



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

**Chamber Ref: FTS/HPC/EV/22/2077**

**Property at Flat 3/2, 1 Haldane Street, Glasgow, G14 9QN (“the Property”)**

**Parties:**

**Mr Malcolm Lytton, 17 Birksburn Avenue, Stonehouse, Lanark, ML9 3QN (“the Applicant”)**

**Mr Fraser Lytton, Flat 3/2, 1 Haldane Street, Glasgow, G14 9QN (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

- 1.** The Applicant seeks an eviction order on ground 3 of Schedule 3 to the 2016 Act. A tenancy agreement, Notice to leave, section 11 notice and building warrant were lodged in support of the application.
- 2.** A copy of the application was served on the Respondent by Sheriff Officer. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 4 October 2022 and that they were required to participate. They were provided with the telephone number and passcode. Prior to the CMD the parties lodged submissions and documents.
- 3.** The CMD took place on 4 October 2022. The Applicant was represented by Ms Grosvenor, solicitor. The Respondent participated and was supported by his

mother, Mrs Aileen Lytton. The Applicant and Respondent are father and son.

4. At the CMD, the Tribunal noted that the application is opposed. The Respondent confirmed that a notice to leave had been given in December 2021. There were no issues raised regarding the validity of the Notice, although the Respondent stated that another notice was issued in August 2022, which was not valid. The Respondent also told the Tribunal that the property requires to be refurbished and that he could not reside there while the work is being carried out. However, the Respondent was willing to move out while the work is ongoing. The Applicant was not agreeable to that course of action. The Tribunal noted that the only matter in dispute is whether it would be reasonable to grant the eviction order and determined that the application should proceed to a hearing. The Tribunal also issued a direction to the Respondent for a written submission to be lodged within 21 days which addresses the basis for the argument that it would not be reasonable to grant the eviction order.
5. The parties were notified that a hearing would take place at Glasgow Tribunal centre on 27 January 2023 at 10am. Prior to the hearing the Applicant lodged documents .

### **The Hearing on 27 January 2023**

6. The Applicant attended, represented by Ms Grosvenor, solicitor. The Respondent attended late, accompanied by his mother Mrs Lytton. Prior to the hearing (between 5.48am and 10am on 27 January 2023) the Respondent submitted written representations and documents. The Applicant objected to these submissions and documents, due to the late notice and prejudice to the Applicant. The Tribunal noted that the direction issued to parties stipulated that the Respondent had to lodge written submissions within 21 days of the CMD. The Tribunal Procedure Rules 2017 (Rule 22) stipulates that documents must be lodged no later than 7 days before a hearing. The Respondent had failed to comply with both the direction and the Rules. The Tribunal noted that the Respondent is a vulnerable adult who suffers from autism. He is also unrepresented. In the circumstances, the Tribunal was satisfied that the Respondent had a reasonable excuse for the late lodging of submissions and documents (Rule 22(2)) and parties were advised that the documents submitted between 5.48 and 9.41am would be allowed, but not those received after 10am.
7. Following an adjournment, Ms Grosvenor advised the Tribunal that the Applicant was seeking a postponement of the hearing to allow time to properly consider the additional documents and submissions and, if necessary, to lodge a response and further evidence. This was not opposed. The Tribunal confirmed that the hearing would be postponed.

8. The parties were notified that the adjourned hearing would take place at Glasgow Tribunal Centre on 14 April 2023 at 10am. Prior to the hearing the Applicant lodged 2 further bundles of documents. Following receipt of these, the Tribunal asked parties to clarify whether the Respondent is currently subject to a guardianship order. Both stated that he is not.

### **The Hearing on 14 April 2023**

#### **Evidence of Malcolm Lytton (ML)**

9. **ML** told the Tribunal that he purchased the property to provide his son with somewhere to live. Fraser Lytton (FL) had spent some time in Local Authority accommodation and subject to a treatment and supervision order. Mrs Lytton (AL) had purchased 1/2 Haldane Street and ML had spent 5 years refurbishing it in the hope that FL would live there on his release. Social Work did not want him to return to reside in Stonehouse. FL initially moved to Chestnut Cottage (supported accommodation) in Ayrshire. Social Work applied for guardianship which included a power to determine where he lived. The owner of the property was planning to sell and agreed to sell it to ML, rather than place it on the open market. It was purchased by ML for FL with Social Work's agreement. It was approved as FL would be able to live independently and AL would be nearby. The other option would have been a Council house, but it would have been in South Lanarkshire and not in Stonehouse or surrounding towns. The property is a top floor one bedroom tenement flat. FL was familiar with the location and had helped with some of the work at Flat1/ 2. The property was in poor condition. There was no real kitchen, and the ceiling was sagging. There were structural problems in the kitchen and the electrics were old. The boiler was very old and the bathroom unusable.
10. ML stated that he agreed with Social Work that he would do all the required work at the property. The owner of the property moved into AL's flat for a few months as part of the deal. The bathroom was re-furbished before FL moved in but that was all. Since then, he has completely refurbished the kitchen, with new units. There is a new boiler, new radiator by the window, new timber mouldings and the windows were replaced. New floorboards were fitted in kitchen and bathroom. Pipes were moved and plasterwork renewed. A new cupboard for the boiler was fitted. The bathroom work included new sanitary fittings, a replacement window and insulation. He would have liked to get the ceiling fixed, as it's covered in cracks, and re-wire the property. This hasn't been possible as FL prevented it. He wasn't happy with the noise and dust. The living room at the property was initially used for care staff to stay. Problems started with getting access to the property in January 2021. There were problems with AL. She assaulted him in the close and was arrested, although released without charge. Then FL started refusing access. Because of the problems he only went when Tommy Craig (Support Worker) was there. The last time he got access to the property was on 21 October 2021. Letters and

messages were sent requesting access. This was refused but no reason given.

- 11.** When asked why he is seeking eviction, ML said that wet rot was identified at the window in the living room and a structural report obtained by the Property Factor from Grieg Penman. This recommends certain remedial work and confirms that it is a common repair. Joists need to be replaced in both Flats 3/2 and 2/2. There has been water ingress. The work will also involve external pointing to stop the water ingress. The room requires to be cleared, the end joist propped up, new joist ends spliced, rotten joists removed and replastering. The work will be noisy and there will be a number of men working in the property, materials and chemical treatments. When asked if it would be practicable for someone to live there during this work, ML said “ideally not”. It would take 3 or 4 weeks. He referred to the statement from the engineer, Andrew Allen. This confirms that the resident of 3/2 should be decanted. The work has not been done because the Property Factor does not currently have sufficient funds to allow it to proceed. ML referred to a letter from Hacking and Paterson dated 17 June 2022 which confirms that the money collected would be returned. There was an owners’ meeting in August 2021. It was poorly attended. One owner on the ground floor told him that he was happy for the work to proceed but was not prepared to pay while ML was having problems getting access to the property. There are 15 shares involved. Two shops have to pay 5 shares between them. Then there are 10 flats, with one share each. ML said that he told the Factor to hold on to his share. The work is necessary, and the room cannot be refurbished until it is done. He has told them that he is willing to pay the difference between the quote and the current price for the work as costs have increased. He hopes that the Council will take steps to force the shops to pay. Only 5 shares were previously paid. In response to questions from the Tribunal ML said that, if necessary, he would pay the missing shares to get the work done and take court action against the other owners. However, he believes that the reason for non payment is the access issue as the other owners know about it.
- 12.** ML told the Tribunal that, in addition to the structural work, there are other planned works at the property. The living room needs to be plastered and re-wired, the hall is in poor condition. He referred the Tribunal to a photograph of the ceiling in Flat 2/2. This was taken prior to 2017. It shows part of the ceiling having collapsed. ML said that the insurance claim for the damage was refused because it was just “wear and tear”. ML referred to the building warrant lodged with the application. This relates to a plan to convert the property from one bedroom to 2 bedrooms. The plan is to convert the room used by FL as a bedroom (previously the living room) into 2 bedrooms. It will involve erecting a wall within the room with sound insulation. Radiators need to be moved and new ones installed. The windows need to be replaced with fire escape windows and doors replaced with fire doors. He will need to break through a cupboard to create an entrance to the new bedroom. Copper pipes need to be renewed. The property needs to be re-wired. For financial reasons he intends to do most of the work himself. As he works full time it will take 3 to 4 years. It will be necessary to instruct some contractors – a plasterer, and electrician and a glazing firm. When asked if it would be practicable for the work to be carried out with FL residing there, ML said that he had intended to do the work with FL

living there. He would prefer to let him stay but he is refusing access. Social Work and his carer tried to persuade him to give access. It will be easier to get the work done if the property is empty as he will not need to tidy up as he goes along. The work will cause disruption. Noise, dust, and smells. FL has Aspergers which makes him more susceptible to change and disruption. Some of the work can be carried out before the structural work is done. The work in the kitchen, bathroom, hall, and bedroom can be done before.

- 13.** ML told the Tribunal that, before Social Work had ceased their involvement a meeting took place at the property. Ruth Prescott was there, and FL agreed that he would allow access for the work. They discussed him moving down to AL's flat for a short time. ML usually came to the property on Tuesday and Thursday afternoons to work when Tommy Craig was present. The day after the meeting (which took place on 15 December 2020) FL sent a text telling him not to come.
- 14.** When asked about FL's support network at the property, ML said that as soon as FL moved into the property in January 2018, AL said the rent should be reduced from £500 to £380. FL then stopped paying until his supporters stepped in. He has paid his rent since then. AL also caused problems with getting the work done. ML gave AL a spare key. She lets herself in. ML referred to an email from Ruth Prescott which makes reference to the adverse impact of AL on FL's care. FL benefits from her company but he could still visit her if he lived elsewhere. Her interference in the work getting done is not in FL's interests.
- 15.** In response to questions from FL, ML stated that there was a period of a few days when there was no functioning boiler at the property. 3 or 4 days. There was also a period where there was no functioning kitchen and an agreement was reached that FL could use AL's kitchen, until she stopped that. ML confirmed that he intended to keep the traditional doors but to upgrade them with fireproof panels. He said that he did not know enough about housing benefit to comment on whether FL would receive less benefit if he was in a 2 bedroom flat. He had intended to keep the rent the same. ML confirmed that FL had suggested that he would move out for a few weeks while workmen came in to do all the work. That would be OK for the structural work, but he could do the rest around FL. That was agreed with Ruth Prescott. ML confirmed that he had only asked for access to do work, not to view the property. When asked why he wanted to evict FL, if he accepted that FL did not like change, he said that it is because he cannot get access to do the work. He would prefer that FL stay there. The flat is not in a suitable condition. When asked if he had snooped in FL's bedroom, he said that he went in once to check the sockets. He has not tried to access FL's email, he does not know the email address. However, FL has hacked his email. When asked about the first plasterer who did work in the house, ML said that cannot recall if he was supposed to do curves. There is one curved corner. He denied that FL helped with work in the property before he moved in. He stated that the assessment lodged which states that ML does not have autism was lodged to show that he is a victim of domestic violence. It is relevant as background, in relation to getting the work done. AL lets herself into the property. She has an adverse influence. ML and AL are currently going

through a divorce. They separated on 7 August 2012. The eviction application is not connected to the divorce. The process started because FL won't allow the work. There were no cooking facilities at the property for 3 months. The plaster work was delayed because the plasterer walked off the job. ML opposed the end of the guardianship because he thought it was useful for FL to have the additional support. ML sought legal advice on the Council reinstating the housing powers but was advised that FL would need to be re-assessed by a psychiatrist who was unlikely to say this was needed.

16. In response to questions from FL about the timescale which was agreed with Social Work for completion of the work, ML said that there was no specific time agreed but that he was to keep Ruth Prescott updated. There was no deadline and she know it would take time.
17. In response to questions from the Tribunal, ML said that the property had been purchased in 2018. The works at AL's flat had taken 5 years and AL lived there when the work was being carried out. In relation to the work at the property, ML said that he thought that FL could stay in one room while work was being carried out in another. He had taken advice on guardianship to avoid the need for eviction. He said that there had been a schedule for the work but no specific timescale. It was reasonable to take 3 or 4 years to do the work since he worked full time. He could not instruct contractors because he could not trust AL not to interfere. When asked about the rationale behind the conversion to 2 bedroom, ML said that it was a small amount of additional work. It was to give more flexibility, if FL met someone and wanted to start a family. His plan is to complete the work, especially the structural repair, as it is preventing people getting mortgages, and then let it out to a family or students. The suggestion that FL move out on a temporary basis was already agreed but it did not work out. FL asked if he could live in his house, but Social Work had said that he can't live back there.
18. ML told the Tribunal that he had taken advice about the right of entry process, but it is not suitable because of the amount of time he needs at the property. When he was going to the property, he would discuss with FL and agree when he would next visit. ML has his own key. AL used to shout at him and shout through the letterbox when he was there. He contacted the police on occasion, when there was evidence of what she had done. Generally, neighbours were not there. He did not seek advice on interdict or protective orders. ML said that it had always been his plan to convert the property. Before FL moved in, he converted a large cupboard where tools are currently kept. When asked whether there is a current EICR and whether it recommends re-wiring, ML said there is, and it does not. He thinks it is required though. He confirmed that the works, including the conversion, had been planned for FL's benefit but that is no longer the plan due to problems with access. In addition, FL allows AL into the property when he is there.

### **Tommy Craig's evidence**

19. Mr Craig said that he is a residential care worker for Stepdown Community Services. He worked with FL for three years, latterly at the flat. He stopped

working with him 18 months ago, when the guardianship ended. Mr Craig told the Tribunal that the flat was in poor condition when FL moved in, with minimal amenities. It was cold and in a state of disrepair. ML was there regularly, carrying out work. Initially there was no issue about access, but ML started having problems with that and was not allowed full access. No reason was given. Mr Craig supported ML on a few occasions to get access, there was a dispute between AL and ML. In relation to the structural and other work planned, Mr Craig said that he previously worked in the building trade and that it could not be carried out while the property was occupied for health and safety reasons.

20. In response to questions from FL, Mr Craig said that he did not know if Social Work had stipulated a timescale for completion of the work, but they were prompting ML to get it done.

### **Evidence of Fraser Lytton (FL)**

21. FL said that he would not like the planned work to be carried out while he is living at the property but was there when previous works were ongoing such as plastering, new boiler, new kitchen and the floor boards in the living room being lifted. Most of the work was carried out by ML except for the plastering and the boiler. He allowed access. He stopped providing access because a timescale had been agreed with Social Work and it was taking too long. ML won't agree to instruct workmen who could do the work over a short time period. FL would prefer for it all to be done at once. He said he would move out to his mum's or ML could rent something for him or he could stay at ML's house. FL told the Tribunal that he does not want to move elsewhere and wants to stay at the flat. He knows the area and his mum is there to provide support. He conceded that he found some of the previous works disruptive but coped OK. He did not cope well with the plastering as it's a dirty job. He previously allowed access between 2018 and 2021 but the work was taking too long.
22. When asked about the current condition of the property, FL said that the kitchen is mostly done and the room he uses as a bedroom (the former living room) is OK. The current living room is a workroom and cannot be used because of all the building materials and tools. When asked how he felt about that he said that he would prefer to have a living room. The bathroom is OK, mostly completed. The living room is the room that needs the structural work. That work is required but the email from the Factor says that he does not need to move out for that.
23. FL told the Tribunal that he has been looking at websites in relation to private lets and has applied to Whiteinch Housing Association. He hasn't submitted medical evidence. He is currently in receipt of PIP, ESA, and housing benefit. The latter covers most of the rent - £450. He makes up the difference.
24. When asked how long he would be prepared to move out of the flat for the work to be done. FL said that he was not sure, maybe about 2 months. He accepts that the structural work is needed but the other work is not, and he

never said he wanted 2 bedrooms. He told the Tribunal that he does not think he will be able to get a new private let at short notice as there is a shortage in Glasgow. He is only entitled to housing benefit for a one bedroom property. When asked whether he could stay in the property throughout the proposed work he said that he would probably prefer to move out for some of it.

- 25.** FL told the Tribunal that ML only ever wants into the property to do work, never to view it. He would allow access for the latter. He said that he helped with the work before he moved in such as cleaning off nicotine stains and stripping wallpaper. Hacking and Paterson have said that the tenants do not have to move out for the structural work to be carried out. They would not say who had paid and who had not. AL spoke to some of the homeowners, most of whom had paid. It was the shop owners and the private lets who had not. FL said that he has allowed access for contractors, such as Grieg Penman and does not think the other owners failed to pay because of the access issue. He personally told the landlord that his benefits would be reduced if he has a 2 bedroom flat. The landlord said in his evidence that FL does not like change but wants to evict him. The flat was supposedly purchased for FL's benefit, but he wants to evict him because he has refused access. The issue with the first plasterer was that he agreed to do certain things and then didn't. The landlord has talked about increasing the rent but refuses to say what the increase will be.
- 26.** In response to questions from Ms Grosvenor, FL said that he had seen the property before he moved in and was aware of the condition. He accepted that the work would improve the property and that ML cannot complete the agreed work if FL refuses access. However, he said that it had been agreed that the work would be finished a lot sooner, in about a year. He said that he is happy with the current condition of the property and would be happy if it was improved. He is happy even if it is not habitable. He accepts that the landlord has a right of access to the flat. He denied that he had reneged on an agreement that he would allow access. He just refused to let him in that day. He confirmed that he had received a number of letters requesting access. He does not think he explained why he was refusing access. He accepts that access will be required for the structural work. He accepted that other homeowners potentially would not be prepared to pay for the structural work if there was an ongoing access issue but not that this was the most likely reason for non payment. The landlord only spoke to one owner. Its more likely that it is because others have not paid. He denied that the planned work was more invasive than the work already carried out. Most of the work has already been done while he was there. He accepted that there would be some disruption. He said that he could live there throughout the work although it would be preferable to move out for a short period. If contractors were instructed to do the work over a short period of time he would provide access. He said that the landlord has claimed that he cannot afford contractors but is planning to do the work over three or four years with no rental income.



## **Evidence of Aileen Lytton**

- 27.** AL says that she grew up in Stonehouse and still visits as her mum lives there. She takes the children to see her, including FL. She purchased her flat in August 2013. ML did work to the flat, as did she. It didn't take 5 years. She also helped with flat 3/2. She negotiated the purchase price with the owner. The issue with the first plasterer was that he refused to do curves. She did not shout or throw things about. When asked if she was the landlord's agent she said yes. In 2018 he said that she was the agent. She was not abusive to ML, "not in disrespect". However, the divorce is related to the eviction proceedings. This started 4 years ago. The mortgage over the matrimonial home has been paid off. So, the debt related to the flat has been paid off. The rent was used to pay the mortgage. The agreement with Social Work was that the work would be completed within a year. From the beginning she provided support to FL when the carers were not there. She and his sisters are still his support network. She did not take rent from Stevie Quinn as she was on JSA. When work was being carried out at the flat, they agreed that FL could use her bathroom and kitchen. She put a stop to it because the landlord is obliged to provide these facilities. ML should have reduced the rent when there were no facilities.
- 28.** When asked whether FL could stay with her for a period while work is carried out AL said that she would need something in writing that was enforceable before she would agree to this. An enforceable end date.
- 29.** Ms Grosvenor referred AL to her earlier evidence and suggested that abuse is always disrespectful. AL said that she could not recall saying that, but that abuse is not OK. She stated that the eviction is linked to the divorce because she wants the flat as part of the settlement. She said that FL pops down every day to see her or his sister. They go shopping together and once a month she takes him to see his gran. He lives independently but likes to know where she is. He knows the neighbours. When asked about the current condition of the flat AL said she didn't like to answer that. The kitchen has no door. FL cannot walk in the flat in his socks because there is no flooring in the hall. There are holes in the ceiling. The living room has always been used as a workroom. It has been less habitable than it is at present.

## **The Applicant's submissions**

- 30.** Following the hearing, Ms Grosvenor provided a copy of her written submissions with proposed findings in fact. She invited the Tribunal to conclude that the Applicant and Tommy Craig were credible and reliable. She said that AL has an undue amount of influence over FL and that there is an acrimonious relationship between ML and AL. The adverse influence is evidenced by the mental health assessment lodged and the email from Ruth Prescott. It is therefore likely that FL's evidence was influenced by AL. He was selective about the questions he would answer. There were also contradictions such as when he complained about the condition of the property but said that he wanted to stay there. AL was neither credible or reliable. Her evidence largely related

to the divorce and the acrimonious relationship with ML. She was evasive.

31. Ms Grosvenor referred to the legislation and said that the ground had been established. She referred to the work which is planned. She said that he is entitled to do these works as he is the owner and has obtained the relevant building warrant. The refurbishment works are extensive and will cause serious disruption, mess and inconvenience. There may be exposure to asbestos. It would therefore be impracticable for the respondent to continue to live there. In the opinion of the engineer who prepared the report on the wet rot, the tenants should be decanted for this work. The planned works (either together or separately) are sufficient to establish the ground. The Respondent's medical condition solidifies this position.
32. In relation to the issue of reasonableness, Ms Grosvenor said that the Respondent has a history of refusing access. It is likely that the wet rot will have deteriorated and will continue to do so causing further damage to the building. This work cannot be carried out until the property is vacant. The cost of the works will have significantly increased to the prejudice of the Applicant and other owners. Other homeowners have not paid their share of the structural work because of the access issues. The relationship between landlord and tenant has broken down irretrievably.

## **Findings in Fact**

33. The Applicant is the owner and landlord of the property.
34. The Respondent is the tenant of the property in terms of a private residential tenancy agreement which commenced on 15 January 2018.
35. The Respondent is the Applicant's son and resides at the property alone. He has Aspergers.
36. The property is a one bedroom tenement flat.
37. The Respondent's mother Aileen Lytton resides in the tenement.
38. Aileen Lytton provides the Respondent with support. The Respondent sees her and his sister on a regular basis.
39. The Applicant has obtained a building warrant to convert the property to a two bedroom flat.
40. The Applicant intends to convert the property to a two bedroom flat.
41. The Applicant intends to carry out additional work at the property which will include re-wiring, upgrading the heating system and plastering.

42. The property is affected by wet rot. Structural repairs are required to remedy the wet rot.
43. The Applicant carried out work to the property between the start of the tenancy and October 2021. This included the replacement of the kitchen and bathroom.
44. The Respondent has refused to provide the Applicant with access to the property since October 2021.
45. The Respondent is willing to provide access to contractors instructed by the Applicant and to the Applicant if he wishes to carry out an inspection.
46. The living room at the property is not habitable due to the wet rot and the materials and tools which the Applicant has not removed from the property.
47. The Respondent is willing to remain in the property while work is carried out but would prefer to move out for a short period.
48. It is possible for the works to be carried out while the Respondent resides at the property.
49. The planned works are likely to be disruptive.
50. The Applicant intends to carry out most of the planned work himself and expects this to take 3 or 4 years to complete as he has a full time job.
51. The Applicant issued a notice to leave to the Respondent in December 2021.

### **Reasons for Decision**

52. The tenancy is a private residential tenancy which started on 15 January 2018. The application to the Tribunal was submitted with a Notice to leave and a Sheriff Officer certificate of service. This establishes that the Notice was served on the Respondent on 16 December 2021. The Notice states that an application to the Tribunal is to be made on grounds 3, the landlord intends refurbish the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 19 June 2022. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice and evidence that it was sent to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Section 56 of the 2016 Act.
53. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies." Ground 3 of Schedule 3 states "(1) It is an eviction ground that the landlord intends to carry out significantly disruptive work to or in relation

to the property. (2) The First-tier Tribunal may find that the eviction ground named in sub-paragraph 1 applies if – (a) the landlord intends to refurbish the let property... (b) the landlord is entitled to do so, (c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord and (d) the Tribunal is satisfied that it is reasonable to issue the eviction order on account of those facts.”

54. At the CMD, the Respondent indicated that he did not dispute that it would be impracticable for him to occupy the property during the refurbishment. However, in the written representation lodged prior to the hearing, he stated that although he accepted that work is planned, he did not accept that he would have to move out of the property for it to be carried out. He also disputes that some aspects of the work are necessary, such as some electrical work.
55. The Applicant’s solicitor invited the Tribunal to find that the Applicant and his witness were credible and reliable, and that the Respondent and his witness were not. For the most part, the Tribunal found the Applicant to be credible and reliable. However, there were several contradictions in his evidence. For example, he told the Tribunal that he had purchased the flat for the Applicant and intended the work, including the conversion, to be for his benefit. However, he then confirmed that when the work was finished, he intends to let it out to other tenants. The Applicant also told the Tribunal that he had planned to do all the work with the Respondent continuing to occupy the property. However, his application is based on a claim that this is “impracticable”. The Applicant told the Tribunal that he had to do the work himself, for financial reasons, but also stated that he would pay the missing shares of the structural work, if necessary, and seems content with a plan for the property which would mean the loss of rental income for three years. It appeared to the Tribunal that the Applicant did not appreciate that some of his evidence was contradictory.
56. The Tribunal had no issues with Mr Craig’s evidence although it added little to the relevant factual matters in dispute. The Tribunal also found the Respondent generally credible and reliable. On one occasion he effectively refused to answer the question. He was asked about whether his mother had shouted at a plasterer who was working at the property. He said that he did not know when it was clear that he did. He had already confirmed that he was in the property at the relevant time. The Tribunal takes the view that this was due to embarrassment as his mother was sitting next to him when the question was asked. He could have simply denied that she had shouted but did not do so. Instead, he tried to avoid answering the question. Otherwise, he gave his evidence in a candid and open manner and there was no evidence that his statements were influenced by Mrs Lytton, as was claimed by Ms Grosvenor. The Tribunal did have some concerns about Mrs Lytton’s evidence. She had been present throughout the hearing and her evidence appeared to be coloured by what she had heard – answering questions which had not been asked because she wanted to dispute something said by another witness. It was also clear that she feels a great deal of animosity toward the Applicant. However, much of her evidence was again not relevant to the issues being considered and where it was relevant, it was largely consistent with the

Respondent.

57. The Tribunal notes that the parties are agreed on most of the key factual issues. It is not disputed that the Applicant intends to carry out certain works or that some of these works are required. The Respondent does not deny that he stopped providing access in October 2021. The parties are agreed that the Property Factor could not instruct the structural work because most of the money was not paid, although they disagree about the reason for non payment. The Respondent's medical condition and the implications of this are agreed.
58. To succeed, the Applicant requires to establish three things. Firstly, that he intends to re-furbish the property. For the most part, this is not in dispute and the Tribunal is satisfied that he intends to convert the property to a 2 bedroom property, upgrade the heating, re-wire the property and complete some of the work previously carried out. The Applicant also intends for the wet rot work to be carried out.
59. Secondly, the Applicant must be "entitled" to do the work. It is not disputed that he owns the property. Furthermore, he has obtained a building warrant for the conversion work. However, despite his claim that he will get the structural work done himself, if necessary, it was not clearly established that he is entitled to do so. The repair relates to common property and can only proceed if a majority of owners are agreed. Furthermore, the Property Factor will not instruct the work until they are in funds. Access would also be required to another flat. There may be a right of access in terms of the title deeds but if this was refused, court proceedings to enforce that right might be required. Based on the correspondence from the Property Factor, there is no evidence that this work is likely to be instructed in the near future. Furthermore, although the Applicant claims that he would pay the missing shares to get the work done, this is at odds with his evidence that he cannot afford to employ contractors to do the other work at the property.
60. The dispute between the parties mainly relates to the third part of the test. Ground 3(2)(c) states that the ground applies if "it would be **impracticable** for the tenant to continue to occupy the property **given the nature of the refurbishment** intended by the landlord" (emphasis added). The word "impracticable" is not defined in the legislation. The Oxford Dictionary definition is that it is something which is "impossible in practice to do or carry out". The Tribunal noted the following:-
- (a) Mr Craig said that, as someone who once worked in the building trade, health and safety considerations meant that the property had to be unoccupied. There was no evidence that Mr Craig had any particular expertise, nor was it suggested that he did. His involvement with the parties was in a quite different capacity. His remarks were also very general.
- (b) The Applicant clearly stated in his evidence that he had always intended for the work to be carried out with the Respondent in occupation. He changed his view of this only because of the access issues. He stated that he had planned

for the Respondent to move from room to room as the work progressed.

- (c) The issue of access is largely irrelevant. The ground only applies if the “nature of the refurbishment” means it is “impracticable”. In any event, the Applicant is entitled to access to get work done at the property , both in terms of the tenancy agreement and the Housing (Scotland) Act 2006.
- (d) The Applicant has already carried out a great deal of disruptive work with the Respondent living at the property. This included plastering (which the Respondent particularly dislikes) and works which deprived him of kitchen and bathroom facilities.
- (e) The evidence lodged indicates that the structural work is such that it would be preferable to decant occupants, not that this is essential. The statement from the engineer indicated that it would be “better” if the occupants were decanted. However, he also said that the works to the third-floor property would be less disruptive than on the second floor. The Respondent lodged an email from the Property Factor which specifically states that residents would not require to move out.
- (f) The only planned work which might have justified the claim that it would be “impracticable” for the Respondent to stay is the conversion. However, the evidence did not establish this to be the case. Firstly, the Applicant said in his evidence that the conversion meant a small amount of additional work. Secondly, it seems to be the Applicant’s decision to do the work himself, taking 3 or 4 years to complete it, rather than the nature of the work which is the problem. No evidence was led regarding the length of time qualified contractors would take to complete the work or the Applicant working on it full time.
- (g) The Respondent was quite candid when giving evidence of this issue. He made it clear that he would prefer to move out for a few weeks. However, that would only work if contractors were employed. He stated that if this was not an option, he would remain at the property. Although not keen to do this, he lived in the property throughout the previous works and appreciates that work is required to improve his living conditions.

61. It appears to the Tribunal that the Applicant does not fully appreciate that by creating a tenancy, as opposed to allowing the Respondent to live there rent free, he has created a situation where both he and the Respondent have rights and obligations. It also appears that he has failed to fulfil his repairing standard obligations to the Respondent since the start of the tenancy. However convenient, the Respondent should not have been permitted to move in and pay rent for a property which was not fit to live in. Although the evidence did not clearly establish whether Social Work imposed a time limit for the work, they cannot have envisaged a situation where essential work was still required three years after the start of the tenancy. The Applicant also appears to believe that he should have unrestricted access to the property, as well as a right to store tools and materials, and to take as much time as he wants to complete the work.

The Applicant has failed to provide the tenant with a detailed programme for any of the works intended. This would provide the tenant with information on the duration and impact of the works and could help with the access issues as well as acknowledging the Respondent's health condition which results in him requiring information/ details to help him make decisions. Although he is legally obliged to provide access, the Respondent's decision to withhold access is understandable in the circumstances. The Tribunal concludes that, although certainly disruptive, it has not been established that it would be impracticable for the planned work to be carried out while the Respondent resides at the property,

62. The Tribunal also concluded that, even if the Applicant has established parts 2(a) to 2(c) of Ground 3, they would not have been satisfied on reasonableness for the following reasons:-

- (a) The Applicant tried to persuade the Tribunal that Mrs Lytton has too much influence on the Respondent and her support is detrimental to his wellbeing. This argument is flawed for several reasons. Firstly, whatever views were held by Social Work staff, they chose to place him in the property at a time where they had the power to determine where he should live. They are no longer involved with the Respondent and the email which is critical of Mrs Lytton is 4 or 5 years old. It was clearly established that the Respondent has a close relationship with his mother and relies on her for support. His sister is also involved. They are his support network, and it would be detrimental for him to have to move away from them.
- (b) The Applicant also referred to the difficulties he experienced with Mrs Lytton, saying that she was abusive and interfered when he was trying to carry out work. There was little evidence of the abuse, and it is not unusual for there to be animosity following a separation. Mr Lytton objected to Mrs Lytton coming into the property when he was there. However, as a landlord, he has no right to prevent a tenant from allowing their family to visit unless there is a legal impediment to them doing so. Mr Lytton has not taken steps to protect himself from what he perceives as harassment. He contacted the police on only one occasion and has not applied for an interdict. He has also failed to take practical steps which would considerably reduce the need for him to be in the property such as employing a letting agent and contractors to do the work.
- (c) As a result of his medical condition, an eviction and having to move away from the area is likely to have an adverse impact on the Respondent. He has expressed concern about this.
- (d) The Respondent is dependent on benefits which will restrict his ability to source alternative accommodation, particularly in the private sector. Currently he has to top up his housing benefit to meet his monthly rent.
- (e) Some of the planned work is unnecessary to ensure that the property meets the repairing standard.

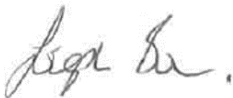
- (f) Although the application is based on ground 3, the Applicant is clearly seeking eviction because of the access problems rather than the refurbishment work which he intended to carry out with the Respondent in occupation. The Notice to leave was served 2 months after access was withdrawn. However, the Applicant has not made use of his legal remedies in this regard. He said that he could not use the Tribunal right of entry process because of the amount of access he requires. However, if he was to approach the work in a different way, and use contractors, the process could be used. However, it is unlikely to be needed in those circumstances. The Respondent is keen to have most of the work carried out. He simply objects to the length of time involved.

## **Decision**

**63.** The Tribunal determines that the application should be refused.

## **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.**



**Josephine Bonnar, Legal Member**

**23 April 2023**