



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/20/2361**

**Re: Property at 993 Sauchiehall Street, Flat 3/1, Glasgow, G3 7TZ (“the Property”)**

**Parties:**

**Mr Sam Stead, C/O Slater Hogg and Howison, 146 Byres Road, Glasgow, G12 8TD (“the Applicant”)**

**Mr James Patrick Ward, 993 Sauchiehall Street, Flat 3/1, Glasgow, G3 7TZ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.**

**Background**

1. By application received on 11 November 2020, the Applicant applied to the Tribunal for an order for recovery of possession of the property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Grounds 14 and 15 of Schedule 3 to the 2016 Act. Supporting documentation was submitted in respect of the application, including a copy of the lease, the Notice to Leave served on the Respondent, proof of service by Sheriff Officer of the Notice to Leave, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003, redacted emails from neighbouring residents and with Police Scotland and the Applicant’s letting agents.

2. On 1 December 2020, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. On 10 December 2020, a copy of the Application and supporting documentation was served on the Respondent by Sheriff Officer, together with intimation of the date, time and arrangements for a Case Management Discussion (“CMD”) to take place by telephone conference call on 18 January 2021 at 10am. Written representations were to be lodged by 30 December 2020. No written representations were submitted by the Respondent.
4. On 7 January 2021, the Applicant’s representative emailed the Tribunal, seeking leave to amend her written representations and to submit a further redacted email update from a neighbouring resident and on 12 January 2021, further emailed the Tribunal with additional email communications between herself and Police Scotland.

### **Case Management Discussion**

5. On 18 January 2021, the Applicant, Mr Stead, and the Applicant’s representative, Ms Grosvenor, of Harper Macleod LLP joined the telephone conference CMD. The Legal Member delayed the start of the CMD for a few minutes to see if the Respondent joined but he did not.
6. After introductions and introductory remarks by the Legal Member, the Applicant’s representative was asked to address the application. She confirmed that the Applicant is the proprietor and landlord of the Property and seeks an order for possession on the basis of antisocial behaviour in terms of Grounds 14 and 15 of Part 3 of Schedule 3 of the 2016 Act. Ground 14 relates to antisocial behaviour by the Respondent, who is the tenant, and Ground 15 to antisocial behaviour by Mr Joseph McLaughlin, whom the Respondent has permitted to reside in the Property with him, without the consent of the Applicant, and appears to reside there on a permanent basis. Such has been the severity of the conduct, that these proceedings have been brought and the Applicant is seeking an eviction order today. The behaviour has occurred within the property and within the close at the Property, which has caused neighbouring residents alarm, distress, nuisance and annoyance. Since moving into the Property, the Respondent and Mr McLaughlin have regularly engaged in loud and violent altercations within the Property and the close, have played very loud music at unsociable hours, have kept dogs in the Property (contrary to the terms of the lease), which bark and howl loudly, have left furniture and other items within the close which obstruct access for other residents, have damaged the Property by breaking glass in the inner door, have made offensive gestures towards neighbour’s CCTV cameras within the close and have engaged in loud banging/DIY work within the Property late at night as recently as December 2020. Police attendance at the Property has been required on several occasions, particularly during summer 2020 after the Respondent moved in and it is understood that criminal charges have been brought as a result of some of these incidents which were of a violent nature. It is also

understood that there were bail conditions in place against the Respondent, preventing him approaching Mr McLaughlin. The Applicant's representative submitted that the conduct was relevant and sufficient conduct in terms of Grounds 14 and 15 given the nature of the conduct, that it was significantly alarming and distressing to neighbouring residents, some of whom have young families, that it poses an intolerable nuisance to neighbouring residents, that it has been sufficiently serious and alarming to necessitate police attendance on several occasions and has also been a sustained course of conduct. The Applicant's representative made reference to the Inventory of Productions lodged in support of the Application and, particularly the redacted witness statements in the form of emails which are from neighbouring residents and the communications with Police Scotland.

7. The Applicant's representative asked to amend her written representations in terms of her emails to the Tribunal dated 7 and 12 January 2021. The Legal Member queried the timeframe of this in terms of the Regulations. The Applicant's representative clarified that she was seeking to amend in terms of Rule 13 and that the amendment sought did not seek to introduce any new issue, but rather just update the position. The Legal Member noted that the emails had been circulated to the Respondent by the Tribunal on receipt and indicated that the amendment would be therefore be permitted (Rule 13(1)(b)).
8. The Legal Member indicated that she would like some further information from the Applicant's representative or the Applicant himself with a view to the Legal Member being satisfied as to the reasonableness of the Tribunal granting an eviction order in this case. The Applicant's representative stressed the nature and severity of the conduct, the fact that it has caused alarm, intimidation and intolerable nuisance to neighbouring residents in their homes and that the behaviour looks set to continue as it has persisted after the Respondent was made aware of the complaints and after Notice was served. All the conduct has occurred within the past 12 months and is ongoing, although she pointed to the fact that Grounds 14 and 15 do not require the antisocial behaviour to be ongoing. She considers that all aspects of the grounds for recovery are met. In response to questions from the Legal Member, the Applicant confirmed that two separate households within the block of flats have complained directly to him about the conduct of the Respondent and Mr McLaughlin. Although he has not been told of any recent violent altercations between the two, the antisocial behaviour generally in the form of noise from the Property has continued, including loud music and barking dogs and then the DIY noise which was occurring after midnight in December 2020. The Applicant believes that the Respondent and Mr McLaughlin are both still residing in the Property, although neighbours have previously reported the Respondent being absent for periods of time which seemed to be connected to bail conditions that the Respondent was under. The Applicant does not know for definite if the dogs are still at the Property. The Applicant confirmed that his letting agents and tradesmen instructed by them have tried unsuccessfully to obtain access to the Property to inspect, as there is concern that the Property has been damaged and the Police had mentioned that there was a lot of dog excrement inside the Property. The Respondent's attitude towards the complaints initially was to play it all down but he is not now responding at all. It is a concern to the Applicant how

little regard the Respondent and Mr McLaughlin have for their neighbours and that they have continued to act in this way.

## **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the sole tenant of the Property by virtue of a Private Residential Tenancy commencing on 23 June 2020.
3. The Respondent has allowed Mr Joseph McLaughlin to move into the Property and reside with him there, and has kept at least two dogs at the Property, without the consent of the Applicant and contrary to the conditions of tenancy.
4. The Respondent associates with Mr McLaughlin in the Property and both have acted in an antisocial manner and engaged in a course of antisocial conduct within the Property and the common close.
5. The antisocial behaviour has included violent altercations, loud noise for prolonged periods and at unsocial hours, property damage and obstructing access by leaving items in the common close.
6. Several instances of antisocial behaviour have occurred between June and December 2020.
7. Neighbours have complained repeatedly to the Applicant regarding the antisocial behaviour which has caused them alarm, distress, nuisance, annoyance and has disturbed their sleep.
8. There have been Police attendances at the Property which have resulted in criminal charges against one or both of the occupants of the Property.
9. The antisocial behaviour has continued despite the Respondent being made aware of the neighbour complaints, the Notice to Leave having been served and these Tribunal proceedings having been brought.
10. The Respondent has not allowed the Applicant's letting agents and contractors access to the Property for purposes of inspection and repair.
11. A Notice to Leave dated 8 October 2020, specifying Grounds 14 and 15 of Schedule 3 to the 2016 Act, was served on the Respondent by Sheriff Officer on 8 October, specifying the end of the notice period as 6 November 2020.
12. The Tribunal Application was lodged on 11 November 2020.

## Reasons for Decision

13. The Respondent did not submit any written representations to the Tribunal and did not attend the CMD, having been properly and timeously notified of same. There was accordingly no issue taken and no contradictory evidence put forward in respect of the application by the Respondent.
14. The Legal Member was satisfied that the Notice to Leave was in correct form, gave the requisite period of notice of 28 days and that these Tribunal proceedings were thereafter brought timeously, after the date specified in the Notice to Leave, all in accordance with the relevant provisions of the 2016 Act, as amended.
15. The Legal Member was also satisfied from the information contained in the application and supporting documentation, together with the oral submissions made by the Applicant's representative and the Applicant at the CMD that all aspects of Grounds 14 and 15 of Schedule 3 to the 2016 Act, as undernoted, had been met:-

### 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, 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.

#### **Association with person who has relevant conviction or engaged in relevant anti-social behaviour**

15(1) It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or 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) a person who falls within sub-paragraph (4)—

(i) has received a relevant conviction as defined by paragraph 13(3), or

(ii) has engaged in relevant anti-social behaviour,

(b) 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 conviction or (as the case may be) the occurrence of the anti-social behaviour, or

(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.

(3) In sub-paragraph (2)(a)(ii), “relevant anti-social behaviour” means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.

(4) A person falls within this sub-paragraph if the person—

(a) resides or lodges in the let property,

(b) has sub-let the let property (or part of it) from the tenant, or

(c) has been admitted to the let property by the tenant on more than one occasion.

(5) In a case where two or more persons jointly are the tenant under a tenancy, the references in sub-paragraphs (3) and (4) to the tenant are to any one of those persons.

16. The Legal Member was satisfied in respect of Ground 14 that the Respondent had engaged in relevant antisocial behaviour at the Property in relation to neighbouring residents within the 12 months prior to the Tribunal application being made which had caused or is likely to have caused those residents alarm, distress, nuisance or annoyance. Given the number of instances of antisocial behaviour, which amounted to a course of conduct and the serious nature of some of the conduct and the fact that it occurred at the Property and affected neighbouring residents, the Legal Member was satisfied that it was reasonable to issue an eviction order as a consequence of it.
17. The Legal Member was satisfied in respect of Ground 15 that the Respondent associates in the Property with his co-occupant, Mr McLaughlin who has also engaged in relevant antisocial behaviour at the Property, as specified above, within the 12 months prior to the Tribunal application being made and that it is reasonable to issue an eviction order on account of this.
18. The Legal Member therefore concluded that the application did not require to go to an evidential hearing and that an order could properly be made at the CMD for possession of the Property.

## **Decision**

The Legal Member accordingly determines that an order for possession of the Property should be granted.

## **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.**

**Nicola Weir**

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Legal Member/Chair

18 January 2021  
Date