



**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/20/2666**

**Re: Property at The Cottage, 20 High Street, Alyth, Blairgowrie, Perth and Kinross, PH11 8DW (“the Property”)**

**Parties:**

**Mr Neil Stewart Anderson, Kinballoch, Bankhead, Alyth, PH11 8HQ (“the Applicant”)**

**Mr Nic Bauer, The Cottage, 20 High Street, Alyth, Blairgowrie, Perth and Kinross, PH11 8DW (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Frances Wood (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for recovery of possession.**

**Background**

1. By application dated 23<sup>rd</sup> December 2020 the applicant seeks an order for eviction on the ground of anti-social behaviour.
2. Case management discussions (“cmds”), took place on 22<sup>nd</sup> February, 22<sup>nd</sup> March and 27<sup>th</sup> April 2021. The applicant was represented by Mr Runciman, solicitor. The respondent appeared on his own behalf. The respondent disputed that there had been any incidents of anti-social behaviour. Following the cmd on 27<sup>th</sup> April 2021 the Tribunal issued a direction specifying that parties could

lodge written representations and any documents they sought to rely on no later than 25<sup>th</sup> May 2021. An evidential hearing was assigned for 4<sup>th</sup> June 2021.

### **Hearing – Preliminary matters**

3. On the morning of the hearing the respondent emailed the Tribunal. He stated that due to high levels of stress and anxiety he was unable to attend the hearing. He enclosed a letter from a GP locum dated 2<sup>nd</sup> June 2021. The letter stated:  
*“I met Mr Bauer today. He suffers from anxiety and depression. He feels the upcoming tribunal/hearing will cause him considerable distress. Please take this into consideration.”*. The respondent attached a letter dated November 2016 from Dundee Health and Social Care Partnership which was titled “Sensory Processing Assessment Report”. The letter confirmed that in 2016, the respondent was diagnosed with Asperger Syndrome. In addition, the respondent attached photographic evidence of medication which he had been prescribed. The respondent had also lodged information relating to a separate application to the Tribunal concerning the landlord’s alleged failure to provide all tenancy terms in writing and correspondence alleging a failure on the landlord’s part to comply with the Repairing Standard set out in the Housing (Scotland) Act 2006. The respondent provided no explanation for the lodging of these documents hours before the hearing was due to proceed.
4. The respondent did not request an adjournment of the hearing but given the contents of his email, the Tribunal determined to treat same as a request to adjourn due to medical reasons. The Tribunal heard from Mr Runciman, the applicant’s solicitor: Mr Runciman strongly opposed an adjournment. The matter had been ongoing since December 2020. He explained that witnesses had been arranged and were waiting to provide evidence. He highlighted that the medical letter was dated 2<sup>nd</sup> June 2021 and no explanation had been given as to why the respondent had waited until 5.59 am on the morning of the hearing to send that to the Tribunal. He submitted that the respondent had failed to comply with the requirements of rule 28 which required a party to notify all other parties if an adjournment was sought. He explained that the applicant had his email address and had no reason not to comply with the rule. He advised that the respondent had been saying since the first cmd in February that he would obtain legal representation and he had not done so. He submitted that the

respondent had lodged no substantive defence to the majority of allegations of antisocial behaviour. He had failed to prepare a defence and was seeking to delay proceedings without justification. Mr Runciman drew the Tribunal's attention to the fact that the respondent had recently represented himself in an evidential hearing before the Tribunal concerning the Tenancy Deposit Schemes (Scotland) Regulations 2011. The respondent himself had lodged a copy of the judgement in relation to that matter which confirmed that he conducted the lengthy hearing on his own behalf on 16<sup>th</sup> April 2021. Mr Runciman stated that the prejudice to his client would be great if the hearing was adjourned. He referred to the costs his client would incur, and his clients concerns as to the deteriorating condition of the property. He also referred to the fact that that respondent had indicated that he was looking for alternative accommodation, which was confirmed by a letter from Perth and Kinross Council. Mr Runciman stated that the respondent had a pattern of lodging documents at the last minute with no reason given and stated that in his view it was a tactic designed to frustrate the process and delay matters without justification.

5. Having regard to the written email from the respondent and the oral submissions from Mr Runciman the Tribunal determined not to adjourn the hearing and to proceed in the respondent's absence. It was not disputed that the respondent suffered from anxiety and stress and had a previous diagnosis of Asperger syndrome. However, the medical letter lodged by the respondent fell far short of stating that the respondent was so unwell that he was not able to attend the hearing. The Tribunal had regard to the fact that the respondent had previously conducted a lengthy evidential hearing in relation to a separate matter before the Tribunal notwithstanding his medical condition. The Tribunal were alert to the fact that some adjustments such as regular breaks may have been reasonably made to enable the respondent to participate fully had he attended but determined that the respondent had failed to show a good reason why he failed to attend or establish a good reason for an adjournment as required in terms of rule 28.
6. The Tribunal noted that the respondent had sought to lodge a large volume of written documents and photographs on 27<sup>th</sup> and 28<sup>th</sup> May 2021. The Tribunal had issued a direction prior to the hearing stating that all documents parties

sought to rely on must be lodged by 25<sup>th</sup> May 2021. The Tribunal determined not to consider the documents which had been lodged late.

### **The Hearing**

7. Prior to the hearing the applicant's solicitor had lodged four lists of documents, comprising various correspondence and a number of photographs of the property. The applicants had updated their written application to narrate antisocial behaviour spanning the period from July 2020 to March 2021. The applicants had lodged two schedules of antisocial behaviour. One schedule related to incidents directed at the applicant and his wife, Valerie Anderson. The second schedule listed antisocial behaviour directed at the respondent's neighbours. The respondent had lodged two written representations setting out his position. Mr Runciman led evidence from the applicant, Neil Anderson, his wife Valerie Anderson, Michele Milne and Sheila Ramsay.

### **Evidence of the applicant (Neil Anderson)**

8. The applicant confirmed that he is the owner of the property. He has worked as a gas service engineer for 40 years. The property was bought 30 years ago and prior to renting it out he had lived there with his wife and children as their family home. As the property was a previous family home the applicant advised that he has a sentimental attachment to it which has made it more difficult to see what has been happening there recently.
9. The applicant confirmed that he leased the property to the respondent. The lease commenced on 4<sup>th</sup> April 2018. The rent payable in terms of the lease was £450 per month. The applicant had advertised the property for rent on Gumtree.com. He was introduced to the respondent by Jill Murdoch, One Stop Shop Coordinator, an organisation which supports people with autism. Ms Murdoch advised the applicant that the respondent would be a responsible tenant and the applicant had no reason to question that. He was not made aware of the tenant having any disability or mental health condition which would have meant he required support or adaptations to the property.
10. The applicant stated that he began to receive complaints from the neighbours from May 2020. Before that date, the tenant had paid rent regularly and although it had not been straightforward at times to gain access, the applicant

had generally been able to gain entry to the property to fulfil his legal obligations as landlord. Mr Runciman took the applicant through a list of incidents set out in the lodged schedule. The applicant stated that he was upset when he heard about the complaints. He was anxious that the neighbouring property was being affected by activity at the tenancy.

11. The applicant explained that on 9<sup>th</sup> October 2020 he received a call from the respondent advising that there was a burst pipe in the property and water was flooding into the kitchen. The applicant attended the property immediately. He repaired the pipe. It was during this visit that the applicant noticed that the respondent had pulled out the gas fire which had been in the property. He also became aware of other unauthorised alterations to the property including removal of the bath, cutting of a kitchen worktop, removal of a radiator, tiles removed from walls and floor coverings removed. The applicant recognised that there was a danger of a gas leak as the gas pipe had been left open ended and a calor gas heater was right next to it. The pipe was made safe by the applicant. The following day 10<sup>th</sup> October 2020 the applicant advised that he and his wife, Valerie Anderson, were at the property to ascertain repairs required to the gas central heating boiler. The respondent became angry with the applicant and was jabbing his finger in her face whilst shouting at her. The applicant found the respondent's behaviour to be intimidating.
12. The applicant gave evidence that on 15<sup>th</sup> October 2020 the new gas valve arrived. He telephoned the respondent to arrange to attend the property and fix the valve. The applicant attended the property with George Arthur, a colleague. In order to carry out the necessary repair the applicant needed to turn all the radiators in the property on and check them. The respondent refused to allow that and blocked the doorway. The respondent said he was going to call the police. The applicant explained that he couldn't leave as the valve needed to be fixed. The applicant explained that he was genuinely concerned about the risk to the safety of the property from the gas issue.
13. The applicant explained that throughout October, November and December there were a number of occasions when he sought access to the property but was denied entry. These were listed in the schedule of antisocial behaviour. There was a pattern of behaviour whereby the respondent would text close to

the arranged inspection time to advise that access would no longer be permitted.

14. The applicant gave evidence that on 10<sup>th</sup> January 2021 he received a series of voicemails from the respondent which were abusive. The voicemails were played to the Tribunal. The respondent could be heard speaking aggressively, swearing and demanding that the applicant come to the property. The applicant advised that he was really concerned at the tone of the voicemails and was worried that the respondent would become physically abusive. The applicant went to the property only to be refused access. He called the police to try and gain access as in the voicemails the respondent had stated that water was pouring into the flat. The police attended and entry was eventually gained. At that time water was pouring down the walls of the property. The respondent refused to turn off electrical appliances which the applicant considered dangerous given the presence of water. The applicant and a colleague worked to make the property safe, draining the water system. The applicant considered that the flood was caused by a burst pipe. The respondent had not been heating the property which was the cause of the frozen pipe. The applicant also noticed that the mains electricals sockets, central heating wiring and gas boiler had been tampered with by the respondent. He said that the property, which had been a 'lovely cottage' was in a terrible 'state' and had been 'vandalised'.
15. On 4<sup>th</sup> March 2021 the applicant advised that he was horrified to notice smoke coming out of the chimney at the property. He phoned the police as he was concerned as to the source of the smoke. The police subsequently attended the property and advised that a wood burner had been installed by the respondent. The applicant gave evidence that he had previously told the respondent that he did not have his permission to install a wood burner. The applicant explained that the respondent was not qualified to install a wood burner. He also explained that the terms of his insurance did not permit a stove. The applicant explained that he was concerned about carbon monoxide and that the respondent could be putting his own health at risk. The applicant explained that by this stage he was at the end of his tether. He was constantly preoccupied by the behaviour of the tenant and worried about what would happen next. He was 'distressed' and 'alarmed'.

16. Mr Runciman took the applicant through a large number of photographs showing unauthorised alterations to the property. The applicant confirmed the photographs to be accurate and to describe the following unauthorised activity:

- neighbour's access blocked by wooden structures in the garden
- bath removed
- internal wall erected
- cupboard removed
- wiring tampered with
- gas turned off to the property
- wood burning stove installed and fireplace badly damaged
- back door glass panes boarded up
- flood light installed directly shining on neighbour's property

17. The applicant advised that he had contacted Jill Murdoch, One Stop Shop coordinator, by text on 19<sup>th</sup> October 2020 to see if they might be able to resolve the situation. Ms Murdoch provided support to the respondent. Copies text messages showing the conversation had been lodged. The applicant advised that he has tried to resolve the situation by writing letters to the respondent and trying to speak to him.

18. The applicant advised that due to the stress of the situation with the respondent he has been prescribed medication. He has been struggling to sleep. He has developed a condition called polymyalgia which causes joint pain. The condition is exacerbated by stress and has an impact on the applicant's ability to work. He had cut the number of hours he is able to work.

19. The applicant confirmed that there has been no hot water or gas central heating into the property since January 2021. He explained that the respondent had not paid any rent since January 2021. This, combined with the legal fees due for representation, meant that if the property was recovered it would need to be sold to cover costs as he could not afford to reinstate it to make it fit to rent again.

#### **Evidence of Valerie Anderson**

20. Mrs Anderson confirmed that she is the applicant's wife and she works as a receptionist/administrator. They have three children who were brought up in the property.

21. Mrs Anderson explained that she and her husband were introduced to the respondent by Jill Murdoch. She had told them that he was a very meticulous person and would make a good tenant.
22. Mrs Anderson became concerned when they first started receiving complaints from the neighbours. Mrs Anderson had been working as a carer looking after young people with disabilities. Whilst she was accompanying a young person in a wheelchair, she passed the property in late July 2020. She gave evidence that the respondent confronted her in the presence of the young person and spoke to her aggressively about her failure to agree to his installing a wood burner in the property. Mrs Anderson was very upset after the incident and felt frightened. She became too nervous to walk past the property with service users. As there was no other route suitable for wheelchairs, her fear of a further altercation with the respondent meant she was unable to perform her job and led to her leaving that role.
23. Mrs Anderson's evidence corroborated her husband's evidence fully. She confirmed his evidence in relation to the incidents concerning the gas valve in October 2020. In particular, she gave evidence that on 10<sup>th</sup> October 2020 she had been in the property with her husband as she needed to help him by searching the internet to find the correct replacement gas valve. The respondent had asked her what she thought of his fireplace. When she responded by saying "What fireplace?", referring to the fact that the respondent had taken out the fireplace leaving exposed wall, he 'flipped' and completely lost his temper, 'screaming in her face'. He shouted at her and said "I am going to leave. I want my deposit. I am going to sue you. I am good at this." Mrs Anderson stated that she was shaken by the respondent's attitude and was very worried about how things would develop.
24. Mrs Anderson stated that she had tried writing to the respondent advising him to stop carrying out alterations to the property. She had put hand-written notes through his door. She and her husband had spoken to the police at a police station in Dundee on 13<sup>th</sup> November 2020 as they didn't know what else to do and they were very concerned about the safety aspects of the internal changes to the property.
25. Mrs Anderson gave evidence in relation to the flooding incident on 10<sup>th</sup> January 2021. She had listened to the voicemails left by the respondent. She and the



applicant had gone to the property with the police. They had to wait an hour before the respondent allowed them entry. Mrs Anderson advised that the respondent was bullish and arrogant and refused to turn off the electricity despite the flooding. He did not take instructions from the police. She explained that the police officer had to keep the respondent in one room so that repairs could be carried out. She said that at this time she felt hopeless about the situation and concerned about what the respondent was capable of doing.

26. Mr Runciman took Mrs Anderson through the photographs showing unauthorised alterations referred to at paragraph 16. She also confirmed the damage shown in the photographs. She felt 'heartbroken' about the damage to the property which included holes in skirtings, tiles and other things removed from walls, removal of the fireplace and installation of a wood burner, no floor coverings, and unauthorised installations inside and out.

27. Mrs Anderson advised that she is a much more nervous person now than before. She definitely would not rent out a property again. She stated that the respondent had converted a room at the front of the property into an exhibition space for his photographs.

28. Mrs Anderson stated that the situation with the property had taken a toll on her husband's health. He wasn't sleeping and was very stressed. She is worried about him. Both of them had agreed to try and not speak about the situation after a certain time in the evening to get a break from it. Her husband had developed polymyalgia which was, in her view related to the stress of the situation.

### **Evidence of Michele Milne**

29. Michele Milne confirmed that she is employed as a bar manager. She lives next door to the respondent. She lives with her husband and their three children. She has lived there since 2015. She advised that during the summer of 2020 her mother-in-law, Sheila Ramsay, lived with them as she was waiting for building work to be completed on her house.

30. A schedule of antisocial behaviour detailing incidents had been lodged by the applicant's solicitor. Mr Runciman took Ms Milne through a number of incidents all of which she confirmed to be true. She gave evidence that on 28<sup>th</sup> May 2020 her family and some friends had been in the back garden. The children had been playing and using their trampoline. Around 8pm when Ms Milne was

starting to tidy up and they were planning to go inside, a police officer arrived. He told Ms Milne that a complaint had been received that they had been having “too much fun”. Ms Milne advised that in her view the police officer thought that it was a nonsense call. She said that the police officer said that they had to follow up on any calls that were received.

31. Mr Milne advised that the respondent had added mesh fencing on top of her perimeter fence and erected a wooden structure. She described a sequence of incidents which had occurred. The respondent installed a spotlight which Ms Milne stated shone straight into her garden. This frequently disturbed the family as there would suddenly be a light shining in the garden and they would have no control over that. The effect was to make the family nervous. Ms Milne gave evidence that during June 2020 the respondent gave her children “dirty looks” and when the children used the trampoline, he would glare at them. She gave evidence that whilst out walking her dogs with her children the respondent followed her on his bike in an intimidating way. Ms Milne explained that in June 2020 her mother-in-law, Sheila Ramsay, came to stay at the property. She stayed for a number of weeks in a caravan on the driveway, whilst waiting for her own home to be finished. She had moved back to the area after her husband passed away in order to be close to family. Ms Milne gave evidence that on 30<sup>th</sup> June 2020 the respondent jumped up at the fence and began shouting at Mrs Ramsay and swearing at her. The respondent was annoyed that Mrs Ramsay’s dogs had been barking. The incident escalated when Mrs Ramsay’s son confronted the respondent, and the police were called. Ms Milne said the police advised that the respondent had mental health issues and should not be approached. The following day Ms Milne contacted the antisocial behaviour team at Perth and Kinross Council.
32. Ms Milne gave evidence that the family had frequently been disturbed by banging sounds and noise associated with the repairs issues and alterations to the property next door.
33. Ms Milne explained that her daughter was now so nervous that she no longer played on the trampoline which they had moved away from the perimeter of the garden. The whole family have become much more nervous. Ms Milne checks her car when she gets in to make sure the respondent isn’t in the back seat. Her family have stopped coming to visit in the garden as they are worried that

the police will be called. Ms Milne explained that she holds a licence for her position as bar manager. A criminal prosecution could jeopardise that and she could not take the risk of having visitors and she was concerned the respondent would make a false complaint to the police. Ms Milne has never had any involvement with the police previously. She was on good terms with her previous neighbours. She does not feel safe with the respondent next door and has installed a doorbell camera and security lights.

### **Evidence of Sheila Ramsay**

34. Mrs Ramsay is 70 years old and retired. She lost her husband in 2019. She decided to move back to Alyth to be close to family. She brought her caravan up to live in until her new house was completed. She was staying with her son and Michele Milne in June 2020. She advised that the respondent called the police to report that someone was staying unlawfully in the property during the coronavirus lockdown.
35. Mrs Ramsay advised that on 30<sup>th</sup> January 2020 she had left her dogs in the caravan for a period whilst she went out. When she returned the respondent's head appeared above the fence. He said next time she went out she should take the dogs with her. He said that if Mr Ramsay didn't shut the dogs up, he would. Mrs Ramsay stated that she was very annoyed about the occurrence and considered it a threat. She was also concerned at the thought that the respondent could put something through the fence to harm the dogs.
36. Mrs Ramsay confirmed Mrs Milne's evidence that her son Ryan had confronted the respondent after the incident and the respondent had called the police. The police had advised Ryan not to approach the respondent. Mrs Ramsay advised that she remained at the property for another two months during which time she was constantly worried about the threat to her dogs from the respondent.

### **Submissions on behalf of the applicant.**

37. Mr Runciman submitted that the definition of antisocial behaviour is wide and that a key factor is the impact of the antisocial behaviour on the other person. He referred to the examples of antisocial behaviour set out in the Scottish Government's model Private Residential Tenancy agreement. Antisocial behaviour included "vandalising or damaging the property or any part of the common areas".

38. Mr Runciman submitted that the witnesses' evidence was credible and reliable and taken together clearly showed that there had been a course of conduct of antisocial behaviour which had a detrimental impact on the witnesses.
39. In relation to the question of reasonableness Mr Runciman highlighted that the applicant had tried to diffuse the situation by doing what he could to stop the behaviour. He submitted that the Tribunal should follow the approach set out in the case of *Glasgow District Council v Erhaiganoma (1993 SCLR 592)*. A copy of the decision was not provided but Mr Runciman submitted that the case was authority for the approach that if a ground for recovery of possession is established it is for the tenant to put forward a case as to why it was not reasonable for an order to be granted.
40. Mr Runciman submitted that it was a duty on private landlords to take action against antisocial tenants. An eviction order would benefit the wider community. Mr Runciman submitted that the organisation who had helped the respondent secure this tenancy were still working with him and would be able to assist him to find another tenancy. He referred to a letter which had been lodged from Perth and Kinross Council on 26 May 2021 showing that the respondent had applied for housing. Mr Runciman submitted that the damage to the property was significant and continuing. No rent had been paid since January 2021.
41. Addressing the written submissions that had been lodged by the respondent Mr Runciman stated that no medical evidence had been lodged in relation to the respondent's stated medical condition. In any event the respondent's medical conditions did not exempt him from his duties and obligations as a tenant. None of the averments made in the written representation have been supported by productions.
42. Mr Runciman submitted that the ground for recovery for possession had been proven and that it was reasonable to grant an order.

### **Findings in fact**

43. Parties entered into a private residential tenancy agreement. The tenancy commenced on 4<sup>th</sup> April 2018. The initial term of the lease was for twelve months. The lease has since continued on a month-to-month basis. The rent payable in terms of the lease is £450 per month.

44. A valid notice to leave was served on the applicant by Sheriff Officers on 12<sup>th</sup> November 2020. The notice was dated 11<sup>th</sup> November 2020. It specified that the respondent required to remove from the property on 11<sup>th</sup> December 2020. A certificate of service showing that the notice had been served by Sheriff Officers on 12<sup>th</sup> November 2020 had been lodged with the application.
45. The respondent resides alone in the tenancy.
46. The applicant was introduced to the respondent by Jill Murdoch from One Stop Shop Autism Initiatives who were helping the respondent find a tenancy.
47. From May 2020 the respondent's neighbour, Michele Milne and her family began to experience antisocial behaviour from the respondent.
48. On 28<sup>th</sup> May 2020 the respondent unnecessarily called the police to Ms Milne's home without good reason.
49. On 31<sup>st</sup> May 2020 the respondent erected a green mesh fence between the tenancy and Ms Milne's property without permission.
50. On 30<sup>th</sup> June 2020 the respondent was verbally abusive and threatening to Sheila Ramsay.
51. Ms Milne and her family stopped using their garden as they were concerned the respondent would be verbally abusive or unnecessarily call the police.
52. Ms Milne and her family feel nervous and intimidated as a result of the respondent's behaviour towards them.
53. The applicant experienced stress as a result of the impact the respondent was having on his neighbours.
54. The respondent has carried out extensive alterations to the damage of the property without authorisation from the applicant.
55. The respondent was told that the applicant did not permit him to install a wood burner in the property.
56. In July 2020 the respondent was verbally abusive to Mrs Anderson in the presence of a service user.
57. The respondent caused damage to the gas installations in the property by removing a gas fire without the required expertise and qualifications. The respondent's actions place himself and his neighbours at risk of a gas leak.
58. The respondent's response to the applicant's attempts to repair the gas installations was hostile and aggressive.

59. The applicant's concern at the respondent's failure to cooperate to allow necessary repairs to be carried out led him to contact the police for advice on 16<sup>th</sup> October 2020.
60. From October 2020 until January 2021 the applicant attempted to arrange access using lawful means and notification on a number of occasions. The respondent repeatedly cancelled access at the last minute or refused access at the notified time.
61. On 10<sup>th</sup> January 2021, the respondent left voicemails using a rude manner and demanding that the applicant attend at the property due to a flooding incident. When the applicant and Mrs Anderson went to the property with police in attendance the respondent refused to allow entry for an hour. When access was gained there was a large amount of water as a result of a burst pipe. The respondent refused to switch off the electrical supply endangering himself and those present and had to be kept in one room to allow essential work to take place to make the property safe.
62. The respondent installed a wood burner without the necessary expertise or qualifications placing himself and the property at risk and in breach of the applicant's insurance policy.
63. The applicant has carried out a large number of alterations without the required expertise. His actions have damaged the property, reduced its value and made it unsafe. Significant cost will be incurred in repairing the damage. The applicant has tampered with the wiring and gas installations. He erected an internal wall, and removed the bath and cupboards. He has boarded up the back door to the property and installed a wood burner.
64. Since January 2021 there has been no gas central heating or hot water in the property.
65. The respondent has not paid rent to the applicant since January 2021.
66. The applicant and Mrs Anderson have suffered stress, nuisance and annoyance as a result of the respondent's antisocial behaviour.
67. The applicant's health has suffered as a result of the stress he has experienced.
68. The applicant and Mrs Anderson were distressed to see their former family home damaged by the respondent's actions.
69. The applicant and Mrs Anderson had taken steps to try and resolve the matter by contacting the respondent's support worker and trying to discuss the

situation with the respondent. The respondent has failed to engage with the applicant to resolve the situation.

70. The respondent has experienced financial loss as a result of the damage to the property, the fact that the respondent has not paid rent since January 2021 and the cost of instructing legal representation in the present action.
71. The respondent has been looking for alternative accommodation and has submitted an application to Perth and Kinross Council for assistance.
72. The respondent has previously been diagnosed with Asperger Syndrome.
73. The respondent has previously received support from One Stop Shop Autism Initiatives in Perth.

### **Reasons for the Decision**

74. The Private Housing (Tenancies) (Scotland) Act 2016 applies to the tenancy agreement between parties. Schedule 3 sets out grounds for eviction. Paragraph 14 states;

*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*

75. The Tribunal required to consider whether antisocial behaviour had been established and in terms of paragraph 14(5) whether it was reasonable to issue an eviction order as a consequence.

76. The Tribunal found the evidence of the applicant, Mrs Anderson, Ms Milne and Mrs Ramsay to be credible and believable. The Tribunal found that the evidence from the applicant and the other witnesses was consistent and similar in relation to the incidents of antisocial behaviour. The applicant had lodged a large number of photographs which clearly showed the damage to the property. The Tribunal accepted the applicant and Mrs Anderson’s evidence about the impact the events at the tenancy had had on their health and the ongoing stress they had experienced. The Tribunal accepted the evidence of Ms Milne that the respondent’s behaviour had caused alarm and led to the family being unable to enjoy the use of their garden during a period that included a lockdown as a result of the coronavirus pandemic.

77. The respondent had lodged two separate written representations. The respondent’s position in summary was that he had not engaged in any antisocial behaviour. He stated that he had called the police on a number of occasions due to his neighbour’s behaviour. He explained that he suffered from Asperger Syndrome which meant that his interactions with other people could be stressful as his condition affected his ability to understand the behaviour of others. The respondent stated that his interactions with the applicant had always been amicable. He denied receiving correspondence relating to antisocial behaviour and stated that he had been given permission to install a wood burner.



78. The Tribunal accepted the evidence of the witnesses and determined that the respondent had engaged in a course of conduct which had caused alarm, distress, nuisance and annoyance.
79. The Tribunal proceeded to consider the question of reasonableness as required by the statute. The Tribunal noted that in *Glasgow DC V Erhaiganoma* the ground for recovery of possession was rent arrears which distinguished the case from the present one. In relation to antisocial behaviour the ground itself specified that the Tribunal must consider whether it was reasonable to evict given the nature of the behaviour, who it was in relation to and where it occurred. In addition, the respondent had lodged written representations setting out a defence to the action and providing some information relevant to the consideration of reasonableness. Given the background to the case and the terms of the statutory ground the Tribunal considered that it was in the interests of justice that they consider all the information before them in determining whether it was reasonable to grant an eviction order.
80. The Tribunal considered that the applicant had experienced stress and his health had suffered as a result of the respondent's behaviour. The Tribunal also took into account the impact on Mrs Anderson and Ms Milne, both of whom gave evidence that their day to day lives had been impacted by the antisocial behaviour. The Tribunal had regard to the effect of the tensions on Ms Milne's children who were unable to play in their garden during the lockdown period. Mrs Anderson and Ms Milne had spoken of how nervous they were of the respondent and this had placed them under pressure for a considerable period of time. The Tribunal took into account that the behaviour had been ongoing since May 2020 and there had been no improvement during that time. The Tribunal considered that the damage to the property was significant and posed a threat to the safety of the respondent and the neighbouring properties. The Tribunal noted that the voicemails from the respondent were aggressive and were contrary to the respondent's stated position that all communication between parties had been amicable. The Tribunal took into account the financial impact of the respondent's continuing occupancy of the property on the applicants. The Tribunal considered that the applicant had been reasonable in his response to the antisocial behaviour. The Tribunal accepted that the

ongoing situation at the property had a detrimental effect on the applicant's family life.

81. The Tribunal took into account that the respondent had been diagnosed with Asperger Syndrome and that his condition would have an effect on how he interacted with other people and how other people might perceive his behaviour. The respondent's condition might also impact on his reaction to stress and his sleeping patterns. The Tribunal noted that the issues with the tenancy had begun during the first lockdown of the pandemic and considered that this may have contributed to the stress felt by the respondent who had neighbours who were now at home full time, as he himself was. The Tribunal also took into account that the stress and anxiety the respondent suffered from would also impact on his interactions with other people. The Tribunal considered that the respondent did have support available to him through Jill Murdoch, from the One Stop Shop Autism Initiatives. The respondent did not engage with support to resolve issues as they were arising. The respondent had stated in his written representations that all communications with the applicants had been amicable. The Tribunal did not consider that to be true. The Tribunal noted that the respondent had failed to attend the hearing to provide an explanation for the damage he had done to the property. The Tribunal considered that the respondent requires support. The Tribunal noted that the respondent has been looking for alternative accommodation. The Tribunal considered that the condition of the accommodation posed a threat to the respondent's health. The Tribunal took into account that the respondent was a single man.

82. Having considered the above matters and taking into account the oral evidence presented at the hearing and the written documents lodged by parties the Tribunal considered it was reasonable to grant an order for recovery of possession.

## **Decision**

The Tribunal determined to grant an order for recovery of possession.

## 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.

**M.K.**

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Legal Member/Chair

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Date

4<sup>th</sup> June 2021