



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/24/3304

Re: Property at 40 Ardbeg Avenue, Kilmarnock, KA3 2AP (“the Property”)

Parties:

ISK Properties, Tailend, Dunlop, Kilmarnock, KA3 4EH (“the Applicant”)

Ms Margaret Ann Biggley, 40 Ardbeg Avenue, Kilmarnock, KA3 2AP (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”) which took place by telephone conference on 23 September 2025, the Applicant was represented by Mrs Isabel Kerr (ISK Properties being her trading name). The Respondent was not present or represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that –

Background

A CMD had previously taken place on 31 March 2025. That CMD was adjourned to a further CMD to allow Mrs Kerr to produce more information and detail for the Tribunal to properly consider the application and make a determination. The Tribunal also issued a Direction.

Prior to the CMD Mrs Kerr lodged two emails dated 19 September 2025.

The CMD

At the outset of the CMD the Tribunal identified that it still did not have a copy of the Private Residential Tenancy Agreement (“the PRT”) between the parties. Whilst Mrs Kerr had attempted to send the pages of the PRT with one of her emails of 19 September 2025 the

pages had not been received fully and legibly and the Tribunal adjourned to allow Mrs Kerr to resend the pages before reconvening.

On reconvening Mrs Kerr made the following additional oral submissions to supplement her application and additional written submissions dated 19 September 2025:-

- i. Mrs Kerr has no idea if the Respondent is still in occupation of the Property. She has not paid rent for two years and Mrs Kerr assumes the Respondent is still living there.
- ii. Following service of the Notice to Leave, the Respondent advised Mrs Kerr that she would be happy to leave the Property and move to a Council house but she could not get a Council house and therefore Mrs Kerr still regards her as the tenant.
- iii. Tampering with Electricity Meter – Mrs Kerr stated that the Police attended on 10 December 2023 and the crime number is within the Notice to Leave. Mrs Kerr's own electrician also attended on 10 December 2023 and the electricity supplier, Octopus Energy, subsequently attended on 17 January 2024. The Property was unsafe to live in as a result of the "rigging" of the meter.
- iv. Causing Deliberate Damage to the Property – Mrs Kerr kept a diary due to there being so many complaints. On 30 July 2023 the door was kicked in. On 14 November 2023 windows were broken and the crime reference number is within the Notice to Leave. On 5 August 2023 there was further vandalism. The damage was wilful. The Respondent had no respect for others. The Respondent admits causing the damage carried out usually when she is drunk or angry and couldn't find her key. She would phone Mrs Kerr to ask her to fix the damage which she did.
- v. Harassment – On 31 October 2023 Mrs Kerr called the Police. There were always complaints from neighbours. They would call Mrs Kerr during the incidents and would hold their phone to walls or in the street for Mrs Kerr to hear the disturbances. The neighbours constantly contacted the Police and the Council. They would be referred back and forth between these authorities. The Council's antisocial behaviour team would contact Mrs Kerr. When the Police attended the behaviour would stop and restart as soon as the Police left. Eventually neighbours would leave. The Respondent and her visitors put fear into the street.
- vi. Absence of Written Permission – The Respondent did not obtain from the Applicant written permission to have other persons live in the Property. Those people were noisy and disruptive.
- vii. Court Ban – Mrs Kerr was previously advised by an antisocial behaviour officer that the Respondent had been banned from the street. She was advised to take steps to remove the Respondent. This was around 2021. She didn't do so.
- viii. Failure to Allow Inspections – Mrs Kerr would call her plumber to carry out a gas safety check. He would arrange access directly with the Respondent. When the plumber then attended at the agreed date/time the Respondent would refuse access. This was repeated and then the plumber would contact Mrs Kerr to put a written notice through the door of the Property advising that entry will be forced if access is not given. Mrs Kerr is charged for each visit by the plumber. Mrs Kerr never got to the stage of making a right of entry application to the Tribunal. Access was eventually given after a number of failed attempts. During these efforts Certificates would fall out of date putting the Respondent at risk. The Respondent would turn on Mrs Kerr and taunt her about that.
- ix. Failure to Report Repairs – The Respondent failed to report a roof leak. This was noted when Mrs Kerr gained access to the Property on 10 December 2023 with the Police.

- x. Failure to Heat the Property – As a result of the Respondent’s failure to heat the Property the mould was “unbelievable”. Water had come into the Property through the ceiling due to the roof leak. As a result the Respondent and three other people were living only in the living room of the Property and the fridge had been moved there.
- xi. Allowing/Participating in Illegal Activity – On 10 December 2023 the Police noted evidence of drug taking in the Property. They knew this by the smell and evidence found within. The Police saw the Respondent smoking “joints”.
- xii. Anti-social behaviour - As narrated under the heading “Anti Social Behaviour” at paragraph 1 within the Notice to Leave and above under “Harassment” at paragraph v.
- xiii. At paragraph 2 of the Notice to Leave under this heading the behaviour and language directed towards Mrs Kerr took place on 31 October 2023. The incident was reported to the Police and the Respondent charged.
- xiv. Paragraph 3 of the Notice to Leave under the heading “Anti Social Behaviour” is self-explanatory and is also discussed at v. above.
- xv. On 17 January 2024 the Respondent threatened Mrs Kerr and her family. The Police were in attendance that day due to the energy supplier being present relative to the meter tampering and stayed to make sure Mrs Kerr was safe whilst she dealt with Octopus Energy.
- xvi. Mrs Kerr said she believed the Respondent might not be living at the Property but couldn’t be sure. Sometimes Mrs Kerr would meet the Respondent at the Property. When this happens the Respondent brings an army of followers with her. The street is quiet right now.
- xvii. The Property might be sold by Mrs Kerr in due course but she is trying to do things the right way.
- xviii. Mrs Kerr seek an eviction order.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. Mrs Isabel Kerr, who trades as ISK Properties, is the heritable proprietor of the Property.
- ii. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy that started on 14 March 2019.
- iii. On 23 January 2024 the Applicant served on the Respondent by hand delivery a Notice to Leave based upon Grounds 11, 14 and 15 of Schedule 3 of the 2016 Act.
- iv. The Applicant has served on East Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- v. Mrs Kerr does not know if the Respondent is still in occupation of the Property.
- vi. The Respondent has not paid rent for two years.
- vii. The Respondent previously advised Mrs Kerr that she would be happy to leave the Property and move to a Council house.
- viii. The electricity meter within the Property was previously tampered with by the Respondent or those living with or visiting her as a result of which the Police and Mrs Kerr’s electrical contractor attended on 10 December 2023. The electricity supplier, Octopus Energy, subsequently attended on 17 January 2024. The Property was unsafe to live in as a result of the “rigging” of the meter which constitutes a material breach of the PRT.
- ix. On 30 July 2023 the door to the Property was kicked in and deliberately damaged.
- x. On 14 November 2023 windows in the Property were deliberately broken.
- xi. On 5 August 2023 there was further wilful vandalism.

- xii. The Respondent admitted causing the damage referred to above all in material breach of the PRT, usually done when she is drunk or angry and couldn't find her key. She would phone Mrs Kerr to ask her to fix the damage which she did.
- xiii. There were many complaints from neighbours. They would call Mrs Kerr during incidents and would hold their phones to walls or in the street for Mrs Kerr to hear the disturbances within or near the Property. The neighbours constantly contacted the Police and the Council. They would be referred back and forth between these authorities. When the Police attended the bad behaviour would stop and restart as soon as the Police left. Eventually neighbours would move elsewhere as a result.
- xiv. The Respondent and her guests/visitors put fear into the street.
- xv. There was constant loud music from the Property, shouting and swearing from persons within with the windows open, banging on the ceiling of the downstairs neighbour, drinking and swearing in the street and partying into the early hours of the morning.
- xvi. The Respondent did not obtain from Mrs Kerr written permission to have other persons live in the Property all in material breach of the PRT. Those people were noisy and disruptive.
- xvii. In around 2021 Mrs Kerr was advised by an antisocial behaviour officer that the Respondent had been banned from the street. She was advised to take steps to remove the Respondent. She didn't do so.
- xviii. Mrs Kerr called her plumber to carry out a gas safety check at the Property. He arranged access directly with the Respondent. When the plumber then attended at the agreed date/time the Respondent refused access. This was repeated. The plumber contacted Mrs Kerr to put a written notice through the door of the Property advising that entry would be forced if access is not given. Mrs Kerr was charged for each visit by the plumber. Access was eventually given after a number of failed attempts. During these efforts Certificates would fall out of date putting the Respondent at risk. The Respondent would turn on Mrs Kerr and taunt her about that. Failure to allow access for gas safety checks constitutes a material breach of the PRT.
- xix. The Respondent failed to report a roof leak. The leak was observed when Mrs Kerr gained access to the Property on 10 December 2023 with the Police. Failure to report the roof leak constitutes a material breach of the PRT.
- xx. As a result of the Respondent's failure to report the roof leak mentioned above and also her failure to heat the Property considerable mould developed within the Property. Failure to heat the Property is a material breach of the PRT.
- xxi. On 31 October 2023 the Respondent seriously verbally abused Mrs Kerr. The incident was reported to the Police and the Respondent charged.
- xxii. On 10 December 2023 the Police noted evidence of drug taking in the Property all in material breach of the PRT.
- xxiii. On 17 January 2024 the Respondent threatened Mrs Kerr and her family in the presence of the Police who attended with the energy supplier relative to the meter tampering. Threatening behaviour is a material breach of the PRT.

Reasons for Decision

The Respondent did not submit any representations to the Tribunal and did not attend either CMD. The factual background narrated by the Applicant within the application papers, emails and orally at the CMD was not challenged and was accepted by the Tribunal. The Applicant spoke credibly, reliably and with emotion given the stress the circumstances giving rise to the application had created.

The Application seeks an eviction order on Grounds 10, 11, 13, 14 and 15 of Schedule 3 of the 2016 Act. The Notice to Leave proceeds on Grounds 11, 14 and 15 thereof alone.

At the previous CMD Mrs Kerr accepted that there is no basis for an eviction order under Ground 10 which, in any event, was not referenced in the Notice to Leave.

At the CMD Mrs Kerr also accepted there was no evidence to meet the terms of Grounds 13 which requires details of a "relevant conviction" as defined. Ground 13, again, was not referenced in the Notice to Leave.

Mrs Kerr also had no evidence of any "relevant conviction" of any third party relative to Ground 15.

The Tribunal therefore considered whether an eviction order could reasonably be granted under Grounds 11 (Breach of Tenancy Agreement), 14 (Anti-social Behaviour) and 15 (Association with person who has engaged in relevant anti-social behaviour).

Legislative Framework

Ground 11 states:-

"11 Breach of tenancy agreement

(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the tenant has failed to comply with a term of the tenancy, and

(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent."

Grounds 14 and 15 are set out in full in the CMD Notes of 31 March 2025.

Dealing with each Ground in turn -

Ground 11

Given that the Tribunal accepted the factual background narrated by Mrs Kerr in the application, her emails of 19 September 2025 and orally at the CMD there is a wealth of evidence that various provisions of the PRT have been breached by the Respondent, in particular –

- i. Tampering with electricity meter -
In the PRT under the heading "REASONABLE CARE" the Respondent required to
 - "refrain from wilful damage"; and
 - "not tamper with or allow anyone else to tamper with electricity meters".

She failed to do so.

Further Clause 26 of the PRT states:-

"If the Tenant instructs or allows the meter to be changed or altered in any way to facilitate free power this will result in breach of agreement and tenancy will be terminated, and the Tenant is responsible for the reasonable cost of changing the meter back."

- ii. Caused deliberate damage to the Property –
In the PRT under the heading “REASONABLE CARE” the Respondent is required to
- “take reasonable care of the Let Property”; and
 - “refrain from wilful damage”.

She failed to do so.

- iii. Respect for Others –
In the PRT under the heading “RESPECT FOR OTHERS” the Respondent and/or those living with her and/or her visitors have
- Engaged in antisocial behaviour towards Mrs Kerr and neighbours;
 - Caused alarm, distress, nuisance, and annoyance to the Landlord and to neighbours amounting to harassment;

by making excessive noise, being disruptive, vandalising and damaging the Property.

- iv. Absence of Written Permission
In the PRT under the written narrative below “Rent” the Respondent has failed to
- Obtain prior written permission from the Applicant before allowing another person to live in the Property;
 - Tell the Applicant in writing the name of any other person over 16 years of age living in the Property and their relationship to the Respondent.

- v. Failure to Allow Inspections
In the PRT under “ACCESS FOR REPAIRS, INSPECTIONS AND VALUATIONS” the Respondent is required to allow reasonable access to the Property for an authorised purpose.

She has failed to do so by failing to allow a contractor appointed by the Applicant to undertake gas safety inspections as required.

- vi. Failure to Report Repairs
In the PRT under “REASONABLE CARE” the Respondent is obliged to report faults, defects, leaks and necessary repairs affecting the Property immediately to facilitate quick repairs and thus prevent deterioration of the Property.

She failed to do so by failing to report a roof leak causing damage to the Property over a prolonged period.

- vii. Failure to Heat the Property
In the PRT under “REASONABLE CARE” the Respondent is obliged to keep the Property adequately heated and ventilated.

She failed to do so and due to the unreported roof leak mentioned above the Property developed excessive mould.

- viii. Allowing/Participating in Illegal/Activity in the Property

In the PRT under "RESPECT FOR OTHERS" the Respondent is obliged not to use unlawful drugs or otherwise use or allow the Property to be used for an illegal purpose.

She failed to do so. On 10 December 2023 the Police reported to Mrs Kerr evidence of drugs being used within the Property.

The various breaches of the PRT by the Respondent as outlined, collectively at least, constitute a material breach of the PRT and the extent, frequency and impact of those breaches on Mrs Kerr and the neighbourhood make it reasonable for an eviction order to be granted in favour of the Applicant.

Indeed, a number of the breaches individually would constitute a material breach of the PRT such that it would be reasonable for an eviction order to be granted, particularly relative to the Respondent's wilful and deliberate damage to the Property and the failure of her and those staying with or visiting her to show respect for others including Mrs Kerr and neighbours causing them to be repeatedly harassed.

Whilst, in light of the Tribunal's decision with regard to Ground 11, there is no necessity to consider Ground 14 the Tribunal nevertheless considered whether or not there is sufficient evidence such that it would also be reasonable to grant an eviction order on that ground.

Ground 14

For Ground 14 to be established the following requirements must be met –

- There must be sufficient evidence that the Respondent has behaved in an anti-social manner (as defined) in relation to another person;
- The anti-social behaviour must be relevant anti-social behaviour (as defined),
- The Tribunal must be satisfied that it is reasonable to issue an eviction order on account of that fact; and
- The application for an eviction order must be made within 12 months of the anti-social behaviour occurring or the Tribunal must be satisfied that there is a reasonable excuse for the application not being made within that period.

In the Notice to Leave at paragraph 2 under the heading "Anti Social Behaviour" Mrs Kerr narrates in a redacted manner abusive language that the Respondent used towards her on 31 October 2023 causing alarm and distress. The Police were called and the Respondent was charged. She also referred to an incident on 17 January 2024 whilst at the Property with the energy supplier and the Police when the Respondent threatened Mrs Kerr and her family causing alarm and distress. Indeed she narrated that the Police stayed to make sure she was safe whilst she dealt with the energy supplier.

This application was lodged with the Tribunal on 19 July 2024 within 12 months of both incidents.

The Tribunal is satisfied the anti-social behaviour is relevant anti-social behaviour and that it is reasonable to issue an eviction order on account of those two incidents alone.

Indeed, Mrs Kerr kept a diary and there were numerous other instances when neighbours would contact her and also the Council and the Police relative to the Respondent's behaviour in the Property or in the street outside. A full chronology of dates was not provided however.

Ground 15

In light of there being sufficient evidence to warrant the grant of an eviction order on both Grounds 11 and 14 of Schedule 3 of the 2016 Act there was no requirement for the Tribunal to consider Ground 15.

Decision

The Tribunal grants an eviction order against the Respondent in favour of the Applicant under Grounds 11 and 14 of Schedule 3 of the 2016 Act.

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.

G. Buchanan

Legal Member/Chair

3 October 2025
Date