



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/22/4318**

**Re: Property at 6 Clova Place, Uddingston, G71 7BQ (“the Property”)**

**Parties:**

**Mr James Adams, Mrs Linda Adams, 12 Glenacre Crescent, Uddingston,  
G71 6EJ (“the Applicant”)**

**Miss Heather Braidwood, 6 Clova Place, Uddingston, G71 7BQ (“the  
Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that it is not reasonable to grant an eviction order and the  
application is therefore dismissed**

**Introduction**

1. This is an application under rule 65 and section 18 of the Housing (Scotland) Act 1988. The application seeks an order for possession.
2. The application was initially accompanied by: a copy of the short assured tenancy between the parties dated 6 May 2017; Notice to Quit dated 3 November 2022; AT6 Notice dated 3 November 2022; post office receipt dated 3 November 2022; Notice under Section 11 of Homelessness Etc (Scotland) Act 2003; correspondence from Scottish Gas dated 20 November 2022; correspondence from South Lanarkshire Council in December 2022 and January 2023, a note from Police Scotland and an email from a letting agent responsible for another property in the block.

3. The application is based on grounds 13, 14 and 15 of Schedule 5 to the Housing (Scotland) Act 1988. At the initial procedural stage the tribunal found that the Notice to Quit dated 3 November 2022 was invalid, but the application was proceeding on the basis of Section 18(6) of the 1988 Act.
4. The applicant is represented by Mr Stephen Kiernan of Premier Properties. The Respondent has represented her own interests throughout the process with the support of her housing support officer Ms Jackie Discombe.

### Procedural background

5. A Case Management Discussion took place on 3 April 2023 followed by a hearing on 13 June 2023.
6. On 3 April 2023 the respondent participated personally and was supported by Ms Jackie Discombe, housing support officer. She explained that she had mental health problems and that the alleged difficulties in the tenancy had arisen due to the actions of her son and others associated with him. She felt unable to control the situation. It was accepted on behalf of the applicants that it was understood that it was primarily the respondent's son who had been behaving inappropriately and acting antisocially.
7. The tribunal having noted the circumstances continued matters then to a full hearing. The applicants were required to produce detailed information by way of photographs and statements to fully support the allegations of antisocial behaviour, as well as the condition of the property. The respondent was required to produce evidence of her health and financial situation, including prospects of obtaining alternative more suitable accommodation for her.
8. As at the next hearing on 13 June 2023 further evidence had been provided by the applicants in support of the application, including photographs. The respondent had a letter from her GP and had sent it by recorded delivery to the tribunal administration on 8 June 2023. That had not been processed nor received by the tribunal. It was agreed by all involved that it would be appropriate not to proceed with the full hearing but for there to be a further adjournment.

### The law

9. The grounds relied upon in Schedule 5 to the Housing (Scotland) Act 1988 are:

#### Ground 13

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

#### Ground 14

The condition of the house or if any of the common parts has deteriorated owing to acts of waste by, or the neglect or the default of, the tenant or anyone of joint tenants or any person residing or lodging with them or any subtenant of his; and in the case of acts of waste by, or the neglect or default of, a person lodging with the tenant or subtenant of his, the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or subtenant.

In this Ground “the common parts” means any part of a building containing the house or any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

#### Ground 15

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has –

- (a) been convicted of –
  - (i) using or allowing the house to be used for immoral or illegal purposes; or
  - (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or
- (b) acted in an antisocial manner in relation to a person residing, visiting or otherwise engaging in unlawful activity in the locality; or
- (c) pursued a course of antisocial conduct in relation to such a person as is mentioned in head (b) above.

In this ground “anti-social” in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, ‘conduct’ includes speech and a course of conduct must involve conduct on at least two occasions and ‘tenant’ includes anyone of joint tenants.

#### Findings and Reasons

10. The tribunal attached weight to the entirety of the documentary evidence which is not the subject of challenge.
11. The property is 6 Clova Place, Uddingston G71 7BQ. The applicants are Mr James Adams and Mrs Linda Adams who are the joint heritable proprietors and registered landlords of the property. The respondent is Ms Heather Braidwood who is the tenant.

12. The parties entered into a short assured tenancy which commenced on 24 June 2017. The lease was for an initial period of one year and has continued by tacit relocation since.
13. Due to concerns regarding antisocial behaviour in the property, the applicants' seek to evict the respondent under grounds 13, 14 and 15 to Schedule 5 to the 1988 Act. The terms of the lease made provision for this with the grounds being fully set out, and a relevant AT6 was served on the respondent.
14. The applicant's representative confirmed that whilst the eviction continued to be pursued in relation to grounds 13 and 14, the major concern was the issue of antisocial behaviour on the part of the respondent's son and associates for the purposes of ground 15.
15. The tribunal was not invited to hear all evidence from any witnesses on behalf of the applicants. However, the tribunal recognises that there is substantial documentary evidence which establishes all of the grounds relied upon. The tribunal was, however, satisfied, on the basis of the up to date position, evidenced by the respondent and her housing support officer, that matters are much improved and that the issues which establish the grounds relied upon are now historical.
16. The tribunal was able to find, on the basis of the documentary evidence, that clauses (5) and (15) of the lease have been breached by the respondent. There is clear documentary evidence that the respondent was not keeping the interior of the property in a good condition. She does not dispute this was the position previously, and so ground 14 is established. It was also accepted that the respondent's son was, along with others known to him, misusing illicit substances, establishing ground 13.
17. The evidence to support ground 15 is primarily in the form of emails from Brian McAvoy who is an investigation officer with the Anti Social Investigation Team of South Lanarkshire Council. In terms of communications produced by him, there is evidence of antisocial behaviour in early November 2022, early January 2023 and early May 2023. The types of antisocial behaviour are specified as the respondent's son and his associates causing excessive noise and nuisance; shouting/arguing; and a smell of drugs emanating from the property. On one occasion there was also harassment of another resident in the building. Police Scotland had been in attendance on occasion and the respondent had received a formal warning from South Lanarkshire Council. There was also documentary evidence from two other residents within the block to support these concerns. The tribunal, therefore, found ground 15 established.
18. More generally the tribunal had regard to the report from Scottish Gas to the applicants dated 14 November 2022 in which it was advised that there was no option but to suspend the service account due to the condition of the property and the behaviour of the occupants. The tribunal also noted the correspondence from Anne-Marie Stormonth dated 2 November 2022 on

behalf of proprietors of another property in the block and the note from Police Scotland dated 26 October 2022.

19. Whilst the application has been opposed by the respondent, she has acknowledged the previous difficulties and has not focused her opposition in suggesting that the grounds relied upon in this eviction application are not established. Her opposition focuses upon the reasonableness of the tribunal granting an eviction order.
20. The applicants' representative had a considerable degree of sympathy for the respondent's circumstances noting that she was vulnerable, had health problems and that the accommodation really was not suitable for her. His cautious and understanding approach is commendable.
21. The respondent is 54 years of age. She is unemployed. She has a number of health difficulties. These are vouched in terms of a report by her GP Dr M Brown dated 7 June 2023. She has chronic issues with backpain due to osteoporotic fractures. The pain limits her mobility and she is effectively housebound because of it. She has however started to access physiotherapy being delivered to her at home and she is prescribed analgesia. The respondent also has a diagnosis of anxiety and depression which has been exacerbated by the current eviction proceedings. She is prescribed a number of medications for her mental health. The respondent has an allocated social worker who has been assessing her in respect of a home package of care. This is likely to be an additional positive factor moving forward.
22. The applicant's representative did not suggest that there had been any episodes of antisocial behaviour since 3 May 2023. That is now a period of 3 months. The tribunal was satisfied that the circumstances for the respondent and the property are much improved. The difficulties have never been of the respondent's own making. The antisocial behaviour has arisen through the actions of her son. Her son's circumstances are now more stable. He is working as a labourer to a scaffolder and has a formal contract of employment. He is undertaking training and other courses to increase his skill levels. He is committed to that work. He is living with the respondent on a full-time basis and supports the respondent due to the combination of her physical and mental health conditions. The property is now clean and tidy. There are still some elements of disrepair but these are not significant despite previously having met the required threshold for the establishing of grounds 13 and 14.
23. The tribunal attached significant weight to the fact that there is no active ongoing antisocial behaviour and the fact that the source of this, namely the respondent's son, has a changed and much improved lifestyle. The likelihood, or risk is therefore reduced.
24. The tribunal also attached weight to the respondent's own personal circumstances. Being required to move into homeless accommodation would be a significant additional stressor to her and would likely lead to a deterioration in her mental health.

25. Weighing up all relevant factors and the circumstances of the respondent, the Tribunal found that it would not be reasonable to evict her.

#### Further comments

26. The tribunal feels obliged to set out its concern regarding the apparent failures of South Lanarkshire Council to protect the respondent. It seems to be accepted that she is an adult at risk and yet no formal identification of her as such a person appears to have been reached by any relevant professional in South Lanarkshire Council. This is despite the involvement of the appellant's housing support officer (who is acknowledged to have a restricted role and is primarily focused on any potential homelessness for the respondent); her social worker who is well aware of her circumstances; and the involvement of the antisocial investigation team.

27. It seems clear to the tribunal, on the basis of the documentation before it, that South Lanarkshire Council have proceeded on the basis that there has been no genuine need for them to activate any particular processes because it was more likely than not that the respondent would be evicted and would bring the problems to an end. This approach is unfortunate and short sighted. It has always been clear that the respondent herself is a vulnerable individual. The provisions of the Adult Support & Protection (Scotland) Act 2007 clearly apply. The Respondent has never been the person causing a problem at the tenancy. It has always been a third party. The Council not only have a right to apply for a Banning Order, but have a positive obligation to do so in particular circumstances. It seems to be highly regrettable that South Lanarkshire Council have not prioritised the taking of such relevant action and, instead, only focused attention on the possible initiation of an Antisocial Behaviour Order which, in the view of the tribunal, would have had limited effect.

28. The property appears not to be suitable for the respondent given her health problems. That of itself would of course be no reason to evict the respondent. She appears to require assistance to move to a permanent home on the ground floor.

#### **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.**

**Richard Mill**

**4 August 2023**

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**Legal Member/Chair**

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**Date**