



**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/21/0055**

**Re: Property at 37 Innellan Drive, Kilmarnock, KA3 1SS (“the Property”)**

**Parties:**

**Mr Robert Morton, 18 Thomas Baird Gardens, Kilmarnock, KA3 1LH (“the Applicant”)**

**Miss Megan-Rae Cooksey, 37 Innellan Drive, Kilmarnock, KA3 1SS (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant.**

**Background**

1. An application was received by the Housing and Property Chamber. It was dated 8<sup>th</sup> January 2021. The application was submitted under Rule 109 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not adhering to ground 15 of schedule 3 of the Private Housing (Tenancies) Act 2016.

2. A Case Management Discussion (“CMD”) was held on 9<sup>th</sup> March 2021 at 2pm by teleconferencing. The Applicant was represented by Mr Tom Telfer, Director, Letts Agree Sales and Lettings Ltd. The Applicant did not attend. Ms Mylene Scott, solicitor, Douglas Wright Solicitors represented the Respondent. The Respondent was also present. Mr Telfer maintained the Applicant’s position. He noted that the Applicant had submitted a number of documents in support of the position that ground 15 has been met. Ms Scott noted that the Respondent felt that she has been singled out and that there was a vendetta against her by her neighbours and the Applicant. Ms Scott had only been able to undertake some investigations but stated that as an example the incident regarding a barking dog related to one occasion. The reference to the Respondent gesticulating whilst driving to a neighbour could not be correct as the Respondent does not drive. It was in fact the Respondent’s partner who had gesticulated at the neighbour. Ms Scott stated that she did not consider this to be within the scope of the legislation. Ms Scott noted that whilst the Respondent did not dispute all of the incidents she would like further time to investigate them and present evidence at a full hearing. The Respondent was of the view that her neighbours and the Applicant have raised these complaints as a reaction to her lifestyle. A date was fixed for a hearing and a direction was issued to both parties to enable further information to be provided.
3. The direction issued stated:-
  - (a) The Applicant was required to provide:
    - i. Up to date or contemporaneous details of any complaints regarding anti-social behaviour.
  - (b) The Respondent was required to provide:
    - i. A full and complete list of the complaints that are disputed up until and including 9<sup>th</sup> March 2021. It will be deemed that all are agreed should this not be submitted.
    - ii. Full details regarding the breach of the peace charge including any court date and outcome of the court date.
    - iii. All medical evidence that is to be relied upon.
  - (c) Both parties were required to provide:
    - i. A full list of all documents to be relied upon plus the documents.
    - ii. A full list of witnesses.
    - iii. A full legal submission to include the legal position regarding the application of ground 15 relating to another person other than the Respondent.

All information was to be provided no later than close of business on Friday 26<sup>th</sup> March 2021.

4. The Respondent’s solicitor emailed on 31<sup>st</sup> March 2021 stating that she had withdrawn from acting for the Respondent.

## The Hearing

5. The hearing was held on 7<sup>th</sup> April 2020 at 10am by teleconferencing. The Applicant was represented by Mr Tom Telfer. The Applicant did not attend the full hearing but attended to give his evidence. The Respondent was present. The Tribunal heard the evidence of each person from the witness list provided by the Applicant and also from both parties.
  
6. The evidence of Mr Robert Morton (the Applicant)  
Mr Morton is the Respondent's landlord. Letts Agree letting agents deal with all of the management of the Property. Mr Morton lives approximately 100 yards from the Property. His only direct contact with the Respondent has been early on in the tenancy when she required her white goods looked at. He had attended the Property but both were in working order. As he lives close by he was contacted by the direct neighbour to the Property, Mrs Pam Vandal. He had given her his phone number. He has tried to keep out of the antisocial behaviour issues and has directed Mrs Vandal to contact the police. In November 2020, Mrs Vandal had contacted him after the Respondent had been shouting, swearing and banging on her door. Mr Morton had gone to her house. Her son was also there. The police were called. Mrs Vandal was an emotional and physical wreck. Mr Morton considers that he had put up with noise that had gone on through spring, summer and autumn but after the incident in November 2020 he wished to pursue eviction proceedings. He has felt intimidated by the Respondent and her partner. The Respondent's partner had driven past his house shortly after he had returned home one day. She had gesticulated at him. Mr Morton and his wife were very concerned for their property and dog that they have recently installed a security camera. Mr Morton is so concerned for Mrs Vandal as she is an elderly woman who lives on her own.
  
7. The evidence of Mrs Pam Vandal  
The Respondent elected not to speak to Mrs Vandal directly as it is term of her bail conditions not to speak to Mrs Vandal. Ms Darlene Mitchell, the Respondent's partner spoke on the Respondent's behalf. The Tribunal considered this appropriate given the terms of her bail conditions. The Tribunal limited Ms Mitchell's involvement to the evidence of this witness as Ms Mitchell had not been notified as a witness within the terms of the direction as detailed above. Mrs Vandal lives in a semi-detached house which is attached to the Property that the Respondent lives in. Mrs Vandal spoke to hearing very loud arguments between the Respondent and her partner. These arguments involved shouting, screaming and swearing at high volumes both inside and outside the Property. She has seen people attending a BBQ in lockdown when it was prohibited. She did not report this as she did not know who to report it to. She has called the police on 5 separate occasions when they have attended the Property. On another occasion the incident occurred in the early hours of the morning so she did not call until the next day. The police said that they had noted it but that they could not proceed further as it was after the event. Mrs Vandal has been very concerned for her own property with the banging that has been happening. This has caused her to look out her window. She has been sworn at as a result. This occurred in November 2020 when she heard a lot of noise and looked out of her window. The Respondent then swore at her and proceeded to bang on her door. Mrs Vandal was very upset as a result and

called the police. The Respondent was arrested. The case is calling in court in May 2021 for breach of the peace. Mrs Vandal has stopped using her front door as she feels intimidated by the Respondent and her partner. She will go into her garden in the morning as the Respondent and her partner do not appear until lunch. This gives her time to do her gardening. She will sit at the side of her house after that. She has had guests of the Respondent staring into her garden when visiting the Respondent and on one occasion the guests of the Respondent ran across her garden. The Respondent also had a bonfire in close proximity to their fence. Mrs Vandal was very worried about this and asked her to stop. Mrs Vandal has lived in her house for 20 years without any significant issues from other occupiers. Once an occupier played music loudly. She told him and he stopped. He will still speak to her when she sees him. There was a further incident of shouting and arguing loudly on the morning of the hearing.

8. The evidence of Mr Brian Weir

Mr Weir lives across the street from the Respondent. His bedroom window is at that side of the house. Mr Weir has heard the Respondent and her Partner arguing on numerous occasions. This has involved very loud shouting, screaming and swearing. This can be heard from inside his house with the windows shut. When he looks out of his window the Respondent and her partner will shout abuse at him. He has called the police 3-4 times. In November 2020 he called the police as he had seen the Respondent banging on Mrs Vandal's door. She was swearing and being abusive. In December 2020/January 2021 the Respondent and her partner were abusive to Mr Weir when leaving the house in their car.

9. The evidence of Mrs Julie Batchelor

Mrs Batchelor is the Respondent's neighbour. Her house is attached to the Respondent's house at the end of their gardens. She has heard a lot of loud arguments, abusive language, screaming and shouting. She has heard her screaming and shouting at her next door neighbour. Mrs Batchelor's daughter was 15 in summer 2020 and could hear all of the Respondent's anti-social behaviour from her garden. Mrs Batchelor can hear the noise caused with the doors and windows closed. She had seen people in the garden having a BBQ during a time when the covid restrictions prohibited it. She is of the view that the Respondent and her partner are staring at her from their garden. She believes the Respondent or her partner to have said to her daughter "there's the girl who thinks she's everything". Mrs Batchelor and her daughter find it uncomfortable to walk past the Respondent's door.

10. The evidence of Mrs Faye Bell

Mrs Bell lives two doors down from the Respondent. She has lived in her house for 20 years. She has not been involved in any other antisocial behaviour legal proceeding for neighbours before. She noticed constant music and constant partying at first. She heard a lot of arguments both in the Respondent's house and garden. She had concerns that she should phone the police about it but did not do so in the end. Mrs Bell has a raised deck and can see into the Respondent's garden from her deck. The Respondent was verbally abusive to her in November 2020 when she was reversing her car. The Respondent had

sworn at her and gesticulated at her. This was in front of her 12 year old son. Recently her son and her 11 year old nephew were playing in the garden. The Respondent or her partner were verbally abusive to the boys after a ball went into their garden.

11. The evidence of Ms Megan Cooksey (the Respondent)

Ms Cooksey wanted the Tribunal to note that she has had a constant struggle with her mental health through lockdown. She had her antidepressant changed in June 2020 but has remained on this medication since with no further intervention. She does not dispute the severity of the accusations. She attributes this to her mental health. She considers that she was provoked when she has sworn at her neighbours. She admits that her partner has sworn and gesticulated at her neighbours. She admitted that her partner swore by gesticulation at her landlord as they passed in the car. She accepts the loudness of the arguing but attributes that to her partner trying to calm her down. The incident with Mrs Vandal occurred after she had been trying to calm her partner down after her grandfather had died. She agreed that it was not appropriate. She is to plead not guilty at the hearing. She disputed saying anything to Mrs Batchelor's daughter. She did not consider that she was responsible for her partner's conduct. This is her first tenancy. Prior to this she was homeless. She did not consider she had breached the coronavirus regulations. She noted that she had an argument with her partner this morning as she was so stressed about the hearing. Ms Cooksey disputed that her partner lived at the Property but that she visited frequently at points.

Findings in fact

12. A Private Rented Tenancy Agreement commenced 5<sup>th</sup> December 2019.

13. The Respondent admitted that her partner had acted in an antisocial way to her neighbours .

14. The Respondent and her partner conducted their behaviour in an antisocial manner such as to cause alarm and distress to her neighbours. The antisocial behaviour was serious, frequent and endured for an extended period of time. This prevented her neighbours from enjoying the peaceful enjoyment of their own property.

15. No medical evidence was provided. The Respondent has been stable on her medication for a period of over 6 months without further intervention from specialist mental health providers.

16. The antisocial behaviour occurred within 12 months of the application being raised.

Gabrielle Miller

7<sup>th</sup> April 2021

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**Legal Member/Chair**

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**Date**