



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/20/2653

Re: Property at 71b Princes Street, Perth, PH2 8LJ (“the Property”)

Parties:

Mrs Gillian Wilson, Dowlings, Perth Road, Blairgowrie, PH10 6EN (“the Applicant”)

Mr Andrew Crawford, 71b Princes Street, Perth, PH2 8LJ (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This was the second calling of a hearing in the application by the Applicant for an order for eviction against the Respondent in terms of the Application made by the Applicant dated 16th December 2020. The first hearing having not been able to proceed due to technical difficulties.
2. The following documents have been lodged with the application:-
3. Copy Notice to Leave dated 23rd October 2020
4. Copy certificate of posting of the Notice to Leave and track and trace dated 23rd October 2020 and 24th October 2020 respectively
5. Copy S 11 Notice and copy e-mail sending the notice to Perth and Kinross Council on 16th December 2020

6. The Applicant later lodged a copy of the tenancy agreement between the Applicant and the Respondent dated 20th November 2018 and which commenced on 1st December 2018.
7. The Applicant is seeking an order for eviction of the Respondent on the ground mentioned in the application and the Notice to Leave dated 23rd October 2020, namely that the tenant has engaged in anti-social behaviour.
8. There have been 3 previous Case Management Discussions the notes of which are referred to for their terms. The Applicants representative Ms Ann Miller of Thorntons solicitors has attended all CMDs the Respondent attended the first CMD but not the second or third but he has denied acting in an anti-social manner which is the ground relied on in this action.
9. At the first Case management discussion Miss Miller advised that the incident as set out in the Notice to leave and application is that the Respondent incited an associate to make threatening or intimidating calls to the Landlords husband on 14th September 2020 placing the landlord and her family in a state of fear and alarm. She advised it was her position that the Respondent by encouraging and condoning the phone calls in the background was engaging in relevant anti-social behaviour .
10. The Respondent when asked what his response to this allegation was that he completely denied it had taken place. The matter is therefore in dispute.
11. Ms Miller has lodged written submissions confirming that there are additional allegations regarding anti-social behaviour but as these have taken place after the incident on 14th September she has advised she is relying on those to argue it would be reasonable for the tribunal to grant an order. These include an allegation that a neighbour is in a state of fear and alarm, that the Respondent shouted and intimidated the Applicant at a recent inspection and the Applicant believes there are other incidents of anti-social behaviour at the Property and as a result the landlord tenant relationship has broken down.
12. At the last CMD on 1st June 2021 it was determined that a hearing would be required to hear evidence from the Applicant and her husband and the Respondent if he wished to participate. It was confirmed the hearing would proceed by video conference at 10am on 9th July 2021 however at that hearing date, due to technical difficulties, the Applicant's solicitor Ms Miller was not able to join until 10.30 and the Respondent appeared to be there as Mr Crawford's name was on the screen briefly but then it shut down and disappeared.
13. The Tribunal advised that as Mr Crawford had been trying to join the conference they would adjourn for 10 minutes to allow him time to do so and to see if he contacted the Tribunal with any issues. During this adjournment the clerk advised the Tribunal members that the Respondent had e-mailed the clerk and the case worker to advise at 10.31 that he was having connectivity issues and was unable to join.
14. The Tribunal discussed this and agreed that it would only be fair and just to continue the hearing to another date to allow the Respondent to join. The Respondent had made attempts to join, he had e-mailed the Tribunal around 10.23 to advise he was waiting to be admitted, and then e-mailed back to say he couldn't join in. The Tribunal advised that in view of these technical difficulties and to ensure the hearing proceeds at the adjourned date, the hearing should take place by telephone.

15. A further hearing date was scheduled to take place on 30th July at 10am by teleconference call to avoid any further technical difficulties and the parties were advised of the date and time and the dial in details.
16. The Applicant lodged a fresh copy of the original productions to ensure the Respondent had a copy that they would be referring to and also lodged another production namely a letter from Police Scotland dated 13th July 2021. They were received 7 or more dates before today's hearing and so the Tribunal accepted them.

17. The Hearing

18. The Hearing proceeded at 10am on 30th July 2021 by way of teleconference. The Convener made introductions, and explained how the Hearing would be conducted over the teleconference. The Applicant attended with her solicitor Ms Miller from Thorntons solicitors
19. The Respondent did not attend on the call at 10 am and the Tribunal waited for 10 minutes to see if he would attend. The Respondent had been advised of the details of this teleconference with details of how to join by letter dated 14th July 2021. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence and the hearing commenced at 10.10am.
20. Ms Miller summarised the application by advising that this was an application for eviction based on Ground 14 of the 2016 Act anti-social behaviour by the Respondent. She advised that she was going to lead evidence from the applicant's husband Mr Darren Wilson, first of all and then the Applicant. Ms Miller advised that she would then be adopting her written submissions as her submissions in this application.
21. The Tribunal queried what the two invoices from a company called Orbis related to and Ms Miller explained that they were in respect of lock changes at the Property carried out by the police and her client would elaborate in her evidence.
22. Ms Miller then called Mr Wilson as her first witness. Mr Wilson when he first joined the call was not in a private or quiet place and a short adjournment was afforded to allow him to move to a private location from where he could give evidence without interruption.
23. Mr Wilson advised he is the husband of the applicant and lives at the same address as the Applicant and he is a company director of Steampunk Electrical. He confirmed that the Property at 71B Princes Street was their family home when he and his wife got together but it is owned solely by his wife, the Applicant and that she tenanted it to the Respondent, Mr Andrew Crawford. He advised that the Respondent used to work for Mr Wilson in a previous business where Mr Crawford was a self-employed contractor doing restaurant fit outs. Mr Wilson advised that during this time Mr Crawford was finding himself travelling backwards and forwards from Blairgowrie to attend work and renting out their former home to him seemed like a good idea. Mr Wilson advised that Mr Crawford rented the property from his wife but also left his business and he no longer used him as a contractor in 2017 when there was an allegation he had removed items from a site. Mr Wilson advised that despite this he continued to be a tenant.

24. Mr Wilson then advised that he had little contact with the tenant until rent was outstanding. He advised that before lockdown there had only been a couple of missed rent payments and said "you just had to deal with these things". He advised that after March 2020 he was continually chasing rent payments after being given promises that were just not happening. He was "just telling us things to get us off the phone".
25. By 14th September 2020 Mr Wilson advised that Mr Crawford had been telling him for days that it would be sorted. Mr Wilson went on to then describe what happened on the evening of 14th September 2020.
26. Mr Wilson advised that he telephoned Mr Crawford between 7 and 8 o'clock at night while he was working away at a job in Aberdeenshire. Mr Crawford then said to Mr Wilson "Here you go Darren someone wants to speak to you" and Mr Wilson confirmed he heard the voice of someone calling himself Duncan McPhee who said he had taken over Andrews rent and would be settling it. Mr Wilson confirmed that he had called Mr Crawford's number and it was handed to Mr McPhee who told him he was a member of the travelling community. A while later the same evening Mr Wilson received a call from Mr Crawford's phone number but it appeared to be Mr McPhee speaking and who advised Mr Wilson that he had been told by Mr Crawford that he (Mr Wilson) owed Mr Crawford £72000 and the debt was now due to him Mr McPhee and Mr Wilson advised the tone changed and became a threat towards himself, and that the travelling community had taken on this debt and that 3 bus loads of guys would be on their way to him at his home address. Mr Wilson advised that although he did not think the threat would actually be carried out he did phone his wife the Applicant to alert her to this conversation and told her to make sure the house was locked, that the CCTV was working and that if anyone arrived she was to call the police immediately. He was concerned that his wife was alone in the house with the children including their baby son. He further advised that he was concerned that Mr Crawford knew where he lived and did not know that he was working away and not at home. Mr Wilson confirmed that his wife was very alarmed and panicked by this.
27. He advised that after that there were several more calls both from Mr Crawford's phone number and another number that appeared to be Mr McPhees. The phone calls went on during the night and he answered some of them from Mr McPhee's phone trying to convince Mr McPhee he did not owe any money to Mr Crawford. He confirmed that on each occasion he could hear Mr Crawford and thought the phone was on loud speaker His clear views was that Mr Crawford had told Mr McPhee this false information and was encouraging him to make these threats. He advised this was a joint collaboration with both men on the phone. and it was quite clear Mr Crawford in his view had given information to Mr McPhee and was encouraging him to make these comments on the phone call.
28. Mr Wilson advised that he and his wife reported this threat to the police but has not heard anything further.
29. Ms Miller then asked Mr Wilson about the time the latest landlord inspection that was carried out by Mrs Wilson and what he knew of this event. Mr Wilson advised that his wife had arranged to visit the flat but she doesn't like confrontation and so in light of what happened she asked a friend and neighbour of theirs Mr Chris Aiken to come with her. Mr Wilson then reported what his wife told him about the event, namely that Mr Crawford had been in the flat when they went to it and answered the door whilst on a phone call. The went upstairs and when Mrs Wilson

asked him about the rent outstanding Mr Wilson advised his wife said he became aggressive, asking “who did Chris think he was” and standing up and upsetting Gillian. Mr Wilson confirmed he did not think there was any meaningful tenant landlord relationship any more.

30. Mr Wilson went on to mention that he had heard about potential other incidents with ex-girlfriends and he believes that Mr Crawford is on house arrest. He advised one girl has spoken to himself about behaviour towards her but felt it wasn't up to him to give details about this but the girl could do so herself.
31. Finally he also commented that there is a neighbour at the Property, who lives in the close and hears all sorts of things going on in including seeing issues with the ex-girlfriend but doesn't want to report anything.
32. Under questions from the Tribunal Mr Wilson admitted that he had once socialised with Mr Crawford when he was working for Mr Wilson. That in relation to the incident on 14th September he was flabbergasted that he could be threatened with 3 van loads of guys on their way to see him and that he spent time trying to tell Duncan McPhee that why would he owe money to someone who owed his wife rent. He thought the men may have been in a pub to start with and somewhat intoxicated. He confirmed that Mr Crawford has not threatened him before or after this event but is not a friendly character and that he would not employ him or give him a reference.
33. He then clarified under questions that the comment made by Mr Crawford to Chris who accompanied his wife to the flat inspection was actually “who the fuck do you think you are” and that Chris had told him he thought Mr Crawford had been drinking. He confirmed this incident has also been reported to the police.
34. Finally in response to being asked if he had been harassing Mr Crawford for payment of rent as suggested in a letter sent by citizen advice on behalf of Mr Crawford Mr Wilson vehemently denied this saying it was absolute lies and that his wife has been told to stay away from that flat (the Property) by the Police. Mr Wilson then left the call having giving his evidence.
35. The Applicant then proceeded to give evidence under questions from her solicitor. She confirmed her name and address was as per the Application and advised that she lived at 19 Dowlings with her Husband, Darren Wilson and 3 children aged 5,13 and 17. She advised she is currently employed as an office manager and had previously worked with her husband's company Build Right as a director. She confirmed that she is the owner and landlord of the Property and it is let to the Respondent who she advised had previously worked with Build Right as a self-employed contractor. She went to advise that as he lived in Motherwell he found travelling to Perth every day onerous and as she and her husband were planning on moving out of the Property they allowed him to move in on a trial basis before the giving him a lease on 1st December 2018. She confirmed the lease was granted around the time he had stopped working for them. Ms Miller asked what the rent was and when it was last paid and Ms Wilson advised it was £625 per month and one payment was made in January 2021 and there have been no payments since. She also confirmed the Notice to Leave lodged in the Applicant's productions was the Notice to Leave served on the Respondent and it narrated anti-social behaviour as the ground of eviction. She confirmed the narration of the events in the Notice to Leave was accurate and expanded on it confirming that she received a call from her husband Darren Wilson on the night of 14th September 2020 when she was in bed already watching TV. She thought it was

around 10 o'clock after her husband had received several calls. She advised Darren told her that he had been on a call from the Respondent and a Duncan McPhee and threats were made that van loads of travellers were going to come to the property I was living at. She said her husband was working away from home but she could not recall where he was, but that he phoned her mobile and warned her to take precautions. He said travellers had taken on a debt and they were coming round. "I took this as a threat. He tried to reassure me but once you have heard this it is difficult to ignore it. I was alarmed and terrified. My young son was in the ground floor bedroom and I went and took him into my bed with me as he was nearest the front door. I made sure the lights outside were on; the CCTV was working; the side door was shut and the windows all locked. I had my phone glued to my side." Ms Wilson then advised that although she did not hear again from her husband who she said did not want to worry her further by phoning she did not sleep well she was terrified and didn't know if this was a genuine threat but took it as one and was ready to phone the police. She concluded this evidence by advising her husband got home around 6 am in the morning and he told her the phone calls had eventually ceased.

36. Ms Miller then asked the Applicant to describe how she felt about engaging with the tenant. The Applicant advised she knew she needed to engage with him but had loads of concerns because he had threatened her family and she did not know where this escalation came from and what would happen. She felt because of recent police attendance at the Property where the police had changed the locks that she needed to inspect the flat. She referred to the two invoices from Orbis dated February 2021 which she advised are for lock changes after the police had entered the property. She could not advise why they had sought entry. Due to her concerns about being alone with the tenant and what he might make up and due to safety concerns, Ms Wilson advised she took a friend and neighbour of her and her husbands Mr Chris . She initially did not remember the date of the inspection but when her solicitor took her through some of the productions including the letters requesting access with the Respondent she confirmed that it would have been in May 2021. The e-mails from the Applicant's account are from Steampunk and were to an account named ACPM which she advised was the Respondent's e-mail account. The e-mails are dated and confirmed by the Applicant as sent between 4th and 17th May and after several e-mails trying she advised to get Mr Crawford to respond a date was agreed and she called at the Property with Chris who she had told should not say anything but who was there just to support her. She advised that the Respondent answered the door while on a phone call; gestured for them to go in and then went into the kitchen while she went and looked in the 2 bedrooms, bathroom and living room. When she got to the kitchen he was off the phone sitting at a table. The Applicant advised she told the Respondent everything looked fine but then asked where we were with the rent arrears and that was she advised when the conversation escalated. The Respondent became agitated and aggressive; he stood up and came towards her "shouting are we done here get out of my house". The Applicant advised she was backing out of the doorway when he turned to Chris and said "what the fuck are you doing here, are you the big man". She then advised the Respondent kept shouting and she said "you don't need to do this we are leaving". The Applicant advised that after leaving

she felt quite upset and phoned her husband to tell him what had happened and to tell him she was going to phone the police.

37. The Applicant then confirmed she did report this to the police, she was initially asked to give a statement but then the police advised they would struggle to make any charges as there was no physical threat, but she advised the police officer then said I can see what the file says and told her not to put herself in that position again and only to communicate with her tenant by e-mail or text confirming "I can understand why you were scared at the situation."
38. Under questions from Ms Miller the Applicant confirmed that the Respondent's voice changed considerably in tone and volume, that he had got out of his chair forcibly and that she felt things were escalating and she had to leave. Ms Miller then asked the Applicant about the two invoices from Orbis and she confirmed that Orbis is a property management company who will change locks when they are damaged. The invoices are both dated 26th February 2021 but the fitting dates are different she confirmed that the locks needed changed because the police were looking for the Respondent and have drilled out the lock. The Applicant advised that when she received the invoices was the first time she realised the police had been looking for her tenant.
39. Ms Miller then asked if the Applicant had heard any reports from neighbours regarding the tenant. The Applicant advised that yes a tenant called Jenny who has the first door that you come to had started to tell the Applicant about noise issues coming from the Respondent. Jenny knew the Applicant was the landlord and reported loud noises and music coming from the Property. She advised the Applicant he used to listen to her complaints but not recently. The Applicant also advised that this neighbour had told her that the door of the Property was "put in by the forensic people" but that she did not know what that was about. The neighbour did however advise the Applicant she was terrified of the Respondent; that she witnessed a brawl outside the flat and phoned the police to try and assist the Respondent who she thought was being attacked but that he had turned and said "what the fuck are you getting involved at". The neighbour has the Applicant said also told her that she has heard shouting and swearing from the Respondent outside her window and that she believes there have been incidents with his girlfriend but the neighbour has told the Applicant she doesn't want involved and phones her husband before she returns to her own home to check it is okay to come home. The Applicant advised that the neighbour has only told her of these incidents after the event.
40. The Applicant confirmed that the information from the neighbour, issues with the police entering the Property and her own interaction with the Respondent at the flat inspection have all happened after she sent the Notice to Leave in October 2020 which was sent based on the series of phone calls on 14th-15th September. She then asked under for a note of how many call outs there have been to the police and she has lodged a response from the Police which shows there have been 5 call outs between 1st December 2018 and 24th June 2021. She confirmed that two of those call outs would relate to the incidents where Orbis were called to change the locks in February 2021. Although it is noted the letter from the police says some of the calls may be malicious.
41. Under questions from the Tribunal the Applicant confirmed that she would normally conduct inspections of the Property about once a year but she felt she should do one because of she was aware the Police had been at the Property and

forced the door open. She confirmed up to then the condition of the Property has never been a concern and she confirmed the current condition of it was fine.

42. Regarding the letters sent from Citizen Advice which have been lodged as part of the productions by the Applicant, where Ms Dawna Ashby of Perth citizen advice bureau had written to the Applicant on 8th January 2021 to ask the Applicant to stop all harassment and advising Ms Wilson that she should only contact Mr Crawford regarding the eviction or rent arrears or any other matter via mail and that she was to stop all harassing calls, texts and messages to Mr Crawford or any of his family members, Ms Wilson denies totally that there has been any harassment. She advised that she passed this on to her solicitor and that asked her solicitor to help. The Tribunal notes there is an email from the Applicant in the productions of Ms Gillian Buchanan of Thorntons solicitors refuting the harassment claims, advising that the Applicant has only made contact to discuss the rent arrears but Mr Crawford does not respond and does not call back when he says he will and that the Applicant told him the eviction process would follow the correct procedures.
43. Ms Miller advised at this point that she had contacted CAB to ask if they were now representing Mr Crawford a week before the first hearing on 9th July 2021 but has received no response.

44. Findings in Fact

45. The Applicant is the landlord and owner of the Property.
46. The Respondent has entered into a lease with the Applicant which commenced on 1st December 2018.
47. The Respondent is in arrears of rent and an order for payment was sought and granted to the Applicant for this.
48. These proceedings were raised on 16th December 2020 and the application included a copy of the Notice to Leave.
49. A Section 11 notice has been served on Perth and Kinross Council
50. A notice to leave was served on the Respondent by recorded delivery on 23rd October 2020
51. The Notice to leave mentions Ground 14 and gives details of the ground which is that the Respondent was directly involved in an incident on 14th September where the landlord's husband and the landlord were threatened with a 3 van loads of men arriving at their home to collect a debt due to Mr Crawford.
52. This threat was reported to the Applicant by her husband and put her in a state of fear and alarm.
53. The threat has been reported to the police.
54. The Applicant attended the Property to carry out a flat inspection during May 2021 at which the Respondent behaved in an intimidating manner to her and the friend accompanying her.
55. The Applicant has been advised by the Police to stay away from the property.
56. The police have twice broken the locks on the Property.
57. The neighbour at the Property is fearful of the Respondent after witnessing a brawl near the flat and hearing him shout and swear outside her window. She has expressed those fears to the Applicant.
58. The Respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months

59. The behaviour caused alarm, distress nuisance or annoyance to another person namely the Applicant.
60. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

61. Reasons for Decision

62. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 14 of Schedule 3 of the Act as the relevant ground of eviction.
63. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Respondent has engaged in anti-social behaviour by making or encouraging or inciting phone calls to be made to the Applicant's husband that contain threats the Applicant's family or are harassing to the Applicant's husband.
64. Ground 14 requires 28 days' notice under the rules which are currently amended by the Coronavirus (Scotland) Act 2020 and were in place for a Notice to Leave which was served on 23rd October 2020. The Notice sets out the notice period as expiring on 25th November 2020 the Notice has been served by recorded delivery on 23rd October and a track and trace receipt confirms it was received on 24th October 2020. The notice is therefore compliant with the requirements of Section 62(4) of the Act.
65. The Application was lodged on 16th December 2020. It was therefore lodged after the expiry of the correct notice period and is therefore an application that the Tribunal can consider and has been accompanied by a section 11 notice served on the local authority.
66. Ground 14 of Schedule 3 of the Act states:-
67. It is an eviction ground that the tenant has engaged in relevant anti-social behaviour
68. The First Tier Tribunal may find that the ground named by sub-paragraph (1) applies if
69. The tenant has behaved in an anti-social manner in relation to another person
70. The anti-social behaviour is relevant anti-social behaviour and
71. Either the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring or the tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period
72. 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
73. Doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance or amounts to harassment of the other person
74. In Sub paragraph (iii) conduct includes speech
75. Course of conduct means conduct on two or more occasions
76. Harassment is to be construed in accordance with section 8 of the Protection from Harassment Act 1997

77. 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
78. in a case where two or more persons are the tenant under a tenancy the reference in sub- paragraph 2 to the tenant is to any of those persons.
79. The Tribunal found both Mr Wilson and Mrs Wilson to be credible in their evidence. Mr Wilson did not seek to elaborate or exaggerate his evidence. The Tribunal found that both corroborated the description of the phone calls on the evening and night of 14th September 2020 and Mrs Wilson gave a detailed and full description of how alarmed and fearful she felt when she thought van loads of men may be descending on her home to collect a debt.
80. There was no contrary version of events from the Respondent for the Tribunal to consider. Mr Crawford has not attended this teleconference hearing on 30th July 2021. He attended the first CMD and advised he denied the phone calls were made on 14th September however he has not lodged any written evidence and although he appeared to try and be at the WebEx hearing on he has not attended this adjourned hearing which took place by teleconference specifically to avoid any issue with video conferencing and to make it easier for parties to join in.
81. The Tribunal had identified that the following issues that should be addressed at the hearing:-
82. Did the conduct alleged to have taken place on 14th September 2020 which is the conduct relied upon in the Notice to leave and the Application as constituting anti-social behaviour, take place?
83. Did the Respondent engage in the alleged conduct?
84. Does the alleged conduct if proven, constitute relevant anti-social behaviour for the purposes of Ground 14 of Schedule 3 of 2016 Act?
85. Would it be reasonable for the Tribunal to grant an order for possession if the Tribunal finds that the Respondent has engaged in relevant anti-social behaviour?
86. Both the Applicant and the Respondent were invited to provide any written submissions or productions they wish to rely on at least 14 days before the hearing.
87. If the Respondent wishes to lead any witnesses he should advise the Tribunal of the names and contact numbers for the witnesses at least 7 days in advance of the Hearing.
88. The Applicant has submitted the further instances of anti-social behaviour and conduct by the respondent as evidence that it would be reasonable for the tribunal to evict the Respondent and accepts that the Tribunal first of all has to be satisfied that the fact of and the content of the phone calls on the night of the 14th September constitute anti-social behaviour.
89. The question for the tribunal was whether the Respondent had engaged in anti-social behaviour on the evening of 14th September into the early morning of 15th September and is it relevant anti-social behaviour.

90. Ms Miller has lodged written submissions and has adopted those submissions in her oral submission to the Tribunal.
91. She submits that the evidence supports that on 14th September in various telephone calls between the Respondent's associate Mr Duncan McPhee and the Applicant's husband the Respondent engaged in threatening and anti-social behaviour which caused the Applicant fear alarm and distress. That on the balance of probabilities the conduct alleged to take place did take place and the Respondent engaged in the alleged conduct. She highlights that conduct includes speech and harassment
92. She submits that the phone calls that took place on the night of 14th September and 15th September involved the Applicant implicitly; they were made using his phone and she submits with his knowledge and encouragement. She submits that the evidence shows he was with Mr McPhee during the time the phone calls were made, that the phone was on loud speaker and that the Respondent could be heard in the background and the information used by Mr McPhee could only have come from the Respondent. In particular she submits that during the first call from the Applicant's husband on 14th September the Respondent handed his phone to Mr McPhee and "incited and/or encouraged Mr McPhee to make serious and violent threats to the safety of the Applicant and her family. That the threats caused the Applicant significant fear, alarm and distress. That any objective observer would accept that being threatened with "van loads of men going round to their house would cause fear alarm and distress. This meets the test in S14(3) of the 2016 Act in that the Respondent did something which caused the Applicant "alarm distress, nuisance and annoyance". Ms Miller refers to the numerous calls that were made over the course of 14th and 15th night into early morning and submits that this amounts to a course of conduct (i.e. more than two calls) and that this amounts to harassment as construed in terms of the 2017 Act. That therefore this amounts to relevant anti-social behaviour.
93. The Tribunal accepts that the Respondent handed over his telephone to Mr McPhee, that he gave certain information to Mr McPhee and so has colluded, incited or encouraged the making of the threats to send van loads of people to the Applicant's home. The Respondent has not offered any other explanation except originally to deny this happened. The tribunal heard that the Applicant and her husband knew the Respondent before he became a tenant, that relations had become strained especially with the non -payment of rent and that the Applicant's husband would have been able to recognise the Respondent's number as he had phoned him on several occasions to ask about rent arrears. The Tribunal accepted the evidence of Mr Wilson in the absence of any other information and this is supported by Mrs Wilson's evidence as to what her husband told her on the evening of 14th September and then how she reacted to it. The Tribunal also accepts that Mrs Wilson was seriously upset and distressed about this incident. By taking part and inciting this threat the Respondent has engaged in anti-social behaviour. In addition that behaviour is relevant anti-social behaviour as it did cause alarm fear and distress to Mrs Wilson and was disturbing and harassing to Mr Wilson as although not as frightened for himself as Mrs Wilson was the continuous phone calls during the night of the 14/15th September were annoying and disturbing to him, and gave him cause for serious concern for his family resulting in reporting the incident to the Police the next day.

94. The Tribunal then has to consider even if the eviction grounds are met whether it would be reasonable to grant the order of eviction. The Applicant has submitted further information in support of that, namely that the Applicant felt intimidated and fearful during her visit to the flat for the purposes of an inspection; that a neighbour is now reporting to the Landlord various incidents that have made her fearful of meeting or seeing the Respondent, and that the police have had occasion to force the locks on the door of the Property twice and have now advised the Applicant to stay away from the Property and deal with the Respondent only by e-mail and text message. The Applicant confirmed that she felt the usual landlord/ tenant relationship has been destroyed that it would be difficult for her to continue to carry out her landlord duties and that she has serious concerns for the distress this is causing the neighbour.
95. The Tribunal considers that on balance and in the absence of any representations from the Respondent the landlord/ tenant relationship has significantly broken down and given the continuing incidents at or around the Property by the Respondent to the Applicant and a neighbour that it would be reasonable to grant an order for eviction.

Decision

Order for possession is granted.

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.

Jan Todd

12th August 2021

Legal Member/Chair

Date