

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/21/1724**

**Re: Property at 72 Dunblane Drive, East Mains, East Kilbride, G74 4EP (“the Property”)**

**Parties:**

**Mrs Elaine Baxter, 15 Grenadier Park, Grenville Gate, Glasgow, G72 8EP (“the Applicant”)**

**Mr Nicki Morgan, present whereabouts unknown (“the Respondent”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Eileen Shand (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction is to be granted**

**1. BACKGROUND**

This is an application to bring to an end a tenancy, commencing 19 March 2021 for 1 year but which in fact only lasted several months or so. The actual agreement was headed “Minute of Lease” and reference was made therein to it being a Short Assured Tenancy, as opposed to a Private Residential Tenancy under the 2016 Act, but it contained the “four cardinal elements” of a lease, namely parties, subjects, rent and duration, was signed on the last page and, furthermore, complied with the definition of “Private Residential Tenancy” as set out in s1 of said Act. In addition, the Respondent had taken up occupancy based on it. Accordingly, the Tribunal considered it and the parties’ actions consistent with it reflected the intentions of the parties as to establishing a Private Residential Tenancy.

The supporting documentation for this application confirmed that appropriate notice periods had been given in respect of the Notice to Leave, dated 11 June 2021 and signed for by the Respondent on 12 June 2021 and that the

appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003.

In this application, the Applicant stated that she wished repossession in view of anti-social behaviour on the part of the Respondent in terms of Ground 14 of Schedule 3 of the 2016 Act, which had been clarified by correspondence between the Applicant and the Tribunal, the original application referring to other additional grounds, which were not referred to in said Notice to Leave. Accordingly, the sole basis of the application was said Ground 14, which states:--

“Anti-social behaviour

(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.”

Accordingly, in order to be able to grant the eviction order on this ground, the Tribunal requires to be satisfied not only that the requisite behaviour occurred but also that it is reasonable to grant the order, in terms of Paragraph 5.

## **2. CASE MANAGEMENT DISCUSSION (“CMD”)**

From the case papers, it appeared that the Respondent was perhaps no longer living in the Property. Sundry procedure had resulted in Service by Advertisement on him in terms of Rule 5(4) of the First-tier Tribunal for Scotland Housing & Property Chamber (Procedure) Regulations 2017. He did not attend nor was he represented at the CMD on 28 October 2021. Accordingly, only the Applicant attended, assisted by her husband, John Baxter.

They advised that they had served Notice to Leave on the Respondent upon the suggestion of a representative of South Lanarkshire Council, against a background of numerous complaints made both to the Council and the Applicants about anti-social behaviour on the part of the Respondent. The Respondent had then contacted them to discuss leaving the property on an amicable basis, without the need for further proceedings, and an agreement had been reached whereby Mr Baxter attended at the Property at about 6-30pm on 1 July 2021 but the Respondent was not there and did not attend. Mr Baxter noted the Property to be untidy and in a state of disarray, as shown in photographs lodged. A further suggestion was made for a meeting at the Property on 12 July, the date of the end of the notice period specified in the Notice to Leave, but again the Respondent failed to attend. The inside of the Property did not seem to have changed since the previous visit, leaving the Applicant to conclude it had not been lived in since that visit.

Efforts to trace the Respondent led the Applicant to seek police assistance as to his whereabouts, but the most the police were able to advise was that the Respondent had another address and would not be returning to stay at the Property anytime soon. Mr Baxter surmised this was perhaps an indication the Respondent was in custody but obviously could not be sure.

At about the beginning of September or so, Mr & Mrs Baxter ascertained with a neighbour that the Respondent had not returned to the Property and no longer appeared to be living there and that the neighbour would contact them if the Respondent returned. However, as at today's CMD they had heard nothing further.

On enquiry being made by the Tribunal as to whether they thought the Respondent had abandoned the Property, as opposed to vacating it, the Applicant confirmed that the Respondent's belongings still appeared to be there, but they had taken no steps to dispose of them.

The Tribunal enquired as to the Applicant's understanding of the provisions of s50 of the 2016 Act and whether it perhaps was applicable to the present situation between the parties. The relevant part of said section states:--

”50 Termination by notice to leave and tenant leaving

(1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

(a) the day specified in the notice to leave in accordance with section

62(1)(b), or

(b) the day on which the tenant ceases to occupy the let property.”....

Both Mr & Mrs Baxter confirmed, very candidly, that they were not aware of

this provision and were not sure as to whether they might be minded to withdraw the application on the basis of its application.

In view of this uncertainty about withdrawing the application, the Tribunal considered whether or not it could find Ground 14 established and went on to consider evidence available as to relevant anti-social behaviour by the Respondent.

The Applicant founded upon numerous matters having been brought to her and her husband's attention on numerous occasions by South Lanarkshire Council and neighbours of the Respondent, regarding noise, littering and dumping of waste, untidiness in the stairwell, back court area and at the bin relating to the Property and persons unknown attending during the covid pandemic. There had also been a complaint about damage caused to the downstairs neighbour by flooding, although this might have been accidental. She had been contacted by 3 separate departments of South Lanarkshire Council to bring these matters to her attention. In addition, 2 of the neighbours had contacted her and/or her husband direct on numerous occasions with complaints. Correspondence was produced from South Lanarkshire Council confirming complaints made to it to such an extent that it issued numerous warning notices to the Respondent on 16 April and 1, 6 and 13 May 2021. Copies of text messages from the Respondent were produced denying some of the complaints but accepting "1 breach of COVID rules", being "in the wrong" and not being "a great tenant". Significantly, said messages also indicated an intention to vacate the Property on a voluntary basis and were mainly contrite and respectful in tone.

### **3. FINDINGS IN FACT**

The parties entered into a Private Residential Tenancy of the Property on 19 March 2021.

During his tenancy, the Respondent engaged in relevant anti-social behaviour such as to cause nuisance or annoyance to neighbours, who reported same to the Applicant.

Furthermore, complaints were made to South Lanarkshire Council regarding said behaviour, leading to it issuing warning notices to the Respondent on 16 April and 1, 6 and 13 May 2021.

The Respondent accepted at least one of the grounds of complaint.

A Notice to Leave was served on him by the Applicant on 12 June 2021, whereby he was to leave the Property on 12 July 2021.

The Respondent indicated an intention to leave the Property on a voluntary basis in any event.

The present whereabouts of the Respondent is unknown to the Applicant but, apparently, known to police.

The Respondent has not returned the keys to the Property.

### **4. REASONS FOR DECISION**

Mr & Mrs Baxter were candid about their lack of knowledge of the provisions of s50 of the 2016 Act and unsure as to whether they would be content to withdraw the application and rely on the terms of said section in the event of the Respondent returning to the Property. In addition, the fact of the Respondent's belongings still remaining in the Property left some doubt as to

whether he had “ceased to occupy” it in terms of said section, or left it one day and not returned due to some intervening factor eg involvement with police, which was an impression gained from their contact with the police, right or wrong though it might be. In all of these circumstances, the Tribunal formed the view the Applicant would prefer the certainty of a decision and that there was sufficient information available to find there had been anti-social behaviour by the Respondent at the Property such as to cause nuisance and annoyance to neighbours, as evidenced by their numerous complaints to the Applicant and South Lanarkshire Council. The text messages from the Respondent also appeared to accept some failings on his part, even if only to a limited extent.

In all of these circumstances and for the sake of certainty for parties, the Tribunal accordingly considered Ground 14 to be established and for it to be just to grant the order sought.

## **5. DECISION**

To grant the order for eviction sought by the Applicant.

### **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.**



SR QUITHER

28 October 2021

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**Legal Member/Chair**

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**Date**