



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

**Chamber Ref: FTS/HPC/EV/20/1278**

**Re: Property at 72 Ava Street, Kirkcaldy, Fife, KY1 1PN (“the Property”)**

**Parties:**

**Mrs Evelyn Snowdon, 49 Ava Street, Kirkcaldy, Fife, KY1 1PN (“the Applicant”)**

**Mr Brandon McPherson, Ms Chloe Digman, 72 Ava Street, Kirkcaldy, Fife, KY1 1PN (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)**

**Decision in absence of the Respondents**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.**

**Background**

1. By application dated 19 March and 23 April 2020 the Applicant seeks an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy private residential tenancy agreement, two Notices to leave and Notice to the Local Authority in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, together with post office certificate of posting. The application is based on ground 11, 12 and 14 of schedule 3 of the 2016 Act.

2. The Applicant lodged a number of documents as evidence of the grounds of eviction specified in the application. These include – a timeline of events relating to the property, copy email from the First Respondent dated 30 December 2019, a photograph dated 10 February 2020, a photograph dated 24 March 2020, copy text messages with the First Respondent, photographs of items of furniture, text messages with Amy Buchan (AB) dated 27 December 2019, letter from AB dated 3 May 2019, messages from AB dated 11,17 and 27 May 2019, handwritten incident diary of Julie Burns (JB), screenshot from social media dated 27 February 2020, whats app messages from Wendy Wales (WW) dated 10 March 2020 and 22 June 2020, text messages with the Second Respondent, letter to both Respondents dated 6 May 2019 and bank statements.
3. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 21 August 2020. All parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 17 September 2020 at 2pm and that they were required to participate.
4. The application called for a CMD on 17 September 2020 at 2pm. The Applicant participated. The Respondents did not participate and were not represented.

### **Case Management Discussion**

5. Mrs Snowdon advised the Legal Member that the Respondents remain in occupation of the property and that she is seeking an eviction order. She advised that the First Respondent notified her by email on 30 December 2019 that he was no longer residing at the property. However, his absence was temporary, following a police incident, and he continues to reside there. The Second Respondent notified her in June 2020 that she was hoping to secure alternative accommodation but appears to have been unsuccessful.
6. The Legal Member notes that two Notices to Leave were lodged with the application. The first states that the Applicant intends to seek an eviction order on ground 11, breach of tenancy and ground 14, antisocial behaviour. The breaches of tenancy alleged relate to unpaid rent and keeping cats at the property. The Notice is dated 9 February 2020. The date specified in Part 4 of the Notice, as the earliest date that an application can be made to the Tribunal is 12 March 2020. Mrs Snowdon referred the Legal Member to the timeline and to the photograph dated 10 February 2020. She confirmed that the photograph was taken when she hand delivered the Notice to leave to the property. The second Notice to leave states that the Applicant intends to seek an eviction order on ground 12, rent arrears over three consecutive months. The Notice is dated 24 March 2020. The date specified in Part 4 is 22 April 2020. Mrs Snowdon referred the Member to the timeline and photograph dated 24 March 2020. She confirmed that the photograph was taken when the Notice was hand delivered to the property. The Legal Member also noted that the Applicant has

provided a copy of a Section 11 Notice and a post office receipt which establishes that it has been sent to the Local Authority.

### **Ground 11 – breach of tenancy**

7. The Legal Member noted that Clause 34 of the tenancy agreement lodged with the application states, “The Tenant will not keep any animals or pets in the Let Property without the prior written consent of the Landlord. Any pet (where permitted) will be kept under supervision and control to ensure that it does not cause deterioration in the condition of the Let Property or common areas, nuisance either to neighbours or in the locality of the Let property.”
8. Mrs Snowden advised the Legal Member that the Respondents had asked for permission to keep 2 cats at the property. She referred to copy letter dated 6 May 2019 which states that permission is given for “two outdoor cats at the property”. They had also asked for permission to keep a dog, which had been refused. At no point have the Respondents asked to increase the number of cats. However, when she visited the property in December 2019, Mrs Snowden noted that there were 5 cats within the property. Neighbours also reported an increase in the number of cats. At one point there were 6 in total. When challenged, the Second Respondent stated that she was only looking after the additional cats while their owner was on holiday. However, when Mrs Snowden and her husband were at the property in August 2020, there were three cats present and neighbours have confirmed that there are certainly more than two on a permanent basis. The Applicant also referred to the social media screenshots submitted which establish that there were 5 cats at the house at one point. Mrs Snowden advised the Legal member that she is concerned that the house is starting to smell because of the number of cats. However, although neighbours have mentioned them, there have been no specific complaints about the cats causing nuisance.

### **Ground 12, rent arrears over three consecutive months and ground 11, unpaid rent.**

9. Mrs Snowden advised the Legal Member that she had agreed with the Respondents to change the date on which rent was due to be paid, to the 1<sup>st</sup> of the month, as this was when the First Respondent was paid. Rent was paid in full up to and including 1 December 2019. No rent was paid on 1 January 2020, or subsequently. The Respondents currently owe eight months rent.
10. In response to questions from the Legal Member the Applicant confirmed that the Notice to leave in relation to ground 12 was served on 24 March 2020.

### **Ground 14, antisocial behaviour.**

11. Mrs Snowden advised the Legal Member that the Respondents had been in occupation of the property for only 2 weeks when she first received complaints regarding antisocial behaviour. Neighbours complained of loud music, parties and shouting at the property. One neighbour moved out because of the noise. Another had to switch their living room and bedroom around, because the noise

made it impossible to sleep. She advised that neighbours have reported nonstop noise disturbance from the property. In addition, there have been two serious incidents (on 27 December 2019 and 21 June 2020) when the police have had to attend. During the December incident, damage was caused to items of furniture within the property. These have not been repaired or replaced. Following the June incident, the police removed the First Respondent from the property and the Second Respondent was taken to hospital by ambulance. She subsequently advised the Applicant that she had been assaulted and her arm had been broken. Mrs Snowdon advised that the property is a one bedroom flat. The Respondents are the only residents. As well as complaints about music, shouting and other noise disturbance, the neighbours have complained that the tumble drier is excessively loud and seems to be left on for several hours at a time, frequently late at night. Furthermore, there have been complaints that the Respondents' wheelie bins are often overflowing because they do not put them out for collection regularly and do not recycle.

12. The Applicant referred to the documents lodged in support of the application and the Legal Member noted the following –

- (i) Letter from AB dated 3 May 2019. “..your tenants keep playing loud music...the whole block are annoyed with the noise ...they also had friends in late at night...if they could stop shouting, my bedroom backs onto their lounge!”
- (ii) Message from AB dated 11 May 2019 –“Your new tenants are playing loud music a lot (this morning from early again)...I can't even relax at night time without loud noise. I can't sleep in my living room (on the other side of my flat) forever...I'm so tired of dreading coming home to loud noise”
- (iii) Message from AB dated 27 May 2019, 11.48pm, “ Still got an issue with the tenants drier/washer, its on all day every day near enough, it still sends vibrations all through my flat and Wendy's upstairs. Its on just now and my girls are struggling to get to sleep...Its bad enough they smoke outside my bedroom window and are loud in general but when it impacts our sleep”
- (iv) Message from AB dated 27 December 2019, “ the police were at number 72 yet again....there is constant noise, especially at night, I'm talking really loud noise”
- (v) Message from AB, “ they scream and shout all the time sadly, mostly the girl. Wendy says she heard what sounded like them punching the walls/doors”
- (vi) Message from WW dated 22 June 2020, “huge bust up on Saturday night with police and ambulance at 2.30 in the morning”
- (vii) Incident diary of JB – “talking noisily all night” (27 January 2020), “Arguing all night” (2 February 2020), “just the same with the two of them arguing” (9 February 2020), “Music on all afternoon” (10 February 2020), “ Loud talking and bins not been taken out” (12 February 2020), “Bradley and her talking all night loud in living room. Put in ear buds at 4am as I couldn't stand it any longer.” (11 March 2020), “Loud music”, (19 March 2020), “Music on very loud and a lot of noise. Laughing, shouting doors banging...They did turn it down but by then we were upset and anxious” (31 March 2020), “dave had to aks them to turn it down. They did but it started again at 3.30” (10 April 2020), “ fed up with no sleep as Brandon still talking all night and them

sleeping all day...Finally given up and moved bed to front room to try to get away from noise" (26 April 2020), "Both shouting all night. Still rowing. She told him to get out. Loud banging of doors. Music and tumbler on again". (30 May 2020), "Fed up with no sleep for 2 weeks. Brandon still talking all night" (4 June 2020), " heard them coming in at 12pm. Then heated shouting and loud bangs. Heard Chloe shouting and screaming. More loud bangs. At 1.30 police van came. Police left after 2am" (20/21 June 2020), "Shouting again. Brandon is back" (22 June 2020)

## **Findings in Fact**

13. The Applicant is the owner and landlord of the property.
14. The Respondents are the tenants of the property in terms of a tenancy agreement dated 14 April 2019.
15. The Respondents are due to pay rent at the rate of £400 per month.
16. The Respondents have been in arrears of rent since 1 January 2020. The sum of £3600 is currently outstanding.
17. The Respondents previously kept 5 cats at the property. They currently have three cats at the property.
18. The Respondents shout, argue, play loud music, and make excessive noise at the property.
19. The Respondents neighbours have suffered alarm, distress, nuisance, and annoyance as a result of the shouting, arguing, loud music and excessive noise by the Respondents.

## **Reasons for Decision**

20. The application was submitted with two Notices to Leave. The first is dated 9 February 2020. The date specified in Part 4 of the Notice, as the earliest date that an application can be made to the Tribunal, is 12 March 2020. The Notice was hand delivered to the property on 10 February 2020. The grounds specified in the Notice are grounds 11 and 14. The application to the Tribunal was made after expiry of the notice period. The Legal member is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act in relation to the first Notice to leave.
21. The second Notice to leave is dated 24 March 2020. The date specified in Part 4 is 22 April 2020. The Notice states that the Applicant intends to seek an eviction order on ground 12, rent arrears over three consecutive months.

However, the Legal Member notes that, at the date of service of the Notice, the Respondents had not been in arrears of rent for three consecutive months. The first missed payment had been 1 January 2020. Although three instalments had been missed, the account had not been in arrears for three full calendar months. In the case of Abdul Majid against Adele Gaffney and Andrew Robert Britton 2019 UT 59, the Upper Tribunal refused the Applicant's request for permission to appeal. The Applicants had applied to the Tribunal for an eviction order on the basis of ground 12. The application was rejected by the Tribunal on the ground that the Respondent had not been in rent arrears for three or more consecutive months at the date of service of the Notice, on 1 July 2019. In refusing the application for permission to appeal the Upper Tribunal stated, at paragraph 9 "...as at the date of the Notice to Leave the tenant must have been in rent arrears for three or more consecutive months. Therefore, if the tenant was first in arrears of rent as at 30 April 2019 then the expiry of the three month period would be 30 July 2019. As at 1 July 2019 the tenant was not in arrears for three or more consecutive months." Paragraph (14) ... the statutory provision is clear which is that the ground of eviction must be satisfied at the date of service of the Notice to Leave. If it is not, it is invalid. If it is invalid decree for eviction should not be granted. The decision of the First-tier tribunal sets out the position with clarity. It could in my view it could never have been intended by Parliament that a landlord could serve a notice specifying a ground not yet available in the expectation that it may become available prior to the making of an application. Such an approach would be open to significant abuse. Either the ground exists at the time when the Notice to leave is served, or it does not. If it does not, the notice to leave is invalid and it cannot be founded on as a basis for overcoming security of tenure that the 2016 Act." The Legal Member is therefore satisfied that the second Notice to leave is invalid, and therefore the Tribunal cannot entertain the application to which it relates. The application for an eviction order on ground 12 is therefore refused.

**22.** The Legal Member noted that the Applicant has provided a copy of a Section 11 Notice and a post office receipt which establishes that it has been sent to the Local Authority. The Legal Member is satisfied that the Applicant has complied with Section 56 of the 2016 Act.

**23.** Section 51 of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

### **Ground 11, breach of tenancy agreement**

**24.** Ground 11 states, "(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.”

25. The Legal Member notes that one of the alleged breaches of tenancy is the failure by the Respondents to pay rent. The Legal Member is satisfied that the Respondents have failed to pay rent since 1 January 2020. However, in terms of subsection (3), a failure to pay rent does not establish this eviction ground. The second breach of tenancy identified in the application is the keeping of an excessive number of cats at the property. The Legal member is satisfied that clause 34 of the tenancy agreement prohibits the Respondents from keeping pets without permission. Furthermore, the Applicant has expressly given permission for only 2 cats. The Legal member is also satisfied that the Respondents have (at various stages) kept up to 5 cats at the property, without permission. The Respondents are therefore in breach of the tenancy agreement. However, the Legal Member notes that the Respondents continue to have permission for two cats and that there are only three of them at the property at the present time. Furthermore, there have been no complaints of nuisance in connection with the cats. The Legal member is therefore not satisfied that it would be reasonable to issue an eviction order on account of this failure to comply with the tenancy agreement.

#### **Ground 14, antisocial behaviour**

26. Ground 14 states “(1) It is an eviction ground that the tenant has engaged in relevant antisocial behaviour. (2) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if - (a) the tenant has behaved in an antisocial manner in relation to another person, (b) the anti-social behaviour is relevant antisocial behaviour, and (c ) either – (i) the application for an eviction order that is before the Tribunal was made within 12 months of the antisocial behaviour occurring, or(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.” Anti-social behaviour in relation to another person is described as including “(3)(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,”. In terms of sub-paragraph 5 “Antisocial behaviour is relevant antisocial behaviour for the purposes 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.”
27. The Legal Member is satisfied that the Respondents have engaged in antisocial behaviour. The Applicant has been receiving complaints since May 2019, shortly after the start of the tenancy, regarding excessive noise from the property including loud music, shouting, screaming, banging, and arguing from the property. This has caused several of the Respondent’s neighbours to suffer alarm, distress, nuisance, and annoyance. This has led to one neighbour moving away and others losing sleep on a regular basis. Police have had to attend on at least two occasions. When complaints have been received, the Applicant has contacted the Respondents and warned them regarding their

behaviour. Notwithstanding these warnings the Respondents have continued to engage in antisocial behaviour.

28. The Legal Member is also satisfied that the antisocial behaviour is relevant antisocial behaviour, as it has taken place at the tenancy subjects and in relation to people residing within the vicinity of those subjects. The Legal Member also notes that the behaviour in question occurred between May 2019 and June 2020. The application was submitted to the Tribunal on 19 March 2020, within 12 months of the said behaviour occurring. The Applicant has therefore complied with subsections (2), (3) and (5) of ground 14. The Legal Member therefore concludes that the eviction ground has been established.
29. As the Applicant has complied with the requirements of the 2016 Act, and as the eviction ground has been established, the Legal Member determines that an eviction order should be granted.

## **Decision**

30. The Legal Member determines that an eviction order should be granted against the Respondents.

## **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.**

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**Josephine Bonnar, Legal Member**

**17 September 2020**