and the floorcovering in the kitchen being grubby. The report refers to the Property being cluttered.
130. Mr Berkley's evidence was that subsequent inspections showed no improvement. He said that there was a deterioration in the condition of the Property prior to October 2023. His evidence was less than convincing because he included what he had found at inspections after October 2023. In the Applicant's submissions, there were also errors. For example, there was reference to the May 2023 inspection finding that the kitchen appliances were in poor condition. This was not accurate. The tribunal also did not have the benefit of evidence from the Applicant who could have spoken to the inspection on 4 October 2023.
131. The Respondent's position is that she accepts that there was some damage to the Property and she undertook to make good and to keep it in better condition. The tribunal did not consider that any admission by the Respondent could be interpreted as an acceptance of Ground 11.
132. The tribunal accepted that, prior to 23 October 2023, the Property had not been completely clean and that there had been some damage. The tribunal accepted the Respondent's submission that this was not significant and could be constituted wear and tear.
133. The tribunal did not consider that clutter in the Property was a significant issue in relation to Ground 11.
134. On balance, the tribunal determined that there was insufficient evidence to support a finding that there had been a breach or breaches of the tenancy agreement on or prior to 23 October 2023. Ground 11 is therefore not engaged.
135. Having determined that neither ground for eviction had been met, the tribunal did not require to consider the issue of reasonableness.

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.

**Martin J. McAllister
Legal Member
13th May 2025**