

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/21/0519**

**Re: Property at 30a Rugby Road, Kilmarnock, KA1 2DP (“the Property”)**

**Parties:**

**Mr Stuart Miller, JC Roxburgh Properties Ltd, 19/21 Ayr Street, Troon, KA10 6EB (“the Applicant”)**

**Ms Teri McClung, 30a Rugby Road, Kilmarnock, KA1 2DP (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Angus Lamont (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**BACKGROUND**

1. The Applicant is the Landlord of the property at 30A Rugby Road, Kilmarnock KA1 2DP. The Respondent is the tenant;
2. The lease is a private residential tenancy in terms of The Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”);
3. The Applicant presented an Application to the Tribunal seeking an Order for Eviction of the Respondent on the grounds of Anti-Social Behaviour (ground 14 of schedule 3 to the 2016 Act);
4. A Case Management Discussion was assigned for 17 May 2021 at 10am (“the First Case Management Discussion”). That Case Management Discussion was conducted by teleconference;
5. The Applicant was represented at the First Case Management Discussion. The Respondent did not participate although the Tribunal had been satisfied that the proceedings and the date and time of the First Case Management Discussion had been intimated to the Respondent;
6. Prior to the First Case Management Discussion the Applicant provided a lengthy “paper apart” and numerous supporting documents which indicated

a lengthy course of anti-social behaviour on the part of the Respondent within, and in the locality of, the property;

7. The Applicant had served a Notice to Leave upon the Respondent advising of the intention to raise proceedings for recovery of possession of the property;
8. A Notice in terms of s11 of the Homeless etc. (Scotland) Act 2003 had been intimated to the Local Authority;
9. While the Respondent did not participate in the First Case Management Discussion, the representative of the Applicant advised the Tribunal that, that very morning, the Respondent had e-mailed the Applicant directly making various comments which indicated an intention to oppose the proceedings;
10. In those circumstances, the Tribunal felt it appropriate to adjourn the Case Management Discussion to enable the Respondent to participate meaningfully. The Tribunal also issued a Direction that the Respondent advise the Tribunal of details of any Solicitor, advisor or any other representative acting on her behalf and, separately, that she provide a written note of her defence/position in relation to the Application. The Respondent failed to do so;
11. A further Case Management Discussion was assigned for 25 June 2021 at 10am ("the Second case Management Discussion"). The date and time of that Case Management Discussion together with a copy of the Direction referred to above was forwarded to the Respondent and a Royal Mail track and trace receipt confirmed it had been received;

## **THE CASE MANAGEMENT DISCUSSION**

12. The Applicant did not participate personally in the Second Case Management Discussion but was represented by Miss J Grosvenor, Solicitor, Messrs Harper MacLeod, Solicitors, Glasgow. The Respondent did not participate in the Second Case Management Discussion. The Tribunal was, however, satisfied that details of the first and second Case Management Discussions had been intimated to the Respondent and, in the circumstances, determined that it was appropriate to proceed in her absence;
13. The Applicant's representative moved the Tribunal to grant an order for eviction of the Respondent from the Property. She referred to the numerous documents previously lodged with the Tribunal, supplemented by oral submissions. In particular, she advised that since the First Case Management Discussion the anti-social behaviour had continued. In particular, she advised that on 12 June 2021 the Respondent physically attacked a neighbour residing near the property following a disagreement in relation to a dog. This matter was reported to Police Scotland. In addition, on the same date, further evidence of apparent drug dealing arose. A number of cars arrived at the property late at night and, on one specific occasion, two individuals chapped the door of one of the neighbours, in error, looking for

the Respondent. It appeared that the combination of circumstances indicated that persons were attending at the property to purchase drugs;

14. On 30 May 2021 there were recurring vehicle visits at the property, again in what appeared to be obvious indication of persons attending there for the purchase of drugs;
15. Information lodged with the Tribunal prior to the First Case Management Discussion indicated that there were repeated, long standing issues arising from the Respondent's dogs repeatedly barking day and night, the dogs not being kept under control while outwith the property and numerous incidents of dog fouling in the vicinity of the property, which was not removed or cleared by the Respondent;
16. Information was provided that the Respondent regularly played loud music to the disturbance of the neighbours and this matter being reported to the "ASBO Team" of East Ayrshire Council;
17. Information was provided to the effect that the Respondent had attended at the doors of neighbours shouting, swearing and acting in an aggressive manner in what would appear to be a Contravention of s38 of the Criminal Justice and Licencing (Scotland) Act 2010. Again, these matters were reported to Police Scotland;
18. The Respondent did not keep the garden ground at the property in a good condition and, in particular, allowed refuse and food waste to collect resulting in vermin and seagulls being attracted to the common areas of the property;
19. Police Scotland have been involved in dealing with reports in relation to anti-social behaviour on the part of the Respondent at the property and had confirmed, in a letter dated 19 April 2021, that they had received reports on 18 August 2018, 18 October 2020, 9 November 2020, 14 January 2021 and 13 February 2021. These various incidents related to the Respondent's dog fouling the pavements, the Respondent making gestures towards neighbours, the Respondent leaving refuse in the vicinity of the property, issues relating to loud music and dog barking, the Respondent attending at two neighbouring properties and causing a disturbance, the Respondent attending at the property of neighbours and advising that she was suffering from Covid-19 and the Respondent being abusive towards neighbours following Police having executed a search warrant at the property;
20. Police Scotland also confirmed that on 13 February 2021 they conducted a search of the property, under authority of a Sheriff search warrant, as a result of which two persons within the property were charged with criminal offences;

## **FINDINGS IN FACT**

21. The Tribunal found the following facts to be established:-

- a) By lease dated 16 December 2017 the Applicant let the Property to the Respondent. The lease is a Private Residential Tenancy in terms of the 2016 Act;
- b) Since at least 2018 the Respondent has indulged in a course of anti-social behaviour;
- c) This behaviour has resulted in neighbours at the Property being alarmed, upset and being subjected to nuisance and annoyance;
- d) This behaviour has involved apparent criminal behaviour within the Property and within the locality of the Property;
- e) On 13 February 2021 the Property was searched by Police Scotland and two persons within the Property were arrested and charged with criminal offences;
- f) The Applicant served a Notice to Leave on the Respondent on 1 February 2021;
- g) The Applicant raised proceedings on 5 March 2021;
- h) The Applicant intimated the proceedings to the local authority in terms of s11 of the Homelessness Etc. (Scotland) Act 2003;
- i) It is reasonable that an order for eviction be granted;

## REASONS FOR DECISION

22. Ground 14 of Sch 3 of the 2016 Act provides as follows:-

***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, 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**

23. The legal formalities require to enable the Application to proceed before the Tribunal – service of a Notice to Leave and intimation of a Notice in terms of s11 of the 2003 Act upon the Local Authority – had been complied with by the Applicant;
24. A significant body of information had been presented to the Tribunal which indicated a persistent course of anti-social behaviour on the part of the Respondent both within the property and in the vicinity of the property;
25. This anti-social behaviour on the part of the Respondent appeared to include the commission of criminal offences by the Applicant and others permitted entry to the property by her;
26. This course of conduct was continuing and, given the continuing nature of this conduct, the Application to the Tribunal was timeous;
27. The Respondent had, on two separate occasions, been given the opportunity to address the Tribunal and had failed to do so;
28. In all the circumstances, the Tribunal had little hesitation in concluding that it was reasonable to grant the Order sought by the Applicant;

## **DECISION**

The Tribunal grants order to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property at 30a Rugby Road, Kilmarnock, KA1 2DP and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

## **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.**

Virgin Crawford

25 June 2021

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**Legal Member/Chair**

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**Date**