



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016**

Reference number: FTS/HPC/EV/20/0500

Order granted on 07 May 2021 in absence of the Respondent

Property: 1/2,191 Clarkston Road, Cathcart, Glasgow, G44 3BS

**Parties:**

Randy McIlwaine, residing at flat 1/1, 18 Prospecthill Grove, Glasgow, G42 9LD (“the Applicant”)

Barry Miller, residing at 1/2,191 Clarkston Road, Cathcart, Glasgow, G44 3BS (“the Respondent”)

**Tribunal Members:**

**Paul Doyle (Legal Member)**

**Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 14 of part 3 of schedule 3 to the 2016 Act.**

**Background**

The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant had lodged with the Tribunal Form E. The documents produced were a Tenancy Agreement, a Notice to leave, served on 1 February 2021, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicant is the heritable proprietor of the Property.

## **Case Management Discussion**

A case management discussion took place by telephone conference at 2pm on 07 May 2021. The Applicant was present (by telephone). The hearing was delayed until 02.10pm to allow sufficient time for the respondent to participate, but there was no appearance by or on behalf of the Respondent.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a private residential tenancy Agreement for the Property dated 29 May 2020. The respondent took entry to the property on the same day.
2. From the very start of the tenancy the respondent adopted a hostile and abusive tone with the applicant. Between 1 June 2020 and today's date, the respondent has sent 586 texts to the applicant, the majority of which contain threatening, disparaging and abusive language. The applicant has been so concerned by the contents of the messages he has received that he has repeatedly reported the respondent to the police. Two days before today's hearing the applicant received a torrent of abuse in a text message from the respondent. That message has resulted in consideration of a prosecution under the Communications Act 2003.
3. The daily communications from the respondent have caused the applicant and his spouse fear and alarm. The applicant repeatedly asked the respondent to stop contacting him and to stop threatening him, but the respondent refuses to do so. Instead, the respondent has steadily increased the frequency of threatening messages, and steadily heightened the level of threats and abuse directed at the applicant.
4. The conduct of the respondent is relevant antisocial behaviour within the meaning of the Private Housing (Tenancies) (Scotland) Act 2016. The respondent's conduct has caused fear, alarm, distress, nuisance and annoyance to the applicant and his wife. The respondent has devoted himself to a course of conduct intended to cause fear, alarm, distress, nuisance and annoyance to the applicant and his wife.
5. The respondent's conduct has caused fear and alarm to others. He has made a nuisance of himself and has destroyed any meaningful Landlord and tenant relationship. It is reasonable to make an eviction order because of the respondent's conduct.

6. On 1 February 2021 the applicant served a notice to leave on the respondent in terms of s.50 of the Private Housing (Tenancies) (Scotland) Act 2016. On 4 March 2021, the applicant submitted an application to the tribunal.

7. The Applicant seeks recovery of possession of the Property in terms Ground 14 of part 3 of schedule 3 to the 2016 Act. The applicant establishes that the respondent has acted in an antisocial manner towards another and that it is reasonable to grant an order for eviction. The application for eviction is made whilst the pattern of antisocial behaviour is still happening.

8. The weight of reliable evidence indicates that it is reasonable to grant an order for repossession of the property.

9. The respondent offers no resistance to this application. The respondent received notice of this hearing from Sheriff Officers on 6 April 2021.

### **Reasons for the Decision**

The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 14 of part 3 of schedule 3 to the 2016 Act is established. The respondent offers no defence to the application. For these reasons, the Tribunal determined to grant an Order for possession.

### **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 12 of part 3 of schedule 3 to the 2016 Act.

### **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.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by**

**upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**P.D.**

**7 May 2021**

**Legal Member**