



**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**

**Chamber Ref: FTS/HPC/EV/19/3948**

**Re: Property at Claire Cottage, 103 High Street, Auchterarder, PH3 1BJ (“the Property”)**

**Parties:**

**Mr Craig Wilkie, Tarken House, Auchterarder, PH3 1DB (“the Applicant”)**

**Mr Edgars Sinkevics, Mr Artur Zajac, Claire Cottage, 103 High Street, Auchterarder, PH3 1BJ (“the Respondents”)**

**Tribunal Members:**

**Helen Forbes (Legal Member) and Ann Moore (Ordinary Member)**

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

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

**Background**

1. This is an application dated 11<sup>th</sup> January 2020, made in terms of Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”) seeking an eviction order under grounds 11 and 14 of the Private Rented Housing (Tenancies) (Scotland) Act 2016 (“the Act”). The Applicant’s representative included with the application a copy of the tenancy agreement between the parties, which tenancy commenced on 8<sup>th</sup> February 2019, copy Notice to Leave dated and served on 7<sup>th</sup> October 2019, copy section 11 Notice to the Local Authority, served on 11<sup>th</sup> December 2019, and copy email and written correspondence to the Respondents.
2. A Case Management Discussion (“CMD”) was held on 3<sup>rd</sup> February 2020. The parties were not in attendance. The Applicant was represented by Ms Helen Hatfield. The case was set down for a hearing on 4<sup>th</sup> March 2020. Following a

request on behalf of the Applicant to postpone the hearing, a further hearing was set down for 9<sup>th</sup> April 2020.

3. By Order dated 19<sup>th</sup> March 2020, the hearing set down for 9<sup>th</sup> April 2020 was postponed to 28<sup>th</sup> May 2020, as part of the measures to manage the COVID-19 outbreak.
4. By Order dated 19<sup>th</sup> May 2020, the hearing set down for 28<sup>th</sup> May 2020 was postponed to 9<sup>th</sup> July 2020, as part of the measures to manage the COVID-19 outbreak.
5. By Order dated 11<sup>th</sup> June 2020, the hearing set down for 9<sup>th</sup> July 2020 was postponed to 30<sup>th</sup> July 2020, as part of the measures to manage the COVID-19 outbreak.
6. Parties were notified of the hearing to take place on 30<sup>th</sup> July 2020 by letter dated 7<sup>th</sup> July 2020.
7. By email dated 23<sup>rd</sup> July, the Applicant's representative made written representations and lodged documentation.

### **The Hearing**

8. A hearing took place on 30<sup>th</sup> July 2020 by teleconference call. The parties were not in attendance. The Applicant was represented by Ms Helen Hatfield, Property Sales and Letting Management, Jameson & MacKay.
9. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the hearing, together with details on joining the telephone conference, by recorded delivery letter dated 7<sup>th</sup> July 2020. Track and trace information showed that the letter was signed for by one of the Respondents on 8<sup>th</sup> July 2020. The Tribunal determined that the requirements of Rule 24(1) had been satisfied and that it was appropriate to proceed with the application in the absence of the Respondents upon the representations of the Applicant's representative and the material before the Tribunal.
10. As a preliminary issue, the Tribunal raised the issue of new information and matters that were referred to in the email and documents submitted to the Housing and Property Chamber on 23<sup>rd</sup> July 2020. There was some discussion about the fact that the Tribunal could not take these new matters into account as the application had not been amended in terms of Rule 14. A short adjournment was allowed for the Applicant's representative to take instructions as to whether to adjourn the hearing to allow an application for amendment. The Applicant's position was that he wished to continue with the hearing, based on the matters raised in the application.
11. Ms Hatfield said the problems with loud noise and music began last year. The local authority became involved. The tenants were asked to temper their

behaviour. A pattern emerged where they would quieten down for short periods after being asked, but the issues would always start again. There seemed to be alcohol involved. The issues affect two neighbours – the properties are terraced. Both neighbours were available to give evidence to the Tribunal.

12. Responding to questions from the Tribunal, Ms Hatfield said she is not aware that any children live at the Property. The Respondents are both single men in employment and she is not aware of any benefits in payment.

### **Evidence of Calum Russell Galbraith**

13. The Tribunal heard evidence from Mr Calum Russell Galbraith, who resides at Jasmine Cottage, 103 High Street, Auchterarder. He is the owner occupier of his property and has resided there for three years. Mr Galbraith said the Respondents moved into the Property last year. He introduced himself to the Respondents and gave them a present of a food hamper, in an attempt to be welcoming. The Respondents' behaviour declined rapidly and they began to entertain large groups of people that were drinking heavily. There was loud amplified music and strobe lighting. Mr Galbraith attempted to raise matters with the Applicant; however, there was no response. The local authority assisted him in identifying the Applicant's representative, with whom he then raised the matter.
14. Towards the end of 2019, matters began to escalate. Due to the levels of noise, and concerns that there was violence occurring within the Property, the police were called to the Property on 1<sup>st</sup> September and 4<sup>th</sup> October 2019. On one of those occasions, the Respondents did not open the door and the police had to begin to force entry to the Property.
15. The Respondents and additional people that are staying in the Property are often heavily intoxicated. The frequency of the noisy gatherings has been random – it could be mid-week or weekend. Often, the noise will start in the early morning and it can continue for up to 36 hours. The Property shares a party wall with Mr Galbraith's property. Mr Galbraith can hear loud music through the wall. There is also a garden area shared between three properties, and large groups of men regularly gather there, causing further noise, which is intimidating for the neighbours.
16. Mr Galbraith said there was noise disturbance at the Property on 12<sup>th</sup>, 13<sup>th</sup> and 29<sup>th</sup> April 2020. Due to concerns about police resources during the Covid 19 outbreak, he did not contact the police at that time. There was an occasion in June 2020 when he called the police due to noise nuisance from the Property.
17. Mr Galbraith said that the problems have had a very negative effect on his health. He works shifts, and the noise nuisance has interfered with his sleep. He has suffered stress and panic attacks and had to be signed off work for a period of three and a half months. The noise nuisance has led to strained relationships at work. He is now back at work, but the panic attacks have

continued to affect him, which has made him late for work on occasion. He has had emergency consultations with medical professionals and has had to take emergency leave due to the situation. He has been prescribed medication for stress and panic, which can also affect his ability to drive and work. He has been referred to psychology.

18. In or around January 2020, Mr Galbraith began to spend time away from his home, due to the situation, and the need for a quiet, stress-free environment. He has returned to his home at various times since January 2020 and he is aware that the problem is ongoing.

### **Evidence of Geraldine Anne Hunter**

19. The Tribunal heard evidence from Geraldine Anne Hunter. She resides at 101 High Street, Auchterarder. She is the owner occupier of her property, which is attached to the property of Mr Galbraith. She has resided there for three and a half years, with her partner and four children. Ms Hunter is employed as a carer for the disabled and as a waitress.
20. Ms Hunter described the layout of the properties, stating that the Respondents have to pass close to her back door, and the property of Mr Galbraith, by using a narrow lane and common garden area. She said the Respondents and others that appear to stay at the Property are loud and often drink alcohol. Due to the layout of her property, her daughter and son have often been disturbed by loud music from the Property. The music, which she described as techno music with a loud beat, can occur in the early hours of the morning and often goes on all night. It has happened regularly, although she thought there may have been an improvement in the last two to three weeks, although it may just be that she has not heard the noise from her bedroom, which is at the front of her property.
21. Ms Hunter was aware that the police had been called a couple of times to the Respondents due to the noise nuisance and possible fighting within the Property. She was able to hear the heavy thumping that sounded like fighting was taking place. Ms Hunter's children find the behaviour of the Respondents intimidating. There are large, noisy gatherings, with drinking of alcohol and smoking outside. Ms Hunter has approached the Respondents and asked them to keep the noise down, and to tidy up mess that they have left outside. She said one of the Respondents has better English than the other, and she believes they understand what she is saying, as they have kept the volume down for a few days after her visits, but the situation always deteriorates.
22. Ms Hunter has a disabled daughter who comes to stay on occasion. She is particularly disturbed by the noise nuisance, as sleep problems form part of her disability. She has been severely affected by the noise situation. Due to the layout of the properties, Ms Hunter has not been aware of the strobe lighting.

23. Ms Hunter said she is now considering selling her property due to the situation

### **Findings in Fact**

24.

- (i) The parties entered into a private residential tenancy agreement in respect of the Property that commenced on 8<sup>th</sup> February 2019.
- (ii) Shortly after the commencement of the tenancy, the Respondents began to have large gatherings in the Property and the adjoining common garden area. The Respondents regularly play loud music and use strobe lighting in the Property. The Respondents regularly hold noisy parties in the Property.
- (iii) On 1<sup>st</sup> September 2019, the police were called to attend at the Property due to noise nuisance.
- (iv) On 4<sup>th</sup> October 2019, the police were called to attend at the Property due to noise nuisance.
- (v) By letter dated 4<sup>th</sup> October 2019, the Applicant's representative wrote to the Respondents asking them to cease their anti-social behaviour. There was no response from the Respondents.
- (vi) Notice to Leave was served on both Respondents by email on 7<sup>th</sup> October 2019.
- (vii) The Respondents did not leave the Property as a result of the Notice to Leave.
- (viii) The police were called to attend at the Property due to noise nuisance in June 2020.
- (ix) The Respondents have behaved in an anti-social manner in and around the Property in relation to Mr Galbraith, Ms Hunter and Ms Hunter's family, by pursuing a course of conduct of noise nuisance which has caused alarm, distress, nuisance and annoyance to the neighbours.
- (x) The Respondents have failed to comply with clause 21 of the tenancy agreement by failing to have respect for others by engaging in antisocial behaviour towards the neighbours constituted by making excessive noise and by allowing visitors to the Property to be noisy.
- (xi) It is reasonable to issue an eviction order as a consequence of the anti-social behaviour and the breach of clause 24 of the tenancy agreement.

## Reasons for Decision

25. Ground 11 of the Act provides that it is an eviction ground if the tenant has failed to comply with an obligation under the tenancy, and that the Tribunal may find the ground applies if the tenant has failed to comply with a term of the tenancy and the Tribunal considers it to be reasonable to issue an eviction order on account of that fact. The tenancy agreement between the parties provides at clause 24 that the tenant ... and his visitors must not engage in antisocial behaviour to another person. Antisocial behaviour is defined as behaviour that causes or is likely to cause alarm, distress, nuisance or annoyance to any person. The clause goes on to list particular behaviours that the tenant and visitors must not engage in. This list includes making excessive noise and allowing visitors to be noisy or disruptive.
26. Ground 14 of the Act provides that it is an eviction ground that the tenant has engaged in relevant antisocial behaviour. The Tribunal may find that the ground applies if the tenant has behaved in an antisocial manner in relation to another person, the antisocial behaviour is relevant antisocial behaviour, and the application for an eviction order was made within 12 months of the antisocial behaviour occurring. A person is to be regarded as behaving in an antisocial manner in relation to another person by doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance or pursuing in relation to the other person a course of conduct which causes or is likely to cause the other person alarm, distress, nuisance or annoyance or amounts to harassment of the other person. Course of conduct is defined as meaning conduct on two or more occasions. Antisocial behaviour is relevant antisocial behaviour if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the antisocial behaviour and who it was in relation to or where it occurred.
27. Ground 11 and Ground 14 are discretionary grounds.
28. The Tribunal found both witnesses to be credible and reliable in their evidence. The Tribunal found that the Respondents had engaged in antisocial behaviour towards the neighbours at 101 and 103 High Street, Auchterarder, by playing loud music regularly and for excessive periods. The Tribunal found that the Respondents had pursued a course of conduct towards the said neighbours that caused the neighbours alarm, distress and nuisance.
29. The Tribunal considered the nature of the antisocial behaviour in relation to the said neighbours, which occurred at and around the Property. The Tribunal considered the limited information available in relation to the effect of repossession on the Respondents; however, as they did not engage in the process it was impossible to consider this matter in depth. The Tribunal took into account the fact that there are no children living in the Property and both Respondents are employed. The Tribunal was satisfied that it was reasonable to issue an eviction order on both grounds as a consequence of the antisocial behaviour.

## **Decision**

30. An order for eviction is 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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**Legal Member/Chair**

**30<sup>th</sup> July 2020**  
**Date**