



**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/21/0553

**Re: Property at 1 South Park Cottages, South Parks Farm, Glenrothes, KY7
6HH (“the Property”)**

Parties:

**Balgonie Estates Limited (SCO09072), Estate Office, Markinch, Glenrothes,
KY7 6HH (“the Applicant”)**

**Mr Lee Allan, 1 South Park Cottages, South Parks Farm, Glenrothes, KY7 6HH
 (“the Respondent”)**

Tribunal Members:

Andrew McLaughlin (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

The matter called for a Hearing today by conference call in respect of an Application for an Eviction Order based on Grounds 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Hearing called alongside a related Hearing on the Application with reference FTS/HPC/CV/21/0465 in respect of a Payment Order.

There had been a previous Case Management Discussion in respect of both Applications on 21 April 2021 at which Case Management Orders containing Directions had been made regulating the progress of the case towards today's Hearing. The Applicant had complied with those orders by lodging a witness list in addition to the documentary evidence that was submitted alongside the Application. The Respondent did not comply with the Directions made which had included ordering the Respondent to lodge written particulars of the Respondent's proposed

defence together with a witness list and any documentation to be relied on at the Hearings.

The Applicant was represented by Ms Allanson, solicitor, of Anderson Strathern. There was no appearance by or on behalf of the Respondent. Details of today's Hearing together with information about how to join the conference call and a copy of the Case Management Discussion decisions and directions had been served on the Respondent on 28 April 2021. The Tribunal therefore decided to proceed with the Hearing in the absence of the respondent.

The Hearing

Ms Allanson intended to lead evidence from two witnesses in support of the Application for an Eviction Order. Despite the fact that the case was not being contested at today's Hearing, the Tribunal required to hear evidence to properly consider whether the grounds of eviction was established and also to assess the reasonableness of making any order.

Mr Colin Smith

The first witness called was Mr Colin Smith who lives at Number 3 South Park Cottages which is two doors down from the address where the Respondent lives. Mr. Smith described their respective properties as being three terraced cottages in a rural location and adjacent to extensive farmland. The area sounded quiet and removed from town or city life.

Mr Smith had lived there happily for ten years until around November 2019 when the Respondent moved into the Property and immediately started causing extensive disruption to his neighbours. This included immediately hosting an impromptu firework display without any consultation which sounded chaotic, dangerous and completely over the top from Mr Smith's evidence. Mr Smith then described in some detail an extensive chronology of wild and excessive parties and social gatherings that caused unacceptable levels of stress, annoyance and anxiety to Mr Smith and his wife and also to the occupier of the property immediately next door to Mr Smith. These parties started as soon as the Respondent moved in around November 2019 and have continued to the present day and despite the national lockdowns often in place during these times.

These parties invariably involve large numbers of visitors attending at the Property, drinking heavily, listening to loud electronic music and often fighting each other in drunken arguments until the small hours of the morning.

In addition to this Mr Smith gave a comprehensive account of the visitors to the Property coming and going at all hours of day and night and even appearing on occasion to drive whilst drunk. On other occasions visitors congregated in vehicles to smoke what Mr Smith was sure was cannabis.

Mr Smith also spoke to the Respondent leaving rubbish permanently strewn about the area and having his bins permanently overflowing. The area round the

Respondent's Property was normally heavily littered with beer cans and other rubbish.

Mr Smith also described his own bins being contaminated by the Respondent who often dumped landfill waste in Mr Smith's recycling bin meaning that Mr Smith's own bins would not then be emptied by the local authority refuse collectors.

The situation with the litter was so bad that in fact Mr Smith indicated that there had been an outbreak of vermin in the area and Mr Smith had required to organise rat and mouse traps to try and manage the scale of the problem.

Mr Smith spoke of a puddle of vomit that was left outside the Respondent's Property for some time after one of his parties. Mr Smith informed the Tribunal that the Respondent left the vomit unattended to for a considerable period of time and took no steps to clean it up.

Mr Smith's evidence was not just restricted to describing loud parties and mess. He also gave evidence that one evening when he and his wife went for an early evening stroll, they found two visitors at the Property with their penises exposed and openly urinating in front of them against one of the walls of the cottages.

Mr Smith also described being threatened by the Respondent whenever he challenged him about his behaviour. On one occasion when Mr Smith was attempting to take a photograph of some debris left by the Respondent, when the Respondent angrily accosted him and accused him of photographing his truck.

Mr Smith had been forced to call the police on countless occasions and also reported incidents of concern to Balgonie Estates who own the farm cottages.

Mr Smith's evidence was given in a measured and logical manner. The Tribunal considered him an impressive witness. The events which he described sounded appalling and the Tribunal considered that Mr Smith was being genuine when he described how having the Respondent next door significantly affected his wellbeing. He described how he loved the area but was now nervous to go out in case he met the Respondent, and he dreaded the weekends when he was forced to be in close contact with the Respondent's chaotic lifestyle. He also hated seeing the area become so dirty and neglected.

The Tribunal did find it surprising to hear that a 16-year-old lived in the Property with the Respondent. The Respondent was described as a male in his late thirties with a son who appeared to live with him at least some of the time. The Tribunal was anxious about what effect this lifestyle must be having on the child's wellbeing. The implication was that the child was in the Property when the parties and disruption was taking place which was a troublesome thought.

The next witness called was Ms Elaine Turner.

Elaine Turner

Ms Turner was an estates office administrator for the Applicant. Her duties included looking after the tenants of the various properties owned by Balgonie Estates. She had been in her role for five years.

She was very familiar with the Respondent and the issues that had arisen following on from his arrival at the Property. She confirmed that there had been several complaints made from Mr Colin Smith at number 3 and also Ms Hazel Bisset who was the other neighbouring tenant Mr Smith had referred to and who resided at number 2 South Park Cottages.

She spoke of receiving constant complaints along the lines of those spoken to by Mr Smith in his evidence. Ms Turner had not inspected the Property herself but could confirm that all the complaints she had received were well founded and that in her entire career in housing she had never encountered a tenant that caused so many problems as the Respondent.

Ms Turner spoke to the complaints regarding the wild parties, the fighting, the mess, the rodents and the intimidation of the other neighbours. Ms Turner also confirmed that she was anxious that the other two residents of the cottages might feel that they have no option other than to leave.

She also spoke of how she had liaised with the community police about these issues. Ms Turner could not confirm if the Respondent's son lived in the Property full time, but it was clear that Ms Turner had made efforts to address the concerns with the Respondent.

She spoke to having served warning notices to the Respondent about his anti-social behaviour on 17 November 2020 and on 13 January 2021. On one occasion the Respondent phoned Ms Turner and appeared to apologise and stated that he had "*gone off the rails*" and this was because he had recently separated from his partner. The Respondent had also advised that he had not received the latest anti-social behaviour warning letter and had asked this to be sent to a new email address. This was done. Ms Turner pointed out though, that on the weekend immediately following this phone call the Respondent had another weekend of wild parties, with drunken fighting and unacceptable noise levels until the small hours of the morning.

The Tribunal found Ms Turner to be a credible and reliable witness. Her evidence was corroborated by the accounts given by Mr Smith and the Tribunal had no reason to doubt that she was being anything other than completely candid with the Tribunal.

At this point Ms Allanson confirmed that she would be calling no further witnesses in respect of this Application for the Eviction Order, but that a further witness would be called who would be only speaking to the Application for the Payment Order.

Having considered the Application with enclosures and having heard evidence from both witnesses and also having carefully questioned both witnesses with a view to assessing whether not only the grounds of eviction was established but also the

reasonableness or otherwise of making the order, the Tribunal made the following findings in fact.

Findings in Fact

- I. *The parties entered into a Private Residential Tenancy at the Property that commenced on 23 October 2019;*
- II. *The Applicant was the landlord and the Respondent was the tenant in respect of that tenancy;*
- III. *Ever since moving into the Property, the Respondent by his behaviour and actions has made life intolerable for his neighbours at numbers 2 and 3 South Park Cottages;*
- IV. *The Respondent has allowed the Property to become a destination of choice for third parties to attend most weekends for wild parties that typically involve excessively loud music, frequent drunken brawls in the vicinity of the Property and completely unacceptable levels of waste materials being left in the surrounding area;*
- V. *The Respondent has shown no regard whatsoever for the welfare and well-being of his neighbours and shows a commitment to continuing on with this long standing pattern of behaviour;*
- VI. *The Respondent has caused his neighbours significant distress and harm to their well being and quality of life;*
- VII. *The occupiers of numbers 2 and 3 South Park Cottages have been forced to live in squalid living environment caused directly by the actions of the Respondent in allowing vermin to thrive as a result of the Respondent's lifestyle choices;*
- VIII. *The Respondent has shown no regard whatsoever to the health and legal implications of actively orchestrating large gatherings during periods of national lockdown and has exposed his neighbours to increased risks of Covid-19 infection together with the associated anxiety of having to be proximate to large groups;*
- IX. *The Respondent has attempted to intimidate neighbours and been aggressive when challenged about his appalling behaviour;*
- X. *The Applicants gave the Respondents written notices on 17 November 2020 and 13 January 2021 warning the Respondent to change his ways;*
- XI. *The Respondent failed to take heed of these warnings and continued to occupy the Property in such a manner that caused unacceptable levels of stress and anxiety to those who lived around him;*
- XII. *The Respondent has a 16-year-old son who resides in the Property at least some of the time;*

- XIII. *It is more likely than not that the Respondent's child has been in the Property and exposed to the extreme behaviours of the Respondent.*
- XIV. *It cannot be said that refusing to grant an Eviction Order is obviously more conducive to the welfare of the child when it appears that the Respondent's lifestyle at the Property is so chaotic;*
- XV. *The Applicant has gone to reasonable lengths to address with the Respondent the concerns raised regarding his anti-social behaviour. These efforts have yielded no assurances that the pattern of behaviour has changed;*
- XVI. *On 12 January 2021, the Applicants validly served a Notice to Leave on the Respondent in terms of Grounds 14 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016;*
- XVII. *The legal test set out in Grounds 14 of Schedule three of the Private Housing (Tenancies) (Scotland) Act 2016 is met in that the Respondent has engaged in relevant anti-social behaviour in relation to another person within the last twelve months;*
- XVIII. *The Respondent's anti-social behaviour has, by his actions, caused alarm, distress, nuisance and annoyance to his neighbours and numbers 2 and 3 South Park Cottages.*
- XIX. *It is reasonable to grant the Eviction Order.*

Decision

Having made the above findings in fact, the Tribunal unanimously granted the Application and made an Eviction Order.

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.



Andrew McLaughlin
Legal Member/Chair

27 May 2021
Date