



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/22/3528

Re: Property at 125 Burns Road, Greenock, PA16 0PJ (“the Property”)

Parties:

Prime Developments Limited, 3 Newton Street, Greenock, PA16 8UH (“the Applicant”)

Mr James McClumpha, 125 Burns Road, Greenock, PA16 0PJ (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted at the property in terms of Grounds 12 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that for three or more consecutive months the Respondent has been in arrears of rent and the Respondent has engaged in relevant anti-social behaviour to persons living close to the property in the period of 12 months before the application for eviction was made and it is reasonable on account of the circumstances of the rent arrears and relevant anti-social behaviour that an eviction order is granted.

The decision of the Tribunal was unanimous.

Background

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 28 September 2022 along with a related payment order application under reference FTS/HPC/CV/22/3533 and accepted by the Tribunal on 26th October 2022.A case management discussion was fixed for 27th January at 2pm in relation to both applications.

Case Management Discussion

2.The Applicant company was represented by Mr Caldwell solicitor of Patten and Prentice Solicitors.Sam Mohammed of the Applicant company was present at the case management discussion to observe the proceedings. There was no appearance by or on behalf of the Respondent. The Tribunal members noted that the Application and supporting papers had been served on the Respondent by Sheriff officers on 5th December 2022 by affixing these to the main door of the property as there was no letterbox. The Tribunal members were satisfied that fair notice of the case management discussion had been given to the Respondent and that it was appropriate to proceed in his absence.

3.The Tribunal had sight of the two applications, papers apart along with the applications, a letter to the Respondent dated 17th August 2022, a Notice to Leave and guidance notes, execution of service of these documents on the Respondent by Sheriff officer, a notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an email to Inverclyde Council in relation to the notice, a series of photographs, a rent statement dated 16th September 2022, an email dated 20th August 2021 from Inverclyde Council , a letter to the Respondent dated 26th September 2022 regarding rent arrears, an updated rent statement and a handwritten letter from a Henry Fulton. In addition to these documents the Tribunal had sight of an email the Respondent had sent to the Applicant's solicitor dated 21st December 2022 which he had copied to the Tribunal as part of an email thread started by the Applicant's solicitor who had sent an email to the Tribunal seeking to increase the sum requested by way of a payment order, which email was copied to the Respondent.

4.The Tribunal considered whether it ought to consider as part of the application for eviction a letter from a Henry Fulton a resident of Burns Road who lived next to the let property, this letter having been lodged on behalf of the Applicant on the morning of the case management discussion. In its letters to parties the Tribunal had indicated in terms of Rule 9 of the Tribunal Rules that representations by parties were to be made by 20th December 2022 and that documents lodged less than 7 days before the case management discussion would not be considered if received after that date unless the Tribunal was satisfied there was a reasonable excuse for the late lodging. Mr Caldwell asked that the letter be considered and explained that this had been sent to his client by Mr Fulton who was exercised by the conduct of the Respondent. The letter had then been passed to Mr Caldwell who had lodged it with the Tribunal. The Tribunal members adjourned to consider whether this letter should be considered and decided that it was appropriate to consider the letter, as although it was undated it had clearly been written recently before the case management discussion as it referred to not having seen the Respondent at the property for a period of almost 3 months, the letter indicating that the Respondent had not been seen at the property since 6th November 2022.This suggested that the letter had been written not long before the case management discussion and the Tribunal was satisfied that this together with the fact that it was sent to the Applicant company which then had to pass it to their solicitor was a reasonable explanation for the late lodging of the document.

5.Mr Caldwell set out the details of the tenancy for the Tribunal members. The parties had entered into a private residential tenancy at the property with effect from 2nd March 2020.The rent for the tenancy is £ 498.33, payable monthly in advance and as at the

date of service of the Notice to Leave the unpaid rent was £1379.90 and rent was in arrears for three or more consecutive months, since April 2022. Mr Caldwell had written to the Respondent in September 2022 when the rent arrears had reached £1878.23 and this letter suggested that legal advice be sought and enclosed a guidance leaflet on homelessness during the pandemic. On 12th December 2022 Mr Caldwell emailed the Tribunal copying in the Respondent requesting to increase the sum being sought by way of a payment order in relation to the rent arrears to £3373.22, in terms of Rule 14A of the Tribunal Rules of procedure. The rent arrears as of January 2023 stood at £3871.55 and no rent had been paid by the Respondent since June 2022.

6. Mr Caldwell indicated that little was known of the Respondent's financial situation but at no time during the tenancy was it understood that the rent was being paid by housing benefit and there was no information to suggest that the rent arrears had accrued due to some delay or failure in the payment of any benefit. The Respondent's employment status was unknown.

7. The other ground upon which eviction was sought related to alleged anti-social behaviour. Mr Caldwell described this as persistent and having occurred since the start of the tenancy. He referred to the Respondent having frequent gatherings of friends at the property, the burning of wood in the garden at the property day and night, the encouragement of tradesmen to deliver wood, which was then burned at the property, generating acrid smoke affecting neighbouring properties. He referred to frequent parties at the property with people coming and going until the early hours of the morning. The front garden frequently has large piles of wood and wood was burned in a pool at the back of the property on a floating device. Mr Fulton suggested that the pool itself was often filled up starting at 9pm and carrying on until 4am. It was suggested that a Cannabis plant was growing at the property and that the Respondent had been evicted from a property previously due to criminal activities. The letter from Mr Fulton who works and is self-employed, referred to parties which lasted all night and prevented him having his grandchildren to stay with him at a nearby property where he lives with his wife. He referred to burning fires in the front and back gardens at the property and the keeping of a boat in the front garden. The letter referred to the Respondent parking his vehicle within inches of the bumper of Mr Fulton's van, coming and going and making noise until the early hours of the night, Mr Fulton indicated that this had affected his mental health and disturbed his sleep and that of his wife. The letter referred to a burger van arriving after the boat was sold and how this was present at the property for a number of weeks whilst it was "fixed up". The letter further suggested that the Respondent would come and go constantly to and from the property in a very noisy car into the early hours of the morning. Mr Fulton complained to wardens and the landlord, and he suggested that parties had tried to reason with the Respondent but said that he paid no attention. Mr Fulton organised a petition of neighbours regarding the Respondent having no respect for neighbours and being anti-social and this was signed by approximately 22 surrounding neighbours and presented to the landlord in an effort to have the Respondent removed. Mr Fulton's letter also suggested that neighbours at 121, 123, 127 (his address) and 129 Burns Road had suffered most from the Respondent's behaviour.

8. Mr Caldwell referred to two specific incidents at the property in detail. He referred to a development on 13th October 2022 when the police attended the property with a

warrant and forced entry to the property. They removed items from the property and the door required to be secured and was later secured. Later on the same day a crowd of youths had arrived at the property trying to gain entry. The Respondent had made contact with the landlord in order to gain entry to the property and an arrangement had been made to give keys to a friend of his named only as Adam.

9.Mr Caldwell also referred to an incident in November 2022 when Mr Fulton suffered a power outage at his home after hearing banging from the let property. It had been assumed initially that this was a power cut, but Mr Fulton noted that no other house in the street was in darkness at the time and had later been advised by Scottish Power staff that the fuse box serving both his property and the let property at 125 Burns Road had been deliberately damaged. In Mr Fulton's letter he described this incident and how the Respondent had been seen speeding away in his car after Mr Fulton's property lost power. Mr Fulton has not seen the Respondent at the property since that date and the power company required police assistance to access the let property for the power to be restored. Mr Fulton 's letter suggested that the whole series of events had been a nightmare for him and those living near to the let property.

10.Mr Caldwell referred to the back door at the property having apparently been glued shut at some stage during the tenancy and the lock having to be replaced. Although this was suggested to have occurred during the tenancy the Tribunal was not given any information as to how this might have occurred.

11.Mr Caldwell suggested that the property was boarded up and secure at the time of the case management discussion in January 2023.His information was that the property now has little in the way of contents and is not being used or is being used only by associates of the Respondent for whatever purpose.

12.The Respondent did not appear at the case management discussion and was not represented and had not made any representations directly to the Tribunal. The Tribunal did have sight of an email he sent to the Applicant's solicitor on 21st December 2022 in response to Mr Caldwell 's email to the Tribunal requesting to increase the sum being sought by way of a payment order. In this email the Respondent suggested that he was still waiting for the door at the property to be replaced and stated that the house was not safe or secure. He said he would pay nothing as the living conditions were unacceptable. He suggested he had not abandoned the property and complained of the treatment he had received at the hands of the landlord's agent and said that he would surrender the property if an agreement could be reached and stated that he was seeking "comparison".

13.The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

14.The Applicant company and the Respondent entered into a private residential tenancy at the property with effect from 2nd March 2020.

15.The rent in terms of the tenancy agreement is £498.33 per month payable in advance.

16. In August 2022 when a Notice to Leave was served on the Respondent rent arrears had accrued in the sum of £1379.90 and the rent had been in arrears for a period of more than three consecutive months since April 2022.

17. In December 2022 rent arrears had accrued in the sum of £3373.22 and the arrears continue to accrue, no rent having been paid in terms of the tenancy agreement since June 2022.

18. The Applicant's solicitor wrote to the Respondent on the question of rent arrears in September 2022 and signposted him to guidance in the event of homelessness but received no reply.

19. The rent arrears accrued during the tenancy are not as the result of a delay or failure in the payment of housing benefit.

20. The Respondent in an e mail dated 21st December 2022 sent to the Applicant's solicitor said he would pay nothing for the property, complained regarding the safety and security of the property and said he would surrender the property if an agreement could be made.

21. Between 28 September 2021 and 6th November 2022 the Respondent has engaged in relevant anti-social behaviour at the let property at 125 Burns Road Greenock affecting neighbours living in properties in the same street.

22. The Respondent engaged in persistent anti-social behaviour between 28 September 2021 and 6th November 2022 at the let property and this involved on frequent occasions the hosting of noisy parties which went on into the early hours of the night on many occasions and disturbed the sleep of those in neighbouring properties.

23. The Respondent engaged in persistent anti-social behaviour between 28 September 2021 and 6th November 2022 at the let property involving on a number of occasions the burning of large piles of wood at all times of the day and into the night at the front and back of the let property including burning wood on a flotation device on a pool in the back garden, all of which caused thick smoke which annoyed, disturbed and caused nuisance to neighbours in nearby properties in the same street.

24. The Respondent engaged in persistent anti-social behaviour between 28th September 2021 and 6th November 2022 at the let property which involved the Respondent coming and going from the let property at all hours of the day or into the early hours of the night in a noisy vehicle causing disturbance, annoyance and nuisance to neighbours living nearby in the same street.

25. The Respondent engaged in persistent anti-social behaviour between 28th September 2021 and 6th November 2022 at the let property which involved the Respondent filling a large pool in the garden at the property on a number of occasions sometimes as late as 9pm at night and continuing to fill it until 4am causing annoyance, disturbance and nuisance to neighbours living nearby in the same street.

26 Between 28th September 2021 and 6th November 2022 Mr Henry Fulton and his wife, near neighbours of the let property have suffered distress, annoyance, nuisance, and disturbance as a result of the behaviour of the Respondent as set out at paragraphs 22-25 of this decision.

27. Neighbours in the street where the let property is situated signed a petition which was sent to the Applicant as the property landlord to attempt to have the Respondent evicted from the property.

28. In October 2022 the police forced entry to the let property which was secured after this incident and arrangements were made to allow the Respondent access to the property by giving keys to a friend of his at his request.

29. A Notice to Leave in proper form setting out the two eviction grounds in detail was properly served on the Respondent on 17th August 2022 giving sufficient notice to the Respondent of the application to the first-tier tribunal for an eviction order.

30. A notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to Inverclyde Council on 28th September 2022 in relation to this application.

Reasons for Decision

31. The Tribunal was satisfied that it was reasonable to grant an eviction order on both of Grounds 12 and 14 of Schedule 3 of the 2016 Act. In respect of Ground 12 the Tribunal was satisfied that Ground 12 was established on the information before it and it noted that the Applicant's solicitor had sent a letter to the Respondent in September 2022 signposting him to assistance in the event of homelessness. The Tribunal was satisfied that there had been an attempt to comply with the Pre Action-Protocol requirements in respect of an application in terms of Ground 12. The Tribunal further accepted that after an incident in October 2022 the property was boarded up and secure and did not accept the Respondent's suggestion as set out in an e mail to the Applicant's solicitor in December 2022 that it was insecure and as a result of the living conditions that no rent was to be paid at that time.

32. As far as the application under Ground 14 is concerned the Tribunal considered the terms of the Ground in detail and this is set out here :-

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,

[F33(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, 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.

33. There was no discussion in this application regarding the timing of the anti-social behaviour of the Respondent at the let property other than information and material before the Tribunal to suggest that this had persisted throughout the tenancy and that the Respondent had last been seen at the let property on 6th November 2022. The application was made on the basis that the behaviour had continued throughout the tenancy but Ground 14(2) (ba) at subsection (c) states that an eviction may be granted if the application is made within 12 months of the anti-social behaviour occurring unless there is a reasonable excuse for the application being made after that time. In the absence of information as to any reasons for the timing of the application,

which was made in September 2022, the Tribunal considered that the proper approach in making its decision was to consider only behaviour which it accepted had occurred after the date of 28th September 2021, in the 12 months before the application was submitted to the First Tier Tribunal. The Tribunal considered that the Respondent has engaged in persistent relevant anti-social behaviour to neighbours in the street where the let property is situated as described in the Notice to Leave and set out in findings in fact numbers 21-26 of this decision. Given that the Tribunal restricted its consideration of behaviour to that which occurred in the 12 months before the application was made, the Tribunal did not consider the email from Inverclyde council regarding alleged anti-social behaviour as part of this decision, given that it was dated in August 2021. In addition the Tribunal did not consider that the material before it in relation to suggested gluing of the lock in the back door of the property, drug taking and other criminal behaviour at the let property resulting in police attendance with a warrant and the alleged damaging of a fuse box which was said to have cut the power supply to a neighbouring property, could be said to amount to relevant anti-social behaviour of the Respondent on the basis of the limited information on these issues before the Tribunal. It was further noted that the incidents referring to police attending at the property with a warrant and the cutting off of the power supply to a neighbour, which were suggested to have taken place in October and November 2022 occurred after the Notice to Leave was served and referred to allegations which were different to those outlined in the Notice. The Tribunal did not consider these incidents or suggested drug taking at the property when making its decision on this eviction ground. Any information relating to suggestions of previous criminal conduct on the part of the Respondent or of any previous eviction order was not considered relevant to this application and also not considered as part of this decision.

34. The Tribunal also considered in terms of its assessment of whether it was reasonable to grant the order requested that it would have found it was reasonable to grant an order under Ground 12 only even if it had not granted the order in terms of Ground 14, given the information regarding the rent arrears and the Respondent's attitude to the payment of rent as set out in his email of 21st December 2022.

Decision

The Tribunal determined that an eviction order be granted at the property in terms of Grounds 12 and 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 in that for three or more consecutive months the Respondent has been in arrears of rent and the Respondent has engaged in relevant anti-social behaviour to persons living close to the property in the period of 12 months before the application for eviction was made and it is reasonable on account of the circumstances of the rent arrears and relevant anti-social behaviour that an eviction order is 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.



Legal Member/Chair

27.1.23

Date