



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/19/3171

Re: Property at 26 Double Hedges Park, Edinburgh, EH16 6YL (“the Property”)

Parties:

Mr Ian Urquhart c/o Southside Property Management, 20 Nicolson Street, Edinburgh, EH8 9DH (“the Applicant”)

Mr David Taylor, 26 Double Hedges Park, Edinburgh, EH16 6YL (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member/Chairperson) Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 14 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

- Background
- 1. An application dated 4 October 2019 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of two grounds: the Respondent having breached a term of a private residential tenancy, being Ground 11; and the Respondent having engaged in relevant antisocial behaviour, being Ground 14, both said Grounds under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion
2. A Case Management Discussion (“CMD”) took place on 13 December 2019. The Applicant was represented by Mr Runciman, solicitor at Gilson Gray. The Respondent was represented by Miss McKinnon, solicitor at Friends Legal. The Respondent denied the allegations made against him in respect of the alleged behaviour in breach of Grounds 11 and 14. A Hearing was accordingly fixed for evidence to be heard.
- The Hearing
3. The Hearing took part over the course of two days, commencing on 7 February 2020 and thereafter concluding on 28 August 2020. The delay between the two dates was primarily caused by the Covid pandemic and national lockdown, and also due to the second date having to be re-scheduled due to the Respondent’s agent indicating shortly before it that she was unable to attend due to failing to diarise the date.
- The Applicant’s case
4. The Applicant’s first witness was Angela McIntyre, employee of Southside Property Management, the managing agents for the Applicant to manage the lease of the Property to the Respondent under a Private Residential Tenancy (“PRT”). Ms McIntyre manages 235 properties and is well experienced in property management. Ms McIntyre confirmed that a copy of the PRT entered into with the Respondent was lodged with the application. Under Clause 17 of the PRT the Respondent undertook to keep the Property adequately ventilated and heated, and ensure the Property is kept clean. Under Clause 20 of the PRT the Respondent undertook to allow reasonable access to the property for inspections. The agents would look to do routine visits every 3-4 months, and would give 48 hours’ notice of this. Reports would be compiled by the staff member carrying out the inspection. Under Clause 21 of the PRT the Respondent undertook not to engage in antisocial behaviour towards another person. She submitted this meant not to disturb someone else either through their own actions, music, noise, causing disturbance or causing distress to someone else. This would include a neighbour. Under Clause 28 of the PRT the Respondent undertook not to make any alteration to the property, its fixtures or fittings, nor carry out any internal or external decoration, without the prior written consent of the landlord.
 5. Ms McIntyre received complaints of antisocial behaviour by the Respondent and wrote to him on 26 May 2019 (a copy of the letter was lodged in process and referred to). Thereafter Ms McIntyre wrote to the Respondent on 16 July 2019, following a routine property visit which had shown that the property had deteriorated and issued a formal warning. Ms McIntyre again wrote to the Respondent on 1 August 2019 warning him that he had carried out an unauthorised alteration in the property, namely installing a thermostat on the boiler which he had not requested authorisation for and for which an electrician had to be sent out to check over.

6. Ms McIntyre referred to a property inspection report of 11 June 2019 which had been prepared by a colleague. There had been damage to a cooker ring. A new extractor had been fitted to the bathroom at the start of the tenancy, but mould was now showing in the bathroom. Ms McIntyre submits this was due to insufficient heating and ventilation. Marks were also starting to appear on the hall walls. The Respondent had refused to allow her colleague to continue to photograph the internal condition of the property, so the report could not be completed with as many photos as normal. It was submitted that the level of cleanliness of the property needed improvement. A photo of the boiler was referred to, which shows black tape. It was submitted that this was where the Respondent had installed a thermostat, which had caused a crack, and he'd had to tape it up. It was submitted that the Respondent was not qualified to carry out such an alteration and he should have sought authorisation for such work to be done by a professional. Ms McIntyre had spoken to the Respondent who had indicated that he had been unable to control the temperature and reduce his bills in the house which was why he'd carried out the alteration. However, it was stated that all radiators had individual controls to allow control throughout the property and the alteration was not needed. An electrician was called out who had to replace the damaged isolator switch which had been taped up by the Respondent. The electrician had advised that the works done could have caused a fire. The inspection report of 5 October 2018 which had been prepared prior to the Respondent moving in was referred to. This showed that the property was in a very good condition at the start and had been professionally cleaned. No issues were mentioned with the kitchen, The oven hob was intact and in good condition.
7. Ms McIntyre submitted that the Respondent had been causing nuisance in the neighbourhood. Several complaints had been made to the landlord directly from neighbours. The complaints included loud music late at night and into the early hours, the Respondent going to neighbours doors and asking to borrow cigarettes, and strange behaviour (examples were given of the Respondent cycling on a child's bike) and lying in the back garden with loud music playing. Ms McIntyre wrote to the Respondent and warned him regarding the behaviour and that it needed to stop. Ms McIntyre submitted that the Respondent then told her that he was not keeping well, and that he needed help with his mental health issues. She did not know if he had any professional support and had asked him to look into getting some help and that he should call her if he needed help. She has tried to be accommodating.
8. Under cross-examination, Ms McIntyre confirmed that as regards the mould in the bathroom, she was unaware if the Respondent has purchased mould spray to try and rectify the issue. She confirmed that no "mould expert" had been instructed to inspect. She submitted that she would expect mould and paper peeling off the wall would be due to lack of proper ventilation, but advised that an extractor fan had been fitted. She had seen issues with mould often in properties and had it been reported to her at an early stage by the Respondent, she could have offered advice. Ms McIntyre did not agree that the marks on the walls through the property was fair wear and tear, but did accept that they were minor. Ms McIntyre confirmed that she had not witnessed any antisocial

behaviour herself and took instructions from the landlords. The complaints had been made directly to the landlord or his wife who in turn passed it to Ms McIntyre to deal with. She did not know which particular neighbours had complained, only that there had been 3 or 4 neighbours complaining.

9. The Applicant's second witness was Maureen Urquhart, wife of the Applicant. She submitted that she dealt with the management of the property for her husband and liaised with Ms McIntyre on any issues. In late spring/early summer 2019, whenever she was shopping locally, different neighbours would approach her and complain about the Respondent. One neighbour complained about the noise, and that she was frightened by him. At the start of the PRT there were no issues, but they started around April/May 2019. The first complaint was made whilst she and her husband were attending at the property to tidy the garden and cut the grass. The garden had been a mess. A neighbour, Peter Scorer, introduced himself and advised he had experienced a number of issues with noise. He lived directly above the property. He complained of noise throughout the night and early hours, loud base music, and that the Respondent would leave the house with the music still playing in the empty property. Mrs Urquhart had told Mr Scorer to contact the managing agents to complain directly. The managing agents had tried to speak to the Respondent about his behaviour but he had hung up the call. She was unaware of any mental health issues at the start of the PRT.
10. On another occasion, it was reported that a Bulgarian lady who lived at 28 Double Hedges Park said that the Respondent was asking her for food and cigarettes. She had asked him to leave her alone, and that she felt frightened and intimidated. She had left the property and moved elsewhere and it was understood that this was due to his behaviour. Another neighbour at 30 Double Hedges Park spoke to Mrs Urquhart complaining that the music was loud and that the Respondent was leaving it on whilst he went out. His behaviour was intimidating and frightening, and described it as relentless. Separately, a local taxi driver (who was only referred to as "Derek" and with no specific address) complained to her that something needed to be done about the Respondent. He had loud music on at 3am, he had been seen lying in the garden in his underwear. The Respondent had jumped out in front of his taxi deliberately. He required to get up early for work and was being affected by the loud music interrupting his sleep. Mrs Urquhart asked him to report directly to the Police and the letting agent.
11. Mrs Urquhart wrote to all of the neighbours on 26 May 2019 asking them to make complaints to the letting agent if there were further issues. Following service of the Notice to Leave, the behaviour continued.
12. Mrs Urquhart submitted that she had been told that the Respondent had installed something on the boiler. The boiler was only 2 years old, when he moved in. There were no issues with the heating and there were thermostatic control valves on all of the radiators. No request was made to carry out an alteration, and had he requested they would have refused as he is not qualified to do such work. The warranty on the boiler is now invalid because the

Respondent has tampered with the boiler. The heating system had cost £6,000 to install only a couple of years prior to the Respondent moving in .

13. Mrs Urquhart said the property had been professionally cleaned prior to him moving in and a new extractor fan had been installed in the bathroom which came on with the light. He had allowed the property to deteriorate. The garden was in a poor condition now. The Respondent did not take proper care. Mrs Urquhart was concerned that the Respondent was putting himself at risk and the other people around him.
14. On 1 June 2020 a neighbour reported that a social worker had attended at the Respondent's property with food and a gift box for the Respondent as it was his birthday. He threw everything out into the garden and shouted at them to leave. Mrs Urquhart attended later that day to cut the rear grass and saw the food and gift lying in the garden. It lay there for days. A neighbour told her that she was frightened of the Respondent due to his behaviour and didn't like walking past the property. Thereafter it was reported to her that the Respondent had been removed from the property by the Police and sectioned under the Mental Health Act. On 23 June 2020 the Respondent absconded from the Royal Edinburgh Hospital and the police called her in the middle of the night to asked her to attend at the property with keys to give them access. The Respondent was lying behind the front door refusing to let them in. She arrived at the property at 4.45am and the Respondent could be heard shouting at the police, and she was told this had been going on for a few hours. She described the Respondent's behaviour as erratic and volatile ,and she thought that he needed more supported accommodation. The Police took him back to the Royal Edinburgh Hospital for treatment. Thereafter he was released. Further complaints of loud music were made on 12 July 2020. Over that weekend, two neighbours called her to say he was walking up and down the street in his bare feet, shouting that his dad had been killed by gangsters. He also put notes through a neighbour's door which mentioned the Islamic State. On 13 July 2020 Mrs Urquhart received a call form Mr Scorer to say that the Respondent had run out of his property saying his children had been kidnapped and the kidnappers had demanded £50k ransom money. He asked Mr Scorer to call 999 which he did and the police attended. It turned out that this was not correct, that the Respondent's children were safe and at home with their mother. Mr Scorer was very alarmed by this. On 14 July 2020 it was reported to her by a neighbour that the Respondent was dressed as Spiderman and was seen walking down the street with a tent and a mop and bucket saying he was going camping. Mr Scorer said he was alarmed at the bizarre behaviour and that other neighbours found it frightening.
15. Under cross-examination Mrs Urquhart confirmed that she didn't know whether the neighbours had complained to the police or not. She was not aware of whether the Respondent had been charged by the police for his behaviour or not. She said that another neighbour who had been referred to previously did not want to come to the Tribunal to give evidence because she was frightened of the Respondent and potential repercussions for doing so.

16. The Applicant's third witness was Peter Scorer, who resides above the Respondent at 25 Double Hedges Park. He moved in on 22 December 2018. He had first met the Respondent when they were both outside smoking in the garden. The Respondent had told him that he had experienced mental health issues. They would chat and were on friendly terms. The Respondent then started asking for cigarettes, which Mr Scorer eventually refused to do as this was not reciprocated. Mr Scorer watched the Respondent ride a child's bicycle in the street with a kilt on his head. This caused Mr Scorer alarm, as this was not natural behaviour. He was concerned for the Respondent's mental health. On 2 or 3 occasions initially he had asked the Respondent to turn down his music. In early May 2019, he knocked on the Respondent's door as the music was very loud in the afternoon. He could see the Respondent through the front window and that he had headphones on, but wasn't listening to the music through them. He could feel the vibration of the music through the floor and walls and described it as sounding like the Respondent was having a rave. The Respondent did agree to turn it down on that occasion. On another occasion he was awoken at 6.30am due to loud music from the Respondent's property. He ended up having to leave the flat for the morning because the Respondent didn't answer the door and the loud music continued. Mr Scorer described feeling forced out of his own flat because of the noise. He returned at 12.45pm and the music was still loud and he could hear it in the street as he walked towards the property. He knocked on the Respondent's door again and a neighbour passing told him that the Respondent had left the property at midday. Mr Scorer had to sit in his flat with his laptop and headphones on to drown out the noise. He later called the Respondent on his mobile to ask him to turn the music down. He admitted shouting at him because he was so frustrated. A policeman came on the phone and advised that the Respondent was in the police station. He explained to the policeman the issue with the music. The next day he called the letting agent and the Council's noise nuisance team for help. He was advised to call 101 to report further issues of noise.
17. Mr Scorer called 101 on a future occasion to report loud music. The police didn't attend. A few days later at around 6pm the music was loud again. He called the Police. They didn't attend. The Council noise team attended but the music had been turned down just prior to their arrival. Mr Scorer described making another 3 calls to 101 to report noise. He described the music as being played regularly late at night and in the early hours of the morning. It is played intermittently through the day and night and is a nuisance. Mr Scorer referred to an email sent to the landlord on 14 January 2020 which listed incidents on 9 May 2019, 8 November 2019, 6 January 2020 and 11 January 2020. On all occasions the music was very loud, the base could be felt vibrating through the floor and Mr Scorer could not watch TV. He confirmed that the noise caused him nuisance and annoyance. He referred to the Bulgarian lady who previously lived a few doors down complaining to him about the noise, and that she was concerned at the behaviour. She told him she had found the Respondent intimidating. Mr Scorer also said that the taxi-driver at 35 Double Hedges Park had found the Respondent at 3am lying on the garden path with no top on, and speakers outside his house playing loud music.

18. Under cross-examination Mr Scorer agreed that he would expect to hear some noise of neighbours below his flat, but stated that this was excessive. He said that he tried very hard not to make noise himself, and kept his TV down as low as possible, but the Respondent's music was louder than his own TV. He admitted that he was unaware as to whether the Respondent had ever been prosecuted for noise nuisance. He did not feel threatened by the Respondent. He was aware that the Respondent had mental health issues, but considered he should seek help with that and that he should use his headphones which he knows he has, if he wants to listen to loud music at unsociable hours. He denied exaggerating the level of the music and effect it was having on him.

- The Respondent's case

19. The Respondent said that that he had a right to entertainment in his house. His music was not loud and the insulation between the property is poor. He can hear Mr Scorer snore but doesn't complain about it. He did not accept that his music was played overly loudly. He complained that Mr Scorer had made death threats against him and he is too scared to leave the house. He is being victimised by the Police. He said that no neighbours had complained to him about the noise, other than Mr Scorer. He has had pleasant conversations with all of the neighbours. When asked if he was playing loud music, the Respondent said that he has a difficult time with his mental health and that Mr Scorer, the landlord and the neighbours were responsible for this. He did not feel welcome in the neighbourhood. The landlord had posted letters to neighbours about him and now they make things up. He referred to the Spiderman outfit and submitted that this was not indecent, and there were no issues regarding him wearing this. He was an adult and could choose his own clothes. He has never had an ASBO, nor any police action taken against him regarding his music. He submitted that the general street noise was louder than his music. He could hear the taxi-driver starting his taxi in the early hours of the morning, but he didn't complain about that.

20. He described his relationship with Mr Scorer as being friendly at first, but now he was backstabbing. Mr Scorer had shared stories from his time in Afghanistan and Iraq whilst serving in the forces and he was scared at what Mr Scorer was capable of. Mr Scorer twists what he says and has made fun of his mental health. The Respondent has experienced poverty and wanted to use Mr Scorer's cigarette ends to smoke. Mr Scorer had agreed that he could do so but has now changed his mind. The Respondent feels isolated since he separated from his wife and lost his job. He has never been threatening towards other neighbours.

21. The Respondent described struggling with his mental health. He feels the neighbourhood has ganged up on him and lie about him to the letting agent and landlord. He considers it threatening to him when neighbours are lying about him. He can't take the pressure and breaks down. He denied cycling with a kilt on his head. He accepted receiving the letters from the letting agent regarding his behaviour but said that they made no attempt to meet with him to discuss their concerns.

22. Describing the incident referred to on 1 June 2020 which was his birthday, the Respondent advised it was a friend who attended at the property with cake, a picnic and balloons. She stood a few feet away from him and he was upset because he had no one to share these things with. She left the items on his doorstep and left. He was upset as he couldn't see his children, had received no birthday cards or calls to wish him happy birthday. His mental health was suffering.
23. He confirmed that he had been sectioned on 6 June 2020. He thereafter absconded from the hospital on 23 June 2020 and the police attended at the property at 4am. He didn't want them to break the door down and he had no keys to let them in, so he lay behind the door to prevent them causing damage. He got up politely once the landlord arrived with keys. He went back to hospital and received further treatment after that.
24. He denied keeping music on for long periods. He does not have a TV as he cannot afford a TV licence.
25. When asked about the letters posted to neighbours, he denied that they were threatening or in any way cryptic. He had a problem with his printer, and he had posted pages of how the printer was printing things off to Mr Scorer's letterbox. The references to Islamic States and stats were due to a conversation he was having with Mr Scorer about deaths caused by war as compared to deaths caused by Covid. He was trying to inform Mr Scorer.
26. The Respondent maintained he had indeed received a phone call about his children being kidnapped and this was not a lie. He was extremely upset by this. He did not consider that neighbours were distressed by him wearing Spiderman costume. He doesn't wear it every day. It's his choice as an adult as to what he wears.
27. Relating to the condition of the property, the Respondent advised that there was mould noted in both the report at the start of the tenancy, and at the subsequent inspection. This was not his fault. He bought anti-mould spray. The bathroom had been flooded and the landlord didn't resolve this properly. This had left a lot of damp and humidity which had worsened matters. The landlord should have done something to fix the issue of the mould. He complained that the landlord failed to do any maintenance. The marks noted on the hall and living room walls were usual wear and tear. These were not grounds for evicting him.
28. He was having trouble keeping the property adequately heated. He made an adaptation to the boiler because the agents wouldn't listen to his concerns. He installed a thermostat which makes the heating system better. He is an engineer and knows how to make a circuit diagram. He was facing large heating bills as he could keep the property at a stable temperature. The thermostat has now cut his bills significantly. He should be pleased for trying to improve the property. He did not accept that this alteration was a breach of the terms of the PRT.

29. He used to keep the property clean but his depression has caused him to neglect himself and the property. He would deep clean the property if he felt he was in better health. He is struggling to cope.
30. The Respondent submitted he had a Community Psychiatric Nurse, a Psychiatrist, a Support Worker and Social Worker. They are going to help him to get the flat cleaned. He needs to move out for a week for this to be done but he hasn't had a chance due to Covid. He moved from Midlothian to Edinburgh so his support network isn't very good and he is still building this. He is now receiving treatment and is on the waiting list for a Psychologist.
31. Under cross-examination the Respondent did not accept that he behaved in an antisocial manner. He has not played loud music, and has not behaved in an intimidating manner to neighbours, nor has he harassed neighbours. He accepted he owned headphones but did not consider that they were adequate to allow him to enjoy his music fully. The insulation in the property was poor. He has also been cooperative with Mr Scorer but now thinks that he is ganging up against him. He considered that he was being harassed and distressed because of what is going on in his life. He did not accept any responsibility for his behaviour or the complaints made because of what was being done to him. He submitted that the definition of antisocial behaviour as laid out in the lease should be different where someone has mental health issues. He considered that the way neighbours behaved towards him was antisocial, in that they were excluding him from society.
32. He did not accept that he had carried out an alteration to the boiler but instead it was an "adaption". He improved the heating system. He did not accept that he had caused a danger. He was qualified to fit the thermostat. He followed the appropriate manual instructions. He did not accept that his alteration had invalidated the warranty. The adaption was not dangerous. When asked if he'd considered moving to a house that was cheaper to run and with better insulation, he replied that he had not and that he was scared of moving because he was being discriminated against due to his mental health.

- Findings in Fact

33. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the PRT") which commenced on 5 October 2018;
- (ii) The Applicant has served a Notice to Leave on the Respondent on the basis of Grounds 11 and 14 of Schedule 3 to the 2016 Act, dated 30 August 2019;
- (iii) The Respondent has engaged in relevant antisocial behaviour during the course of the Agreement, in breach of section 21 of the Agreement.

- Reasons for Decision

34. Both Grounds 11 and 14 Grounds 11 and 14 of Schedule 3 to the 2016 Act are discretionary grounds, meaning the Tribunal must be satisfied that it is reasonable to evict where the grounds have been established.
35. The Tribunal was satisfied that Ground 11 had been established, namely on the basis that the Respondent had breached section 28 of the PRT by installing an electrical thermostat himself without consent of the landlord. The Tribunal was not satisfied on the basis of the evidence heard that the reported marks on the walls throughout the property were anything other than fair wear and tear, nor that the issue of mould was one which could be directly attributed to the Respondent's lack of care. The Tribunal considered the issue of the broken cooker ring to be entirely minor. Whilst the Tribunal was satisfied that Ground 11 had been established in evidence, the Tribunal did not consider that it was reasonable to evict the Respondent as a consequence of said breach of tenancy. The Tribunal noted that it was submitted that the addition of a thermostat could have been fire hazard, however it had since been made safe. No evidence was heard from the electrician who attended as to how serious this issue was, and the potential repercussions. No evidence was led as regards the claim that the boiler warranty had been invalidated. There were no further reported issues of unauthorised alterations and accordingly the Tribunal was not satisfied it was reasonable to evict based on this one standalone incident.
36. The Tribunal was satisfied that the terms of Ground 14 of Schedule 3 to the 2016 Act had been met in that the Respondent had engaged in relevant antisocial behaviour during the course of the Agreement, and that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.
37. The Tribunal noted that there was little corroborating evidence of the incidents of antisocial behaviour and much of Mrs Urquhart and Ms McIntyre's evidence was hearsay, aside from the incident witnessed by Mrs Urquhart where the Respondent had absconded from hospital and refused to allow the Police access and she had been called out in the middle of the night to attend with keys. However, the Tribunal found the Applicant's witnesses to be a credible and reliable. The Tribunal was satisfied on the basis of Mr Scorer's evidence that antisocial behaviour which had caused nuisance, annoyance, alarm and distress had been demonstrated by the Respondent, mainly by way of playing loud music.
38. It should be noted that the Tribunal was not persuaded that the Respondent wearing a spiderman costume, or riding a child's bicycle in the street with a kilt on his head (the latter being denied by the Respondent), or walking down the street with a tent, mop and bucket, were displays of antisocial behaviour in themselves. The Respondent is an adult and at liberty to dress however he wishes so long as he doesn't breach the laws of decency. Whilst these sorts of behaviours may not be typical behaviours of most adults, being different is not antisocial in itself. Whilst the Tribunal was concerned that there may have

been some exaggeration from neighbours as to how the Respondent's more "unusual" behaviour was affecting them, and in absence of direct evidence from anyone other than Mr Scorer in this regard, the Tribunal was satisfied that the incidents of loud music were antisocial, causing nuisance, annoyance, alarm and distress to others.

39. The Respondent was evasive at times in his evidence and refused to accept any suggestion that his music was loud, or that he had caused any disturbance to his neighbour, instead trying to blame his neighbour's behaviour towards him as exacerbating his mental health issues. The Tribunal has considered the impact eviction will have on the Respondent, and the proportionality of granting such an order, in coming to the decision of whether it is reasonable to evict based on this behaviour. It was clear from the evidence of the Respondent that he suffers from mental health difficulties. This was not refuted by the Applicant. However, the Tribunal heard no medical evidence. This was unfortunate. Whilst the Respondent's agent had lodged a witness list in advance of the Hearing which included two medical professionals as witnesses on behalf of the Respondent, they were not brought to the Hearing to give evidence. No medical records or such documentation was lodged. During the course of the second day of the Hearing, the Respondent's agent started to refer to medical documents, which had not been lodged. An adjournment was taken to identify whether these had in fact been lodged at any point, as neither the tribunal, nor the Applicant, had sight of these. From checking the administration system, it was determined that these had never been lodged. The Respondent's agent confirmed that she was content to continue the Hearing without further delay, regardless. The Tribunal requires to consider the impact on the Respondent of eviction, despite lack of specific information as to his condition. The Tribunal is satisfied that the Respondent is struggling to cope with this particular tenancy. He is causing nuisance, annoyance, alarm and distress to neighbours and whilst the Tribunal has some sympathy that the Respondent appears to be struggling with poor mental health, the neighbours cannot continue to suffer from his behaviour, when it is clear he hasn't been engaging with assistance given, as demonstrated by actions such as his absconding from hospital. The behaviour is having a detrimental effect on the neighbours. It was clear from the Respondent's evidence that he took no responsibility for his behaviour and there was no indication that his behaviour would change or improve, nor any desire from the Respondent to make any changes to lessen the impact on his neighbours and in particular, Mr Scorer above. Having considered both the negative impact on the neighbours if the Respondent continued to reside in the property, and the negative impact eviction may have on the Respondent should he be removed from the property, the Tribunal considered it reasonable that the Respondent should remove from the property. It is hoped that with the assistance of medical professionals already involved in his care, that they can support him in obtaining alternative accommodation more suited to his needs.
40. It should also be noted that following the conclusion of each parties' evidence, closing submissions being made and the Hearing being adjourned for the Tribunal to consider matters and make a determination, the Tribunal Administration received an email from the Respondent's agent attempting to lodge medical documentation for consideration by the Tribunal. Failing which,

the Respondent agent sought that the Tribunal fix a further day's Hearing to allow medical evidence to be led. The Tribunal found this to be wholly inappropriate. It was the Respondent's agent's responsibility to ensure that all evidence that the Respondent wished to be considered by the Tribunal was lodged timeously. The Respondent's agent was given the opportunity during the Hearing, when it became apparent that said documentation had not been lodged, to make a motion if she wished an adjournment. She chose not to do so. She also chose not to bring witnesses to the Hearing despite the lodging of a Witness List. It is neither appropriate nor competent to request that the Tribunal, following conclusion of each party's case and adjournment of the Hearing, to consider further evidence which had not been lodged timeously. The Tribunal has accordingly not considered this documentation as it considered it would not be fair or appropriate to do so.

- Decision

41. The Tribunal granted an order against the Respondent for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground 14 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Fiona Watson

22nd September 2020

Legal Member/Chair

Date