



**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/22/1050**

**Re: Property at 59F Balunie Terrace, Dundee, DD4 8TD (“the Property”)**

**Parties:**

**Vaqar Salimi, 129a Broughty Ferry Road, Dundee, DD4 6LB (“the Applicant”)**

**Tomasz Lukjanow, 59F Balunie Terrace, Dundee, DD4 8TD (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Melanie Booth (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined the following:**

**Background**

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by Simon Cohen (the Applicant’s processor as landlord) to the Respondent commencing on 7 November 2017.
2. The application was dated 11 April 2022 and lodged with the Tribunal on that date.
3. The application relied upon a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 4 March 2022 (but which was clearly posted on 3 March 2022). Evidence of service of the notice by recorded delivery service on 4 March 2022 (as well as delivery by a DHL courier on the same day) was included with the application. The terms of the Tenancy Agreement were such that no Notice of Quit was required as, further to section

18(6)(b) of the 1988 Act, clause 20.5 of the lease made provision for the Tenancy to be brought to an end on ground 15 while still a contractual assured tenancy.

4. The said AT6 relied upon ground 15 under Schedule 5 to the 1988 Act and at Part 2 is stated:

*Ground 15*

*The tenant or anyone living with him has caused a nuisance or annoyance to neighbours or has been convicted of immoral or illegal use of the premises.*

Part 3 of the AT6 was not completed. The AT6 stated that proceeding would not be raised before 1 April 2022, meaning exactly 28 days were provided. We noted that a Notice to Leave (relevant only if this were a Private Residential Tenancy) had also been sent date the same dates, and it contained over a page of details of specific historic anti-social incidents.

5. Evidence of a section 11 notice dated 11 April July 2022 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council was provided with the application.

### **The Hearing**

6. On 25 November 2022 at 10:00, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by Webex video conference call, we were addressed by the Applicant. As of 10:20, there was no appearance by the Respondent (that is, neither he nor anyone on his behalf had dialled in).
7. We were informed by the clerk that the day before the Hearing emails had been sent to the Tribunal by the Respondent and that he and his partner (principally his partner Katarina Miskewicz) had spoken with the Tribunal's office. Neither the Respondent nor his partner speak English as a first language, but between the emails and calls they communicated that they were not going to be able to attend the Hearing due to being required in Dundee Sheriff Court. A court reference was provided, and the clerk confirmed that a criminal matter with that reference was on the rolls for 25 November 2022 but that neither the Respondent nor his partner were the named accused. Further information was sought from the Respondent, but nothing was received. We therefore lacked any information as to why the Respondent or his partner were required in regard to someone else's criminal matter at Dundee Sheriff Court (though the obvious explanation is that they were cited as witnesses).
8. On the morning of the Hearing, we directed the clerk to call the contact number for the Respondent at 10:00 and 10:10 and, if there was no response, leave a voicemail message that the Hearing would be commencing by 10:15. The clerk did so but there was no response, and no one connected into the videoconference. This remained the case through to the end of proceedings around 11:30.

9. In the circumstances, we were satisfied to commence the Hearing in the absence of the Respondent or his partner (who was also to be a witness). We decided on this course of action for the following reasons:
  - a. The date of 25 November 2022 had been set (originally as a case management discussion (“CMD”)) in mid-September 2022. The Respondent had not taken issue with the date when set.
  - b. We issued a Notice of Direction dated 14 September 2022 asking parties for submissions on assigning a Hearing (without a further CMD first taking place) and asking whether 25 November 2022 was a suitable date for a Hearing. The Respondent did not respond.
  - c. In light of the Applicant’s submissions in favour, we assigned the 25 November 2022 as a full day hearing and intimation was given of this by email and then with a formal Note. The Respondent did not respond to raise an issue with scheduling.
  - d. The Respondent and Katarina Miskewicz were invited to test the Webex system and given slots to do so on 10 November 2022. They failed to connect and did not respond to an email from the clerk offering assistance with connection.
  - e. We were provided with almost no information on 24 November 2022 by the Respondent and his partner as to the issue with their attendance. We were unaware as to why they were required at court. We certainly were not provided with any witness citations (which, if they were cited for a trial, would likely have been carried out before the September Notice of Direction).
  - f. In general, apart from attending the original CMD of 8 July 2022 to confirm he was opposing the application (on the basis that he and his partner had improved their behaviour and addressed the previous issues), the Respondent had failed to lodge any papers or respond to either of the Notices of Direction that had been issued during the application. Rather than their failure to attend on 25 November 2022 being out of character, it was the attendance at the CMD of 8 July 2022 which now seemed out of character.
  - g. In consideration of the issues raised, and the possibility of prolonging the issues of anti-social behaviour (if the basis of the application was proven by the Applicant), we were unwilling to allow further delay. Rule 2(1)(e) sets out an over-riding objective upon us to “avoid[ ] delay, so far as compatible with the proper consideration of the issues”.
10. We conducted a truncated examination of witnesses at the Hearing ourselves in consideration that: we had heard from the parties in detail at the CMD; received further papers from the Applicant in response to a Notice of Direction issued after the CMD; and that the Respondent and his partner were not in attendance. We took the information provided at the CMD and further to the Directions as given (and nothing said orally at the Hearing by the Applicant or her witness contradicted anything the Applicant had previously lodged or stated). The below summary of the Applicant’s evidence thus combines evidence provided at the CMD and the Hearing, and that of the Respondent is from the CMD only. (We heard Ms Fyffe only at the Hearing.)

### *The Applicant*

11. The Applicant explained that she purchased the Property with the Tenancy already ongoing and was unaware of any anti-social issues. It was only later, from contact from Dundee City Council, that she became aware that there were issues with anti-social behaviour. When she obtained a report from Police Scotland she found that the issues had pre-dated her ownership. She said that she may not have purchased if she had known. (We noted from our papers that her date of entry was 24 July 2021 and the Police Scotland report of 27 July 2022 included entries back to 13 January 2020.)
12. As she had purchased the Property with the Tenancy in place, she had been confused as to what papers to serve. She had notices served in December 2021, but she needed to re-serve notices in March 2022. Her continuing confusion on the Tenancy Agreement was the reason she prepared both an AT6 and a Notice to Leave. She recalled that both were sent together by recorded delivery and then separately by a DHL courier.
13. In regard to the anti-social behaviour, no complaints had been received by her direct, but in support of the application the Applicant had lodged, amongst other documents: an Anti-Social Behaviour Order obtained against the Respondent (dated 8 July 2021); a copy of the application for the ASBO (which detailed 23 incidents of anti-social behaviour from November 2020 to April 2021), and a report from Police Scotland of 30 visits to the Property between 1 January 2020 and 24 June 2022. The major of the visits and incidents were related to loud music; shouting and arguing; or noise from DIY at inappropriate times. (Broadly these were the matters prohibited by the ASBO.) There were some clusters of incidents with 13 of the 30 occurring between July and December 2021. 12 occurred in the six months after the ASBO application was granted, and 18 in total in the year that followed it (so more than half occurring after the ASBO). There had been two incidents since the service of the AT6.
14. The Applicant was unaware of any incidents since 24 June 2022, but she had not contacted Police Scotland or the local authority to seek further details. She remained concerned however that, even if incidents had stopped, they may restart.

### *Kimberly Fyffe*

15. Ms Fyffe is an Investigation Officer with Dundee City Council's anti-social behaviour team. She explained that her role in regard to the Respondent effectively ended when the ASBO was obtained, but she continued to be contacted by neighbours with complaints, as they had retained her details. Further it was clear that she had corresponded with the Applicant, regarding the ASBO being breached, reminding her of her duties as a landlord to deal with anti-social behaviour of her tenant.
16. Ms Fyffe was clearly consulting her own notes when giving evidence. We did not have those lodged with us but were satisfied to allow evidence on this way, given the detail she was thus able to provide.

17. She explained that she had sought an update from Police Scotland in expectation of giving evidence and, between that update and complaints to her office, she knew of a number of incidents since 24 June 2022:
  - a. 20 August 2022: A complaint to her office from a neighbour about a domestic argument at the Property at 12:15, when shouting and screaming was heard.
  - b. 1 October 2022: Police were called at 18:09 due to a domestic disturbance. The Respondent's partner had accused the Respondent of holding a gun to her head and a police search during the visit located a toy gun, but also items that could be used as weapons (two pickaxes, knives, and a hatchet) as well as handcuffs said to be like police handcuffs. The Applicant was arrested for assaulting his partner, and was also arrested due to a class B controlled drug being found in his possession. The Applicant was remanded for a short period following this incident.
  - c. 3 October 2022: Police were called at 22:05 due to loud music. The Respondent's partner was found drinking at the Property with friends.
  - d. 12 October 2022: Police were called at 23:11 due to multiple voices heard shouting and arguing. The Respondent was once again living at the Property, and had friends there with him.
  - e. 16 October 2022: A complaint to Ms Fyffe's office from a neighbour about loud music at 12:17 and then later at 17:22. The neighbour had provided Ms Fyffe with a video recording from a smartphone of the sound as heard in her own property. Ms Fyffe said that she agreed that the recording showed excessive volume. (We did not have the benefit of seeing the recording.)
  - f. 23 October 2022: Police were called at 20:45 in regard to reports of a domestic disturbance, with a female shouting, screaming and crying. The Police found two couples there (presumably the Respondent, his partner, and friends). The female who had been shouting explained that she had a sore leg and had been crying out in frustration. The Police had thus determined it was not to be recorded as a "domestic argument" in their records.
18. Ms Fyffe acknowledged that the ASBO did not appear to have an effect on controlling the Respondent's behaviour, but it was up to the Police to charge him if he breached it. She believed that most of the visits could have resulted in a charge, but she only knew of two charges for breach of ASBO: on 12 November 2021 and 24 June 2022. She was not aware of the outcome of these charges.
19. In regard to her opinion on the severity of the matter, Ms Fyffe commented that: "If this had been a Council tenant, we would have moved for eviction way before now."

*The Respondent (from information at the CMD)*

20. Due to his limited English, Ms Miskewicz spoke on the Respondent's behalf at the CMD (and we had an interpreter in attendance at the Hearing, in expectation of the Respondent and his partner appearing).
21. Ms Miskewicz spoke on behalf of them both and accepted that there had been further incidents of the police attending at the Property since February 2022 (i.e. since the AT6 was issued). She acknowledged complaints about loud music, the use of power tools, shouting, and arguments between her and the Respondent. On these she explained:
  - a. They were sorry about the loud music and were not continuing to play loud music.
  - b. There were power tools used, but they were not heavy power tools, and it was because the Respondent was carrying out work at the Property. (She said that they had kept the Property in good condition and carried out work to it.)
  - c. She accepted that they argued, and that the neighbours had not liked the sound of them arguing. She was sorry about that, and they were trying to keep the noise down.
  - d. She was disabled and suffered from pains in her knees and ankles. Sometimes this made her cry out. (The implication, as we understood it, was that some of the shouting may have been her crying out in pain. We note that she did not specify which incidents were attributable to this, though we noted that Ms Fyffe mentioned the Police being provided this explanation regarding the incident of 23 October 2022.)
22. The Respondent and his partner lived alone at the Property; and as of 8 July 2022 neither worked, both were on Universal Credit, and the Respondent was carer for his partner. (The Respondent had no disabilities.) The Respondent's partner repeatedly stressed on 8 July 2022 that both wished to remain at the Property.

**Findings in Fact**

23. By written lease dated 7 November 2017 the Respondent and the Applicant's predecessor as landlord agreed a lease with a start date of 7 November 2017 until 6 November 2018 ("the Tenancy"). The lease has continued by tacit relocation since.
24. Clause 20.5 of the Tenancy makes provision for the Tenancy being brought to an end on Ground 15 of Schedule 5 to the 1988 Act while it is still an assured tenancy in terms of that Act.
25. The Applicant became landlord of the Property on 24 July 2021.
26. On 3 March 2022, the Applicant drafted an AT6 form in correct form addressed to the Respondent but dated 4 March 2022, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Ground 5 of Schedule 5 to the 1988 Act, all based on

the anti-social behaviour of the Respondent and nuisance caused. The AT6 gave the Respondent notice that proceedings would not be raised before 1 April 2022.

27. On 3 March 2022, the Applicant drafted a document, purporting to be a Notice to Leave for a Private Residential Tenancy, detailing specific incidents of anti-social behaviour by the Respondent and those in the Property with him.
28. On 3 March 2022, the Applicant competently served the AT6 (along with the Notice to Leave) upon the Respondent with delivery on 4 March 2022.
29. On 11 April 2022, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 65, with the application papers detailing a number of incidents of anti-social behaviour and nuisance.
30. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council on 11 April 2022 by the Applicant.
31. On 24 May 2022, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the application.
32. The Respondent and his partner have conducted themselves in a way to cause repeated nuisance to neighbours and undertaken incidents of anti-social behaviour, throughout the period from 13 January 2020 to 22 October 2022.
33. This nuisance and anti-social behaviour has included: playing loud music; arguing and shouting; and carrying out work using power tools in the evening and night. This behaviour has resulted in visits from the police, and charges against the Respondent.
34. An anti-social behaviour order was granted against the Respondent by the Sheriff at Dundee on 8 July 2021 for a period of four years. Under the order, the Respondent was prohibited from “(a) shouting, swearing or banging within the dwelling house at 59F Balunie Terrace, Dundee or in the common close at 59 Balunie Terrace, Dundee in such a manner that would cause or be likely to cause alarm or distress to residents of and visitors to the block at 59 Balunie Terrace, Dundee or allowing visitors to act in a similar manner; (b) playing a radio, television, hi-fi, computer, musical instrument or any other sound producing device within the dwelling house of 59F Balunie Terrace, Dundee, at a volume such as to cause, or be likely to cause, alarm or distress to residents of or visitors to the block at 59 Balunie Terrace, Dundee or allowing visitors to act in a similar manner; (c) carrying out any works within the property after 21:00 hours which involves the use of power tools or other tools which would cause or be likely to cause alarm or distress to residents and visitors to the block at 59 Balunie Terrace, Dundee or allowing visitors to act in a similar manner”.

35. Since the date of the ASBO, the Respondent has conducted himself in a way to be in breach of the order.
36. The Respondent resides with his partner at the Property, without any dependents.

### **Reasons for Decision**

37. Though the AT6 could have held more detail, its validity was not disputed by the Respondent, and it contained sufficient information that the Respondent was under threat of eviction due to anti-social behaviour and nuisance. The Respondent would be aware of what breach was being founded upon and the steps necessary to remedy the breach. In addition, the Notice to Leave continued details of past behaviour, should the Respondent have been in any doubt as to the types of behaviour he needed to cease. Further, he was under an ASBO setting out the types of behaviour which were to cease.
38. We were satisfied that there had been historic anti-social behaviour by the Respondent. He admitted as such, through his partner, at the CMD and the Sheriff at Dundee had held as much when granting the ASBO. We held that our role was to consider whether such matters remained after the issuing of the AT6, or whether his behaviour had improved sufficiently to the point that it was not reasonable to evict.
39. It was clear to us that it had not. Including all incidents noted by Ms Fyffe (as the incident of 22 October 2022 clearly still caused alarm to the neighbours, even if the medical explanation was truthful), there were eight incidents since the service of the AT6 (so around 20% of all incidents we had within our papers).
40. There were certainly periods of greater disorder, and when setting the Hearing we were conscious that the frequency of incidents did appear to have diminished since the AT6. The incidents in October show this trend to be reversing, and potentially escalating. We find that the Applicant has amply proven that there has been anti-social behaviour and nuisance and that it was reasonable to seek eviction. There was nothing stated on behalf of the Respondent as to why it would be unreasonable.
41. We were thus satisfied to grant an order for possession under ground 15 relative to rule 65. No order for expenses was sought by the Applicant.

### **Decision**

42. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.



## 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.

# J Conn

25 November 2022

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Legal Member/Chair

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Date