



**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/21/1178**

**Re: Property at 76 Nethertown Broad Street, Dunfermline, Fife, KY12 7DS (“the Property”)**

**Parties:**

**Mr Shaun Adams, 2/1 Chancelot Grove, Edinburgh, EH5 3AA (“the Applicant”)**

**Mr Daniel Cunningham, 76 Nethertown Broad Street, Dunfermline, Fife, KY12 7DS (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Tony Cain (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application by the Applicant for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 12 and 14 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 is refused.**

- Background
- 1. An application dated 17 May 2021 was submitted to the Tribunal under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). Said application sought a repossession order against the Respondent on the basis of the Respondent having engaged in relevant antisocial behaviour, being Ground 14 under Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”).

- Case Management Discussion

2. A Case Management Discussion (“CMD”) took place on 5 August 2021. The Applicant was represented by Mr Robertson, Trainee Solicitor. There was no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 30 June 2021. The Tribunal was accordingly satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent’s absence.
3. The Applicant’s representative moved for the Order to be granted as sought. The parties had entered into a Private Residential Tenancy Agreement (“the Agreement”) which commenced on 15 June 2020. The Respondent had engaged in relevant antisocial behaviour within the Property and within the vicinity of the Property. The Respondent refuses to take his bins out and they have to be taken out by a neighbour. The Respondent fills other occupier’s bins with his waste, meaning they can’t use their own bins. There is clutter outside of the flat entrance and this causes issues for access to be gained by others to the block. Reference was made to an email by another occupier in the stair dated 28 January 2021 which set out the nature of the complaints. Photos had been lodged showing rubbish bags in the garden area. A letter from a Safer Communities Offer at Fife Council dated 6 July 2021 was lodged, which confirmed complaints had been made to them. It was also submitted that there was a strong smell of cannabis coming from the Property. The Respondent lives alone and has no dependants known of.
4. A Notice to Leave had been served on the Respondent on the basis of Ground 14 of Schedule 3 to the 2016 Act, on 1 February 2021 by way of email.
5. The CMD was adjourned to a Hearing to take place on 14 September 2021 at 10am. The purpose of the Hearing is to determine if Ground 14 has been established, and further, if it is reasonable to issue the Order for repossession.
6. A Direction was issued by the Tribunal dated 5 August 2021 and which required the Applicant to provide no later than 14 days prior to the Hearing:
  - (i) Copies of all communications with the Respondent in relation to the antisocial behaviour and any warnings issued in relation to the antisocial behaviour, both prior to and following, service of the Notice to Leave on the Respondent;
  - (ii) Copies of all complaints made by neighbours regarding antisocial behaviour by the Respondent.

- **The Hearing**

7. A Hearing took place on 14 September 2021. The Applicant was again represented by Mr Robertson, Trainee Solicitor. There was no appearance by or on behalf of the Respondent. The Applicant did not attend personally to give evidence, nor were any witnesses called.

8. The following documents were lodged alongside the application:

- (i) Copy Private Residential Tenancy Agreement
- (ii) Copy Notice to Leave
- (iii) Proof of service of the Notice to Leave by both email and letter
- (iv) Section 11 notification to the local authority under the Homelessness etc. (Scotland) Act 2003
- (v) Rent statement
- (vi) Copy bank statements from Applicant
- (vii) Emails between Applicant and Respondent from 5 December 2020 to 19 January 2021
- (viii) Email from neighbour to Applicant dated 28 January 2021
- (ix) Copy text messages between Applicant and Respondent dated 12 December 2020 to 13 January 2021
- (x) Copy letter from Safer Communities, Fife Council to Applicant dated 6 July 2021
- (xi) 3 undated photographs

9. The following additional documents were lodged by Inventory of Productions on 30 August 2021:

- (i) Written statement of Kevin Turner dated 26 August 2021
- (ii) Written statement of David Jones dated 26 August 2021

10. The Applicant's Representative again moved for the Order for Repossession to be granted. It was submitted that there were two forms of relevant antisocial behaviour being perpetrated by the Respondent, namely inappropriate disposal of waste and the use of illegal drugs from the Property. With regard to the inappropriate disposal of waste, this was consistently taking place throughout the time that the Respondent had lived in the Property. The Respondent refuses to take out the bins to be collected on the appropriate day, leaving neighbours to do so. The Respondent regularly fills other neighbours' bins with his own refuse so that they cannot use them. Reference was made to the statement of Kevin Turner of 26 August 2021. Said statement referred to the Respondent continuing to leave waste in the communal area, it causes birds to gather and that it causes a safety hazard to the neighbouring residents. Reference was made to the letter from John Maguire, Safer Communities, Fife Council to the Applicant of 6 July 2021. This confirmed that there had been "*continuous complaints*" regarding inappropriate depositing of waste by the Respondent. They had visited the Property and confirmed that there had been inappropriate depositing of waste. This was causing distress to neighbours and could also be a potential fire hazard and public health issue. The Tribunal was directed to an email from the Applicant to the Respondent dated 19 January 2021 which states "*I just received a call from Fife Council about the mess in the stair can you make sure you are using the correct bins and remove all rubbish and suitcase from outside the front door.*"

11. It was submitted that as regards the use of illegal drugs in the Property, it was alleged that the Respondent is both using and dealing cannabis in the Property. Reference was made to the statement of David Jones which says that there is

an “*overwhelming smell of cannabis*” coming from the Respondent’s flat. The smell comes almost every day and has gotten worse in the last few weeks. He has asked the Respondent to stop. The behaviour is having an adverse effect on the neighbour’s mental health and he is worried that his employer may smell the cannabis on his clothes and they have a zero tolerance approach to drug use. This could lead to instant dismissal from employment.

12. It was submitted by the Applicant’s representative, in answer to questions from the Tribunal regarding whether or not there were any warnings issued other than the said email of 19 January 2021, that it was not for the Applicant to tell the Respondent how to act in the Property, and that that Respondent should be responsible for his own behaviour and the effect it has on others. It was submitted that the Applicant has attempted to correspond with the Respondent but that this has made no difference. The Respondent is a single male believed to be in his twenties. No other information was known about the Respondent.

- **Findings in Fact**

13. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement (“the Agreement”) which 15 June 2020;
- (ii) The Applicant has served a Notice to Leave on the Respondent on the basis of Ground 14 of Schedule 3 to the 2016 Act, and which was served on 1 February 2021;
- (iii) The Respondent had engaged in relevant antisocial behaviour during the course of the Agreement, by failing to appropriately dispose of waste.
- (iv) When asked to address the issue of inappropriate disposal of waste, the tenant rectified his behaviour, however this was not sustained over the longer term.
- (v) The Applicant failed to appropriately manage the tenancy.

- **Reasons for Decision**

14. The Tribunal was satisfied that the terms of Ground 14 of Schedule 3 to the 2016 Act had been met in that the Respondent had engaged in relevant antisocial behaviour during the course of the Agreement, and that a Notice to Leave had been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act. However, the Tribunal was not satisfied that it was reasonable to grant the Order sought.

15. Section 51 of the 2016 Act states as follows:

*51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*

*(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*

*(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

16. Ground 14 of Schedule 3 to the 2016 Act states as follows:

*(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.*

17. The Tribunal was somewhat surprised that the Applicant did not consider it appropriate to appear personally at the Hearing to give evidence, nor bring any witnesses to provide evidence as to the basis upon which his Application was brought. It appeared clear to the Tribunal that the Applicant’s management of the tenancy and the issues being relied upon in terms of Ground 14, was entirely lacking. The Tribunal was presented with one email of 19 January 2021 (referred to at paragraph 10 above) in which the Applicant had contacted the Respondent regarding the issue of inappropriate disposal of waste. This email does not highlight a breach of tenancy, nor the clause being breached, nor did it provide any sort of warning about the repercussions of failing to dispose of waste correctly. It referred to an issue of *“mess in the stair”* and made no reference to any issues of waste externally. The email was not followed up, and there was no evidence of any further attempt by the Applicant to contact the Respondent regarding the issue thereafter. The next correspondence with the Respondent appeared to be a Notice to Leave being served on the basis of Ground 14 dated 1 February 2021.

18. Attached to the email of 19 January 2021 were 2 emails of 11 January and 24 December which addressed solely the issue of rent arrears having accrued and chasing the Respondent for payment of rent. The copy text messages between Applicant and Respondent dated 12 December 2020 to 13 January 2021 lodged with the Application again solely focussed on non-payment of rent. No mention was made in any of those messages regarding the issue of inappropriate disposal of waste.

19. The said letter from Mr McGuire of Fife Council’s Safer Communities is addressed to the Applicant and states *“I am sure that should you wish to visit this area you would recognise the extent of the problem and the distress that this antisocial behaviour is causing the responsible residents and landlords of properties within the street”* and finishes with *“I trust that I can rely on your co-operation in this matter and that you will organise for your area to be maintained in the appropriate manner.”* There was no evidence presented that the Applicant did anything at all in response to this letter.

20. It seemed clear to the Tribunal that the Applicant was more concerned about the non-payment of rent and made significantly more attempts to contact the Respondent regarding that issue and try to resolve same, than he did regarding the issue of any antisocial behaviour. The Tribunal did not consider that the Applicant had dealt with the matter with any seriousness. He had failed to manage the tenancy as an appropriate landlord should.
21. The Tribunal did not agree with the position put forward by the Applicant's representative that it was not for the Applicant to tell the Respondent how to act in the Property. The Tribunal considered that it is entirely a landlord's role to remind a tenant of their obligations under a tenancy, and that if they are behaving in any way which is in breach of their obligations and is causing nuisance and annoyance to neighbours that this should be made clear to the tenant, with appropriate warnings issued. This is part of managing a tenancy. This was not done in this case. There were no warnings issued. It was not clear to the Tribunal if the Applicant had actually visited the tenancy to see the issue at first hand. There was no evidence that the Applicant had taken any action following receipt of the Safer Communities letter. However, the Tribunal noted that it was stated in the email of Kevin Turner of 28 January 2021 that *"since you contacted him he must of disposed of some of his rubbish and clutter somewhere as his bins weren't overflowing and the area outside his flat was cleared of most of the clutter."* Therefore it was evident that following the sole example of contact by the Applicant on 19 January 2021, the Respondent did react appropriately by clearing his rubbish, rectifying the breach of tenancy. However, there were no further attempts to contact the Respondent, nor warnings issued, when the matter appeared to deteriorate again, other than simply going straight to a Notice to Leave .
22. The Tribunal did not doubt that the overflowing bins, and use of neighbours' bins, would be a nuisance to those neighbours, particularly if happening repeatedly over a period of time. The Tribunal noted the statement by Mr Jones which set out his concerns regarding the smell of smoke from the Property and again, the Tribunal did not doubt that this would be an annoyance if occurring as regularly as stated. However, the Tribunal did not hear evidence from any neighbours, nor from the Applicant himself. The Tribunal was simply asked to take the lodged statements (which, it should be noted, were not lodged in the form of an affidavit but simply appeared to be signed statements) at face value, without the opportunity to hear from the complainers themselves. The Tribunal is being asked to treat the situation as being so serious as to warrant evicting the Respondent from his home, and yet there was no evidence before the Tribunal which would suggest that the Applicant himself has treated the situation with such a level of seriousness. It was evident that following the sole example of contact by the Applicant on 19 January 2021, the Respondent did react appropriately by clearing his rubbish, rectifying the breach of tenancy. However, there were no further attempts to contact the Respondent, nor warnings issued, when the matter appeared to deteriorate again. The Applicant does not appear to have adequately managed the tenancy nor reasonably addressed the issues of inappropriate disposal of waste, as a reasonable landlord should. The Tribunal has weighed up the apparent nuisance and annoyance caused to the neighbours by the behaviour, with the repercussions

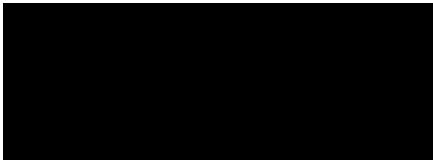
of evicting the Respondent from his home. The Tribunal, after careful consideration of the documents presented before it, is not persuaded that eviction is either reasonable under the circumstances, or a proportionate response.

- Decision

23. The Tribunal refused the application by the Applicant for eviction of the Respondent from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under grounds 12 and 14 under schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.

### **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.**



**Legal Member/Chair**

**Date: 28 September 2021**