

**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/21/2369**

**Re: Property at 18 Glendinning Road, Glasgow, G13 2PL (“the Property”)**

**Parties:**

**Mrs Joanna Kaczynska, Mr Karim Baaziz, 14 Stonefield Avenue, Glasgow, G12 0JF (“the Applicants”)**

**Mrs Rebecca McLaren, Benjamin Anthony Johnston, 18 Glendinning Road, Glasgow, G13 2PL; 18 Glendinning Road, Glasgow, G13 2PL (“the Respondents”)**

**Tribunal Members:**

**Paul Doyle (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) makes an order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 3 of part 1 of schedule 3 to the 2016 Act.**

**Background**

1. The Applicant sought recovery of possession of the Property in terms of Section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 (the "2016 Act"). The Applicant lodged Form E with the Tribunal on 29 September 2021. The documents produced were a Tenancy Agreement, a Notice to leave, served on 18 March 2021, together with a notice under s.11 of the Homelessness (Scotland) Act 2003. A copy land certificate was lodged with the Tribunal which showed that the applicants are the heritable proprietor of the Property.

2. A Case Management Discussion took place before the Tribunal by telephone conference at 10.00am on 18 January 2022. All parties were present. Mrs Kaczynska spoke for the applicants. Mrs McLaren spoke for the Respondents. The application was continued to an evidential hearing to take place at 10am on 1<sup>st</sup> March 2022.

3. An evidential hearing took place before the Tribunal by telephone conference at 10.00am on 1 March 2022. All parties were present but unrepresented. The applicants lodged written submissions on 14 and 15 February 2022. The respondents made written submissions on 14 and 16 February 2022. The applicants and both respondents gave evidence by answering questions put by tribunal members.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicants and the Respondent entered into a private residential tenancy Agreement for the Property dated 26 June 2018. The respondents took entry to the property on 15 June 2018.

2. The rent in terms of the Tenancy Agreement was £795 per month.

3. On 4 March 2021 the applicants emailed the respondent's suggesting a 10% increase in rent. On 15 March 2021, the respondent emailed the applicants suggesting a lower increase in rental and asking for certain repairs to be carried out.

4. On 18 March 2021 the applicants served a notice to leave on the respondents on the ground that they intend to refurbish the property.

5. The kitchen and bathroom in the property are past their useful life and need to be replaced. The central heating system in the property is old. Some walls and ceilings in the property are coated in Artex, which might contain asbestos. There is an infestation of rats in the attic on the property.

6. The applicants want to replace the kitchen and bathroom. They intend to replace flooring. They intend to re-plumb and replace the boiler. They intend to remove the Artex from the property, replaster walls and ceilings, and redecorate.

7. One of the applicants is an architect. The applicants own five properties. In June 2021 they instructed Pride Plumbing and Heating Scotland Ltd to refurbish this property and one other. The refurbishment works were due to start on 20 September 2021. In the contractor's opinion, is not possible to carry out the refurbishment work unless the property is empty.

8. The property requires refurbishment. The necessary works mean that, for a period measurable in weeks, the property will be without heating, water, sanitation, and

cooking facilities. The property cannot be occupied during the renovations and refurbishment.

9. In June 2021 the applicants approached estate agents and made enquiry about marketing the property for sale. The applicants' intention is to refurbish the property and then market the property for sale.

10. The property is occupied by the respondents alone. At the date of application, both respondents were in employment. One of the respondents has now lost their employment. Since receiving the notice to leave the respondents have looked for alternative accommodation, but have restricted their enquiries to the private rental market. They have neither registered with a Housing Association nor with the local authority. They have only viewed two properties so far this year.

11. Both of the respondents are independent, employable, adults.

12. The applicants intend to refurbish the property and are entitled to carry out the work. The nature of the planned refurbishment means that for weeks the property will fall below the tolerable standard and will be uninhabitable. There is nothing about the respondents' circumstances which makes it unreasonable to grant an order for repossession of the property.

### **Reasons for the Decision**

1. The applicants seek repossession of the property under ground 3 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. The Applicants say that they intend to carry out necessary refurbishment work to the property.

2. Ground 3 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 is framed as a mandatory ground for repossession, but, in this case, it is discretionary because notice to leave was served after 7 April 2020.

3. The Respondents argue that an order for repossession is not reasonable, because it would make them homeless. In addition, both Respondents say that the applicants do not need to refurbish the property, and that the respondents can continue to live in the property while any repairs and maintenance are carried out. The respondents believe the Applicants are fabricating a claim because the notice to leave was received soon after a proposed rent increase.

4. We heard evidence from both applicants, and from both respondents. The applicants provided a history of discussions with the respondents leading to service of the notice to leave. They rely on a brief report from Pride Plumbing and Heating Scotland Ltd and provided detailed oral evidence of the nature of the refurbishment work planned.

5. Mr Johnston for the respondents agreed that the property would benefit from refurbishment. He told us that he agreed “100%” that both the bathroom and the kitchen in the property need to be replaced. He accepted that the walls in the property are covered in Artex. Both respondents told us that they have tried to find alternative accommodation in the private rental market. Both respondents confirmed that they had not made enquiry with either the local authority or with housing associations. Mr Johnston told us that the respondents have viewed two potential rental properties so far this year.

6. Ms McLaren’s evidence was that the applicants are exaggerating the extent of the work required. She described the necessary work to the bathroom as simply a replacement tap. Her evidence creates inconsistency, because Mr Johnston’s clear evidence is that the bathroom in the property must be replaced, not least because it lacks a mechanical ventilator.

7. The weight of reliable evidence tells us that the applicants intend to refurbish this property, and that the planned refurbishment involves replacing the kitchen and bathroom, removing Artex from the walls, and eradicating an infestation of rats. We accept the applicants’ evidence that they intend to replace the boiler. We accept the applicants’ evidence that during the refurbishment works the property will be without heating, water, sanitation, and cooking facilities. It is not disputed that the applicants are entitled to do the work. The copy land certificate placed before us tells us that the applicants are entitled to carry out the refurbishment work.

8. On the facts as we find them to be, the respondents cannot continue to live in a property which will be without heating, water, sanitation, and cooking facilities. We do not accept the applicants’ insistence that the refurbishment works will take five months and perhaps longer, but the reliable evidence tells us that for perhaps two months the property will be uninhabitable.

9. The Scottish Government brought in new rules on 7 April 2020 in reaction to the Covid-19 pandemic. All grounds for eviction are now discretionary. This means the tribunal must consider the reasonableness of the request of an eviction order. These changes apply until 31 March 2022.

10. Tribunal members asked the respondents about their personal circumstances and their search for alternative accommodation. There was nothing in the answers given by the respondents which indicates that it is unreasonable to grant an order for repossession.

11. The Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The basis for possession set out in in terms Ground 3 of part 1 of schedule 3 to the 2016 Act is established. For these reasons, the Tribunal determined to grant an Order for possession.

## **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for possession of the Property in terms of section 51(1) of the Private Housing (Tenancies)(Scotland) Act 2016 under Ground 3 of part 1 of schedule 3 to the 2016 Act.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

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**1 March 2022**