



**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 Act”).**

**Chamber Ref: FTS/HPC/EV/23/0439**

**Re: Property at 87 Gardner Crescent, Kincorth, Aberdeen, AB12 5TT (“the Property”)**

**Parties:**

**Mr Damian Wright, 51 North Deeside Road, Peterculter, Aberdeen, AB14 0QL (“the Applicant”)**

**Miss Nicole Bain, 87 Gardner Crescent, Kincorth, Aberdeen, AB12 5TT (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member) and David MacIver (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 should be granted.**

**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 was granted by the Applicant to the Respondent and commenced on 18<sup>th</sup> October 2018.
2. The application relied upon a Notice to Leave dated 12<sup>th</sup> January 2023 in terms of section 52 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Leave was served upon the Respondent by Sheriff Officers on 12<sup>th</sup> January 2023, all in accordance with the provisions of the PRT.
3. The Notice to Leave relied upon:

- a. Ground 11 of Schedule 3 Part 1 of the 2016 Act, being that the Respondent has breached a term of the Tenancy Agreement between the parties, and
  - b. Ground 14 of Schedule 3 Part 1 of the 2016 Act, being that the Respondent has engaged in anti-social behaviour, and
  - c. Ground 15 of Schedule 3 Part 1 of the 2016 Act, being that the Respondent has associated in the Property with a person who has a relevant conviction or has engaged in anti-social behaviour.
4. In regard to each of these Grounds, the reasons given for the Notice to Leave explained that the Applicant considered that the Respondent has damaged the property and has otherwise failed to take care of the Property, or to maintain the property in a reasonable condition. It further highlighted various activities of the Respondent, which the Applicant considered to be anti-social behaviour and which had caused distress, alarm and nuisance to others. The Notice to Leave intimated that an application to the Tribunal would not be made before 10 February 2023.
5. The Application papers included a copy of the Tenancy agreement between the parties, together with various photographs of the condition of the Property, a report which confirmed that two complaints had been made to the Police in relation to the Property, and various emails between the Applicant, the Tenant and various officials of the Local Authority.
6. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Aberdeen City Council on 12<sup>th</sup> March 2023 was included in the application papers.

#### **The Case Management Discussion (“CMD”)**

7. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 30th June 2023 at 10:00. We were addressed by the Applicant, Mr Damian Wright.
8. There was no appearance for the Respondent at the CMD. The Applicant indicated that he had not had contact with the Respondent since March 2023. The Tribunal noted that on 31<sup>st</sup> May 2023 Sheriff Officers had served upon the Respondent a letter from the Tribunal which confirmed details of the Application and which gave details of the date and time (with conference call joining instructions) for the CMD. In the circumstances we were satisfied that the requirements of Rule 17(2) had been satisfied and that it was appropriate to proceed with the CMD in the absence of the Respondent.
9. At the CMD, the Applicant confirmed that the application for eviction was insisted upon. The Applicant had previously confirmed to the Tribunal that he wished to proceed with his application in terms of Ground 11 of the 2016 Act (Breach of Tenancy Agreement) and Ground 14 of the 2016 Act (Antisocial Behaviour of the Tenant). He had previously advised the Tribunal that he did not intend to insist upon eviction on Ground 15 of the 2016 Act (Tenant Associated with a Person who has engaged in Antisocial Behaviour).
10. The Applicant explained that the main issues of complaint had started around June 2022, when he received complaints from other occupiers of the block within which the Property is situated. Those complaints related to noise and general disturbance coming from the Property. The Applicant had inspected the Property in June and July of 2022 and found the

Property to be in a very poor condition. The Applicant noted that, at the time of these inspections, the Tenant had failed to care for the Property and had caused damage to the Property. In particular he noted in 2022 that significant damage had been carried to the main door of the Property which was not able to be locked or properly secured. The Applicant took steps to secure the door of the Property by temporary means using a padlock and issued a key for the padlock to the Respondent.

11. At the time of the complaints from neighbouring proprietors in June 2022, the Applicant had spoken to some of the neighbours within the block within which the Property is situated. Neighbours complained of numerous occasions of shouting, screaming and banging from the Property at all hours of the day and night. They indicated that they had complained to the Police. One of the neighbours in particular was concerned about the number of people who were entering and leaving the Property, and one neighbour was scared to call the police in case there were repercussions against her from those that were entering and leaving the Property. That same neighbour had young children who were scared to leave her property as a consequence of the behaviours of those that were occupying the Property.
12. The Applicant referred to a report from the Police which confirmed that telephone calls had been made to the Police to make complaints in relation to behaviours at the Property. At 3.55am on 7<sup>th</sup> of June 2022 a complaint had been made regarding an ongoing disturbance at the Property including shouting and screaming and the Police had attended. On the 19<sup>th</sup> of July at 20.14 a complaint was made regarding an ongoing disturbance at the Property. The complaints related to screaming, shouting and banging from the Property and again the Police officers attended at the Property.
13. The Applicant explained that he frequently met other residents of the block in which the Property is situated. Those residents continue to complain about the behaviour and disturbance cause by the Respondent and others who attend the Property.
14. The Applicant had been able to inspect the Property in March 2023. At that time the Applicant had taken a number of photographs which showed the condition of the Property. From those photographs the Tribunal were able to note that the Respondent has neglected the property. She had failed to clean and maintain the Property. There is evidence from the photographs of significant rubbish and drug paraphernalia (including needles etc.) within the Property. There are significant amounts of rubbish which has accumulated throughout the Property. The main door of the Property has been broken and electrical sockets have been pulled from the walls. There has been significant damage caused to the Property.
15. The Applicant explained that he had been in contact with officers of Aberdeen City Council and had advised them of the behaviours of the Tenant and the damage caused to the Property.
16. The Applicant considered that the Respondent showed complete disregard for the neighbouring proprietors of the Property and had further showed a wilful disregard for the care of the Property, which the Applicant considered now to be currently uninhabitable.

### **Findings in Fact and Law**

17. The Parties entered into a private residential tenancy in respect of the Property commencing on 18<sup>th</sup> October 2018.

18. Notice to Leave dated 12<sup>th</sup> January 2023 was served on the Respondent by Sheriff Officers on 12<sup>th</sup> January 2023.
19. The Respondent, and persons visiting the Respondent at the Property, have engaged in anti-social behaviour in relation to other persons in the locality of the Property.
20. The Respondent has pursued a course of antisocial conduct causing alarm, distress, nuisance and annoyance in relation to persons residing in the locality of the Property.
21. The Respondent has failed to take reasonable care of the Property and has brought hazardous material into the Property. She has failed to keep the Property clean. The Respondent has caused significant damage to the Property in breach of Clause 16 of the Tenancy Agreement between the parties.
22. It is reasonable to grant an eviction order.

**Reasons for this Decision:**

23. The Tribunal is satisfied that Ground 11 of the 2016 Act has been met and that the Respondent has failed to comply with an obligation under the tenancy. Specifically, the Tenant has failed to maintain the Property in a reasonable state of repair. The Respondent has breached Clause 16 of her Tenancy Agreement which requires her to take reasonable care of the Let Property and ensure the Let Property and its fixtures and fittings are kept clean during the tenancy.
24. The Tribunal is further satisfied that the terms of Ground 14 of schedule 3 of the 2016 Act have been met in that the Respondent has engaged in relevant antisocial behaviour. On the evidence from the Applicant the behaviour of the Tenant and those visiting the Property has caused and is likely to cause other parties, within the vicinity of the Property, alarm, distress, nuisance and annoyance. The antisocial behaviour complained of is relevant as it is in relation to other occupiers of the building in which the Property is situated.
25. The Tribunal took account of the significant number of incidents outlined by the Applicant together with copies of the Police information and confirmation of the Applicant's discussions with neighbouring proprietors. There is evidence that the antisocial behaviour of the Respondent has had a considerable detrimental effect upon the lives of the Respondent's neighbours and the Applicant.
26. In considering whether it was reasonable to grant the eviction order the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant.
27. The Respondent was not in attendance to put forward any reasons why it would not be reasonable to grant the order, despite having being notified of the application and the CMD.
28. In all of the circumstances the Tribunal considered it reasonable to grant the order sought.
29. Were the Tribunal to grant the order solely on the basis of Ground 11 of the 2016 Act, such an eviction order would be subject to the Cost of Living (Tenant Protection (Scotland) Act

2022) which could suspend enforcement of the eviction order for the period of six months. However, as the Tribunal also found that Ground 14 of the Act (antisocial behaviour) had also been established the provisions of the Cost of Living (Tenant Protection (Scotland) Act) do not apply to an eviction order granted on that ground.

### **Decision**

In all of the circumstances therefore 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, and we direct that the order should not be executed prior to 12 noon on 28<sup>th</sup> July 2023.

### **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

**Andrew Cowan**

Legal Member/Chair

Date: 30/07/2023

### **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.**

---

Legal Member/Chair

---

Date

