



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

Chamber Ref: FTS/HPC/EV/25/0713

Re: Property at 2 Prospect Street, Cowdenbeath, Fife, KY4 9BL (“the Property”)

Parties:

Mr Wilson Muvuti, 11 Wester Suttieslea Bank, Newtongrange, EH22 4FL (“the Applicant”)

Mr Kelvin Boyle, 2 Prospect Street, Cowdenbeath, Fife, KY4 9BL (“the Respondent”)

Tribunal Members:

Yvonne McKenna, Legal Member and Andrew Taylor, Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the Property under ground 14 of schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 should be refused.

Background

1. This is an application in terms of Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“**the Rules**”). The Applicant is seeking an order for recovery of possession of the Property in terms of Ground 14 of Schedule 3 of the 2016 Private Housing (Tenancies) (Scotland) Act, (**the 2016 Act**), namely that there has been anti-social behaviour.
2. The Tribunal had before it the following documents:
 - a) Application dated 19 February 2025.
 - b) Tenancy agreement with a commencement date of 2 June 2023.

- c) Notice to Leave dated 15 January 2025 together with proof of service.
- d) Section 11 Notice dated 18 February 2025 in terms of the Homelessness etc. (Scotland) Act 2003 to Fife Council.
- e) Various documents submitted to support the anti-social behaviour ground;
1. Letters to the Respondent dated 9 January 2025, 21 April 2024, 3 December 2024, and 19 December 2024.
 2. Photographs of damage.
 3. Communication with Fife Council's Housing Officer.
 4. Various WhatsApp chats with other tenants.
 5. Further incident timeline letter 26 March 2025.
3. The application was accepted by the Tribunal on 15 May 2025.
4. On 5 October 2025, the Applicant submitted further photographs regarding damage.
5. On 6 October 2025, the Respondent contacted the Tribunal, seeking an extension of time in which to lodge written representations. He stated that he had been in contact with The Citizens Advice Bureau, as he has a difficulty with reading and presenting information. He was still waiting for an appointment with them. In addition, he said that he had ongoing health issues. The extension period was granted by the Tribunal and the Respondent was afforded a further period in which to lodge written representations.
6. Two case management discussions (**CMDs**) took place on 3 November 2025, and on 2 February 2026. The case was allocated to an in-person hearing to take place at the Vine Conference Centre, Dunfermline on 1 May 2026.
7. On 10 April 2026, the Applicant emailed the Tribunal. He intimated that he would be calling one witness namely Mr Colin Thomson. He also lodged further productions.
- Letter from the Applicant to the Respondent dated 9 January 2026
 - 6 photographs of the Property
 - Letter from the Applicant to the Respondent dated 3 December 2024
 - Compliance visit summary
 - E-mail to the Applicant from Police Scotland dated 23 January 2026
 - Invoice 0094 Inglis Engineering to the Applicant dated 10 December 2025
 - Invoice 0100 Inglis Engineering to the Applicant dated 21 December 2025
 - Notice to Leave dated 15 January 2025
 - Letter from Applicant to Respondent dated 17 March 2025
 - WhatsApp exchange between the parties dated 18 February 2026-30 March 2026.
8. No further productions were received from the Respondent until the morning of the Hearing. The Applicant and the Respondent both attended the Hearing in person.

9. The Respondent lodged several productions on the morning of the Hearing by e-mail, at 9.15 am, and also arrived at the Tribunal venue with a carrier bag full of documents which he wished to be lodged as productions. In terms of Rule 22, the case was continued to a Hearing on 12 August 2026.
10. The documents e-mailed on 1 May 2026 by the Respondent were;
 - Letter from his social worker dated 10 April 2026
 - Letter from Fife College dated 2 April 2026
 - Various medical notes
 - E-mail exchange between the Respondent and his criminal solicitors MJS
 - WhatsApp conversations between the various tenants.
11. On 14 May 2026 the Applicant lodged;
 - Photographs and a short video taken on 6 May 2026 of the kitchen at the Property.
 - Two invoices to Inglis Engineering dated 14 and 16 May 2026
 - Messages exchanged between the parties.
12. On 29 May 2026, the Respondent lodged further written submissions together with;
 - Various medical letters
 - Information from DVLA
 - Letter from his criminal justice social worker dated 20 October 2025
 - Social Security Scotland communication.

The Hearing 12 August 2026

13. An in-person Hearing took place on 12 August 2026 at Edinburgh Tribunal Centre. The Applicant and the Respondent were both in attendance along with the Applicant's witness Mr Colin Thomson.

Evidence of the Applicant (Summary)

14. The Applicant agreed that the matters complained of were as follows; From 3 December 2024, ongoing neighbour complaints regarding noise, banging doors, shouting, threatening behaviour whilst under the influence with police and fire brigade attending at the Property. This type of behaviour continued until March 2025 when again the police attended for a welfare check following banging and a shouting disturbance. The front door and the Respondent's bedroom door were broken by the police in completing welfare checks on several occasions. Furthermore, on 21 April 2024, it was suggested the Respondent had sexually harassed two tenants at the address on two separate occasions.

15. After the application had been lodged, the Applicant said that on 12 March 2025, the Respondent had left the oven door unattended for 6 hours; and on 16 March 2025, there was an incident when the radiator was pulled from the wall by the Respondent causing flooding.
16. The Applicant's position was that he has provided evidence of major damage to the Property when the police have attended to carry out welfare checks on the Respondent. The damages are substantial and probably for him as a landlord were, "the last straw".
17. The people who made the allegations of sexual harassment have since left the Property a long time ago. The Applicant had advised them to report matters to the police. He is unaware if they have done so or not. He said this was not the major issue. The suggestion was that the residents had been afraid to go to the toilet or to be alone in the house with the Respondent. Another resident complained the Respondent tried to touch them without consent.
18. He said that there were 7 other tenants in the accommodation, which is mostly at full capacity. Each tenant has their own room and there are a shared kitchen and two shared bathroom spaces. The tenants had been complaining to him about the Respondent's behaviour, when all he could do was to go through the appropriate channels.
19. In relation to the noise disturbances, police attendances, and forced entries, these had occurred regularly until March 2025. Sometimes police attended twice in one night. These disturbances happened every night over a 4 month period. On one occasion when the police had gained entry the lock was broken and he had managed to salvage the door. This didn't last 2 weeks. There have been trades people called out so this has caused financial strain on him, and mental anguish. The police have contacted him demanding entry for a welfare check and he has needed to drive over from Edinburgh where he lives, and then he has work the following day. This has necessitated the Applicant taking time off work as he has a duty of care to the residents to make sure that the entry door functions- with no guarantee this will not all happen again.
20. There is the issue of the radiator which was ripped off the wall in the Respondent's bedroom. This had happened on a Sunday morning. The Applicant had rushed over after receiving calls from the residents that there was no hot water. He had attempted to adjust the pressure and to re-pressurise the system. In the course of doing so, the Respondent had told the Applicant that there was water all over his bedroom floor. It transpired that the Respondent had broken the copper pipe when he pulled the radiator. The Respondent had claimed at the time this was an accident. Water was spraying the whole room and flooded a storeroom in the downstairs shop. The Applicant had needed to let the shop know what had happened. The Applicant said that every time the people who lived and worked on the street saw him, they were threatening towards him saying he had better do something or there would be consequences. He had taken to recording when he arrived at the Property as he was scared someone would attack him.

21. The Respondent had refused the Applicant access to his room in order to cap off the radiator as he said that he required 48 hours' notice. Even though the Applicant explained this was an emergency, he did not get access for days. Eventually an engineer capped off the radiator.
22. It got to the point the Applicant lodged a Notice to Leave. The Respondent was advised by Fife Council that they would only re-house him if he was evicted and not if he left voluntarily. The Council have told the Applicant the Respondent is his tenant. The Applicant responds that he doesn't want him as his tenant. When he reverts to the council he is met with the same response.
23. At some point he learned about the Respondent's mental health. The Applicant approached social services but did not hear back from them. He had thought they may have a solution. He reported the vandalism to the police regarding the radiator. The police said that the Respondent would be charged. To date the Respondent maintains this was an accident.
24. The Applicant's position is that the Respondent needs to face the consequences. To date the radiator has not been fixed. The local authority has told the Applicant this is the Applicant's responsibility to sort out. This is putting his Multiple Home Occupancy license in jeopardy as the Property requires to be in a good state.
25. When the accommodation was inspected by the local authority, they could not check safety issues in the Applicant's room as it was so packed with belongings. When he provides notice of an inspection the Respondent takes belongings outside but the bins are full and if the inspectors see that they insist the bin area is cleared. To date he has been unable to access the Respondent's room to assess the water damage. The radiator is still not fixed.
26. Tradespeople have refused to carry out work at the address due to intimidation they feel from the Respondent. He has lost cleaners due to the state of the house and the communal areas.
27. In total the costs of forced entry to the outside door and the door to the Respondent's room has cost approximately £3,000. He was advised by the Scottish landlords association if he approaches his insurance company his premiums go up so he has not made a claim. The Respondent has paid £90 but this was just the costs of capping the copper pipe, this did not cover the damage to the radiator.
28. He was unaware of the Respondent's mental health issues as these were not disclosed to him at the outset.

Evidence of Mr Colin Thomson (Summary)

29. Mr Thomson moved into one of the rooms approximately 2 years ago. He recalled one night when the Respondent and another tenant were involved in a commotion, alcohol had been consumed and paramedics were called. The Respondent was

saying he wanted to hurt someone. The situation calmed down. Then a few weeks later a similar disturbance occurred. Mr Thomson had contacted the Applicant to make him aware.

30. On these occasions, the Respondent was shouting, swearing and making animal noises. The paramedics had been unable to access the Respondent's room to carry out a welfare check. The fire department had attended to force the bedroom door. Mr Thomson had heard from behind his own bedroom locked door, scuffles, and what sounded like struggles with the police.
31. A pattern developed whereby there would be the noise of wine or beer bottles in the afternoon being brought into the shared accommodation, and then in the late evening there would be shouting, slamming doors and banging. The Respondent could be heard calling NHS 24 swearing and shouting. Mr Thomson's door is further along the corridor from the Respondent. He could still hear all the conversations and the noise.
32. Mr Thomson assumed that someone had requested a welfare check on the Respondent. The Respondent would refuse to answer the front door or his bedroom door, resulting in forced entry. There was an occasion when the police attended one evening and there were 3 police vans outside. The front door was forced on multiple occasions. The doorbell was inoperable. Mr Thomson wore noise cancelling headphones most nights. He did not feel comfortable or safe. There were multiple occasions the Respondent was aggressive with police and sometimes paramedics. It appeared to Mr Thomson that the police did not want to arrest the Respondent. The paramedics had no reason to take him away. As the Respondent was self-reporting and calling emergency services himself, Fife Council could not obtain an anti-social behaviour order.
33. On occasions the Respondent would be partially clothed, acting in this manner from 5 pm until 5am. The Respondent would stare at residents and make guttural animal noises. This behaviour went on for months. One week the police were out 5 times in one week.
34. Mr Thomson was away from the accommodation on his days off work so he had a break from the situation. It was very difficult. The Respondent's bedroom is by the bathroom. The Respondent made accusations regarding him being reported to the Applicant. He would calm down for a period of 1-2 weeks then he would start to drink again, and the residents knew they were in for a disturbed night. At one point the Respondent told police he had soiled himself. There was a smell coming from the Respondent's room. Mr Thomson placed air fresheners near the Respondent's door.
35. There have been no such disturbances involving police and/or paramedics since March 2025.
36. There has been food left in the kitchen which is rotting and the hob was left on when the Respondent was drunk which had set off the fire alarm. The kitchen is always dirty. Mr Thomson does not know if the Respondent is responsible for this.

In the residents group chat, the Respondent claimed to be cleaning the kitchen. Mr Thomson himself does not use the kitchen but finds the mess and the rubbish situation to be unacceptable.

Evidence of the Respondent (Summary)

37. The Respondent is 39 years of age. He is currently unemployed but has only yesterday managed to get his driving licence back which will help in his search for employment.
38. He accepted from the outset that the noise disturbances and the police involvement had happened. He had apologised previously and apologised in the course of the hearing. He said that he took responsibility for what had happened. There had been no malicious intent on his behalf. His actions had not been deliberate. It is not a case of anti-social behaviour; it is a case of a health issue. He is now a lot better. The Respondent was unhappy at the suggestion he had behaved inappropriately and has never been questioned by the police regarding any sexual allegations.
39. He said that due to his size, he accepts he may come across as intimidating. He is not trying to hurt anyone. All the time the police and ambulance were there it was because he had called the emergency services. For a year he had been trying to get back into treatment with psychiatry. He had lost his grandmother, and then he had an issue with his mother which had affected his mental health.
40. He has now been sober for 15 months. There has been a vast improvement to his life overall. He is seeing a psychiatrist regularly, currently once every 3-6 months. This is on a voluntary basis. His medication was increased and he engaged in therapy. His mental health is now stable. His sleep apnoea has improved and he now has a new breathing machine which he uses at nights.
41. He has gone out of his way to mend the relationships he has with other residents in the accommodation. He gets on well with all of the other residents. He said that Mr Thomson does not communicate with any of the other residents. His landlord has never enquired about his health. All the time it is about the bottom line and what it is costing the Applicant. The Respondent understands he is running a business, but he had no lock on his bedroom door for 18 months and there was no lock on the front door for over a year. The Respondent had already paid £90 to have the radiator fixed, and there has been two years without heating in his room.
42. The damage caused to the radiator was an accident. He had got up during the night and put his hand on the radiator which had come away from the wall. The joiner had told the Respondent it was only attached with three small screws.
43. This behaviour had all occurred at a time when the Respondent felt horrible. Things had culminated in a suicide attempt in March 2025, when he had hit rock bottom. The paramedics had tried to section him twice but there were no bed spaces available at the time. He had accumulated criminal charges over this period having not had a criminal record before. He accepted that Mr Thomson would have heard

him on the phone with emergency services. He had been hearing voices in his head at that time. He had not caused the physical damage to the doors. This was emergency services gaining access for welfare check on him.

44. The Respondent referred to an e-mail (undated) to him from his criminal solicitors, in response to his e-mail of 24 April 2026, which stated;

'Hi Kelvin,

I'm sorry for the delay in getting back to you.....

I can confirm that when assisting you with your criminal matters, I instructed an independent psychiatrist, Dr Jim Craig to assess you. This was primarily to ascertain whether you had a legal defence to the charges that you were facing. This was due to the history that you provided to me of your longstanding mental health difficulties. Dr Craig was of the view that you did not have criminal responsibility for charges on the 13th and 15th January 2025 as a result of dissociative disorder resulting from severe sleep apnoea.

Specifically he stated, "His mental health has deteriorated in the last nine months with the CPAP machine breakdown. This has exacerbated all of the above with increased disturbance to his sleep pattern, increased anxiety, agoraphobia and depression, increased resort to alcohol and dissociation and hence amnesia relevant to the incidents on 3, 13 and 15 January 2025. On these dates the accused was so distressed that he dissociated and hence has no recall. At the time of the alleged offences, he was so severely stressed and agitated and in this extreme condition, did not know the nature or wrongfulness of his actions. Therefore he did NOT have criminal responsibility.'

45. The Respondent referred to a letter from his social worker dated 20 October 2025, which stated,

'Mr Boyle has been subject to a community payback order since 20 March 2025, during which he has attended weekly appointments before more recently being moved to fortnightly contact. Within this time, I have noted significant progress made by Mr Boyle in that he has been abstinent from alcohol throughout this time, he has been engaging with Fife Alcohol Support Service on a weekly basis (this is a condition of his order). In addition, Mr Boyle has been supported to engage with the relevant medical professionals. He reports to feel in a much more stable and positive place than he was during the time of his disruptive behaviours within the tenancy and in conversations with myself he has acknowledged that his behaviour was not acceptable and understands why he is now in this position. '

46. He said that he continues to suffer from sleep apnoea and often doesn't get to sleep until 6am. This is why he has asked for 48 hours' notice for access to his room so that he can try and get his sleeping pattern on track, and if required take additional medication. He denied that any smells came from his room and referred to the fact the toilet was right beside his room.

47. In relation to the kitchen area, there are various others in the house. He said that he cleaned the kitchen for example two days ago and it is dirty again, so what is the point. There are bin bags on the floor which are not his. He feels that all of the blame regarding the kitchen is being placed on him when this is not the case. Similarly, the outside bins are used by various others and are always over-flowing. It is not only at times when he clears his room. There had been cctv in the kitchen area for around 6-8 months, at the tenants' request. This had not disclosed any anti-social behaviour by the Respondent.

Findings in Fact

48. There existed a private residential tenancy between the parties.

49. The Respondent is the tenant.

50. The Applicant is the landlord.

51. The tenancy commenced on 2 June 2023.

52. The rent payable in terms of the tenancy is £105 per week, inclusive of council tax, heating/electricity and TV licence.

53. The tenancy agreement provides for the lease of Room 1 at the Property, which is one of 8 rooms in total which are rented out with a shared communal kitchen and 2 bathrooms.

54. The tenancy agreement provides that the tenant agrees to take reasonable care of Room 1 and any common parts.

55. The tenancy agreement provides that the tenant must not engage in anti-social behaviour to another person.

56. The Respondent suffers from poor mental health.

57. On various occasions between December 2024 and March 2025, police, fire services and paramedics attended at the Property, having been called by the Respondent.

58. Between December 2024 and March 2025, on several occasions the Respondent was loud and aggressive, shouting and swearing at emergency services.

59. At the time of this disruptive behaviour the Respondent was suicidal and had called emergency services to the Property looking for help from psychiatry. At times he was suicidal.

60. The Respondent attempted suicide in or around March 2025.

61. Since March 2025 the Respondent's behaviour has dramatically improved. There have been no police attendances. There have been no noise or disturbance complaints.
62. A Notice to Leave was served dated 15 January 2025 stating that an application would not be made until 16 February 2025. It sought eviction under Schedule 3 Ground 14 of the 2016 Act, namely antisocial behaviour. There was evidence of service.
63. A section 11 notice had been sent to the local authority advising that the Applicant was seeking possession of the Property. There was evidence of service.
64. The Respondent continues to reside at the Property.
65. The application was made to the Tribunal on 19 February 2025.
66. On 16 March 2025, the Respondent accidentally pulled the radiator from the wall of his room.

Reasons for Decision

67. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.

The ground which the Applicant seeks eviction is Ground 14;

'Anti-social behaviour

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,

[F36(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.’

68. The Tribunal considered the basis for granting the order under Ground 14. We find that this ground is not met. The behaviour of the Respondent in relation to the various noise disturbances and police attendances has clearly caused nuisance and annoyance to the other residents, and to the Applicant. However, we require to take into account the fact that the Respondent was very unwell at that time. We have seen the terms of the communication from the Respondent's solicitors which confirmed this, and we accept the Respondent's evidence on this point. He accepted his behaviour and provided an explanation. The Respondent gave an explanation which we accepted with regard to the radiator damage, that he had accidentally leaned on the radiator causing it to come away from the wall. There was no reliable evidence presented to the Tribunal in relation to sexual harassment, and the Applicant himself conceded this was not the main concern. The other more recent complaints relate to an untidy kitchen/ outdoor bin area, and the Respondent not permitting access without 48 hours' notice to allow inspections by Fife Council. The issues regarding the kitchen/ bin area cannot be specifically blamed on the Respondent. There is insufficient evidence which has persuaded us he was responsible. Failure to allow access does not amount to anti-social behaviour. We do not consider the behaviours complained of to be relevant anti-social behaviour in view of the prevailing circumstances of this case and accordingly we do not find the first part of the ground established.

69. In addition, the Tribunal proceeded to look at whether it would be reasonable for the Tribunal to grant the order under this ground. We find it would be unreasonable to grant the order. In coming to this conclusion, we took into account the following factors; -

(i) There has been definite improvement in the Respondent's behaviour and personal circumstances.

(ii) The Respondent has underlying mental health issues but has now engaged with medical professionals, stabilised his health and accepted support.

(iii) He has had an increase in his mental health medication and has his sleep apnoea better controlled with the assistance of a breathing apparatus.

(iv) There have been no issues involving the police or emergency services since March 2025, which at the time of the Hearing was a period of one year and five months. This type of behaviour, involving alcohol being taken, and emergency

services called with resulting noise disturbances and police presence is no longer a recurring theme during the tenancy.

(v)The Respondent has provided the Tribunal with medical documentation, as well as communication from his criminal solicitors which confirms the position that he was mentally unwell at the time of the behaviours which took place between December 2024 and March 2025.

(vi)The communication from the Respondent's social worker adds weight to the Respondent's position and confirms his engagement with support services.

(vii)Other than the witness, Mr Thomson, there was a lack of evidence from the other occupiers of the shared accommodation. Indeed, the Respondent said he got on with the remainder of the tenants and there was evidence of a housemates WhatsApp chat.

70. The Tribunal is therefore of the view that the ground is not established and it appeared to us unreasonable to grant the order sought.

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.

Yvonne McKenna

12 August 2026

Legal Member/Chair

Date