

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 Act”)

Chamber Ref: FTS/HPC/EV/24/0805

Re: Property at Muirake Farmhouse, Banff, AB45 2BQ (“the Property”)

Parties:

Mr James Beattie, Newmills of Boyne, Banff, AB45 2BD (“the Applicant”)

Mr Robert Gibson, Muirake Farmhouse, Banff, AB45 2BQ (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant under Ground 14 of Schedule 3 of the Act; the date of ejection to be no sooner than 12 noon on 4 August 2025.

Background

1. In this application, the Applicant seeks an order for recovery of possession of heritable property (“the Property”). The Grounds relied on in the application form are Grounds 5,11 and 14 of Schedule 3 of the Act. Ground 5 is no longer insisted upon, due to time delays and a change in a family member’s circumstances.
2. The application was made on 19 February 2024 and accepted by the tribunal on 12 April 2024. It was submitted by the Applicant’s solicitor who subsequently withdrew from acting. The Applicant has conducted his own case since around 20 November 2024.
3. The Respondent was served with the paperwork and was required to submit any written representations in response to the application by 5 July 2024. None were lodged within the specified timeframe.
4. A Case Management Discussion (“CMD”) took place on 25 July 2024 by conference call. Both Parties participated with the Applicant being represented by his solicitor. A Note was subsequently issued to the Parties. Of note, the Respondent advised he wished to oppose the application and wished legal

representation; he stated he was charged with an “incident” but that no court proceedings were brought against him. It is also at this CMD that the Applicant stated that Ground 5 was no longer relied upon. The tribunal directed a Hearing to be fixed.

5. Around 8 January 2025, the Respondent instructed the Civil Legal Assistance Office. From then on, the Respondent has been represented by Mr Simon Leigh, solicitor.
6. A Hearing was assigned for 10 January 2025 and intimated to the Parties. At the Hearing, both Parties participated, and the Respondent was represented by Mr Leigh. A Note was subsequently issued to the Parties. Of note, the tribunal granted the motion of the Respondent’s Representative to adjourn the Hearing to allow for a full legal aid application to be made and for consideration of the papers. A new Hearing date was identified as 10 March 2025.
7. A substitute Hearing date was thereafter fixed by the administration for 4 June 2025 and intimated to the Parties.
8. On 27 May 2025, the Respondent’s Representative submitted Answers to the application and a First Inventory of Productions. This was belatedly crossed over to the Applicant and the tribunal members just before the Hearing date.

The Hearing

9. The Hearing took place on 4 June 2025 by conference call before this tribunal. It started slightly later than 10am to allow for the last paperwork produced to be considered. Both Parties participated and the Respondent was represented by Mr Leigh.
10. Following on from discussion around the paperwork submitted on 27 May 2025, the late Answers were allowed in, and the First Inventory of Productions comprising of two documents was timeously received.
11. The Answers asked the Applicant to clarify whether Ground 5 was no longer being relied upon. This was confirmed.
12. Of note, and summarising, the Answers admitted that the Police recovered a small amount of Cannabis from the Property on 11 September 2023. It was denied that the Respondent had engaged in antisocial behaviour. It was explained that the Respondent had grown a small amount of Cannabis for personal medicinal use. No criminal charges were brought by the Procurator Fiscal in respect of this incident. It instead was diverted, and the Respondent received a letter dated 13 March 2024 stating that no further action would be taken. It was denied that the Respondent had acted in a way which could be considered antisocial, and it would be disproportionate to grant decree for eviction. Reference was made to the Respondent’s daughter, her pending investigations into health and homelessness. It was submitted that it was not reasonable to grant an order for eviction in terms of Section 51 and Paragraph 14(2) of the Act.
13. The First Inventory of Productions for the Respondent comprised of two items. The first is a letter from the Procurator Fiscal addressed to the Respondent at the Property dated 13 March 2024. It stated, “I am now in receipt of the report from the Social Work Department advising that you have fully engaged and completed satisfactorily the tasks/work required for diversion. I can advise that I will be taking no further action regarding this case. The matter is now closed.”

The second item is a letter dated 11 April 2025 from NHS Grampian and relates to the Respondent's daughter. It outlines a summary of discussions that took place between the Respondent and his daughter and an unnamed CAMHS, Links Unit worker. It sets out self-reported information and an agreed plan that includes further discussions with CAMHS to explore if the Respondent's daughter meets the criteria for specified disorders she raised, and the obtaining further information from other sources.

Summary of evidence

14. The oral evidence was heard from both Parties.

The evidence of the Applicant-summary

15. On 11 September 2023 police officers attended the Property in relation to another matter. The Respondent was not present, and access was gained using a ladder and through an upper open window. Upon entering the Property, the officers discovered a Cannabis cultivation in one of the bedrooms.

The Applicant became aware through information given by other farm workers that there had been an incident at the Property involving Cannabis. This caused the Applicant to be alarmed.

The Applicant had then taken time out of his schedule and gone to the Property and observed one of the mature Cannabis plants being taken from the Property and placed in a police van on 11 September 2023. It was 4-5 foot high. The Applicant had spoken to the police officer. He asked for details and asked if the water supply and electricity were safe but was told he had no right to be there. The Respondent had said he had four plants at the CMD on 25 July 2024. He had done some research, and each plant could produce a yield of 4-10 oz possibly. The street value could be possibly several thousand pounds. This was not a small amount for personal use.

The Applicant had smelled Cannabis from the Property before 11 September 2023 when he was in the vicinity of the Property. Sometimes this was when he was down whilst working. He also went down to read the meter once per month outside the front door of the Property. He saw a light on 24/7 in one room. The rest of the Property was barely lit. He considered the Respondent's daughter, when cohabiting in the Property, would not be immune from the existence of a Cannabis cultivation in the Property and the passive exposure effects of the growing of it and the smoking of it.

The Applicant tried to obtain more information around the offending and police actions on 11 September 2023 from the local authority, then various third party organisations, without success due to privacy laws.

He was sceptical about the Respondent's defence and believed he was seeking to minimise his culpability for it.

On 27 October 2023 an email was sent by Jenny Wylie, Community Safety Officer (Antisocial Behaviour) dated 27 October 2023, addressed to the Applicant. The contents alerted the Applicant to a positive drug search warrant that was executed at the Property on 11 September 2023 and that as a result the tenant, John Gibson is accused of being concerned in the production of a controlled drug, namely Cannabis.

He emphasised the adverse effects the situation had had on him and considered it to be firmly antisocial behaviour. He considered the Respondent was liable for the antisocial illegal activity in the Property and showed a complete disregard for the distress, nuisance and annoyance caused to him by the illegal activity on his property.

The Applicant was and is apprehensive about the safety of the Property given the incident involving cultivation of Cannabis and the potential for misuse of electricity combined with water. The Applicant is concerned that his insurance would not cover any losses if that were the reason for a claim. This has caused the Applicant upset and distress in the form of anxiety.

The Applicant had sought to inspect the Property condition, giving 48 hours' notice; and hand delivered a letter on 7 February 2025 to the Respondent seeking access on 9 February 2025 at 6.15pm. Access was not given then. Access to the Property was given to the Applicant for the purposes of inspection on 22 February 2025. At that time the Applicant observed mould on certain areas of the walls and ceilings which he attributed to condensation and lack of heating. He had checked the central heating which was switched off. The outside temperature was noted as 5 degrees centigrade. It was established that the heating, hot water systems and sanitary facilities, and wood burning stove were all in working order but were not being used at inspection. The Applicant observed at the inspection that the large kitchen table provided with the let was missing. The Respondent admitted to having broken it up and used it for firewood for heat. The Applicant observed there was no cooker in the space where one should be in the kitchen. In addition to his concerns for the poor condition of the Property when he inspected it, he was concerned about the way the occupants were living and was concerned for the welfare of the daughter.

The Applicant is an arable farmer with 1000 acres of land where he grows barley, and he keeps pigs and cows. He rents the land and buildings from a company, including the Property. He has a family member who assists and relies currently on casual labour. He is 60 years of age. He intends to use the Property as accommodation for a part-time or full time worker to help him on the farm, if an Order is granted.

The Respondents conduct affected the Applicant who was alarmed, upset and distressed by it, and by the aftermath. It was a nuisance and annoyance to him. The Applicant knows that the Property is not suitable and is unaffordable for the Respondent and that he has applied for other private lets without success. He had offered a deposit, but this was declined. He knows the Respondent has applied for local authority housing and in his view, this will likely only be given when the Respondent is evicted an order is granted, he is prepared to be flexible with the eviction date. The Applicant's daughter attends The Gordons Schools at Huntly. The school is out with the catchment area for the Property. To get there the Respondent drives his daughter to a bus stop to then take a local bus from Cornhill to school. Recent car difficulties have meant she has not gone to school for a period whilst the vehicle was being repaired. He thinks the situation cannot go on as it is not in anyone's benefit.

The Evidence of the Respondent-summary

16. On 11 September 2023 police officers attended the Property in relation to another matter. The Respondent was not present, and access was gained using a ladder and through an upper open window. Upon entering the Property, he knew that the officers discovered a Cannabis cultivation in one of the bedrooms. The Respondent was charged with an offence under the Misuse of Drugs Act 1971 relating to the growing of Cannabis.

Three mature plants were seized by police officers, each around 4-5 feet in height.

By the Respondent's admission, there were also small plants in a smaller tent in the bedroom of the Property at an earlier stage of growth. The equipment and set up used by the Respondent to cultivate the Cannabis comprised of a 4m by 8m/2.1 m tall tent, two 600 watt HPS grow lamps, and an exhaust vented through an open window. The Respondent admitted that he cared for the plants and watered and fed them with organic feed. By admission, the Respondent had cultivated cannabis approximately twice yearly from 2017. The Respondent admitted that the mature plants he had gave a yield to him of 2oz per plant at three month's maturity. He then dried and cured the yield and vaped it. He has arthritis and sciatica. He did this rather than buy cannabis as he thought that was dangerous. He did not have a medical exemption but used it for his conditions. He has since obtained prescription drugs. On worst days he cannot come down the stairs.

Access to the Property was given to the Applicant for the purposes of inspection on 22 February 2025 but he said he had since cleaned and treated mould at the windows, he did use the heating sparingly and used the hot water. He used two air fryers for cooking. He also said he had a small portable oven and hob. The Property was initially let to the Respondent to his family of five. It is now only occupied by the Respondent and his teenage daughter. The family are estranged now. The Respondent relies on Universal Credit as his source of income and his housing costs are partially paid for him. The initial rent payable was £600 but this has now increased to £670. This leaves him with a shortfall of £70 which he needs to meet from his income. The Respondent was in rent arrears to the Applicant in the sum of approximately £1300 but has since paid this albeit with some difficulty. The Respondent finds it hard to heat the Property year round on his limited income. The Property is no longer suitable for the Respondent and his daughter. A letter from CAMHS is dated 11 April 2025. The Respondent's daughter is involved with this organisation, and he thinks she has always been a bit different and struggles with the social aspects. She excels in Art and design, and English and is getting on a bit better. The Applicant's daughter attends The Gordons Schools at Huntly, and she is in S3. The school is out with the catchment area for the Property. To get there the Respondent drives his daughter to a bus stop to then take a local bus from Cornhill to school. Recent car difficulties have meant she has not gone to school for a period whilst the vehicle was being repaired. The Respondent is seeking alternative accommodation anywhere on the bus route to the Gordon's school. He thinks that moving school would affect her quite bad. The immediate area around the Property is out with the Respondent's price range for private renting. The Applicant offered to assist the Respondent with a security deposit for alternative

accommodation by way of a loan. The Respondent declined this and has saved £300 thus far by 'scrimping and scraping'. The Respondent has twice applied for smaller private rented property, relying on the local authority Rent Deposit Scheme (where a deposit guarantee is given by the local authority). Both landlords declined to accept the Rent Deposit Scheme. The Respondent applied for local authority housing around July 2024 and is on the waiting list for a house. He recently updated the health sections of the application with up to date health information. The Respondent does not think he will get a council house if an Order was made. His daughter may need to have some other arrangement to live with her mother, but she does not really want that.

Written paperwork

17. The application itself.
18. The First Inventory of Productions for the Applicant with copy Notice to leave, copy email dated 27 October 2023 from the Community Safety Officer; an Affidavit of the Applicant's son, proof of delivery of the Notice to Leave, and a section 11 Notice along with evidence of its service.
19. The Answers.
20. The First Inventory of Productions for the Respondent, with the items noted above.

Findings in fact

- I. The Applicant is the landlord of the Property.
- II. The Respondent is the tenant of the Property.
- III. The Parties entered into a Private Residential Tenancy Agreement with a start date of 1 April 2019.
- IV. The initial rent payable was £600 but this has now increased to £670.
- V. The most recent Private Residential Tenancy Agreement was signed on 25 and 27 October 2023, due to there being a flaw in earlier tenancy paperwork.
- VI. The Applicant is the registered landlord over the Property for Landlord Registration purposes.
- VII. A valid Notice to Leave was served on the Respondent. It relied on Grounds 5, 11 and 14 of schedule 3 to the Act.
- VIII. Ground 5 is no longer being relied upon by the Applicant as the family member concerned had a change in his circumstances.
- IX. The Applicant has no other rented properties and only lets this Property. He let it to the Respondents as the family needed a home.
- X. On 11 September 2023 police officers attended the Property in relation to another matter. The Respondent was not present, and access was gained using a ladder and through an upper open window. Upon entering the Property, the officers discovered a Cannabis cultivation in one of the bedrooms.
- XI. The Respondent was charged with an offence under the Misuse of Drugs Act 1971 relating to the production, or cultivation, of Cannabis.
- XII. Cannabis is a class B drug.
- XIII. Three mature plants were seized by police officers, each around 4-5 feet in height.

- XIV. The Applicant became aware through information given by other farm workers that there had been an incident at the Property involving Cannabis. This caused the Applicant to be alarmed.
- XV. The Applicant had then taken time out of his schedule and gone to the Property and observed one of the mature Cannabis plants being placed taken from the Property and placed in a police van on 11 September 2023. The Applicant had spoken to the police officer. He asked for details and asked if the water supply and electricity were safe but was told he had no right to be there.
- XVI. By the Respondent's admission, there were also small plants in a smaller tent the bedroom of the Property at an earlier stage of growth.
- XVII. The equipment and set up used by the Respondent to cultivate the Cannabis comprised of a 4m by 8m/2.1 m tall tent, two 600 watt HPS grow lamps, and an exhaust vented through an open window.
- XVIII. The Respondent admitted that he cared for the plants and watered and fed them with organic feed.
- XIX. On 11 September 2023, the Respondent cultivated cannabis in the Property.
- XX. The Respondent did not have a licence exemption to avoid prosecution. His actions were unlawful.
- XXI. By admission, the Respondent had cultivated cannabis approximately twice yearly from 2017. This meant he had cultivated Cannabis in the Property from the outset of the tenancy up to 11 September 2023 at various times.
- XXII. The Applicant had smelled Cannabis from the Property before 11 September 2023 when he was in the vicinity of the Property either whilst working nearby or reading the outside meter at the property.
- XXIII. The Respondent admitted that the mature plants he had gave a yield to him of 2oz per plant at three month's maturity. He then dried and cured the yield and vaped it.
- XXIV. The Respondent used Cannabis in the Property. The Respondent did so without any medical exemption and his actions were unlawful.
- XXV. The Respondent is solely responsible for the Cannabis cultivation and for his own use of cannabis in the Property.
- XXVI. The other occupiers of the Property would not be immune from the existence of a Cannabis cultivation in the Property and the passive exposure effects of the growing of it and the smoking of it.
- XXVII. On 27 October 2023 an email was sent by Jenny Wylie, Community Safety Officer (Antisocial Behaviour) dated 27 October 2023, addressed to the Applicant. The contents alerted the Applicant to a positive drug search warrant that was executed at the Property on 11 September 2023 and that as a result the tenant, John Gibson is accused of being concerned in the production of a controlled drug, namely Cannabis. It also highlighted to the Applicant that private landlords are responsible for preventing their tenants behaving in an antisocial way in and around their homes. It advised that the address would continue to be monitored, and should it appear that the tenant is continuing to engage in a course of conduct of antisocial or any other criminal behaviour, Aberdeenshire Council will consult with Police Scotland and may also consider the range of measures available under the Antisocial Behaviour etc. (Scotland) Act 2004. The communication also advised that its intent was to bring the matter to the attention of the landlord and to give him the opportunity to address the

issues with the tenant; and that failure to do so could put his Landlord Registration at risk.

- XXVIII. The Applicant tried to obtain more information around the offending and police actions on 11 September 2025 from the local authority, then various third party organisations, without success due to privacy laws.
- XXIX. The Applicant had sought to inspect the Property condition, giving 48 hours' notice; and hand delivered a letter on 7 February 2025 to the Respondent seeking access on 9 February 2025 at 6.15pm. Access was not given then.
- XXX. Access to the Property was given to the Applicant for the purposes of inspection on 22 February 2025. At that time the Applicant observed mould on certain areas of the walls and ceilings which he attributed to condensation and lack of heating. He had checked the central heating which was switched off. The outside temperature was noted as 5 degrees centigrade. It was established that the heating, hot water systems and sanitary facilities, and wood burning stove were all in working order but were not being used at inspection.
- XXXI. The Applicant observed at the inspection that the large kitchen table provided with the let was missing. The Respondent admitted to having broken it up and used it for firewood for heat. The Applicant observed there was no cooker in the space where one should be in the kitchen.
- XXXII. The Parties Private Residential Tenancy agreement places obligations on the Applicant, as landlord, to ensure gas and electrical safety for any tenant. The Respondent compromised the assurity of this obligation by his unlawful actions when growing Cannabis.
- XXXIII. Clause 20 of the Parties Private Residential Tenancy agreement, in so far as material, prohibits unlawful activities such as the 'use, sell, cultivate or supply unlawful drugs or alcohol.'
- XXXIV. The Respondent was provided with the opportunity of a 'diversion' scheme by the Procurator Fiscal as an alternative to prosecution considerations.
- XXXV. On 13 March 2024, the Procurator Fiscal wrote to the Respondent to advise him that following on from a report from the Social Work Department that no further action would be taken against him. He was accordingly not prosecuted.
- XXXVI. The Applicant is an arable farmer with 1000 acres of land where he grows barley, and he keeps pigs and cows. He rents the land and buildings from a company, including the Property. He has a family member who assists and relies currently on casual labour. He is 60 years of age. He intends to use the Property as accommodation for a part-time or full time worker to help him on the farm, if an Order is granted.
- XXXVII. The Respondents conduct affected the Applicant who was alarmed, upset and distressed by it, and by the aftermath. It was a nuisance to him and an annoyance.
- XXXVIII. Clause 20 of the Parties Private Residential Tenancy agreement, so far as material, titled 'Respect for others' prohibits antisocial behaviour by the tenant or any others associated with him; this includes any behaviour which causes or is likely to cause alarm, distress, nuisance or annoyance to any person.
- XXXIX. The Property was initially let to the Respondent for occupation by a family of five. It is now only occupied by the Respondent and his teenage daughter.
- XL. The Respondent relies on Universal Credit as his source of income and his housing costs are partially paid for him. This leaves him with a shortfall of £70 which he needs to meet from his income.

- XLII. The Respondent was in rent arrears to the Applicant in the sum of approximately £1300 but has since paid this albeit with some difficulty.
- XLIII. The Respondent finds it hard to heat the Property year round on his limited income.
- XLIV. The Property is no longer suitable for the Respondent and his daughter.
- XLV. A letter was produced from CAMHS dated 11 April 2025. The Respondent's daughter is involved with this organisation, which is an NHS service that provides support to young people. It details self-reported family estrangements; lack of motivation, including lack of motivation to go to school, and *inter alia*, a poor sleeping pattern. She is currently in the process of being assessed for possible neurodivergence and there is an agreed plan for information to be ingathered from her schools.
- XLVI. The Applicant's daughter attends The Gordons Schools at Huntly, and she is in S3.
- XLVII. The school is out with the catchment area for the Property. To get there the Respondent drives his daughter to a bus stop to then take a local bus from Cornhill to school. Recent car difficulties have meant she has not gone to school for a period whilst the vehicle was being repaired.
- XLVIII. The Respondent is seeking alternative accommodation anywhere on the bus route to the Gordon's school.
- XLIX. The immediate area around the Property is out with the Respondent's price range for private renting.
- L. The Applicant offered to assist the Respondent with a security deposit for alternative accommodation by way of a loan. The Respondent declined this and has saved £300 thus far by 'scrimping and scraping'.
- LI. The Respondent has twice applied for smaller private rented property, relying on the local authority Rent Deposit Scheme (where a deposit guarantee is given by the local authority). Both landlords declined to accept the Rent Deposit Scheme.
- LII. The Respondent applied for local authority housing around July 2024 and is on the waiting list for a house. He recently updated the health sections of the application with up to date health information.
- LIII. The Respondent suffers from arthritis and sciatica. His condition has not worsened since the 11 September 2023 and broadly remains at the same level. He has on 'his worst days' been barely able to get downstairs in the Property.
- LIV. He is prescribed medication from his GP. His GP is aware of the current proceedings.
- LV. The Respondent and his daughter will be homeless if an order is granted for eviction. In that case the local authority has an obligation to provide temporary accommodation under the Homelessness etc. (Scotland) Act 2003, and to provide housing options assistance. The local authority also has obligations to the Respondent's daughter in her own right to avoid homelessness.
- LVI. A Section 11 Notice under the Homelessness etc. (Scotland) Act 2003 was served on the relevant local authority by the Applicant's solicitor on 19 February 2024.
- LVII. The Applicant has provided Tenancy Reports for the Respondent to the local authority over the past year when asked.
- LVIII. The Applicant was and is apprehensive about the safety of the Property given the incident involving cultivation of Cannabis and the potential for misuse of

electricity combined with water. The Applicant is concerned that his insurance would not cover any losses if that were the reason for a claim. This has caused the Applicant upset and distress in the form of anxiety.

Findings in fact and law

- LVIII. The Respondent has engaged in relevant antisocial behaviour as defined in Ground 14 of Schedule 3 of the Act in relation to another person by virtue of him using and cultivating Cannabis in the Property.
- LIX. The application was made within 12 month's of the antisocial behaviour last occurring.
- LX. The Applicant has a Ground for recovery of possession.
- LXI. It is reasonable to grant an order for recovery of possession of the Property from the Respondent in favour of the Applicant.

Reasons for the Decision

- 21. No issue was taken with validity of the copy of the signed PRT agreement produced; the validity of the Notice to Leave and service of it; and the Section 11 Notice under the Homelessness etc. (Scotland) Act 2003 and service of it on the relevant local authority. The tribunal was satisfied that the necessary statutory requirements had been complied with.
- 22. The tribunal accepted that an email produced from Jenny Wylie, Community Safety Officer (Antisocial Behaviour) dated 27 October 2023, addressed to the Applicant had been received by the Applicant. The contents alerted the Applicant to a positive drug search warrant that was executed at the Property on 11 September 2023 and that as a result the tenant, John Gibson is accused of being concerned in the production of a controlled drug, namely Cannabis. It also highlighted to the Applicant that private landlords are responsible for preventing their tenants behaving in an antisocial way in and around their homes. It advised that the address would continue to be monitored, and should it appear that the tenant is continuing to engage in a course of conduct of antisocial or any other criminal behaviour, Aberdeenshire Council will consult with Police Scotland and may also consider the range of measures available under the Antisocial Behaviour etc. (Scotland) Act 2004. The communication also advised that its intent was to bring the matter to the attention of the landlord and to give him the opportunity to address the issues with the tenant; and that failure to do so could put his Landlord Registration at risk.
- 23. The tribunal accepted the evidence of the Applicant that after receipt of the email, he made numerous attempts to find out further information as to the details of what had happened and the outcome of the charges, by contacting third parties, without success.
- 24. The tribunal accepted that the frequent smell of Cannabis emanating from the Property, the incident on 11 September 2023 involving the cultivation of Cannabis and the whole circumstances around that (and which followed) involving police caused him alarm, nuisance and annoyance; and around the fear of the safety of the Property around the potential for misuse of electricity when growing the plants.

25. The tribunal is well aware of the potential risks that can occur and did not consider the Applicant's concerns irrational.
26. The tribunal accepted the evidence that the Applicant had smelled Cannabis from the Property before 11 September 2023 when he was in the vicinity of the Property. Sometimes this was when he was down whilst working. He also went down to read the meter once per month outside the front door of the Property. He saw a light on 24/7 in one room. The rest of the Property was barely lit.
27. The tribunal was satisfied that the Respondent knew his actions to be unlawful.
28. The Respondent admitted that the mature plants he had gave a yield to him of 2oz per plant at three month's maturity. He then dried and cured the yield and vaped it.
29. The Respondent used Cannabis in the Property. The Respondent did so without any medical exemption and his actions were unlawful.
30. The Respondent is solely responsible for the Cannabis cultivation and for his own use of cannabis in the Property.
31. The other occupiers of the Property would not be immune from the existence of a Cannabis cultivation in the Property and the passive exposure effects of the growing of it and the smoking of it.
32. The tribunal was satisfied that it was evident that what he was doing in the Property, using and cultivating Cannabis, was not with the permission of the Applicant, given that it was let as a family home and for the usual purposes associated with that.
33. The tribunal accepted the Respondent's evidence that he had been growing Cannabis twice yearly since 2017. This meant he had cultivated Cannabis in the Property from the outset of the tenancy up to 11 September 2023 at various times.
34. The tribunal considered that there was a lack of openness on the part of the Respondent after the incident, and he did not provide the Applicant as landlord with information or assurances.
35. The tribunal considered the oral evidence of the Applicant and the Respondent which supplemented the information contained in the e mail of 27 October 2023 and the letter from the Procurator Fiscal dated 13 March 2024. What the tribunal made of this is reflected in the findings in fact.
36. The tribunal considered the terms of the PRT agreement specifically section 20 which says: at section 20.

"Respect for others

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.

"Antisocial behaviour" means behaving in a way which causes, or is likely to cause, alarm, distress, nuisance or annoyance to any person; or which amounts to harassment of any person. Harassment of a person includes causing the person alarm or distress. Antisocial behaviour includes speech.

.....

In addition, the Tenant, those living with him/her, and his/her visitors must not engage in the following unlawful activities:

.....

- *use, sell, cultivate or supply unlawful drugs or sell alcohol;*
- *.....*

- use the Let Property or allow it to be used, for illegal or immoral purposes;
-
The particular prohibitions on behaviour listed above do not in any way restrict the general responsibilities of the Tenant.”

37. The tribunal considered legislation & Guidance, as follows:

Private Housing (Tenancies) (Scotland) Act 2016

Section 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 of the Act: EVICTION GROUNDS

11 Breach of tenancy agreement

- (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 Anti-social behaviour

- (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.*

Private Residential Tenancy Statutory Terms Supporting Notes (Published 1 April 2024)

“Respect for Others

The tenant and anyone living at the property must not be involved in antisocial behaviour at the property.

“Antisocial behaviour” means behaving in a way: which causes, or is likely to cause, alarm, upset, nuisance or annoyance; or which is harassment.

‘At the property’ includes to other people in the property, any neighbour, any visitor, the landlord or those acting for the landlord or any tradesman.

Examples of antisocial behaviour are

.....

using, selling, growing, making or supplying unlawful drugs or selling alcohol;

.....

using the property, or allowing it to be used, for illegal or immoral purposesetc.

Misuse of Drugs Act 1971

2.— Controlled drugs and their classification for purposes of this Act.

(1) In this Act—

(a) the expression “controlled drug” means any substance or product for the time being specified [—

(i) in Part I, II or III of Schedule 2

Schedule 2 Controlled Drugs includes

- *Cannabinol.*
- *Cannabinol derivatives.*
- *Cannabis and cannabis resin.*

4.— Restriction of production and supply of controlled drugs.

(1) Subject to any regulations under section 7 of this Act [, or any provision made in a temporary class drug order by virtue of section 7A,] for the time being in force, it shall not be lawful for a person—

(a) to produce a controlled drug; or

(b) to supply or offer to supply a controlled drug to another.

(2) Subject to section 28 of this Act, it is an offence for a person—

(a) to produce a controlled drug in contravention of subsection (1) above; or

(b) to be concerned in the production of such a drug in contravention of that subsection by another.

[Note s. 7 Authorisation of activities otherwise unlawful under foregoing provisions, such as if it is done under and in accordance with the terms of a licence or other authority issued by the Secretary of State and in compliance with any conditions attached thereto]

5.— Restriction of possession of controlled drugs.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

.....etc.

6.— Restriction of cultivation of cannabis plant.

(1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to cultivate any plant of the genus Cannabis.

(2) Subject to section 28 of this Act, it is an offence to cultivate any such plant in contravention of subsection (1) above.

[Note s. 28 Proof of lack of knowledge etc. can be a defence in proceedings for certain offences].

38. The Respondent conceded that he had grown Cannabis plants in an upstairs bedroom of the 5 bedroomed Property on 11 September 2023. Indeed he conceded in evidence that he had been growing Cannabis since 2017, twice yearly. Since this tenancy commenced on 1 April 2019, this meant that he had been involved in such a course of conduct throughout the tenancy up to 11 September 2023 when the police attended the Property in relation to another matter. It was accepted that there were three mature plants seized by the police, each around 4 or 5 foot high. One of those plants was seen by the Applicant when it was being removed from the Property and being taken away in a police van. The set up used by the Respondent was successful in cultivating the plants to maturity and there were smaller plants being grown suggestive of an intended continuation of the activity. The Respondent spoke of using tents, two 600 watt HPS grow lamps, water and feed giving a yield of 2oz per plant at 3 month's maturity. He used an exhaust vent through an open window. He spoke of him drying and curing the yield and vaping it for his own medicinal use. He conceded he did not have a licence exemption to avoid criminality. All of this naturally meant that the Respondent had invested time and skills in his venture, which he considered to be better than buying it on the street and less dangerous.

39. The tribunal would have had no difficulty in determining that the Respondent had breached clause 20 of the PRT by his own actions but for the fact that the PRT had been signed after the 11 September 2023. He might have been in breach of the terms of an earlier tenancy agreement, but the tribunal had not been provided with that paperwork.
40. The tribunal took the view that the Applicant as a landlord with statutory obligations, had a legitimate interest in any unlawful activity at the Property.
41. The Respondent's Representative sought to distance the actions of the Respondent from the definition of antisocial behaviour and secondly, suggested the causal link was too remote in time and space so as to not be antisocial behaviour. The tribunal did not accept this. The use of the phrase in Ground 14 as "in relation to [another person]" is in the tribunal's view indicative that the conduct complained of (in this case growing Cannabis in the Property and the smell of Cannabis outside) must have some connection with "*another person*" but it need not be targeted at any particular person. Consequently, the tribunal accepted that the Respondent had behaved in an antisocial manner and that the Applicant specifically had been affected by him smelling and being aware of the smell of Cannabis around the Property before 11 September 2023 and therefore by doing something which causes or 'is likely to cause' the other person alarm, distress, nuisance or annoyance, and pursuing 'in relation to the other person' a course of conduct which 'causes or is likely to cause the other person' alarm, distress, nuisance or annoyance.. The tribunal accepted the evidence of the Applicant that he was concerned by the nature of incident occurring, some alarm regarding the potential risk to the Property, and it caused him distress, nuisance and annoyance caused by the illegal activity in the Property. This included a concern that there could be a risk to his property by the misuse of electricity and water when the Respondent had grown Cannabis. The tribunal had no doubt, and it was not suggested otherwise, that the Respondent was fully aware that what he was doing was unlawful and could also have been in breach normal tenancy terms from the outset, with the focus on 11 September 2023, when the police discovered the cultivation.
42. The tribunal could not envisage any lawful tenancy term to allow unlawful activity at a let property, otherwise the landlord would likely also to be involved in criminality.
43. The Respondent referred during his evidence to 'hemp' as if to detract from his admission that it was Cannabis, a controlled drug defined in the Misuse of Drugs Act 1971. The tribunal did not accept this suggested contradiction to all of the other evidence including other admissions from the Respondent.
44. The tribunal accepted that the Applicant had sought to obtain information around the incident from third parties, but no-one had given him any information and gave rise to an apprehension, and he secured a solicitor to raise these proceedings. The tribunal determined that there was in addition to his own interest in the matter to do so, there was also a wider community interest in the incident and for the owner of the Property.
45. The tribunal preferred the evidence of the Applicant that generally the interior of the Property was in poor condition, when inspected on 9 February 2025, likely due to it not being aired and adequately heated and due to lifestyle.
46. The tribunal would have concluded that Ground 11(2)(a) (contractual breach of tenancy agreement and failure to comply with a term of the tenancy-Clause

- 20) would have been satisfied had the tenancy contract been signed before the 11 September 2023.
47. The tribunal concluded that Ground 14(2) (a) (3)(a) and (b) are satisfied in relation to the conduct complained of. The application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring. In respect of subsection (5) 'Anti-social behaviour' is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b), and in this case, given the nature of the anti-social behaviour and—(a) who it was in relation to, and (b) where it occurred.
48. The tribunal determined that Ground 14 of Schedule 3 of the Act was established by the facts.

Reasonableness

49. The tribunal considered the facts in this case and considered the weight to be given to them.
50. For the Applicant, he wished to recover the Property due to the incident involving the using and growing of Cannabis and the antisocial element of the conduct affecting him. He also had concern for the property itself and the risk of misuse of electricity that the incident had potential to cause. He doubted if his insurance would cover such a scenario and he could ill afford it. He was also running a large arable farm and keeping livestock with only his daughter's help and casual workers. He wished to be able to offer the Property to someone who could work part-time or full time for him. He was now 60 years of age. He could have had the help of his son had his circumstances not changed during the tribunal process, which caused him to withdraw from the claim Ground 5. He was alarmed at the poor condition of the interior of the Property, and did not think that the *status quo* in any way benefitted him or the Respondent and his daughter. He considered the situation of the tenancy continuing in all to be unrealistic and untenable. He had offered the Respondent assistance with a new deposit, but this had been declined. He had awareness of the Respondent's home-life situation and would be prepared to give some flexibility to the enforcement as he would not easily see them on the street. He was sceptical as to the extent of the efforts of the Respondent with the local authority. However, he did not think that the local authority would take any action to re-house them until an Order was granted.
51. The tribunal accepted the Respondent's Representative's position that the evidence did not show that there had been any re-offending of cultivation of Cannabis since the 11 September 2023 incident. The tribunal took this into account, but did not consider that too much weight was to be afforded to that as the offending that had affected the Applicant had already occurred.
52. The tribunal considered the Respondent's home circumstances. The Defender is unemployed and his teenage daughter lives with him. They are estranged from the other original family members. They rely on state benefits.
53. It was clear from the evidence that the Respondent did not now consider the Property as suitable or affordable financially. When he and his larger family unit moved in, there were more occupants and more income. It was now only he and his daughter in the Property and financial hardship had been caused due to him relying on benefit income and the Property being large and expensive to run and heat. In fact, the Applicant spoke of the Respondent admitting to

breaking up and burning the kitchen table(supplied) to use as firewood in the stove.

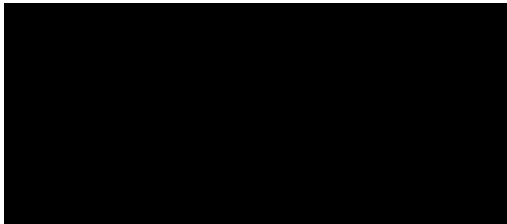
54. The evidence of the Respondent was that due to his arthritis and sciatica he sometimes could barely get down the stairs of the Property.
55. The tribunal determined that the Property was not best suited to their welfare needs and financial means, present and foreseeable and that the Respondent recognised that himself.
56. The Respondent has applied for local authority housing and had sought other smaller private lets. He had not been successful in having any private landlord accept the local authority Tenancy Deposit bond where the local authority is a guarantor.
57. The Respondent had been saving for a tenancy deposit, having cleared the rent arrears that had accrued, and had saved £300 so far
58. The tribunal considered the information in the CAMHS correspondence. In short, whilst there had been some aim towards assessing whether the Respondent's daughter had any degree of neurodivergence, no determination had yet been made. His daughter was said to not like school getting up early for school and her peers are loud and unkind towards her.
59. The Respondent did state that his daughter was enjoying school a bit more and that a move of schools was likely to affect her.
60. The school mentioned is not in the catchment area of the Property. As a result, the Respondent needs to drive his daughter to a bus stop to catch a bus to school. Due to car difficulties, she had missed time from school. Notwithstanding, the Respondent considered it would affect his daughter to move schools. The tribunal considered this but determined that as the Respondent had a firm intention to move from the Property as soon as he was able, his own actions would have the same potential uncertainty around the proximity of any new tenancy he obtains and the current school. The Respondent's daughter did not appear to the tribunal to be thriving in the Property either.
61. The tribunal heard that the Respondent expected an 'intentionality' decision from the local authority if an Order was made and that they would have nowhere to live. The tribunal did not accept that this was inevitable. The health issues had recently been added to his current housing application. He was to update the local authority of the decision in this application. In addition, the local authority has obligations to the Respondent's daughter to prevent her becoming homeless. The Respondent and his daughter were now known to their GP's who had or were to be appraised of their housing situation. Now that there is some openness around this, and with the intervention of CAMHS, the tribunal considered that the support needed was there for them to cope with the disruption of leaving the Property if an order was made.
62. In all, weighing the facts and the circumstances of both Parties against the other, to the issue of reasonableness, the tribunal concluded that the balance weighed in favour of the Applicant and the making an eviction Order. The tribunal considered the Applicant had compelling reasons to seek recovery of the Property against the backdrop of the antisocial behaviour of the Respondent and the impact it had had on him. It was also a situation that was known to the local community, and he had to bear that knowledge. The antisocial offending was not in the tribunal's view trivial as the Respondent seemed to suggest. It

was a planned course of conduct which involved cultivating Cannabis in the Property which was unlawful activity that his landlord had not agreed to. He had invested money in setting it up and his own time and it was a successful venture for him. It was not an amateurish attempt as he had some skill in growing the plants to maturity and yield and he had been doing it for some time. Others in the Property were also not immune to it. His landlord had noticed the smell of Cannabis before the cultivation was discovered. This in itself was a nuisance and caused concern. The tribunal did not consider that the Respondent had done anything to reassure the Applicant that there would be no repetition of use or growing Cannabis in the Property. The Applicant appeared to the tribunal to have lost faith in the Respondent as a tenant because of that. It did not seem to the tribunal that his faith could be restored. The tenancy situation was precarious and unsatisfactory and even the Respondent accepted that it was not suitable for him, and he did not wish to live there and had been taking steps to move on albeit he wished to be on the school route. The medical supports that the Respondent and his daughter needed were now more defined. The tribunal did not expect the local authority to fail in their duties to them, if homeless. The Respondent was already saving too for a private tenancy deposit. An imminent move seemed inevitable regardless as to whether the Order was granted. It did seem to the tribunal that a fresh start would, after the initial disruption benefit the Respondent and his daughter not the least because they would be in a smaller property and one which was more affordable to them. The tribunal considers that the Respondent having gone through this process will be proactive to make it a success. The Applicant's needs were now focussed on utilising the Property for a farm worker and this did seem to the tribunal to be reasonable given the Applicant's need for help.

63. The tribunal concluded that Ground 14(2)(a), (b),(c)(1) and (3)(a) and (b) are satisfied in relation to the conduct complained of. In so far as Ground 14 is concerned, the tribunal considered subsection (ba) of Ground 14. The Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring. In respect of subsection (5) the 'Anti-social behaviour' is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b),and in this case, 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, and (b) where it occurred.
64. The tribunal did consider that it would be reasonable to suspend execution of the Order for two months from the date of the Hearing to allow for the Respondent to engage meaningfully with the local authority and provide all relevant information to assist in his housing application which would now become a homeless application. This would also allow the necessary health supports to be secured to minimise the disruption to him and his daughter and prior to the next school term.
65. The decision of the tribunal is unanimous.

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.



4 June 2025
Date