SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2017] SC EDIN 57

SD31/17

JUDGMENT OF SHERIFF T WELSH QC

In the cause

MIDLOTHIAN COUNCIL, incorporated under the Local Government etc. (Scotland) Act 1994, Midlothian House, Buccleuch Street, Dalkeith, Midlothian, EH22 1DN

Pursuer

Against

MRS LEE GREENS, Penicuik

Defender

Pursuer: Lyons; Midlothian Council
Defender: Meikle; Civil Legal Assistance Office, Edinburgh

At Edinburgh 8 September 2017 the Sheriff having resumed consideration of the cause;

Grants decree in terms of the summons that the defender remove herself and her family, sub-tenants and dependents with her goods and possessions from the property in Penicuik on or before 10 November 2017 and makes no award of expenses due or by either party.

Note

[1] I found the following facts admitted or proved:

i. That the pursuer is the heritable proprietor and landlord of the property in Penicuik. That the defender is the tenant of the property owned by the pursuers in Penicuik in terms of a Scottish Secure Tenancy. Her husband Richard Greens resides there but is not named on the lease as a tenant.

ii. That the defender became the tenant of the property on or around 12 September 2011.

iii. That the defender agreed to observe the conditions of the lease when she became tenant of the property.

iv. That various anti-social behaviour complaints were received by the pursuer from a neighbour of the defender on 17 June 2014, 19 June 2014 and 10 July 2014. The complaints were about constant banging of doors, running up & down non carpeted stairs; dogs barking and wailing; shouting; swearing; arguments; heavy foot traffic entering and leaving the property and drug addicts attending at the property.

v. That on 29 May 2015, police attended the subjects and recovered 10 grams of diamorphine along with paraphernalia indicating that the diamorphine was being supplied from the subjects. The defender and her husband Richard Greens were charged with being concerned in the supplying of diamorphine and possession of cannabis at the property. On 1 April 2016 the defender was convicted, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971, of being concerned in the supplying of diamorphine to another or others at the property. This offence is punishable by imprisonment and was committed while the Defender was on bail. On 18 July 2016 the defender was placed on a drug treatment and testing order (DTTO) for 15 months.

vi. That the defender has behaved in an antisocial manner within the locality of the tenancy in that she was concerned in supplying diamorphine (heroin) there contrary to section 4(3)(b) the Misuse of Drugs Act 1971.

vii. That the pursuer's Community Safety Team wrote to the defender on 4 June 2015 reminding her that antisocial behaviour is unacceptable.

viii. That the pursuer's Housing Services wrote in the same terms on 3 July 2015 reminding the defender of her obligations under the tenancy agreement, specifically Sections 8 and 5 which related to "respecting your neighbours" and "ending your tenancy".

ix. That, in terms of Clause 5 of the lease, the defender agreed that she would not act in an antisocial manner to, or pursue a course of conduct against, any person in the neighbourhood by using the house or allowing it to be used for immoral purposes or supplying drugs from within.

x. That the defender and Richard Greens have repeatedly engaged in other anti-social behaviour before and after 29 May 2015 at the property. This has taken the form of repeated noise disturbance, shouting and arguing late at night. Cars and vans have repeatedly come to the property late at night and persons have visited the property for a few minutes and left. The defender has on various occasions late at night left her property and gone to vans and cars and returned after a few minutes. The defender has used a lawn mower, hoover and washing machine late at night. This conduct has repeatedly caused alarm, distress, nuisance or annoyance to neighbours who have complained to the pursuer.

xi. That the defender and or Richard Greens use cannabis on the property, the smell of which seeps into the adjacent dwelling house to the annoyance and distress of the occupants there.

xii. That a seven year old child residing in the adjacent dwelling house is adversely affected by the late night noise coming from the property and her sleep is disturbed. She is exposed to the smell of cannabis.

xiii. That the Police were called to the property and the defender was charged with an offence of assault on SR on 21 February 2017;

xiv. That a Notice of Proceedings for Recovery of Possession was served upon the defender and the qualifying occupier, Richard Greens, on 27 October 2016.

xv. That the pursuer has grounds for recovery of possession of the property in terms of Ground 1, 2 and 7 of Part 1 of Schedule 2 of the Housing (Scotland) Act 2001.

xvi. That in June 2017 another neighbour who wishes to remain anonymous complained about noise coming from the defender's property.

xvii. That the defender has a medical history of depression, multiple episodes of intentional self harm, drug dependence on a Methadone programme, hypermobility syndrome diagnosed 26 years ago and chronic pain. She is prescribed Fluoxetine, Gabapentin, Naproxen and Tramadol for pain relief.

xviii. That Richard Greens suffers from respiratory disease, high blood pressure, and drug addiction to opiates. He is prescribed Methadone, Diazepam and Mirtazapine for low mood. He is prescribed medication for his other health conditions.

xix. That the defender's 5 children are accommodated in local authority care.

The Issue

[2] The defender is the tenant of the pursuer in a 3 bedroom semi-detached house in Penicuik. The defender lives there with her husband Richard Greens. On 1 April 2016 she pled guilty to being concerned in the supplying of heroin from the tenancy on 29 May 2015. The pursuer has received many complaints from neighbours about the defender's general anti-social behaviour and now seeks an order for her eviction. It was not disputed that grounds for eviction exist. The only issue was whether, in the circumstances of the case, it is reasonable to evict her and her husband who is a qualifying occupant.

The Hearing

Pursuer's proof

[3] Deborah Ratley (47), gave evidence. The witness is the pursuer's housing officer with responsibility for the Penicuik area where the premises are situated. The property comprises a 3 bedroom semi-detached dwelling house with front and back garden within a good residential area with a mix of social and private housing. There are good local amenities, parks and schools. The witness spoke to the lease between the pursuer and defender. She gave evidence that clause 5 of the lease prohibits anti-social behaviour including 'drug dealing'. Allowing drugs to be sold from the premises is grounds for eviction she said. Richard Greens applied to be removed from the tenancy on 21 January 2015. His name was removed on 23 February 2015. He is on the homeless list and she thought he would secure a tenancy in the future. He still resides at the premises. The defender is the sole tenant. The defender was on the 'council's radar' even before the drug raid because of neighbour complaints. The witness said there were complaints from 3 neighbours in the street about the anti-social behaviour of the defender and occupants of the premises in 2014. These complaints related to noise, visitors to the premises, arguing, screaming, dogs barking late at night, door banging at night, cars coming and going and idling outside the property, late night lawn mowing and strimming of the garden lawn at night and early hours noises. There was a police drug raid on 29 May 2015 which resulted in prosecution. Between 2014 and 2017 there have been repeated complaints about noise and anti-social behaviour from the premises. There were complaints about noise of arguments and loud voices late at night from the premises; noise of banging of doors and shouting, the witness said; repeated complaints about visitors coming to the house at night in cars and leaving after a few minutes; and many complaints about cars idling outside the house while someone goes in

for a few minutes from the car. On 5 June 2015 one neighbour called the police because the defender was strimming the lawn late at night. On 21 January 2017 there was an incident reported to the police. The defender was charged with assault of a neighbour. Another neighbour who wishes to remain anonymous complained about noise and called the police in June 2017.

[4] The witness was cross examined and it was put to her that the defender and her husband both were in poor health and were recovering drug addicts. This had not been disclosed to the pursuers but it was known the pursuer's 5 children were accommodated in local authority care. The pursuer knew of the DTTO disposal and the witness said support had been offered to the pursuer in many ways but there had been no engagement by her. She had been offered adoption counselling. Mediation between the pursuer and the neighbours had been discussed with a line manager but the witness said matters had gone too far. The anti-social behaviour continued even after the police raid on 29 May 2015. The witness said support had been offered to the pursuer in the form of adoption counselling. It was suggested the pursuer could have offered the defender a short Scottish Secure Tenancy but this option it was said had been considered but rejected because the anti-social behaviour was continuing and the pursuer accordingly preferred to proceed to eviction. If evicted the pursuer would be re-housed as a homeless person.

[5] In re-examination the witness said the case had been considered at the pursuer's violent and anti-social tenant monitoring group in 2015.

[6] SR (38) gave evidence. He is the proprietor of a hotel in Penicuik. He is a neighbour of the defender. He bought his property in 2011. He described the defender and her husband as bad neighbours. There are people coming and going to all hours at night. There are constant disturbances. The witness has a daughter, aged seven. The witness said since the

defender and her family have been housed there the disturbances have been constant and ongoing. After the council took the defender's children away the noise got worse. There were many comings and goings of people he called 'known drug addicts in Penicuik'. There were no carpets in the house. The noise of doors slamming and banging was regular. There was a smell of cannabis throughout the house. There were cars arriving at all hours of night sitting with their engines running and people coming in and out. His daughter cannot get to sleep because of the noise. She would have to get up at night and come to her parents' bedroom because her sleep was disturbed by the noise. He could hear arguments late at night about drugs and money. The disturbances start about 9pm to 10pm and last until the early hours. The disturbance is constant. It is affecting his daughter who is tired in the mornings going to school. The witness said he and his family cannot use their own back garden because they are not sure what will be said or done by the defender if they go out. There had been arguments and confrontations about the behaviour. In February 2017 he was in his bedroom. There had been noise the night before and his partner had opened the front window and asked if the defender could keep the noise down. This was about 10.30pm. His partner had gone out to the garden. The witness went out to tell his partner to come in. The defender was in the garden. A confrontation occurred. The defender slapped the witness. He ushered her out of his garden. The defender accused the witness of sexually manhandling her. The police were called. The defender was charged with assault. The defender and the witness have not spoken since that day. The witness said there have been at least 2 police raids in the property. The witness said it was a good neighbourhood apart from the defender. There are young families in the area. There is a good social mix. He has considered moving from the area because of the defender's behaviour. At one stage the defender had cameras at the front and rear of the property. The witness complained and they were

removed. From the way people come and go from the house the witness believed there were drugs involved. Cars and arrive people get out and come and knock the window next door to get access. After a short while they leave. Sometimes the car parks about 200yds away and the visitor arrives on foot to the property. Sometimes the defender or her husband goes to a car that has appeared and after a short period they come back to the house. This is a regular occurrence. On other occasions the car goes away and comes back with the defender or her husband in it and returns a short while later. The witness has seen different vehicles including vans and Mercedes cars. The witness said he has considered putting his property on the market and moving. He will not renovate his own property while the defender and her husband live next door. The conduct of the defender and her husband has caused annoyance, alarm and distress to him and his family.

[7] In cross examination the witness said he had never been approached about mediation.

[8] SM (38) gave evidence. She is an office manager and resides with her partner SR and her seven year old daughter in the house next door to the defender. She said there has been a history of disturbance, anti-social behaviour and intimidation coming from the neighbours. She complained about various forms of disturbance over the years including shouting, banging, swearing, noise from household appliances like a washing machine or hoover late at night, all emanating from the defender's property. The defender doesn't work. She and her husband turn day into night. The noise can be from 7pm until 1am or later. Her daughter is disturbed and afraid. She is tired in the mornings because her sleep is disturbed. Cars arrive at all hours and sit with engines running and go away. The witness said there were too many occasions to mention. The witness complained to the council on numerous occasions. She spoke to the incident in February 2017. She said there had been noise the

night before. The defender was leaving a white van at about 10pm. There was an argument outside. The witness opened the window and asked for the noise to be kept down. The defender said she "could make as much noise as she wanted until 11pm". The witness was angry. The defender entered the garden and an argument ensued. The defender's partner got involved. SR came down stairs. He went into the garden. The defender struck SR. The witness phoned the police.

[9] In cross examination the witness was asked if mediation had been offered. The witness said she might have tried that initially but not now after all that has happened. The disturbance, noise and cars have continued and a strong smell of cannabis comes through the fireplace of her front room which is coming from the defender's house next door.

Defender's Proof

[10] Dr Karen Oso MBCHB gave evidence. She graduated in 2006 and has been MRCGPs since 2011. She is the defender's GP. The factual basis of her report was agreed. She said the defender had a history of depression, multiple episodes of self harm, drug dependence on methadone programme, hypermobility syndrome diagnosed about 26 years ago and chronic pain. Dr Oso said in her opinion if the defender were evicted this could result in mental health stressors and that could manifest in a deterioration of the defender's mental wellbeing. On a day to day basis that would result in a dip in her mood. This in turn would mean it was more difficult to achieve long term goals.

[11] In cross examination the doctor said she had never been asked to write a report like this. Her only experience of mental health was doing rotations as a trainee doctor.

[12] Dr A Drummond Begg, MBCHB, FRCGP, DRCOG gave evidence. He is Richard Greens' GP. He qualified in 1992. The factual basis of his medical report is agreed. Richard

Greens suffers from respiratory disease in the form of chronic obstructive pulmonary disease and asthma. He has high blood pressure and drug dependence due to opiate addiction. The doctor said homelessness aggravates health conditions. He said there was an article in the Lancet he had read and some US research to indicate that is the case. He said he was not an expert but he thought homelessness would aggravate the medical condition. Homeless people are more chaotic than people in a stable condition.

[13] In cross examination he said he had little knowledge of the practical aspects of the process of homelessness and what would actually happen if eviction occurred or the legislation.

[14] Richard Greens (39) gave evidence. The witness said he lived at the property with his wife. He said he and his wife have had no involvement in drugs since the drug raid. Steven Smith comes to the house to help his wife. He denied he had noisy arguments with his wife. He said that on the 21 February 2017 the windows in the house were being replaced by the local authority. There was noise that day. Later in the evening Steven Smith arrived to pick up his wife. He said that SM from next door shouted something from the window. SR ran out and grabbed Lee. She did not assault him. There was never any cannabis in the house. The witness said he did not smoke. There was no noise at night. The local authority provided no support. He has 5 children by the defender. They are all in care. Lee turned to heroin because of that. She is better now she is on a DTTO. If they lose the house they won't see the children again because there is nowhere for them to stay. The witness said he ignores the neighbours.

[15] In cross examination the witness confirmed he is not on the tenancy. He signed the letter asking to be removed from it when he was in prison. He was released in May 2014. From May 2014 to January 2015 he lived with a friend. Then he returned to the property. The

police raided the house in May 2015. Both he and Lee were bad on heroin at the time. The witness said he knew Lee used heroin but he didn't know she had it that day. The witness is on the homeless register. He is waiting for a house. Steven Smith has a silver fiesta and a white van.

[16] Lee Greens (37) gave evidence. The witness said she is the tenant of the property. She lives there with her husband. Their 5 children are in local authority care. The witness said she now has regular contact with her second oldest child aged 15 who she wants to come to live with her. She is on a DTTO. She has used heroin since her father died after hospital negligence. She said she turned again to heroin when her children went into care and her husband was in jail. She was in a bad place. She said she worked in saunas and had been the victim of a violent sexual assault. She used heroin to kill the pain. She said she had not used heroin since September 2016. She is presently on a methadone prescription. The witness was asked about cars coming and going from the premises. She said she has a son with a car who comes to visit. Steven Smith also has a car and he visits. That was all. She has bad knees and Steven Smith picks her up to go shopping or go to the chemist. She is tested every week for drugs. If she loses the house she will not get the children back. The witness said she had changed. She has now engaged with SHINE which is a support organization for women. She has contact with the children every day. The council offered her no support. Her neighbour is a housing officer. In February there was noise in the house. The council was changing the window frames. There was banging and sawing. The witness said she cannot use her own back garden as she feels intimidated. In February 2017 the witness said she had come back to the house in the van. The neighbour's window opened and something was shouted. Next thing the door flew open and SR ran out. He attacked her. He had his hand on her chest. He punched her twice and threw her out the garden. She phoned the police but hung up

because she was scared. If she is evicted the witness said she would be put off the DTTO and go to jail. She can say no to heroin now. She has asked for support for years but not got any. The witness thought the child from next door went to her parent's bedroom to sleep because she preferred to sleep in their bed rather than in her own. She denied any suggestion of repeated noise disturbance and constant visitors to the property.

[17] In cross examination the witness was asked about the CCTV. She said it was put up by the police after an incident. She said she was involved with drugs in 2002. She was using drugs in Fort William when younger. Nothing heavy she said. She was using when her father died and after the birth of a child when she had post-natal depression. The witness admitted supplying drugs to friends. She was convicted of possession and supplying in Fort William.

The Submissions

[18] Ms Lyons for the pursuer invited me to accept as credible and reliable the witnesses led by the pursuer. On that evidence she submitted, given the concession that there were grounds for recovery of possession, established in terms of Ground 1, 2 and 7 of Part 1 of Schedule 2 of the Housing (Scotland) Act 2001 [the Act], the only question that arose was whether repossession was reasonable in terms of s16(2) and (3) of the Act. She relied on the reasoning and approach articulated in *Shetland Islands Council v Hassan* [Sheriff Mann] Hous. L.R. 107. Her position was that there was anti-social behaviour and illegality established in breach of the lease. The conduct is ongoing as evidenced by the assault on SR in February 2017 and the recent complaint spoken to by Ms Ratley and the evidence of the witnesses. She also cited the ongoing smell of cannabis from the defender's property as evidence which if believed would entitle the court to hold the defender had not changed her ways. I was

invited to reject the defender's invitation to dismiss the case or adjourn proceedings to monitor the defender's behaviour. Ms Lyons argued there was no evidence from the DTTO team in support of the contention that the defender had made material progress on the order and an adverse inference could and should be drawn from that.

[19] Ms Meikle conceded that there were grounds established which could justify repossession of the property but in the circumstances of this case she invited me not to take that course. The defender admits she was convicted of being concerned in supplying diamorphine but she and her husband deny anti-social behaviour. Ms Meikle did not suggest that the procedure followed by the pursuer was defective in any way. There was accordingly no technical bar to repossession. The only issue was whether it was reasonable to grant decree. She invited me not to do so. She argued the defender was a reformed character in that she was engaging with DTTO and SHINE support. In addition her health and that of her husband was fragile. It was not reasonable to grant the order sought by the pursuer in these circumstances having regard to the interests of the defender, her husband and their children. She invited me to accept the evidence of the defender's witnesses. I was invited to accept the medical evidence that the defender and her husband's health will likely deteriorate if they are made homeless. I was invited to take into account all the circumstances of the case including the effect that losing the property would have on the defender's prospects of having her children or some of them returned to her. The defender relied on *Glasgow Housing Association Ltd v Stuart* 2015 Hous. L.R. 2 [Sheriff S Reid]; *Barclay v Hannah* 1947 S.C. 245; *Glasgow City Council –v- Cavanagh* 1999 House.L.R.7 [Sheriff S Raeburn]; *Glasgow Housing Association Ltd –v- Hetherington* 2009 Hous. L.R. 28. [Sheriff I H L Miller]. I was invited to adjourn the case for 6 months to monitor the behaviour of the defender as was done in *Hetherington.*

The Law

[20] So far as is relevant to this case, the law concerning the power of the court in relation to proceedings for recovery of possession raised in terms of s14 of the Act is contained in s16, which provides:

> "(1) The court may, as it thinks fit, adjourn proceedings under section 14 on a ground set out in any of paragraphs 1 to 7 and 15 of schedule 2 for a period or periods, with or without imposing conditions as to payment of outstanding rent or otherwise.
> (2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—
> (a) that—
> (i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and
> (ii) it is reasonable to make the order…….
>
> (3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—
> (a) the nature, frequency and duration of—
> (i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,
> (ii) where the ground for recovery of possession is that set out in paragraph 2 of that schedule, the conduct in respect of which the person in question was convicted,
> (b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,
> (c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and
> (d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct."

[21] The defender in this case agrees that there are grounds established for repossession in terms of paras 1, 2 and 7 of schedule 2 of the Act. These grounds are:

1. Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.
2. The tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of, the tenant, or a person visiting the house has been convicted of—
   (a) using the house or allowing it to be used for immoral

or illegal purposes, or

(b) an offence punishable by imprisonment committed in, or in the locality of, the house.

7. (1) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any subtenant of, the tenant, or a person visiting the house has—

(a) acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality, or

(b) pursued a course of conduct amounting to harassment of such a person, or a course of conduct which is otherwise anti-social conduct in relation to such a person,

and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant.

The Decision

[22] The Scottish Secure Tenancy was introduced by Chapter 1 of Part 2 of the Act. The intention was to create a protected tenancy in Scotland which extended to every tenant of a local authority or registered social landlord a strong suite of procedural safeguards allied with judicial oversight of eviction. While these tenancies are secure, they are not invincible. Subject to the power to adjourn the case to monitor the conduct of the defender, which is discretionary, I am obliged to grant an order for recovery of possession if grounds are established and it is reasonable to make that order. Thus, if grounds are established and it is reasonable to grant the order, I must do so. In the determination of whether it is reasonable to grant the order for recovery of possession the legislation obliges me, *inter alia,* to have particular regard to the nature, frequency and duration of the conduct established in an anti-social behaviour case in relation to making a judgement whether it is reasonable to grant the order for recovery of possession. Likewise in a conviction case I am enjoined to have particular regard to the nature, frequency and duration of the conduct which gave rise to the conviction. I also require to have particular regard, in deciding the question of

reasonableness, to the extent to which the defender alone is responsible for the conduct established; the impact the conduct established has had and continues to have on others and the steps taken before proceedings were raised by the pursuer to secure the cessation of the conduct established.

The Evidence

[23] There is, apart from the admission by the defender that she was convicted of a contravention of s4(3)(b) of the Misuse of Drugs Act 1971, a stark contrast in the evidence about wider anti-social behaviour at the property. Having heard the witnesses give evidence I have no hesitation in accepting the witnesses of the pursuer as credible and reliable. Ms Ratley struck me as honest and professional in the evidence she gave about the history of complaints in relation to the conduct of the defender and her husband at the property. SR who gave direct evidence of anti-social behaviour, was in my view honest and straightforward in his evidence. He gave a clear and articulate account of years of troublesome, annoying and distressing behaviour which continues. SM also impressed me as honest and reliable and spoke to a sustained pattern of disturbances at the property caused by the defender and her husband's behaviour over the years. On the other hand the defender did not impress me. She denied there was any repeated anti-social behaviour. The defender was emotional during her evidence. She struck me as someone who likes to get her own way and is aggressive if confronted. She rejected any suggestion of anti-social behaviour and played up her own misfortunes with drug addiction and ill health. I believed Dr Oso and Dr Drummond Begg in the evidence they gave about their patients' ailments but I was not impressed by their opinions about the impact of homelessness in this case. Neither doctor was an expert in the effects of homelessness on patients. Neither doctor understood

the procedure involved or knew what would likely happen to the defender and her husband if repossession is granted. I considered Dr Drummond Begg's reference to US research to be unpersuasive. It was not produced by the defender. I believe the anti-social behaviour has continued even after the drugs raid in May 2015. I did not believe Richard Greens. He struck me as dishonest. He denied smoking cannabis in the property but his demeanour in my judgement told a different story. He was uncomfortable when cross examined and challenged. He repeatedly tried to minimise the level of disturbance at the property.

Reasonableness

[24] Having considered the matter carefully and, mindful that it is not contested that grounds for repossession are admitted, I have reached the conclusion it is reasonable to grant the order for recovery of possession for a number of reasons notwithstanding the arguments to the contrary of Ms Meikle, all of which I considered carefully. I considered the authorities cited but cases like this are decided on their own facts and circumstances. My reasons are:

1. The parties to the lease agreed that drug dealing and anti-social behaviour was prohibited and could end up in eviction (Clause 5). So the defender knew of the likely consequences of such conduct and agreed to that condition. It is reasonable that the parties' contract is given effect to (*pacta sunt servanda*).
2. With regard to the drug conviction I had particular regard to the fact that the conviction related to one charge of being concerned in supplying diamorphine on one day. The frequency of the conduct at base of the conviction was one occasion. However I also had regard to the fact that the conduct involved being concerned in the supply of 10gms of diamorphine. Nothing was said by the defender in her

evidence about the circumstances surrounding her concern other than that she supplied to friends. However 10gms is a substantial amount of diamorphine to be recovered from a residential dwelling house. The defender does not work and has been on long term benefits. There was also paraphernalia indicative of supply found. However, I believed SR and SM that there is continuing drug use at the property. The defender herself said she last used heroin in September 2016, which was 3 months after she was placed on a DTTO. Both the defender and her husband denied using cannabis at the property yet both SR and SM said they could smell cannabis in the property and coming through the fireplace into their own dwelling. This indicated to me that drug use was continuing, against a background of drug use by the defender when she was in Fort William and even after the drugs raid in 2015. The only document lodged by the defender in respect of her DTTO was the initial report recommending she be placed on a DTTO. Yet these orders are reviewed regularly and progress reports are prepared by the DTTO team. Ms Lyons invited me to draw an adverse inference from the fact the defender neither lodged any progress reports nor led any evidence from the DTTO staff to support the contention the defender was a reformed character. I do so.

3. Also, with regard to the conviction of 1 April 2016 I had particular regard to the nature of the conduct the defender was convicted of which was being concerned in supplying a class A drug. This is one of the most dangerous drugs on the illegal drug market. I consider it reasonable that the pursuer seeks an order for recovery of possession of the property when (in breach of the terms of the agreed lease) the property is being used by the defender for such a purpose. The landlord in my view is reasonably entitled to take the view that serious drug misuse on the property is

unacceptable and must result in eviction. The defender is a local authority with other housing stock in the area which is described as a good mix of social and private housing stock with high amenity and young families. Having particular regard to the impact such drug supplying activity can have on others especially the neighbours in the street and in the scheme I consider it reasonable that the tenancy is terminated and repossession granted. In this case, the evidence of constant late night traffic to and from the property has had an adverse effect on the quality of life of neighbours. SR indicated that known undesirable elements were coming into the area and drug dealing was going on.

4. Further having heard the evidence of SR and SM I was satisfied drug misuse continues at the property. This I categorised as further anti-social behaviour, based on their evidence that cars and vans continue to call late at night at the property but it also includes the use of cannabis in the property. I thought it of particular significance that SR's daughter was living in circumstances where the smell of cannabis was impregnating the environment she inhabits and both parents said she was tired when going to school in the mornings. I cannot and do not conclude, as a matter of fact, that the presence of the smell of cannabis in her house caused by the defender and or her husband has actually affected the child but I do not exclude the risk that it might have done so. To that extent I take that factor into account in determining that given the likely impact of anti-social behaviour on neighbours it is reasonable to grant the order for recovery of possession.

5. With regard to the denied wider anti-social behaviour involving noise and disturbances, including that of February 2017, I preferred the evidence of the pursuer's witnesses and Ms Ratley. I had particular regard to the nature, frequency

and duration of this conduct in general which can only be described on the evidence as unrelenting and demoralising for the neighbours who have to live with and endure it. I considered the conduct is entirely the responsibility of the defender and her husband. The neighbours are blameless in this affair. At least one neighbour did not want to come forward publicly to give evidence, from which I infer that person is afraid. Having accepted the evidence of SR and SM and that of Ms Ratley I consider it reasonable to make the order, on paragraph 7 grounds, as well.

6. I rejected the evidence of both the defender and her husband that they had been given no support by the pursuer. I preferred the evidence of Ms Ratley that support for adoption counselling and referrals to external agencies were offered but I thought it more likely, as Ms Ratley indicated, there had been no engagement by the defender. In my opinion by offering support and writing to the defender reminding her of her responsibilities the pursuer had done all that could reasonably be expected of a responsible landlord. Again in these circumstances I considered it reasonable to grant the order requested.

7. Ms Meikle invited me to exercise a judicial discretion and adjourn the case for 6 months as had been done in the *Hetherington* case to monitor the defender's behaviour. I regret I am not prepared to do that. The facts of *Hetherington* were different. The conduct complained of lacked specification and had ceased by the proof. The tenant had apparently changed his ways. Here the anti-social behaviour is quite specific, spoken to by neighbours and continuing. I am not persuaded that drug misuse or anti-social behaviour at the property has ceased or that at this late stage it is either appropriate or reasonable in the circumstances to adjourn.

8. Ms Meikle invited me to hold that in terms of the paragraph 7 grounds it was not reasonable to make the order sought as the pursuers had not taken steps such as to offer an alternative tenancy to the defender or offer an alternative type of tenancy to the defender, such as offering to convert the Scottish Secure Tenancy to a Short Scottish Secure Tenancy in terms of s34 and schedule 6 of the Act for a probationary period to monitor her conduct in a less secure tenancy. I was not persuaded that the fact the pursuer did not take this course meant it was unreasonable to grant the order sought in the circumstances of the case. Ms Ratley said the question of an alternative tenancy had been considered but rejected because the anti-social behaviour was continuing. I cannot see how offering to convert the basis of the tenancy would make any difference in these circumstances.

9. Ms Mielke invited me to hold it was unreasonable to grant the order sought because of the adverse effect this would have on the health of the defender and her husband. I do not doubt eviction will in many cases cause hardship to the tenant but that does not make it unreasonable to grant the order. I have taken the personal circumstances of the defender and her husband into account in assessing whether to grant the order is in the circumstances reasonable. Chronic illness and drug addiction are not a licence to breach an agreed lease and abuse the neighbours and the neighbourhood. If drug addiction aggravated by ill health were a bar to eviction, s16(3)(a)(ii) of the Act would be robbed of meaning, see *Shetland Islands Council v Hassan* (*op cit*). Medical support will be available for both of them. Homeless accommodation will also be available. The grant of this order taken in conjunction with the defender and her husband's drug addiction, chronic illness and the loss of their children, heightens the tragedy for them but does not in my opinion render the grant unreasonable when

judged in the context of the agreed lease, the seriousness of the criminal conviction, the corrosive quality of the conduct established and the toxic effect it has had and continues to have on others and to the amenity of the area in which they reside.

10. Ms Meikle invited me to hold it was unreasonable to grant the order sought because of the potential adverse effect this would have if the defender was to be reunited with her children who are in local authority care. There was no evidence before me, other than aspiration on the part of the defender that she be reunited with the accommodated children or some of them. In the absence of evidence from the social work department relating to the viability of such a suggestion I attached no weight to this factor.

[25] In terms of s16(5) of the Act I must appoint a date for recovery of possession which has the effect of terminating the tenancy and gives the landlord the right to recover possession of the property at that date. The lease allows voluntary termination of the tenancy on a 28 day notice. Neither party addressed me on this matter but in the circumstances of the case, to allow time for homeless rehousing, I shall appoint 10 November 2017 as the date for repossession.

Expenses

[26] Both sides are publicly funded. As presently advised I am not disposed to make any award of expenses due to or by.

Sheriff T Welsh QC
Edinburgh Sheriff Court
8 September 2017.