



**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/20/2264**

**Re: Property at 70 Ashvale Place, Top Floor Right Rear, Aberdeen, AB10 6QB (“the Property”)**

**Parties:**

**Mr Alan Kendal Morgon, Mrs Stephanie Anne Morgon, 4 Burn Bank, Kettins, Blairgowrie, PH13 9JA (“the Applicant”)**

**Mr Kevin Leslie, 70 Ashvale Place, Top Floor Right Rear, Aberdeen, AB10 6QB (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession be granted.**

- **Background**

1. This was a hearing in respect of an application by the Applicant dated 23<sup>rd</sup> October 2020 for an order for eviction against the Respondent. This was the first calling of the case before a Tribunal.
2. The following documents were lodged with the application:-
  - A copy of the Tenancy Agreement dated 7<sup>th</sup> June 2019
  - Copy Notice to Leave dated 1<sup>st</sup> July 2020
  - Copy S 11 Notice and copy letter sending the notice to Council
  - Copy of a crime stoppers anonymous submission in relation to the conduct of the Respondent at the Property
  - Copy written Statement of Witness from Mr Craig McCorquodale.
  - Copy letter from Contempo Property sales and lettings to James and George Collie dated 17<sup>th</sup> January 2020

- A further statement from Mr McCorquodale was lodged with the Tribunal the day before the hearing.

## **The Hearing**

3. The Hearing proceeded today by way of teleconference due to the continued requirement at the current time due to the global pandemic for social distancing. The Convener made introductions, and explained how the Hearing would be conducted over the teleconference. The Applicant did not attend but was represented by his solicitor Mr Forbes McLennan from James and George Collie who are also the Applicant's letting agents.
4. The Respondent did not attend on the call at 10 am and the Tribunal waited for 10 minutes to see if he would attend. The Respondent had been served a copy of the application and papers by sheriff officers together with a note of the date and time of the teleconference and details of how to join. The Respondent has been given fair notice and the Tribunal therefore felt it was appropriate and fair to continue in his absence and the hearing commenced at 10.10am.
5. Mr McLennan advised that the tenancy was entered into on 7<sup>th</sup> June 2019 between Mr and Mrs Morgan his clients as landlords and Mr Leslie as the tenant. He advised that he was seeking an order for eviction of Mr Leslie on the ground mentioned in the application and the Notice to Leave dated July 2020, namely that the tenant has engaged in persistent anti-social behaviour. The Applicant has written in part 3 of the notice to leave
 

“Residents in neighbouring flats within the block have for approximately one year observed evidence of what they consider must be drug dealing by the tenant. Substances in small packages are seen being sold. In particular between the hours of midnight and 4am the tenant sells and deals in these packets of substances and receiving cash from buyers at the communal door of the block of flats. Evidence to support the application includes ...an anonymous submission to crime stoppers.”
6. Mr McLennan confirmed that as his firm manage the property he is also aware that numerous complaints about the supply of drugs have been received from neighbours and he submitted that the behaviour complained of including noise at all times of the evening and night, broken locks or leaving the building unsecure, and shouting have been carried out partly by Mr Leslie and partly by those that would come or stay at the flat but that overall he advised that he would be leading evidence to show that it was Mr Leslie's behaviour himself that was sufficient to meet the test in Ground 14 i.e. causing alarm, distress, nuisance and annoyance to the neighbours and in particular to Mr McCorquodale who he had asked to speak as a witness.
7. The Tribunal asked Mr McLennan to explain why he had lodged a further written statement late by lodging it the day before when all written evidence should be lodged at least 7 days in advance. Mr McLennan advised that he had not intended to lodge a further statement as Mr McCorquodale was going to provide verbal evidence to the Tribunal but as Mr McCorquodale had written it out as an aide memoire for his evidence he thought it would be helpful to include it. Given that this was only provided by the witness at the last minute and that he

was going to speak directly to it the tribunal considered it reasonable to allow it to be received.

8. The clerk then telephoned the witness to invite him to attend on the teleconference and Mr McCorquodale joined the call. After introductions Mr McLennan asked Mr McCorquodale a series of questions regarding his knowledge of the Respondent and his behaviour at the property, followed by further questions by the legal member and ordinary member.
9. Mr McCorquodale advised that he is the joint owner of the top floor left hand flat at 70 Ashvale Place and that up until 1<sup>st</sup> December 2020 when he and his family moved to another property, he had lived there with his partner and young son while the Respondent resided as the tenant of the top right hand flat. He confirmed that this meant he lived on the same floor as the Respondent.
10. Mr McCorquodale advised that he made his first statement to James and George Collie around December 2019 and noted that he had occasion to first complain about the Respondent's behaviour in October 2019. On being asked what behaviour had caused concern he explained that there were numerous people coming and going to the Respondent's flat where the Respondent appeared to be supplying substances. The people would congregate on the stairs and there would be someone there almost every day.
11. He said the flat would be relatively quiet until around 3pm each day when noises would start and continue until the early hours of the morning often 3-4am. He referred to it as really disturbing. There would be shouting and arguments and when he sought to raise it with the Respondent advised that he had been shouted at and abused verbally by the occupants of the Property including and in particular Mr Leslie himself. When visitors coming to the Respondents' flat wouldn't get an answer they would take to banging doors and he advised that the whole close would be affected by the noise and disturbance.
12. He further advised that in relation to noise the Respondent started some time in 2020 taking in and doing washing for homeless people. Mr McCorquodale learned this from speaking to one of the people visiting the Respondent who told him the Respondent was making money from this. Mr McCorquodale's issue however was that the Respondent would put the washing machine on at night usually for several hours and that this woke him and his family up and sometimes it would not finish or let up until 4am. He advised this would keep him awake as their flat is right beside the Respondents and the walls are not thick. When he asked the Respondent to stop it he was verbally abused. Mr McCorquodale also advised he had complained on many occasions to the police who told them just to report it to keep a log of incidents.
13. Mr McCorquodale also advised that another issue which has resulted from the Respondent having so many other people visit him at the Property to buy stuff was an issue with the security of the building. Mr McCorquodale advised he would often find the front door kicked in, or wedged open to allow people to come in easily this has resulted in theft of post and other items from the communal hallway and has also caused a nuisance in that Mr McCorquodale and his partner could not leave their young son's pram in the hallway but had to take it up and down to the top floor each time they came or went. He advised that a lot of the residents had found they had parcels or mail stolen. Under questioning Mr McCorquodale admitted that some of the broken locks were maybe carried out by other people visiting the Respondent or staying with him as he often had other people staying in the flat but confirmed that the

Respondent himself had left the door deliberately ajar leaving the building open to anyone to come in.

14. Mr McCorquodale advised that the difficulties he has faced living in with this behaviour in the vicinity of his home became increasingly difficult for him and his family. His partner was not happy to stay there if Mr McCorquodale was away on business and she would move in with her mother on those occasions. His son wasn't able to enjoy the garden due to aggressive dogs being there at times when the Respondent allowed others to stay with him at the Property who had dogs and the constant noise had a detrimental effect on the whole family, waking them up and causing him and his partner stress. He advised that as a result he looked for another property to move to which he has now done and confirmed that this behaviour at the Property by the Respondent had made them move more quickly than they had otherwise intended to do. Mr McCorquodale advised he still has the flat and needs to visit it and at the moment he does not feel he could market it with the current issues with noise and anti-social behaviour.
15. Finally Mr McCorquodale advised that several times he has found the Respondent in the loft area but is not sure what he was doing there or storing there.
16. Mr Mclennan has also lodged a statement from a firm of letting agents who let out one of the flats in the close to another tenant and who advised that their client has been locked out of her flat twice when the Respondent changed the locks on the internal door in the communal stairwell without giving her a key. Their e-mail of 17<sup>th</sup> January 2020 notes that this has caused her inconvenience and distress and that she was afraid of the Respondent due to his aggressive and anti-social manner.
17. The hearing ended at approximately 11am and the Tribunal then adjourned to consider their decision. The clerk advised that just after the hearing had adjourned the Respondent dialled into the conference call. She advised him that the hearing had been scheduled for 10am and that it had been adjourned until 11.30 if he wished to call back then. The Respondent advised he would and did not give any reason for phoning so late. However when the Hearing reconvened the Tribunal waited a further 10 minutes to see if the Respondent would join and he did not attend.
18. The Tribunal then advised they would issue their decision in writing.

- **Findings in Fact**

1. The Applicant and the Respondent entered into a lease of the Property which commenced on 7<sup>th</sup> June 2019.
2. The Applicants are the owners of the Property and have title and interest to bring this action.
3. The Respondent is still occupying and in control of the Property.
4. A notice to leave dated 1<sup>st</sup> July 2020 confirming that no proceedings would be raised before 4<sup>th</sup> October 2020 was served on the Respondent by sheriff officer on 1<sup>st</sup> July 2020
5. These proceedings were raised on 23<sup>rd</sup> October 2020 and the application included a copy of the Notice to Leave.
6. A Section 11 notice has been served on Aberdeen City Council

7. The Respondent has engaged in relevant anti-social behaviour at and around the Property during the last 12 months, namely causing noise, shouting and arguing in the stairwell, causing a lot of visitors to attend the Property late at night and into the morning and causing the Property to be left insecure.
8. The behaviour has been persistent over a lengthy period of time and has caused alarm, distress nuisance or annoyance to another person.
9. The Tribunal finds it reasonable that an order for eviction is granted for the reasons stated below.

### **Reasons for Decision**

19. The Tribunal was satisfied that the Respondents had been served with a valid Notice to Leave under S52 (3) of the 2016 Act specifying Ground 14 of Schedule 3 of the Act as the relevant ground of eviction.
20. The Notice to Leave was also accompanied by evidence of how the ground was met namely that the Respondent has engaged in anti-social behaviour at the Property, including creating a lot of noise, selling substances and having a lot of visitors at all hours for this purpose for a period of around one year before the service of the Notice .
21. Ground 14 requires 3 months' notice under the rules which are currently amended by the Coronavirus (Scotland) Act 2020 and were in place for a Notice to Leave which was served on 1<sup>st</sup> July 2020. The Notice sets out the notice period as expiring on 4<sup>th</sup> October 2020 which as the Notice has been delivered to the Respondent on the date it was signed, is compliant with the requirements of Section 62(4) of the Act.
22. The Application was lodged on 23<sup>rd</sup> October 2020. It was therefore lodged after the expiry of the Notice period and is therefore an application that the Tribunal can consider
23. Ground 14 of Schedule 3 of the Act states:-
  - i. It is an eviction ground that the tenant has engaged in relevant anti-social behaviour
  - ii. The First Tier Tribunal may find that the ground named by subparagraph (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 the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring or the tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period
  - iii. 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 or amounts to harassment of the other person

iv. In Sub paragraph (iii) 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

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

in a case where two or more persons are the tenant under a tenancy the reference in sub- paragraph 2 to the tenant is to any of those persons.

24. The Tribunal accepted the verbal averments of Mr McCorquodale and the written statements included with the Application. The Tribunal found Mr McCorquodale to be an honest and credible witness who gave his evidence in a clear and concise way and did not seek to elaborate or exaggerate any evidence.
25. This is confirmed by the behaviour listed in detail in the written statements from Mr McCorquodale and his verbal evidence. Mr McCorquodale has confirmed that although the presence of other parties has caused some of the noise a lot of it comes directly from the Respondent who has acted consistently in a way that causes Mr McCorquodale and his family distress and alarm, namely having people attend at the Property to buy substances from the Respondent; shouting and having arguments with said people in the close; leaving the communal door jammed open inviting theft from others; and washing clothes continually late at night causing further noise and sleep disturbance to Mr McCorquodale and his family. The Anti-social behaviour is relevant behaviour as it has caused annoyance, alarm and distress to the neighbours in particular to Mr McCorquodale and his family and has caused Mr McCorquodale to make complaints to the police. The events have occurred within 12 months and although the selling of substances from the Property seems to have abated since August 2020 when a CCTV camera and sensor lighting was installed in the close, the other behaviour including noise, leaving the Property unsecured and conducting unreasonable activities late at night that have caused Mr McCorquodale and his family to have disturbed sleep and stress, have continued.
26. There has been no written response from the Respondent and although the Respondent phoned in to the conference call he did so after the Tribunal had finished taking evidence. The Respondent was advised to call back in at

11.30 am and he failed to do so despite the Tribunal waiting a further 10 minutes in case he was late doing so. The Tribunal had no information from the Respondent as to his position or any matters he wishes to be taken into account. The Tribunal considered that given the course of conduct has been present for many months, has only abated slightly since the apparent cessation of selling substances at the property from August 2020 and that the behaviour has caused significant distress, annoyance and nuisance and some alarm to another person, that on balance, it is reasonable that an order for eviction is granted. The Respondent had plenty of notice of the hearing and had another opportunity to put over his views at 11.30 and he failed to do so. The Tribunal had completed hearing evidence when the Respondent attempted to telephone in at 11am and did not telephone back when requested to do so. To delay making a decision would not be fair to the applicants who have responded to the Tribunal's timescales and who are concerned about the ongoing behaviour at their Property.

27. So the Tribunal is satisfied in terms of S 51 (1) of the Act that the eviction ground specified in the application, namely Ground 14 is met, and that it is reasonable for the Tribunal to grant the application.

28. The Tribunal notes however that should the Respondent have a valid reason for not being able to attend on the call at 10 am or again at 11.30am then he will have the opportunity to ask the Tribunal for a recall of the order and can present his reasons at that time if he so wishes.

## **Decision**

The Tribunal determined that the order for eviction sought by the Applicant should be granted

## **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.**

**Jan Todd**

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**Legal Member/Chair**

\_\_\_\_19<sup>th</sup>

**Date**

**January**

**2021**

