



**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/23/1607**

**Re: Property at 10 Albyn Drive, Murieston, Livingston, EH54 9JN (“the Property”)**

**Parties:**

**Ms Catherine Muir, Mr Barry Simpson, c/o 16 Royal Exchange Square, Glasgow, G1 3AG (“the Applicants”)**

**Ms Maria Elena Pech and Miss Jessica Pech, both residing at 10 Albyn Drive, Murieston, Livingston, EH54 9JN and Mr Jon Morrison residing at 71 Redcraig Road, East Calder, EH53 0QX (“the Respondents”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Mary Lyden (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted against the Respondent in respect of the Property.**

**Background**

1. This is an application for recovery of the Property. The application is dated 18 May 2023 and was accepted for determination on 10 July 2023. The Applicant is seeking recovery under Ground 1, Part 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022. This ground states that a landlord seeks recovery of a tenanted property so that it can be sold.
2. A case management discussion had been held on 4 September 2023 and concerns had been raised with regard to intimation of the proceedings on Mr

Jon William Morrison who was not residing in the Property. The Applicant's Representative subsequently provided an up to date address for Mr Morrison.

3. Ms Maria Pech had submitted written representations prior to the case management discussion and the Applicants had submitted a rent statement and copies of correspondence.

### **The Hearing**

4. A Hearing was held by video conference on 5 December 2023.
5. Prior to the Hearing, the Applicants had submitted an updated rent statement showing the rent arrears at 20 November 2023 to be £8250. They also submitted paginated productions together with an inventory.
6. The tribunal was satisfied that effective service of the Hearing had been made on Mr Jon Morrison on 26 October 2023. It had a copy of the Sheriff Officers' certificate of service.
7. Ms Catherine Muir was present and gave evidence. The Applicants were represented by Ms Alexandra Wooley, solicitor. Ms Wooley confirmed that her clients were seeking to recover the Property to enable them to sell it.
8. The Hearing was scheduled to commence at 10 am and, by 10.05 am, there was no appearance from the Respondents. The tribunal was satisfied that Ms Maria Pech and Ms Jessica Pech had been written to and advised of the arrangements for the Hearing. Ms Maria Pech had also participated in a video conference test on 21 November 2023. A decision was taken to proceed with the Hearing and Ms Muir commenced giving oral evidence.
9. At 10.20 am, Ms Maria Pech and Ms Jessica Pech joined the Hearing. They had experienced technical issues which had prevented them joining at the scheduled time.
10. Both parties were content that the legal member summarise the evidence which had been given by Ms Muir prior to the two respondents joining the Hearing.

### **Documents before the tribunal**

- 11.1 Copy of the private residential tenancy agreement for the Property dated 26 and 27 February 2022 showing the commencement of the tenancy to be 20 February 2022 and the monthly rent to be £1500.

- 11.2 Copy rent statement from 20 February 2021 showing the rent outstanding on 20 November 2023 to be £8250.
- 11.3 Notice to Leave dated 6 February 2023 and served by email on the same date.
- 11.4 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 together with proof of delivery on 18 May 2023.
- 11.5 Print of Title Sheet for MID180997 (the Property).
- 11.6 Email from Mr Steve Herbert, mortgage broker dated 20 November 2023.
- 11.7 Email from Ms Siobhan Hilley, Accommodation Team Leader, West Lothian Council dated 19 June 2023.
- 11.8 Copy of letters from NHS Lothian and a General Practitioner with regard to health issues of Mr Simpson.
- 11.9 Estate Agency Agreement between the Applicants and Remax dated 5 May 2023.

## **Findings in Fact**

- 12.1 The Applicants are the owners of the Property.
- 12.2 The Applicants are entitled to sell the Property.
- 12.3 The Applicant and the Respondents entered into a Private Residential Agreement for the Property on 26 and 27 February 2023.
- 12.4 The start date for the tenancy was 20 February 2023.
- 12.5 The initial monthly rent for the Property was £1500 per month and is now £1650.
- 12.6 Mr Jon William Morrison no longer resides at the Property.
- 12.7 The Applicant gave the Respondent Notice to Leave on 6 February 2023 requiring the Respondents to vacate the Property by 4 May 2023.
- 12.8 Ms Maria Pech and her daughter, Ms Jessica Pech continue to reside at the Property.
- 12.9 Ms Jessica Pech is the daughter of Ms Maria Pech.
- 12.10 Three adult children of Ms Maria Pech, in addition to Ms Jessica Pech, reside at the Property.

- 12.11 The six year old son of Ms Maria Pech resides at the Property.
- 12.12 The Applicants have entered into a contract with Remax estate agents for the sale of the Property.
- 12.13 If the Property is recovered by the Applicants, it is their intention to sell it.
- 12.14 The current monthly mortgage payment for the Property is £600.
- 12.15 In March 2024, the monthly mortgage payment in respect of the Property will be in the region of £1860.
- 12.16 Mr Barry Simpson has significant health issues.
- 12.17 The six year old son of Ms Maria Pech has significant educational needs which are met by a primary school local to the Property.
- 12.18 Ms Maria Pech has intermittent work as an agency nurse.
- 12.19 Ms Maria Pech's ability to accept work is restricted because of caring duties which she has for her six year old son.
- 12.20 An adult son who lives with Ms Maria Pech has medical issues which cause difficulties in him obtaining employment.
- 12.21 Ms Jessica Pech is a nursing student at University and, in connection with her studies, has placements in hospitals.
- 12.22 Ms Jessica Pech has employment one day a week in St John's Hospital, Livingston.
- 12.23 Ms Jessica Pech receives a bursary from Scottish Awards Agency Scotland.
- 12.24 Ms Maria Pech and Ms Jessica Pech each have cars. An adult son of Ms Maria Pech, who lives in the Property, owns a car.
- 12.25 There are currently rent arrears of £8250.
- 12.26 The Applicants have a portfolio of six buy to let properties, including the Property.
- 12.27 Apart from the Property, the houses in the portfolio are ex local authority houses.

12.28 The Applicants reside in a property which has an outstanding mortgage of £220,000.

12.29 Mr Barry Simpson is in employment and Ms Catherine Muir works on an occasional self-employed freelance basis.

12.30 The Applicants want to simplify their financial affairs, sell the Property and put the equity raised towards repayment of the mortgage of the property in which they reside.

12.31 If the Applicants do not sell the Property, their financial position will deteriorate.

## **Findings in Fact and Law**

13.1 The Private Residential Agreement dated 26 and 27 February 2020 contains eviction grounds including Ground 1: "The landlord intends to sell the property for market value within three months of the tenant leaving the property."

13.2 The Notice to Leave which was dated 6 February 2023 referred to Ground 1 which was being relied on by the Applicant as the reason for seeking recovery of the Property.

13.3 The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 4 May 2023.

13.4 The appropriate period of notice in such applications is eighty four days.

13.5 The application for eviction was submitted on 18 May 2023.

13.6 The Applicants intend to sell the Property for market value within three months of the Respondents leaving the Property.

## **The Law**

### **SCHEDULE 3 EVICTION GROUNDS**

*(introduced by section 51)*

#### **PART 1**

#### **LET PROPERTY REQUIRED FOR ANOTHER PURPOSE**

#### **Landlord intends to sell**

1 (1) It is an eviction ground that the landlord intends to sell the let property.

- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—
- (a) is entitled to sell the let property,
  - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
  - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—
- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
  - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

## **Evidence**

14. The tribunal had regard to the documentation which had been lodged by the parties.

15. Ms Muir, Ms Maria Pech and Ms Jessica Pech gave evidence.

16. Much of the evidence given was either not challenged by the opposing party or was accepted by it and it is useful to set out what was not contested.

## **Matters not in dispute**

17. The Property is a five bedroomed detached house which was purchased by the Applicants in 1996 as a family home.

18. Ms Muir had to provide care and a home for her father and the Property was not suitable because of the absence of a downstairs shower room.

19. The Applicants purchased a house more suited to the needs of Ms Muir's father who has since died. When they purchased the property more suitable to Ms Muir's father, they placed the Property on the rental market in 2017.

20. The Applicants still reside in the house which was purchased to meet the needs of Ms Muir's father. They reside there with their children who are fourteen and twenty years old. The current outstanding mortgage on this property is £220,000.

21. The Applicants own six rental properties, including the Property.

22. The monthly mortgage payments for the Property will increase from £600 to £1860 in March 2024 when the current mortgage will go on to the standard variable rate.

23. The Applicants have entered into a contract with Remax Estate Agents for the sale of the Property.

24. There are currently rent arrears of £8250.

25. Mr Barry Simpson has a significant health issue which may necessitate him working less at some point in the future.

26. Ms Maria Pech is a nurse who works for an agency. Shifts are not as plentiful as they were and the needs of her six year old son are such that she is limited in what shifts she can take.

27. Ms Jessica Pech is studying nursing at University and has a job working one day a week in St John's Hospital, Livingston.

28. Ms Jessica Pech is in receipt of a bursary from Scottish Awards Agency Scotland.

29. Ms Maria Pech and Ms Jessica Pech each own cars.

30. Ms Maria Pech, Ms Jessica Pech, the six year old son of Ms Maria Pech and three other adult children of Ms Maria Pech reside in the Property.

### **Evidence of Ms Muir**

31. Ms Muir said that she and Mr Simpson took the decision to put the Property on the rental market because it was always their intention to return to live in it. She said that they like the Property and it has good neighbours.

32. Ms Muir said that the Applicants own five other buy to let properties which each have little equity in them. She said that they were former local authority houses. She said that, in an effort to simplify their financial affairs, they were considering handing the properties to West Lothian Council under a scheme where the Council paid a set amount each month and were responsible for the tenants and dealing with the properties. She referred the tribunal to the email from West Lothian Council dated 19 June 2023 which she had lodged and in which the scheme was outlined. Ms Muir said that the Council would not be prepared to take the Property into this scheme because it was only designed for former local authority houses.

33. Ms Muir said that the mortgages on their buy to let properties were due to increase dramatically. She said that, even if the rent for the Property was being paid, it would not cover the new mortgage costs far less the other expenses including

safety certificates and maintenance. She said that, at the moment, with Mr Simpson's wages and the small surplus from the other buy to let properties, they are able to meet the current costs even with no rent being paid in respect of the Property. Ms Muir said that she has occasional freelance work and is self employed.

34. Ms Muir said that the Property was costly to maintain and she cited, as an example, that it has wooden doors and windows.

35. Ms Muir said that she was afraid that, if the order for eviction were not granted, she and Mr Simpson would end up bankrupt and the Property would be repossessed. She said that, at the moment, they were just able to pay the existing mortgage without rent being paid but would not be able to pay the increased mortgage. She referred the tribunal to the email from Mr Steve Herbert of Broker it Free mortgage brokers dated 7 September 2023. The email states that it is considered that the value of the Property was then £491,594 and the balance of the mortgage was £263,017. The email states that, if the mortgage defaults to the standard variable rate, it will rise to £1863.04 per month at the rates then pertaining. The email states that the broker would be unable to re-mortgage the Property because of the existence of a sitting tenant and the fact that rent is not being paid.

36. Ms Muir said that she had investigated the possibility of a sale of the Property with the existing tenants in residence but had been told that, because of their poor record of paying rent, she would not be able to find a purchaser.

37. Ms Muir gave evidence of Mr Simpson's medical situation and referred to the letters which she had submitted which supported this. She said that Mr Simpson is working but that he may need to reduce his working hours in the future because of his condition.

38. Ms Muir said that the Property is in a poor state. She said that she inspected it because of a water leak and was shocked to see the condition of the house. She found beds in rooms which were not bedrooms and she suspected that there was overcrowding and that a number of people had been staying in the Property. She said that there was rubbish in the gutters and there was damage to an external wall which had been caused by something heavy hitting it. She also said that there were other issues, including damage to the decking outside the property, which was damaged and broken and one of the tenants had claimed to have fallen through it. A report on the condition of the Property had been sent to the tenants who had denied responsibility for any damage. Ms Muir said that she then had to have the decking removed. She estimated that there were approximately £20,000 worth of repairs required to the property. Another of her concerns was that the property was being



used as a House in Multiple Occupancy which would have implications for her and her husband as the responsible landlords.

She said that neighbours had complained about the conduct of the tenancy.

39. Ms Muir described the tenancy as “difficult” but stressed that this was not the reason she was seeking to recover the Property. She said that she had once considered the Property to be her “forever home” but that she now has no intention of living in it. She said that the Applicants need to sell the Property.

40. Ms Muir referred the tribunal to the contract which she had signed with Remax Estate Agents dated 5 May 2023. She said that no Home Report had been instructed because there was no point in doing so until the Property was empty because such reports have a limited life.

41. Ms Muir described the prospect of not being able to recover the Property as “financially terrifying.” She said that the situation is extremely worrying for the Applicants and that they feared bankruptcy.

42. Ms Muir said that if the Property was recovered it would immediately be put on the market. She said that the free proceeds of sale would be applied to the mortgage of the property in which the Applicants are living which would considerably ease their financial position given the uncertainties which they had because of the increased mortgage costs, Mr Simpson’s health issues and the lack of rental income from the Property. She said that the current outstanding mortgage for their family home was £220,000.

### **Evidence of Ms Maria Pech**

43. Ms Pech stated that she did not accept that damage had been caused to the Property during the tenancy. She did not agree with the evidence of Ms Muir in this regard.

44. Ms Pech said that she was sorry for the situation in which the Applicants found themselves and that she understood, having heard the evidence about Mr Simpson, why they would want to sell the Property.

45. Ms Pech said that the Applicants’ desire to recover possession of the Property to sell it would make her and her family homeless. She said that they would have nowhere to go. She said that she could not afford other private rented accommodation and she said that the Council would not progress her housing application until there was an order from the Tribunal.

46. Ms Pech said that the rent arrears occurred because Mr Morrison left the Property and work that she was getting from the Scottish Nursing Guild had

diminished. She explained that Health Boards were reluctant to engage agency nurses because of the cost. She said that she had applied to be on the Health Board bank for temporary staff but that this was still pending. She said that she had joined another nursing agency in the hope of getting work. She said that Jon Morrison, father of her youngest child has provided no funds for rent and that she had to take steps through the Department of Work and Pensions to get him to pay money to support his son.

47. Ms Pech gave detailed evidence about her six year old son and his particular needs. She said that these are well served by the local primary school where he is settled and where he has appropriate support. She said she feared that, if she were forced to leave the Property, the family might be housed outwith the area and her son might have to go to a different school which would be difficult for him.

48. Ms Pech said that she has to take her son to and from school and that this restricts the nursing shifts which she can take on. She said that it also prevents her taking a permanent job. She said that she relies on two of her adult children to take her son to school if she manages to get a shift and is working.

49. Ms Pech said that she has attempted to get alternative work and had applied to a delivery company but was required to have her own van which she could not afford to provide.

50. Ms Pech said that the Council would have considered that she had made herself intentionally homeless if she had left the Property in response to the Notice to Leave. She said that she does not have the funds for a tenancy deposit for another private let and that it would be difficult for the family to be housed because they all “need their own space” and individual bedrooms. She said that it would not be possible for any of her adult children to share bedrooms. She said that the Council have told her that it would be difficult to find a home suitable for all the family.

51. Ms Pech said that her three adult sons who live with her are unable to provide any funds to her. One is a University student and one works intermittently, often in part time jobs. She said that the other son has medical issues which have, in the past, necessitated stays in hospital and that he is unable to work because of his condition. She confirmed that one of her sons owns a car.

52. Ms Pech said that she receives no welfare benefits but has made an application.

53. Ms Pech said that matters could be made easier if the Applicants allowed her sons on the tenancy agreement because they could then claim Housing Benefit.

## **Evidence of Ms Jessica Pech**

54. Ms Pech said that she has not been able to contribute funds towards the rent. She said that she was a University student with a bursary from Scottish Awards Agency Scotland. She said that she works one day a week in St John's hospital, Livingston and that she needs her car for work and also when she is on placement in hospitals as part of her studies. She said that the bursary allows her to run her car. It was put to her that running a car had been prioritised over paying rent and she agreed that it had because her car was essential.

55. Ms Pech said that she gives her mother what she can to go towards the rent but has been unable to make any recent payments.

56. Ms Pech said that she did not agree with the evidence of Ms Muir in relation to the condition of the Property and alleged damage caused to it.

57. Ms Pech said that she helps her mother with her young brother and, when she can, assists by taking him to and from school.

## **Submissions**

58. Ms Wooley asked the tribunal to accept that there was sufficient evidence to support the position that the Applicants intend to sell the Property and that, therefore Ground 1 of Schedule 3 of the Act is met. She invited the tribunal to consider that the evidence of Ms Muir was credible and reliable.

59. Ms Wooley invited the tribunal to find that it is reasonable to evict the Respondents because of the hardship caused to the Applicants were the order not granted.

60. Ms Wooley accepted that the tribunal had to carry out a balancing exercise in determining reasonableness. She said that the impending increase in mortgage costs for the Property was significant and she asked the tribunal to accept the evidence of Ms Muir that this increase would not be financially manageable for the Applicants and that she would not be able to sell the Property with sitting tenants.

61. Ms Wooley said that the level of rent arrears was an important factor to take into account in the balancing exercise to be carried out by the tribunal.

62. Ms Wooley asked the tribunal to accept the evidence of Mr Simpson's medical condition and the impact that is having and will have on the Applicants. She said that the sale of the Property would ease the financial burden on the Applicants.

63. Ms Wooley accepted that, when making its decision, the tribunal would require to take the schooling interests of Ms Maria Pech's young son into its balancing exercise. She said that, whilst there are understandable concerns should the child

have to move school, it is the responsibility of the local authority to ensure that appropriate provision is made for each child's education.

64. Ms Wooley submitted that the local authority has a responsibility to provide housing to homeless people and that includes emergency and temporary accommodation when required.

65. Ms Wooley suggested that the Respondents were not properly prioritising their finances. She cited the fact that there are three cars belonging to those staying in the Property. She said that four adult children stay in the Property and that not all of them are working.

66. Ms Wooley said that, from the evidence before the tribunal, it was not sustainable for the tenancy to continue and that the test of reasonableness weighed in favour of the Applicants.

67. Ms Wooley said that, in making her submissions, she was aware of the recent decision of Sheriff Collins in *Manson and Downie v Turner* 2023UT38. She said that a property owner should still be able to recover a tenanted property under the circumstances in which the Applicants find themselves.

68. Ms Maria Pech made submissions on behalf of the Respondents. She said that the main issue she was concerned about is the education of her son who is well settled in Primary Two. She said moving from the Property might seriously affect his wellbeing. She said that he may not be able to continue at the same school.

69. Ms Pech made reference to her adult son who has health issues and she said that moving from the Property would have an adverse effect on him.

70. Ms Pech said that, if she and her family had to move house, they would be homeless. She said that she is struggling financially now and that this would get worse if they were removed from the Property. She said that she hoped to be able to catch up with the rent arrears if she got support from benefits.

71. The written representations submitted by the Respondents state that they are in no position financially to rent or buy another property. They state that the landlord has been unfair and that if the Respondents had been financially able to move, they would have done so "long ago." In response to questioning, Ms Maria Pech was unable to state why she considered that she was being treated unfairly by the Applicants other than to re-state that she and her family would be homeless. The representations state that the local Council has advised Ms Maria Pech that they would have difficulty housing the family because five bedrooms would be required.

## **NOTE**

72. Both parties gave detailed personal evidence about individuals who had not attended the Hearing. Ms Muir had given details of Mr Simpson's medical condition. Ms Maria Pech had given very candid evidence about her six year old son and her adult son. Parties agreed that they would not want the Decision to contain the detail of the evidence provided on these matters.

## **Discussion and Reasons**

73. The tribunal had regard to the documentation which had been lodged by the parties.

74. The tribunal considered that there were no matters of credibility to be determined. There was no dispute on the factual positions set out by the Applicants and the Respondents other than on one matter and that was in relation to the condition of the Property, damage to it and the number of people occupying it. The tribunal disregarded the evidence on these matters. It was not germane to the ground for which an order of eviction is being sought. Such evidence was also not relevant to the consideration of reasonableness.

75. The tribunal had regard to the approach which should be taken on such applications as set out by Sheriff Collins in *Manson and Downie v Turner*. It is only possible to grant an eviction order pursuant to ground 1 if a tribunal is satisfied that the facts in sub paragraphs 2 (a) and (b) are established and that it is reasonable to do so on account of those facts per sub paragraph 2 (c).

76. The first matter to be established is that the Applicants are entitled to sell the Property. The tribunal was satisfied that, as the registered owners, they are entitled to sell the Property.

77. The next matter to be established is whether the Applicants intend to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. The tribunal accepted the evidence of Ms Muir in this regard. She stated that the Applicants intend to put the Property on the market as soon as possible after gaining possession of it. The contract from the estate agents supported this. The tribunal also considered that the evidence which it had heard about the Applicant's financial position and the medical condition of Mr Simpson supported the Applicants' evidence that it is their intention to sell the Property.

78. The Respondents did not challenge the Applicants' right to sell the Property or their intention to do so. Indeed, Ms Maria Pech stated that she could understand why they would want to sell the Property.

79. The tribunal had to determine whether it was reasonable to issue an eviction order. Such a determination is arrived at after a weighing and balancing exercise.

80. The tribunal considered the matters to be weighed and balanced are:

80.1 The financial position of the Applicants.

80.2 The level of rent arrears.

80.3 The medical position of Mr Simpson.

80.4 The difficulties which would be encountered by the Respondents in obtaining alternative housing for themselves and the family members residing in the Property.

80.5 The possible disruption to the life and education of the six year old son of Ms Maria Pech.

80.6 The health issues of one of the adult sons of Ms Maria Pech who resides in the Property.

81. The tribunal accepted the evidence of Ms Muir that the mortgage for the Property would rise substantially in March 2024. This was supported by the email from the mortgage broker dated 7 September 2023. The Respondents did not challenge this evidence. The tribunal accepted that this, together with the substantial rent arrears, would significantly adversely affect the financial position of the Applicants.

82. Since May 2023, only one payment of rent had been made by the Respondents. This was evidenced by the rent statement which had been lodged. Neither of the Respondents who gave evidence had any reasonable explanation of the level of rent arrears being £8250 other than stating that they had been having financial difficulties exacerbated by Mr Morrison leaving the Property and the difficulties with Ms Maria Pech's work situation. Ms Maria Pech said that she hoped to "catch up" with the arrears but provided no clear path for her doing so. Ms Jessica Pech was candid in stating that the bursary she received was used to run her car rather than to pay the rent she was contractually bound to pay. The tribunal did not consider that the prioritisation of running a car rather than paying rent was reasonable. Hospitals are served by public transport and this could be used for placements and work. The tribunal accepted that the level of rent arrears is putting financial pressure on the Applicants, particularly when considered alongside the impending rise in mortgage payments.

83. Without reservation, the tribunal accepted the evidence regarding Mr Simpson's medical position and the consequent desire of the Applicants to reduce financial pressures by selling the Property and paying down the mortgage of the property in which they live.

84. The tribunal accepted the evidence of the Respondents with regard to the difficulties they would face in getting alternative accommodation to suit the family of six, including five adults. It acknowledged the responsibility of the local authority for housing individuals who have not made themselves intentionally homeless.

85. The tribunal accepted that possible disruption to the schooling of the six year old child of Ms Maria Pech may be a possible consequence of an eviction. The tribunal also accepted that the child is settled in a school which meets his needs.

86. Very little evidence was given with regard to the consequences for Ms Maria Pech's adult son who has health issues. The tribunal accepted that moving from the Property for someone with the health issues he has may be disruptive.

87. The tribunal had to exercise judicial discretion in the light of the competing factors just outlined.

88. The tribunal considered that it was not reasonable for a landlord to provide housing for a tenant where rent is not being paid and where a tenant's only position is that, because of financial pressures he/she cannot pay.

89. Notwithstanding this, the tribunal is required to take account of the respective position of the Applicants and the Respondents and weigh them.

90. There would be difficulties in housing the Respondents and their family members but the local authority has a responsibility for doing so. It did not consider the desire of the Respondents to house all members of the family unit in individual bedrooms as a reason not to issue an order for eviction and to frustrate the intention of the Applicants to sell the Property. The four adult children of Ms Maria Pech are living with her which is a matter of choice and it seemed reasonable to the tribunal that these individuals may have to make their own arrangements with regard to housing. It is within judicial knowledge that adult children often leave a family home to make their own way in the world.

91. There might be possible disruption to the education of the six year old child but the local authority has a responsibility to provide schooling to meet every child's needs. There was also not convincing evidence that removal from the Property would necessitate a change of school for the child. The logic of the Respondents' position, which was not considered to be sustainable, was that no order of eviction

could be made unless there was certainty that it would not lead to the child having to move school.

92. The adult with health issues living in the Property may be adversely affected if the eviction order were granted but no substantive evidence was led to support this.

93. Set against the particular needs of the Respondents is the situation of the Applicants. One of the Applicants has health issues which may lead to him not being able to earn as much in the future. The Applicants are facing significant financial pressures as a result of rent arrears and an impending increase in the monthly mortgage payment for the Property. They can relieve financial pressures by selling the Property.

94. The tribunal gave more weight to the Applicants' position. This included the level of rent arrears, the impending rise in mortgage payments and the health of Mr Simpson. Failure to grant the order would give rise to financial hardship and the tribunal accepted Ms Muir's evidence that the Applicants would not be able to meet the increased mortgage costs particularly when the rent for the Property is not being paid. The tribunal accepted that a possible consequence of the financial pressure on the Applicants might be repossession of the Property by the lender.

95. The tribunal considered that greater weight should be given to the Applicants' right to sell the Property than the issues potentially to be suffered by the Respondents on an order of eviction being granted. It considered it reasonable that an order of eviction be granted.

## **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order of eviction be 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.**

**Martin McAllister**

**Legal Member  
3 January 2024**