



**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/22/3748**

**Re: Property at 1 Atholl Terrace, West End, Edinburgh, EH11 2BP (“the Property”)**

**Parties:**

**Peter Wedderburn, Bellevue, Killarney Road, Bray County Wicklow, Republic of Ireland, A98 Y9D0, Ireland (“the Applicant”)**

**Amanda Liddle, 1 Atholl Terrace, West End, Edinburgh, EH11 2BP (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ann Moore (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent.**

**Background**

1. This is an application by the Applicant for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicant to the Respondent commencing on 14 November 2021.
2. The application was dated 12 October 2022 and lodged with the Tribunal on that date. This makes the application subject to the *Cost of Living (Tenant Protection) (Scotland) Act 2022* but, given that eviction is sought on the basis of Ground 14, the 2022 Act does not impose any period of suspension.
3. The application relied upon a Notice to Leave dated 1 July 2022 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated

upon the Respondent by “Signed For” (recorded delivery) on that day (in terms of clause 4 of the Tenancy Agreement. The Notice relied upon three grounds (Grounds 5, 11 and 14) but only Ground 14 was insisted upon in the application. In regard to Ground 14 of Schedule 3 Part 1 of the 2016 Act, the Notice stated: “You have engaged in relevant antisocial behaviour” and then quoted in long form a series of emails from May to July 2022 regarding alleged antisocial behaviour (discussed below). A further email from the Applicant’s agent regarding further incidents in January 2023 was included in the application papers (again discussed below).

4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh City Council on 12 October 2022 was provided with the application.

### **The Hearing**

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 20 March 2023 at 14:00. We were addressed by the Applicant’s legal agent, David Gray, Senior Accredited Paralegal, Gilson Gray (the Applicant’s solicitors) but we also heard at length from Neil Crawford, Property Manager, Dove Davies (the Applicant’s letting agents) and briefly from the Applicant himself. There was no appearance from the Respondent.
6. We were informed by the clerk that no contact had been received from the Respondent (or on her behalf) with the Tribunal. The Applicant’s agent said that there had been no recent constructive contact from the Respondent, though she had permitted some access to the Property recently regarding some repairs. The Applicant explained that he received an email on 1 July 2022, following the Notice of Leave, where the Respondent said she would not be paying any further rent and she would await Sheriff Officers evicting her. The Applicant and his agents regarded the tone of the email as representative of the Respondent’s attitude to the application. The Applicant’s letting agent had been in contact with the Respondent’s social workers and it appeared that they awaited an eviction order so as to be able to advance a homelessness application for the Respondent (which was said to be “under review” at present). The letting agent said that the social workers had confirmed that they had advised the Respondent not to leave the Property voluntarily, so as not to prejudice her position on such an application for rehousing.
7. We considered that the Respondent had received clear intimation of the CMD from Sheriff Officers. Having not commenced the CMD until around 14:10, we were satisfied to consider the application in the Respondent’s absence. In any case, no attempt was made by the Respondent to dial in late to the CMD.
8. At the CMD, the Applicant’s agent confirmed that the application for eviction was still insisted upon. We were told there was substantial further incidents of antisocial behaviour which the Applicant’s letting agent could speak to, having received emails from neighbours and a compilation of events from one specific neighbour. It became clear, however, that no one had a clear narration of the

specific events ready to be presented to us, so we adjourned to allow records to be reviewed.

9. With the information already in the application, and that provided after the adjournment, the submission on antisocial behaviour was as follows (summarised and paraphrased, but all second or third hand reports from neighbours to one neighbour and then onto the letting agent, or by neighbours by email to the letting agent or to the Applicant's brother):
  - a. 26 May 2022: The Respondent's dog (Squire, said to be a 3-year old Staffordshire bull terrier) attacked a neighbour's dog and also bit the neighbour as the neighbour tried to stop its dog being attacked.
  - b. 30 June 2022: The Respondent verbally abused a neighbour passing her garden.
  - c. 1 July 2022: A commotion was heard within the property, with sounds of fighting and screaming, and the dog "going crazy". Police attend and people are taken out of property.
  - d. 7 October 2022: Loud fighting and swearing around 17:05.
  - e. 5 November 2022: Sounds of singing and playing guitar all day, into the evening.
  - f. 8 November 2022: People are seen climbing into the living room through a window. This involves entering an upstairs neighbour's garden area (which is fenced and gated) to reach the window, damaging the neighbour's gate and garden.
  - g. 10 November 2022: Further people entering the Property through the window, so taking access to the neighbour's garden, around 20:00.
  - h. 14 November 2022: Loud slamming of doors and windows, around 19:00, with further people in neighbour's garden having climbed through window. The Respondent is spoken to by a neighbour and she accepts access should not be taken through the garden but she says her front door is currently broken.
  - i. 24 November 2022: A glazier comes to repair a window but a further window is now broken. The Respondent comments to a neighbour that she has reported her broken door to the letting agent and the Police. (The letting agent disputes that a request was made to repair the door until more recently, and it has now been fixed.)
  - j. 8 January 2023: A window is smashed at 00:15 and a neighbour calls the Police about it.
  - k. 16 January 2023: Shouting in the street, doors slamming, and sounds possibly of someone trying to kick in a door, at around 21:00.
  - l. 20 January 2023: A broken window is seen at the Property, and the letting agents are refused access to repair. There is a problem with the boiler overflowing (which is allowed to be repaired). Neighbours report that the Respondent has friends at the Property who are shouting and making threats of violence against each other. Someone is heard trying to kick in a door.
  - m. 26 January 2023: A man and woman visiting the Property are shouting and arguing, and then there is an altercation outside at around 17:00. At 17:53 there is more screaming in the front garden and someone trying to kick in a window. A neighbour who was looking out through her own window at the

scene is sworn at. A neighbour telephones the Police and receives an incident number.

- n. 12 February 2023: A side window is smashed and there are sounds of raised voices and slammed doors.
  - o. 16 February 2023: The Police email the letting agent with a crime reference number regarding “vandalism” to the Property (that is, the broken windows).
  - p. 18 February 2023: A neighbour, who has now installed CCTV, witnesses the Respondent shouting and singing all morning, with her dog making a great deal of noise. At least one visitor is at the Property, with a gentleman seen running around outside in his underwear.
  - q. 21 February 2023: There is noise and a loud slam at around 00:00, and then partying all day.
  - r. 22 February 2023: The Applicant’s brother (who lives locally and whom some of the neighbours are in contact with) reports emails from neighbours with similar reports of recent disturbances. The CCTV catches people coming into the neighbour’s garden ground to smash the kitchen window to take access (as this is the one remaining unsmashed window – the rest now having been boarded up). There is further shouting.
  - s. 27 February 2023: An upstairs neighbour finds smoke in his flat. Investigations by the neighbour suggest it is caused by the Respondent burning something when cooking. When trying to speak to the Respondent about it, the Respondent is found in the street, shouting.
  - t. 1 March 2023: Two men (whom have been regularly seen around the Property) are seen in the neighbour’s garden trying to gain access through the kitchen window, and a further two women are seen in the garden. An email to the Applicant’s brother reports the Respondent in the street swearing and shouting for her dog, who is seen to be roaming the area.
  - u. 2 March 2023: There is a fight in the garden and Police are called.
  - v. 6 March 2023: The Respondent is seen in the street, shouting threats. A neighbour reports this as having become a common occurrence.
  - w. 9 March 2023: People are reported as trying to climb into the Property through the windows, but the windows are all now boarded up.
  - x. W/c 13 March 2023: The Fire Brigade attend twice; once regarding a fire and once regarding a cut to the Respondent, perhaps from broken glass.
10. The Applicant’s general impression is that the Respondent’s behaviour is deteriorating. Though she has allowed some repairs to the Property (if a specific handyman is in attendance) she is uncooperative otherwise. Due to not communicating on the window repairs, the windows have just been boarded up rather than replaced. Neighbours have reported the Property looking “like a slum” and some are said to have left the area due to the Respondent’s behaviour. The Applicant stated to the Tribunal that he was embarrassed about the situation and wished the eviction to bring an end to it.
11. The Applicant was not aware of any issues with benefits and regarded non-payment as being intentional, per the email of 1 July 2022. The Applicant’s letting agent received an email around the same time when the Respondent claimed to be holding back rent to afford a deposit on a new home, but he accepted that was no longer plausible as she had not found a new home and had not paid rent in eight months (now owing £6,200).

12. The Applicant's letting agent believed the Respondent lived alone, though there was much coming and going of people to the Property. The Applicant's agents knew of no reason that the Respondent required the Property due to its specific location or convenience to any support service. It was not specially adapted for the Respondent's needs or the needs of any dependent. The Applicant had no other rental properties, and the Property had been owned by his family since his wife was a student in Edinburgh in the 1980s. There had been a desire that his daughter may live there as a student (as mentioned in the Notice to Leave).
13. No motion was made for expenses.

### **Findings in Fact**

14. On 26 October and 1 November 2021 the Applicant let the Property as a Private Residential Tenancy to the Respondent under a lease with commencement on 14 November 2021 ("the Tenancy").
15. In terms of clause 21 of the Tenancy Agreement, the Respondent undertook not to engage in antisocial behaviour nor cause a nuisance to neighbours.
16. Since at least May 2022 until March 2023, the Respondent or those visiting her, have engaged in antisocial behaviour on multiple occasions such as:
  - a. Shouting, screaming and fighting in and near the Property.
  - b. Slamming and kicking doors and windows.
  - c. Breaking windows, so as to attempt to access the Property other than through the doorway (including taking access to neighbours' gardens to access the windows).
  - d. Not controlling her dog, so that it roams the area and has, on at least one occasion, attacked another dog and its owner.
  - e. Swearing at neighbours and passers-by.
17. On 1 July 2022, the Applicant's letting agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant gave her notice that the Tenancy was being terminated due to her antisocial behaviour.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 29 September 2022.
19. The Applicant's agent served a copy of the Notice to Leave on the Respondent by "Signed For" (recorded delivery), all per the terms of the Tenancy, on 1 July 2022.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 15 of Schedule 3 Part 1 of the 2016 Act.

21. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh Council on the Applicant's behalf on 12 October 2022.
22. On 16 February 2023, the Tribunal intimated to the Respondent the date and time of the CMD of 20 March 2023 by Sheriff Officer.
23. The Respondent resides at the Property alone.
24. The Property is not specially adapted with the use of the Respondent or any dependent.
25. As of 20 March 2023, the Respondent is in arrears of rent in the amount of £6,200, having not paid rent since receipt of the Notice to Leave.
26. The neighbouring occupiers to the Property have found the Respondent's behaviour, and that of her visitors, to have caused them alarm, distress, nuisance and annoyance.
27. The Applicant and his family have owned the Property for a number of years and are distressed about the behaviour reported to them by the neighbours.

### **Reasons for Decision**

28. The application was in terms of rule 109, being an order for eviction from a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been correctly drafted and served upon the Respondent.
29. Ground 14 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (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 subparagraph (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,*
    - (ba) *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 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.*

30. The information provided at the CMD clearly showed that Ground 14 was satisfied in regard to the course of conduct and its effect on the neighbours.
31. We require, in terms of the Act as currently amended, to consider the reasonableness of the application even in regard to such a length course of antisocial behaviour. We were satisfied that the Applicant's reasons for seeking eviction were reasonable. The Applicant had no other rental properties and he clearly felt a connection to the area, and an embarrassment as to what was occurring. The Respondent's refusal to pay rent in the meantime added a flagrancy to her behaviour, and we felt this further weighed against her in assessing reasonableness. We did have concerns about the Respondent's behaviour deteriorating, suggesting that she may require assistance or support, but accepted that she had social work support and the social workers were not opposed to eviction (and, reading between the lines, perhaps encouraged it as a means to obtain more suitable accommodation for the Respondent). We were not minded to grant any additional suspension of the order to evict given the lack of information from the Respondent.
32. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time.

## Decision

33. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 14 of Schedule 3 of that 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.

20 March 2023

Legal Member/Chair

Date