

**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/20/1831**

**Re: Property at 14c Fort Street, Ayr, KA7 1HU (“the Property”)**

**Parties:**

**Mrs Morag McCreath, 12 Carrick Park, Ayr, KA7 2SL (“the Applicant”)**

**Rozelle Letting Services, 1 Wellpark, Ayr, KA7 4QA (“the Applicant’s Representative”)**

**Claire Curtis, 14c Fort Street, Ayr, KA7 1HU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for repossession in favour of the Applicant against the Respondent.**

**Background**

- 1** By application to the Tribunal dated 28 August 2020 the Applicant sought an order for repossession of the Property against the Respondent under ground 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 on the basis that the Respondent had engaged in relevant antisocial behaviour at or in the vicinity of the Property. In support of the application the Applicant provided the following:-
  - (i) Copy Private Residential Tenancy Agreement between the parties dated 29 November 2019 and 3 December 2019;
  - (ii) Copy Notice to Leave dated 22 April 2020;
  - (iii) Section 11 Notice served upon South Ayrshire Council;

- (iv) Statement from the Applicant's Representative;
  - (v) Photographs of the communal areas pertaining to the property and of a neighbouring property;
  - (vi) Copy Letter from Orbis dated 22 April 2020 and invoice;
  - (vii) Witness statements and corresponding emails;
  - (viii) Excerpts from text messages between the Applicant's Representative and the Respondent;
  - (ix) Excerpts from Whatsapp messages between witnesses;
- 2 The Applicant subsequently provided two videos purporting to show antisocial conduct by the Respondent which were uploaded to an online portal by the Tribunal administration and shared with the Respondent and the Tribunal members.
  - 3 By Notice of Acceptance of Application dated 13 October 2020 the Legal Member with delegated powers of the Chamber President confirmed that there were no grounds upon which to reject the application. A Case Management Discussion was therefore fixed for 24 November 2020.
  - 4 Following service of the application paperwork the Respondent submitted written representations on 23 November 2020 via her representative Neil Gray. The representations included an email from the Respondent's son, a handwritten statement from the Respondent herself denying the allegations against her, with the exception of one incident in which she banged the communal door, a character reference from a friend of the Respondent, photographs and excerpt text messages between the Respondent and a friend.

### **The Case Management Discussion**

- 5 The Case Management Discussion took place on 24 November 2020. The Applicant was represented by Eddie Uriarte from the Applicant's Representative. The Respondent was in attendance and representing herself.
- 6 As a preliminary matter the Legal Member noted that written representations had been submitted the day before. Mr Uriarte objected to the consideration of these submissions on the basis that they had been submitted late. The Legal Member advised that she would note the Respondent's position regarding the application and then determine what further procedure was required in the matter. The Applicant would have the opportunity to respond to the Respondent's representations in the event that a Hearing was required in the matter, which appeared likely given the position put forward by the Respondent.
- 7 Having heard from both parties at the Case Management Discussion the Legal Member noted the issues to be resolved by the Tribunal were as follows:-
  - (i) *whether the tenant has engaged in antisocial behaviour; and if so*

(ii) *whether it is reasonable as a consequence of that behaviour due to the nature of it to grant an order for eviction.*

- 8 The Legal Member therefore fixed a Hearing in the matter. The Applicant was given the opportunity to submit any further documentation in response to the Respondent's representations. Both parties were requested to submit any further documents and a list of witnesses, if required, by 18 December 2020.
- 9 No further documentation was received from the Applicant. On 23 December 2020 the Respondent's representative Mr Neil Gray submitted two statements – one signed off "K" and one signed by David Young. The statements were crossed over to the Applicant's Representative.

### **The Hearing**

- 10 The Hearing took place on 8 January 2021. Mr Uriarte appeared again on behalf of the Applicant. The Respondent was present and represented by Mr Neil Gray.
- 11 As a preliminary point the Tribunal noted that the Respondent has submitted two statements on 23 December 2020 which was beyond the deadline fixed for submitting further documents for the Hearing. Mr Gray confirmed that he had forwarded these to the Tribunal when he had received them from the Respondent. He noted that one of the incidents referred to in the statements didn't actually take place until 18 December therefore couldn't have been submitted in advance of that date. The Respondent confirmed that the authors of the statements were friends – K was her friend Kerri who is a parent of her daughter's friend. Mr Uriarte objected to the lodging of the late documents. He noted the Tribunal correspondence is quite clear in stating when documents had to be lodged. There was no excuse. He noted that the statements were not really evidence in any way and shouldn't be accepted as such.
- 12 The Tribunal therefore determined to adjourn the Hearing for a short period to consider whether to allow the late documents from the Respondent. The Tribunal further noted that Mr Gray had not had sight of the two videos submitted by the Applicant and therefore made arrangements for him to receive these during the adjournment so that he could discuss with the Respondent.
- 13 Following the adjournment the Tribunal determined it would allow the late documents from the Respondent. In doing so the Tribunal noted that the statements were reflective of issues already put forward by the Respondent in her previous representations and that the Applicant had been given sufficient notice to consider the representations in order for her representative to address them at the Hearing if required. The Tribunal further confirmed that Mr Gray had viewed the two videos submitted by the Applicant.
- 14 The Tribunal proceeded to hear evidence from the parties. For the avoidance of the doubt, this statement of decision is not an exhaustive minute of the Hearing but simply seeks to summarise the evidence relevant to the Tribunal in its

determination of the application. Each party was given the opportunity to challenge the evidence of the other at appropriate points during the Hearing.

### **The Applicant's Evidence**

- 15** Mr Uriarte gave evidence on behalf of the Applicant. He manages the property for the Applicant and has done so for several years now. This is one of many properties that he manages and he has worked with the Applicant for approximately 15 years. She has a number of properties. He pointed out that the Applicant herself has not raised issues with the tenancy, the complaints have come directly from neighbours in the vicinity of the property. He pointed to the culmination of complaints that have been received which were not all from the one source, but various neighbours who reside in the vicinity of the Property and had provided evidence. Mr Uriarte also pointed to the video evidence that showed the Respondent banging the communal door in the middle of the night and crawling upstairs in her nightgown after putting something on her neighbour's door.
- 16** Mr Uriarte explained the layout of the block of flats in which the Respondent resides. There are two blocks of flats in the complex. Mr Uriarte explained that the Property is in a block of three flats – the Respondent resides in the top flat. There is then a middle flat and a ground floor flat. Outside there is a small car parking area, then another block of flats with approximately 8 flats within it. Mr Uriarte referred to the statements lodged from Dorothy Tennant, Madeline Richards and Rachel Hynes, all of whom live in the block of flats across the car park from the Respondent's block and have witnessed the antisocial behaviour. The Police have been called out on a number of occasions. The Respondent had also contacted Mr Uriarte repeatedly. He noted she had conceded that she has been drinking alcohol more frequently.
- 17** Mr Uriarte explained that the Respondent moved into property in 23 December 2019. Shortly after he had received a number of texts on New Years Eve between 8pm and midnight complaining about the neighbour below, who is named Liz. She is in her 80s and can't leave the house. The Respondent was complaining of banging from the property and the television being on in the early hours of the morning. A couple of weeks later, the Respondent's focus had moved on to the neighbour in the bottom flat, who is named Fiona. Fiona is in her seventies and had provided witness statements, which Mr Uriarte referred to. Mr Uriarte explained that the neighbours are living in fear of the Respondent. Liz downstairs is disabled and has carers coming and going from her flat. She has a key safe as a result. The Respondent had gotten hold of the key and had used it to gain entry to the neighbouring property. Mr Uriarte had received a call from the carer to question why this had happened. It resulted in Liz having to get her locks changed.
- 18** The Tribunal then asked Mr Uriarte to address the specific incidents that were referenced in the application. Mr Uriarte explained that on 11 April 2020 the Respondent had been caught on video by a neighbour Madeline Richards

banging the communal door. He referenced the video that had been lodged and the corresponding email from Ms Richards dated 4 August 2020. Ms Richards can see the Respondent's block from her own property and has witnessed incidents. She videoed the Respondent banging the communal door and called the Police.

- 19** Mr Uriarte referred to another statement from Ms Richards which noted an incident on 17 April 2020 when paint was put on Fiona's door. The Respondent was the only person capable of doing this. She was the only person in the block at the time with the exception of Ms Richards and her husband who were in Fiona's property at the time. Mr Uriarte referred to photographs submitted by Ms Richards which showed the paint on the door. On 19 April 2020 Ms Richards witnessed vandalism to the front door of Fiona's property. She was in that property when the Respondent threw something, believed to be paint, on the door. She had then videoed the Respondent crawling back up the stairs in her nightgown and had called the Police due to concerns for the Respondent's young daughter. The Police had forced entry to the property due to the Respondent failing to give access, which resulted in the Applicant having to pay to have the door secured. Mr Uriarte pointed to the invoice from Orbis which evidenced this.
- 20** Mr Uriarte noted that the last incident recorded by Ms Richards was on 19 July 2020 when she heard the Respondent shouting and swearing from her window in the direction of another neighbour Dorothy Tennant who lives in a nearby block. Mr Uriarte referred to the list of police incident numbers and crime numbers that Ms Richards had submitted which evidenced the ongoing severity of the Respondent's conduct.
- 21** Mr Uriarte referred to the email from Rachel Hynes dated 16 September 2020. Ms Hynes had emailed to report strange behaviour by the Respondent. There was a strong smell of cannabis from the property. On 15 September 2020 Mr Hynes had witnessed the Respondent pacing in the property, shouting and hitting the smoke alarm. Ms Hynes had previously had to call the Police because of disturbances at the property.
- 22** Mr Uriarte noted the Respondent's suggesting that he has taken sides with her neighbours. That was absolutely not the case. Neither he nor the Applicant have anything to gain by pursuing the application. They just want tenants to behave and not cause hassle to neighbours. The Applicant is now being contacted regularly by neighbours raising concerns about the tenancy. It is taking its toll on her as well. Mr Uriarte noted that the Respondent had initially focused her complaints on Liz, however now had moved on to Fiona. Mr Uriarte has spoken with the neighbours on many occasions. He has never had to deal with anything like this in his thirty years of managing properties. He had to base his opinion on the evidence the neighbours had submitted and in his view the evidence was overwhelming. The neighbours had no reason to be against the Respondent in any way. Five neighbours had made complaints. The Respondent's conduct was undeniable.

- 23** Mr Gray was given the opportunity to challenge Mr Uriarte's evidence. He noted the video evidence taken on 19 April 2020 did not show the Respondent putting paint on Fiona's door. All you could see was the Respondent going back up the stairs. Mr Uriarte noted that this was the case, however he had to question why the Respondent had come downstairs in the first place. The neighbours had entered the property and had not seen paint on the door – this was noticed when they discovered the Respondent in the hall. It's a secure entrance – only the Respondent, Liz and Fiona could have gained access at the time and Liz was housebound.
- 24** In his closing statement Mr Uriarte noted that the Respondent had indicated at the Case Management Discussion in November that she was looking for another property, with support from Mr Gray. Mr Uriarte found it difficult to understand how no progress had been made in that respect. The Respondent had produced no evidence to counteract the evidence the Applicant had put forward, only statements from friends who hadn't witnessed any of the conduct she had alleged. They were giving their accounts based on what the Respondent had told them and should not be given any weight. Mr Uriarte denied having ever hung up the phone on the Respondent but did note that she had hung up on him several times. Mr Uriarte then made reference to a previous tenancy the Respondent had however the Tribunal advised that this was a new matter that had not been raised prior to the Hearing and it would not be in a position to take this into account. Mr Uriarte accepted this. He explained that the Respondent had never reported a faulty smoke alarm. Mr Uriarte had been in the property around three months ago to repair a faulty tap and nothing was said at that time. Mr Uriarte disputed the Respondent's contention that Fiona was the centre of the issues. There had been complaints from five separate neighbours and Mr Uriarte simply did not believe that they were all lying, as the Respondent had suggested. Mr Uriarte again questioned the nature of the Respondents' relationship with her neighbour Liz, noting that she had initially made complaints against Liz regarding noise. He also noted the fact that Liz's carer had contacted him, upset about the Respondent having accessed the flat. The carer had asked for the key back from the Respondent but had not received it. Mr Uriarte expressed some sympathy for the position the Respondent was in, however he had to have regard for the neighbours wellbeing. This wasn't just one incident – it was a pattern of behaviour.

### **The Respondent's Evidence**

- 25** Mr Gray led the Respondent's evidence. He referred to her own statement that she had lodged in which she refuted the allegations of antisocial behaviour with the exception of the door slamming which had been shown in one of the videos lodged by the Applicant. The Respondent is friends with Liz. Liz had warned her about Fiona, saying to be careful and that she was evil. In January 2020 Liz had been in touch to ask if she had heard banging. The Respondent had been unable to sleep for a whole week. It had been terrible. Liz had offered to support the Respondent in these proceedings as recently as two weeks ago but she must be too scared of Fiona to participate. Liz had given the Respondent her

keysafe number as the Respondent would often help her out with collecting parcels and other errands. The Respondent has never forced entry to Liz's property. It was all lies. Liz said she had suffered for 15/16 years as a result of Fiona's behaviour. She was too terrified to speak out against her.

- 26** Mr Gray has been working with the Respondent in a housing advisory capacity since June 2020 and it appeared there were incidents with Fiona attacking or committing antisocial behaviour against the Respondent. In July 2020 the Respondent was admitted to hospital because of something that happened between two of them which led to her suffering a nervous breakdown. She was a nervous wreck with Fiona constantly slamming doors. It was affecting her both physically and mentally. The Respondent advised that the neighbours who have complained live streets away. She has never spoken to them. They don't know her.
- 27** Mr Gray noted the reference in email to the antisocial behaviour team being called out to deal with alleged incidents. However they had never taken anything further with regard to their investigations. The Respondent has been in contact with the team herself to report incidents. Nothing has ever moved forward. In reference to the incident in April 2020 when the Respondent was videoed slamming the door, this was in response to Fiona initially slamming the door three times whilst the Respondent was running her daughter a bath. Fiona was filling Liz's head with lies about the Respondent. Both Liz and the Respondent had phoned the police about Fiona's behaviour. The Respondent has attempted to complain to Mr Uriarte but he has hung up the phone on her several times.
- 28** With regard to the incident on 17 April 2020 with the paint on the door, there was no conclusive proof of that as far as the Respondent could see. The Respondent had not put any paint on the door. It wasn't her. On 19 April 2020, Fiona had people going in and out of her flat. The Respondent had gone downstairs to clear the door handle due to the risks from the ongoing coronavirus pandemic. She was on medication and had lost weight. She was dizzy and confused as a result. She had missed a step and hit her head on the wall. A man came out of Fiona's flat and swore at her. He started videoing the Respondent. Social work officers had then attended the property and had taken her daughter away.
- 29** The Respondent referred to the incident outlined her son's email in June 2020 whereby Fiona had shouted at him when he attended the property to get clothes for her whilst she was in hospital. The Respondent had provided him with the keysafe number for Liz so that he could gain access.
- 30** With regard to the incident on 15 September 2020, the Respondent advised that her smoke alarm was sensitive and went off at times. She had tried to rectify it on this occasion. She didn't understand how the complainer could have seen her from her own property. No property inspections carried out to confirm condition of smoke alarm.

- 31** Mr Gray advised in the time he had been working with the Respondent she had come across as a sensitive person, not capable of carrying out a targeted and aggressive campaign of antisocial behaviour against elderly residents. He referred to the relationship between the Respondent and Liz which was friendly. Everything centred around the Respondent's neighbour Fiona. She was the focal point. The Respondent advised that she didn't want to live in the property anymore. Mr Uriarte doesn't listen to her. In response to questions from the Tribunal Mr Gray confirmed that the tenancy agreement lodged was accurate and was not in dispute.
- 32** Mr Uriarte was given the opportunity to challenge the Respondent's evidence. He noted that Mr Gray had not personally experienced any of the incidents alleged by the Respondent involving Fiona and questioned what weight could be given to his evidence as a result. Mr Gray advised that he had spoken to the Respondent in July 2020 and she had told him she was attacked by Fiona which resulted in her going into hospital. He had spoken with Social Work about whether an Adult Support and Protection referral was necessary as a result of the Respondent's condition. Her health conditions had not been made up. Mr Uriarte further challenged the account of the Respondent's relationship with Liz, noting that the Respondent had initially complained about Liz's conduct. The Respondent explained that she and Liz have a friendly relationship. She had just asked her to turn down her radio at night as it would keep her aware. Liz hears all the banging from Fiona. She was the main witness but she was too terrified to come forward. She had told the Police nothing but good things about the Respondent.
- 33** In his closing statement Mr Gray again disputed that the Respondent had been involved in targeted antisocial behaviour. The evidence from the Applicant didn't back that up. He noted that the Respondent also had police incident numbers. There had been no action taken by the antisocial behaviour team and no Antisocial Behaviour Order had been considered necessary. This clearly showed that she was not involved in systematic antisocial manner. The Respondent then stated that she did not understand why neighbours were complaining. Some could not even see her coming in and out of her door therefore how could they have witnessed behaviour. The Respondent was a nervous wreck and did not understand any of this. Mr Gray concluded by addressing the delays in the Respondent obtaining alternative accommodation. He noted that the pandemic had resulted in a stagnation of availability of accommodation which had hindered those efforts.

### **Relevant Legislation**

- 34** The relevant legislation the Tribunal requires to apply in its determination of the application is contained within the Private Housing (Tenancies) (Scotland) Act 2016.



## **51 First-tier Tribunal's power to issue an eviction order**

*(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

## **52 Applications for eviction orders and consideration of them**

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*

*(a) subsection (3), or*

*(b) any of sections 54 to 56 (but see subsection (4)).*

*(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

#### **54 Restriction on applying during the notice period**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or*

*(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the tenant is not occupying the let property as the tenant's home,*

*(ii) that the tenant has failed to comply with an obligation under the tenancy,*

*(iii) that the tenant has been in rent arrears for three or more consecutive months,*

*(iv) that the tenant has a relevant conviction,*

*(v) that the tenant has engaged in relevant anti-social behaviour,*

*(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

#### **55 Restriction on applying 6 months after the notice period expires**

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.*

*(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).*

*(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

## **62 Meaning of notice to leave and stated eviction ground**

*(1) References in this Part to a notice to leave are to a notice which—*

*(a) is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

## **Schedule 3**

### **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.*

## **Findings in Fact**

- 35** The Applicant and Respondent entered into a tenancy agreement which commenced on 23 December 2019.
- 36** The tenancy is a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
- 37** On 22 April 2020 the Respondent was served with a Notice to Leave by the Applicant’s Representative.
- 38** The Notice to Leave was delivered personally to the Respondent at the Property.
- 39** The Notice to Leave complies with the requirements of Section 62 of the 2016 Act and is in the prescribed form.
- 40** The Notice to Leave states that Tribunal proceedings will be raised no earlier than 23 July 2020.
- 41** The Respondent has engaged in relevant antisocial behaviour in relation to another person.
- 42** The application was lodged with the Tribunal on 28 August 2020, within twelve months of the behaviour occurring.
- 43** On 11 April 2020 the Respondent caused alarm and distress to a neighbour by banging the communal door to the block in which the Property is located.
- 44** On 17 April 2020 the Respondent caused alarm and nuisance to a neighbour by leaving a substance, believed to be paint, on the neighbour’s door.
- 45** On 19 April 2020 the Respondent caused alarm and nuisance to a neighbour by leaving a substance, believe to be paint, on the neighbours door and by subsequently refusing to allow Police officers access to the property, causing them to force entry.
- 46** On 19 July 2020 the Respondent caused alarm to a neighbour by shouting and swearing at said neighbour.
- 47** On 15 September 2020 the Respondent caused alarm to a neighbour by shouting in the property and hitting the smoke alarm.
- 48** The Police have been called on numerous occasions to deal with the Respondent’s conduct.
- 49** The Respondent currently resides alone at the Property.

**50** It is reasonable in all the circumstances to issue an eviction order.

### **Reasons for Decision**

**51** Having considered the application paperwork and the documentation lodged by the parties along with the evidence at the Hearing the Tribunal considered it had sufficient information upon which to make a determination of the application.

**52** Based on its findings in fact, the Tribunal ultimately concluded that the Respondent had engaged in antisocial behaviour, in that she had caused alarm, distress and nuisance to neighbours residing in the locality of the property. The Tribunal ultimately preferred the account of events put forward by Mr Uriarte in this regard. Although no neighbours had given evidence directly at the Hearing, the Tribunal accepted the written statements and emails lodged by the Applicant as evidencing a pattern of antisocial conduct by the Respondent. The Tribunal could not discount the fact that a number of neighbours had made complaints against the Respondent and did not accept her position that the allegations were all false and the result of a campaign by one particular neighbour. It was noted that the Respondent had herself conceded to have banged the communal door upon the Applicant having produced video evidence to this effect which the Tribunal felt did damage her credibility in some respect. Furthermore the witness statements produced by the Respondent were mostly from friends and acquaintances who had not witnessed the behaviour she had alleged – only the Respondent's own version of events - which the exception of the email from her son. However the Tribunal considered it could give little weight to his view given that he was unlikely to be impartial given the familial relationship.

**53** The Tribunal did note that on occasion the photographic and video evidence produced by the Applicant did not show directly show the Respondent engaging in the specific acts. However the Tribunal could reasonably conclude that due to the access arrangements for the block in which the Respondent resides, her proximity to the incidents in question and on the balance of probabilities she was responsible for the incidents complained of.

**54** The Tribunal therefore considered whether the antisocial behaviour by the Respondent was relevant antisocial behaviour for the purpose of paragraph 14(5) of Schedule 3 of the 2016 Act. In doing so, the Tribunal required to determine whether it was reasonable to issue an eviction order given the nature of the antisocial behaviour.

**55** The Tribunal accepted that the two other residents of the block in which the Respondent resides were elderly and vulnerable and that this was a relevant matter when considering the reasonableness of granting the order. The Tribunal also noted the alarming and disturbing nature of the antisocial behaviour, which ranged from noise nuisance to intimidating conduct. An example of the latter was the evidence of substances being placed on a neighbour's door. The Tribunal was conscious that there had been no specific incidents referred to by the Applicant since September 2020, although noted that this corresponded with the

raising of Tribunal proceedings. The Tribunal was however aware that in cases like these, where lay persons are involved, there will often be a number of complaints that go unreported. Mr Uriarte had referred to the situation having become untenable due to ongoing complaints and the Tribunal accepted that this was the case. Accordingly, whilst the Tribunal did have some sympathy for the Respondent's personal circumstances and her previous health issues, the Tribunal considered that given the nature of the antisocial behaviour and the ongoing impact on neighbours, many of whom were elderly and vulnerable, it would be reasonable to issue an eviction order.

**56** The decision of the Tribunal was unanimous.

### **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**

28 January 2021  
**Date**