



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/23/0677

Re: Property at 8 Donnini Court, Ayr, KA7 1JP (“the Property”)

Parties:

MR CAMPBELL SEATON, Spoth Crowich Sanquhar, Sanquhar, DG4 6EY (“the Applicant”)

MR PATRICK SMITH, 8 Donnini Court, Ayr, KA7 1JP (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) unanimously determined that the Applicant is entitled to an eviction order under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016, the Tribunal having found that Ground 1 of Schedule 3 thereof applies.

Findings-in-Fact

The tribunal makes the following findings in fact:-

1. The Applicant is the heritable proprietor of the Property.
2. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (“the PRT”) dated 4 July 2020 and that commenced on the same day.
3. The rent payable in terms of the PRT was initially £460 per calendar month payable in advance on the fourth day of each month.
4. The rent increased to £495 per calendar month with effect from 4 August 2022.

5. On 6 July 2022 the Applicant's agents served on the Respondent by Sheriff Officers a Notice to Leave dated 6 July 2022 seeking the Respondent's removal from the Property by 29 September 2022 on the ground that the Applicant wished to sell the Property.
6. On 3 March 2023 the Applicant's agent served on South Ayrshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
7. The Applicant is entitled to sell the Property.
8. The Applicant intends to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it. The Applicant's intention to sell is evidenced by a Sales Invoice from Corum Ayr Limited ("Corum") dated 27 July 2022 in respect of a marketing fee for the Property in a sum of £360 (incl VAT) and a corresponding email from Rhona Brown of Corum also dated 27 July 2022 to the Applicant sending the invoice "*relating to the sale of your property*".
9. The Property is mortgage free.
10. The Applicant owns another property, namely his home, over which there is a mortgage in favour of [REDACTED] taken out in or around 2021 in a sum of £[REDACTED] to fund the cost of improvements to that property. When taken out the monthly mortgage repayment was in a sum of £[REDACTED].
11. On 3 January 2023 the Applicant's monthly mortgage payment was £[REDACTED]. On 3 July 2023 his payment increased to £[REDACTED] per month. The payment increased further to £[REDACTED] per month in August 2023 and to £[REDACTED] per month on 1 September 2023. From 1 October 2023 the Applicant's mortgage payment became £[REDACTED] per month which he continues to pay.
12. The Applicant owns no other heritable property, a property abroad having been sold around 4/5 years ago. The proceeds of that sale were used to purchase the Property as an investment and to clear the Applicant's debts.
13. The rental income from the Property contributed towards the mortgage payments payable by the Applicant to The Mortgage Lender.
14. The Applicant's Letting Agent is Lime Green Estate Agents ("Lime Green") and from the monthly rental income of £495 Lime Green deduct the following:-
 - i. Fees to Lime Green of £115.00;
 - ii. Factoring fees of £70; and
 - iii. Insurance of £15.
15. The Applicant has 3 credit cards provided by [REDACTED] and [REDACTED]. The credit limits on the cards are in the sums of £[REDACTED] and £[REDACTED] respectively.
16. As at 15 June 2023 the balance due by the Applicant on the [REDACTED] credit card was £[REDACTED]. As at 22 May 2023 the balance due by the Applicant on the [REDACTED] credit card was £[REDACTED]. As at 14 May 2023 the balance due by the Applicant on the [REDACTED] credit card was £[REDACTED].

17. As at 1 August 2023 the balance due on the [REDACTED] credit card had increased to £[REDACTED], being in excess of the credit limit. As at 15 August 2023 the balance due on the [REDACTED] credit card had increased to £[REDACTED] and the Applicant had defaulted on sums payable.
18. As at the Hearing the balances due on the [REDACTED] and [REDACTED] credit cards were £[REDACTED] and £[REDACTED] respectively.
19. The Applicant uses his credit cards to fund day to day living expenses and is struggling to pay the minimum balances due thereon.
20. The Applicant previously worked part-time in a customer oversight role in the financial sector working 28 hours per week. Due to the pandemic he was able to work from home and applied to increase his hours to a full-time position. It took a year for that application to be granted. He now works in a full-time position working 4 days each week. He works on a hybrid basis, mainly from home but attending the office 2 or 3 times each month.
21. The Applicant had been off work at the beginning of the year for an operation, then contracted COVID. He received limited sick pay from his employer but borrowed money from his employer which he has had to repay by way of deductions from his wages.
22. The Applicant's son is studying in first year at University in Aberdeen. He has a full grant and his accommodation is provided by the University and is free this year. The Applicant will need to contribute towards his son's accommodation next year.
23. The Applicant's partner is in full-time employment in a community health role working with vulnerable young adults and teenagers. He is in a seconded position at present. He also works agency shifts 2 or 3 times a month to supplement their income.
24. The Applicant has bank accounts with [REDACTED] and [REDACTED]. One account currently has an overdraft of £[REDACTED] and another has an overdraft of £[REDACTED]. There are no extra funds sitting in any of his accounts.
25. The Applicant has been mindful of the Respondent's mental health issues.
26. The Applicant cannot improve his own financial situation without selling the Property.
27. The rental income that the Applicant receives (after deductions) each month now falls short of the monthly mortgage commitment that the Applicant pays to [REDACTED] by a sum of £[REDACTED].
28. The Applicant has sought help from family members to pay bills and has paid them back.
29. The Respondent lives alone in the Property with his two cats.

30. The Respondent remains unable to work on account of his ill-health. He continues on medication for mental health issues including anxiety and PTSD. He attends a psychologist for support and has had 6 appointments since September 2023. He also has support from a psychiatrist who he generally sees every 6 months and from the Mental Health Team.
31. The Respondent has tried to find alternative accommodation. He has approached Ayrshire Housing Association, South Ayrshire Council, Lime Green and other letting agents.
32. The Respondent is willing to move out of the Property but has not been able to do so due to the absence of alternative available accommodation.
33. The Respondent would like to stay in the locality of the Property but would consider living anywhere in Ayr.
34. Routine is good for the Respondent and it helps for him to maintain preferred routes to collect his medication and attend support groups. Changes of routine upset his emotions.
35. The Respondent finds the tribunal process difficult. He has a fear of eviction and a fear of homelessness which has set back his recovery. He needs the situation resolved for his own mental health.
36. The caseworker appointed to the Respondent by South Ayrshire Council has moved on and no one else has been appointed to him. He responds to communications from the Council about his housing situation.
37. The refusal of an eviction order will cause the Applicant further financial detriment.
38. The refusal of an eviction order will prevent the Applicant organising his financial affairs, paying his debts and supporting his son in higher education.

Statement of Reasons

39. This Application called for a Hearing on 31 August 2023 which continued on 6 December 2023. The Hearing took place by telephone conference on each day. The reasons for the adjournment of the Hearing on 31 August 2023 are fully discussed in the Hearing Note of that date.
40. At the Hearing on 31 August 2023 the Applicant was present and was represented by Ms Laura Weir of Murphy Scoular. The Respondent was also present.
41. Prior to the adjourned Hearing on 6 December 2023 and by email dated 14 November 2023 from Lime Green Estate Agents on behalf of the Applicant the Tribunal received intimation that the Applicant would be representing himself at the Hearing.
42. Prior to the adjourned Hearing on 6 December 2023 and by email dated 16 November 2023 the Tribunal also received intimation from Lime Green Estate Agents on behalf

of the Applicant an indexed and paginated bundle of productions. These productions had been lodged prior to the Hearing on 31 August 2023 so were not new and were re-submitted in compliance with the Tribunal's Direction dated 31 August 2023.

43. The Applicant duly attended and represented himself at the Hearing on 6 December 2023. The Respondent attended too.

Case Management Discussion

44. A Case Management Discussion ("CMD") previously took place on 19 June 2023. The Case Management Discussion Note notes the issues in dispute between the parties as being:-

Whether it is reasonable to grant an eviction order.

- In particular whether the Applicant's change of financial circumstances is such that it is reasonable for him to sell the Property.
- Whether, having regard to the Respondent's health condition, it is reasonable to grant an eviction order.

45. In the Application the Applicant seeks an order for the Respondent's eviction from the Property by reference to Grounds 1 and 12 of Schedule 3 of the 2016 Act. At the CMD the Applicant's representative stated that the Applicant was no longer insisting on Ground 12. Accordingly, the CMD and the Hearing both proceeded by reference to Ground 1 alone.

46. In the Application and by reference to Ground 1 the Applicant states:-

"The Landlord intends to sell – due to a change in circumstances the landlord is now selling."

Evidence

47. At the Hearing only the parties gave evidence. The Respondent confirmed receipt of the Applicant's productions by post.

48. The Applicant's evidence commenced on 31 August and continued on 6 December 2023.

Applicant's Evidence on 31 August 2023

49. The Applicant stated that the Respondent had been paying his rent on time.

50. He said his own home was mortgaged and his mortgage payments had almost doubled over the previous few months with a further increase being due. He said his payments were previously £■■■■ per month, had increased to £■■■■ in July 2023 and were due to increase again in September. Increases take effect one month after a change to interest rates.

51. The Applicant said he relied on the rental income from the Property to pay the mortgage.

52. The Applicant stated that there had been considerable changes in his finances. He previously worked part-time in a customer oversight role working 28 hours per week.

Due to the pandemic he was able to work from home and applied to increase his hours to full-time. It took a year for that application to be granted.

53. He is paying the minimum now to his pension reducing his payments from 15% to 5%.
54. The Applicant's partner works full-time in a school and as an agency nurse. His son was due to start at University in September.
55. Notwithstanding what had been said by his representative at the CMD, he had not owned a home abroad for 4-5 years. At that time he was mortgage free in his own home and used the sale proceeds to purchase the Property as his pension.
56. The Applicant said he had no other income.

Applicant's Evidence on 6 December 2023

57. The Applicant repeated that he had sold his property abroad around 5 years ago and used the proceeds to purchase the Property as his pension. He also cleared all his debts at that time.
58. In purchasing the Property he took legal advice. The Property was then relatively new, being around 15 years old, is situated near the sea and was considered a good investment. It needed nothing done and no mortgage was required.
59. The Property had only ever been a rental property and he had never had any problems with any tenants. He felt he had peace of mind that if he needed to sell the Property he could do so quickly.
60. In 2021 the Applicant made significant improvements to his own home. He borrowed £ [REDACTED] from [REDACTED] to fund those works. He found it difficult to get a mortgage and had to jump through hoops.
61. The Applicant has 3 credit cards with [REDACTED] and [REDACTED]. He referred to pages 1 to 11 of his productions which showed a credit limit on each of the cards in the sums of £ [REDACTED] and £ [REDACTED] respectively. As at 15 June 2023 the balance due by the Applicant on the [REDACTED] credit card was £ [REDACTED]. As at 22 May 2023 the balance due by the Applicant on the [REDACTED] credit card was £ [REDACTED]. As at 14 May 2023 the balance due by the Applicant on the [REDACTED] credit card was £ [REDACTED]. The Applicant said he had been struggling to pay the cards for the last year and a half. He struggles to pay the minimum balance due when required.
62. The Applicant said he uses the credit cards for his day to day living, such as fuel. He had been off work at the beginning of the year for an operation, then contracted COVID. He received limited sick pay from his employer but borrowed money from his employer which he had to repay by way of deductions from his wages. He now works on a hybrid basis, mainly from home but attending the office 2 or 3 times each month. He also travels to visit his son at University in Aberdeen.
63. Page 14 of the Applicant's productions is a [REDACTED] credit card statement as at 1 August 2023 showing the Applicant due £ [REDACTED], being in excess of the credit limit. Pages 19 and 20 of the Applicant's productions is a credit card statement from [REDACTED] as at 15 August 2023 showing the Applicant due £ [REDACTED] and page 21 is a letter

from [REDACTED] dated 15 August 2023 notifying the Applicant that he has defaulted on sums payable. As at the Hearing he said the balances due on the [REDACTED] and [REDACTED] credit cards were £[REDACTED] and £[REDACTED] respectively.

[REDACTED] With regard to the mortgage the Applicant referred to pages 27 and 28 of his productions being letters from [REDACTED] dated 9 June 2023 and 11 August 2023. On 3 January 2023 his mortgage payment was £[REDACTED] per month. On 3 July 2023 his payment increased to £[REDACTED] per month. It increased further to £[REDACTED] per month in August 2023 and to £[REDACTED] per month on 1 September 2023. From 1 October 2023 his mortgage payment became £[REDACTED] per month which he continues to pay. When he first applied for the mortgage the monthly payment was £[REDACTED]

65. The Applicant said he previously lived and worked on a self-employed basis on Arran. He sold his home and business there in 2014/15, paid his debts and moved to his current home. However, he lost sight of one credit card on which he was due £[REDACTED]. Mail was not forwarded by those who bought his home on Arran and eventually the credit card company tracked him down through the electoral register. This has affected his credit rating and therefore he required to use a secondary lender for his mortgage. He's not sure if he may be able to remortgage now. When he moved it was also difficult to find work and took a year to do so. He has now been working for the same employer since 2015.

66. The Applicant said he had 2 main bank accounts. One account currently has an overdraft of £[REDACTED] which he would love to reduce and he now has an overdraft on the other account of £[REDACTED]. Fees for the overdrafts are quite high.

67. Prior to this year the Applicant had been working 28 hours per week. Pre-COVID he had been working between 2 offices getting up early to travel there and he found that taxing and demanding. He would work one full week then the next week he would work 3 long days. That pattern would repeat. He applied for a new 4 day week position which is a full-time role effective from 22 May 2023. He is paid monthly.

68. The Applicant's partner is in full-time employment in a community health role working with vulnerable young adults and teenagers. He's in a seconded position at present. His permanent position is working with younger children. He also works agency shifts 2 or 3 times a month to supplement their income.

69. The Applicant's son is in 1st year at University in Aberdeen. He has a full grant and his accommodation is provided by the University and is free this year. The Applicant said he will need to pay towards his son's accommodation next year. He has considered buying a property for him there. His son will need to find work but he will need to help him out.

70. The Applicant said the Respondent had always been a good tenant. The rent of £495 per month supplements the Applicant's income and previously enabled him to work a 28 hour week. He lives "in the middle of nowhere" and had a long commute to work (as above).

71. The Applicant said he had worked hard and sacrificed a lot. He realises a lot of tenants are vulnerable and he has taken the Respondent's mental health issues into account.

However, he said he was frustrated that he could not change his own situation to his own benefit by selling the Property.

72. The Tribunal asked about the Applicant's financial position in July 2022 when the Notice to Leave was served. The Applicant stated that he works in the financial sector. He was aware that he was struggling and that there was a threat of his mortgage increasing. The Property was not working for him. His sister ran an Air BnB and the Applicant thought about doing the same. However, he lives 1.5 hours away from the Property so that would not work. His sister offered to buy the Property and he thought about that too. He was aware that the Respondent had cats and mental health issues. He discussed the position with his advisers, Murphy Scoular. He decided to sell and spoke to Corum. The Respondent allowed them access to the Property. He subsequently complained they were rude and stated that he was not agreeable to showing persons around the Property. He instructed Murphy Scoular to issue the Notice to Leave then changed his mind about proceeding further. He thought he would sell the Property to his sister and buy a property closer to his home at a cheaper price to release some capital. But he said his financial situation changed in 2023. He has sought help from family members to pay bills and he has managed to pay them back. He therefore lodged the Application in March 2023.

73. The Applicant said he had previously suffered from depression. He is determined not to go to the doctor again. He is finding the tribunal process very stressful. He is completely aware of the Respondent's situation. He has not been reckless or unkind and feels the ability to sell the Property has been taken out of his hands.

Cross-examination of Applicant by Respondent

74. The Respondent put it to the Applicant that he was not using the credit cards for living costs such as gas, power and food but rather to buy things on Amazon. He said the Applicant had lodged the credit card statements "for show". In reply the Applicant stated that he should have also supplied bank statements. He uses the credit cards for certain bills each month, for example, every 2 months he requires to spend £400 on oil for his home. He also purchases supplies for the woodburner. He lives 1 hour away from supermarkets so uses Amazon to buy repeat purchases.

75. The Respondent suggested to the Applicant that he was spending money on a good living and had produced nothing to show hardship in 2022. The Tribunal reminded the parties that the test for the grant of an eviction order under Ground 1 was not by reference to hardship but by reference to reasonableness. The Applicant said the Respondent is pre-disposed to find fault but he has presented the facts. He said his partner pays 80% of the bills. The Applicant's bank statements would show his overdrafts. His financial situation had been deteriorating before 2022 and he could not resolve it.

76. Referring to page 24 of the Applicant's productions, the Respondent complained that the Applicant had not produced the signed letter to his employer, Wescot, accepting the variation of his contract of employment.

77. Referring to page 25 of the Applicant's productions, the Respondent questioned the other accounts referred to therein. The Applicant explained that page 25 is an extract from his [REDACTED] Account. He also has an account with [REDACTED]. He has no extra funds in any of them or anywhere else. He

transfers money to the [REDACTED] account each week. These payments are shown in the sums of £ [REDACTED] and [REDACTED]. The account number [REDACTED] is his partner's bank account. The Equifax payment of £ [REDACTED] is for a monthly credit check. The Applicant needs a good credit score to remortgage. His partner has a very good credit score but any mortgage is based upon the worst credit score between them which is that of the Applicant. The payment to "Guardian News &" is for a newspaper app. This is paid monthly.

Respondent's Evidence on 6 September 2023

78. The Respondent confirmed he still lives alone in the Property with his two cats. He remains unable to work on account of his ill-health. He continues on medication for mental health issues and diazepam has been added due to his anxiety. He has started attending a psychologist to help with his PTSD and has had 6 appointments since September 2023 when that support started.
79. The Respondent said he had tried to find alternative accommodation especially within the last 2 or 3 months. He tried the Applicant's agents, Lime Green. They had suitable properties but never told him. He said they could have helped more. He applied for 2 or 3 properties for let but was told they had been let out or the queue was too big.
80. He finds it difficult having to go through the tribunal process. He has a fear of eviction and a fear of homelessness which has set back his recovery such that he now needs the help of the psychologist. He needs the situation resolved for his own health.
81. He feels like he has been "badgered" to get a property. He is willing to move but it is hard to do anything. The homelessness service have told him to go and see them once he has been "kicked out". He said he is not the bad one here.
82. He has applied to other letting agencies but has not been accepted because of his cats.
83. Dr Moorhead who prepared the letter 21 August 2022 moved away from Ailsa Hospital in August. The Respondent is awaiting the appointment of a new psychiatrist. He saw him every 6 months and last saw him at the beginning of August. He gets his medication from his GP every week but otherwise deals with the mental health team.
84. The Tribunal asked about the caseworker appointed to support the Respondent by South Ayrshire Council as referred to at the CMD. The Respondent said the caseworker had moved on but no new one had been appointed to him. The only contact he had received from the Council was a letter asking if he was still homeless and he had answered that as required confirming that remained the case. He has not been into the Council office. He prefers to phone but hasn't done so as he has given them the details they need and is waiting to see what happens.
85. The Property is a one bedroom flat with a living room, kitchen and bathroom. The Respondent said the shower leaks and needs fixed. There is a balcony off the living room which is perfect for him.

86. The Respondent would like to stay in the same area generally. Routine is good for him and he knows his preferred routes to get his medication and attend groups, and knows what is quiet. Changes of routine jumble his emotions. His last stay in hospital was 2-3 years ago. The medication has helped him engage.

Cross-examination of Respondent by Applicant

87. The Applicant pointed out that of the rent of £495 per month paid by the Respondent to his letting agents, Lime Green, they take £115 for their own fees, £70 for factoring fees and £15 for insurance, so he only receives £295.

88. The Applicant said he had tried to contact the Respondent himself. He was not "badgering" the Respondent. He has followed due process. He thought tensions had built between his previous agents, Murphy Scoular and the Respondent and also between the Applicant and Murphy Scoular. The Respondent agreed that Murphy Scoular could have done a lot more.

Submissions

89. The Tribunal invited the parties to make closing submissions if they wished to do so.

90. The Applicant stated he has provided any information asked for and had tried to be upfront and honest about the situation.

91. The Respondent did not wish to add anything to the evidence he had given.

Reasons for Decision

Legislation

92. Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") states:-

"51 First-tier Tribunal's power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order."

93. The grounds of eviction are contained with Schedule 3 of the 2016 Act. Subsequent to the CMD, the Application proceeds only on the basis Ground 1 of Schedule 3 which states:-

"Landlord intends to sell"

(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."*

Issues to be Resolved and considerations

94. By reference to the CMD Note dated 19 June 2023 and as set out above, the issues for determination at the Hearing were confined to:-

Whether it is reasonable to grant an eviction order.

- In particular whether the Applicant's change of financial circumstances is such that it is reasonable for him to sell the Property.
- Whether, having regard to the Respondent's health condition, it is reasonable to grant an eviction order.

95. In assessing reasonableness the Tribunal must consider the whole circumstances in which the Application is made. *Cumming v Danson* [1942] 2 All ER 653 at 655F/G where Lord Greene MR states:-

"..it is, in my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way, as a man of the world and come to his conclusion giving such weight as he thinks fit to the various factors in the situation."

96. The Tribunal also had regard to the comments of the Upper Tribunal in *Manson & Downie v Turner* 2023 UT 38 in which Sheriff Collins KC stated at paragraph 42:

"..the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it

which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b).

Assessment of Evidence

97. The Tribunal found both the Applicant and the Respondent to be credible and reliable in their evidence. They were both unrepresented for the bulk of the Hearing and both gave their accounts in a straightforward fashion. There were very few matters of contention between the parties, the only real challenge being by the Respondent relative to the absence of what he considered to be necessary documentary proof of the Applicant's full financial position to rebut his impression that the Applicant was enjoying "a good living". The Respondent's evidence was not challenged by the Applicant.
98. The CMD Note of 19 June 2023 records that the Tribunal found established the facts required by sub paragraphs 2(a) and (b) of Ground 1 of Schedule 3 of the 2016 Act.
99. In terms of sub paragraph 3 of Ground 1, the Applicant's intention to sell is evidenced by a Sales Invoice from Corum dated 27 July 2022 in respect of a marketing fee for the Property in a sum of £360 (incl VAT) and a corresponding email from Rhona Brown of Corum also dated 27 July 2022 to the Applicant sending the invoice "*relating to the sale of your property*".
100. The Hearing was therefore directed towards the Tribunal's determination of sub paragraph 2(c) of Ground 1 of Schedule 3 of the 2016 Act which requires the Tribunal to be "*satisfied that it is reasonable to issue an eviction order on account of those facts*".

In that assessment the Tribunal again took account of and applied the comments of Sheriff Collins KC in *Manson & Downie v Turner* at paragraph 9 in which he states:-

"As noted, the words "on account of those facts" make clear that the FTS is entitled to find that it is reasonable to issue an eviction order simply on the basis that it is established that the landlord is entitled and intending to sell the property. That might arise where the tenant does not seek to put any other evidence relevant to reasonableness before the FTS, or such evidence as is put forward is rejected. But it does not accord particular weight to the facts in sub paragraphs 2(a) and 2(b) beyond this. The question of whether it is reasonable or not to issue an eviction order is always a matter for the judgment of the FTS in the circumstances of the particular case, attaching such weight as it considers appropriate to the evidence before it. This may include evidence from the landlord bearing on reasonableness - that is, additional to evidence of the facts in sub paragraphs 2(a) and (b) - as well as from the tenant. But there is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa."

101. The Tribunal accepted the evidence of both parties.
102. This Application, being premised on Ground 1 of Schedule 3 of the 2016 Act, does not require the Tribunal to analyse and see vouching of every detail of the Applicant's financial situation or require proof of financial hardship per se as the

Respondent suggested. The test is one of reasonableness weighing all the evidence presented by and heard from the parties.

103. The Applicant clearly has significant financial challenges. In particular -
- a. The monthly mortgage payments payable to [REDACTED] have risen significantly in less than 12 months with the amount payable in January 2023 being £[REDACTED] per month rising to £[REDACTED] from 1 October 2023 with various incremental increases in between. This amounts to an increase of almost 47.8%.
 - b. He is using three credit cards for day to day living expenses and these are consistently at or near the approved credit limit on an ongoing basis with only the minimum balances being generally met.
 - c. The Applicant will require to support his son through University and financially assist him from year 2 with accommodation costs which, in his present circumstances, will be difficult.
 - d. He has no savings.
 - e. His bank accounts are overdrawn.
 - f. The Applicant has increased his working hours to increase his income. He is now working full-time.
 - g. He has previously borrowed money from his employer during a period of ill-health in early 2023 when he was only in receipt of limited sick pay and he has previously borrowed money from family members too to pay debts due. These sums have been paid back.
104. Whilst sympathetic to the Respondent's personal situation the Applicant is frustrated that he cannot sell and release capital from the Property to resolve his own difficult financial situation.
105. The Respondent clearly has significant personal challenges too. In particular -
- a. He has suffered from mental health issues since 2010.
 - b. His health is such that he is unable to work.
 - c. He is taking medication to alleviate his symptoms and is receiving support from a psychiatrist, a mental health team and, more recently, from a psychologist. These strategies have been effective.
 - d. He has a fear of eviction and a fear of homelessness which has set back his recovery such that he now needs the support of the psychologist.
106. The Respondent said he is willing to move out of the Property but is unable to do so as he cannot find alternative accommodation. He has acted entirely properly and has sought to find alternative accommodation by contacting South Ayrshire Council, applying to Ayrshire Housing Association and, more recently, contacting various letting agents relative to properties let in the private sector. His endeavours have been in vain. He would move to a property, ideally, within the same locality or at least within Ayr.
107. The location and description of the Property suit the Respondent well. He takes known routes to pick up his medication and attend support groups. That routine enables the Respondent to keep his emotions stable.

108. The Tribunal required to weigh up the factors affecting the Applicant that favour his recovery of possession of the Property and balance those against the factors affecting the Respondent that favour the refusal of an eviction order to allow him to remain in occupation of the Property in terms of the PRT.
109. The Tribunal had considerable sympathy to both parties' positions. However, after very careful reflection, the Tribunal unanimously reached the view that it is reasonable that an eviction order be granted.
110. The Tribunal determined that refusing an eviction order would cause the Applicant's financial position to deteriorate further. He had bought the Property as an investment – as his "pension" – and whilst the Respondent had been a very good tenant the Applicant's financial position had changed and he required to release the capital invested in the Property in order to organise his financial affairs, pay his debts and support his son in higher education. The Tribunal considered that it was not reasonable to compel the Applicant to continue with the PRT to his financial detriment which is the outcome an eviction order being refused would produce.
111. The Tribunal was very mindful of the health issues affecting the Respondent and the progress he had made in recent times. The Tribunal took into account in particular the suitability of the Property and its location for his needs. However the Respondent indicated he was willing to move and had made every effort to do so. The only issue preventing him moving was the availability of alternative accommodation. He said that Lime Green in particular had other suitable accommodation available from time to time but he had not been given the opportunity to apply for it. On that basis the Respondent, despite his health issues (or perhaps because of his health issues) was prepared to relocate. The Tribunal acknowledges that the eviction process has been stressful for both parties and the Respondent in particular and that, on his own admission, a resolution is needed.
112. Whilst finely balanced, the Tribunal considered that it was not reasonable to refuse an eviction order and thereby cause the Applicant further financial detriment when, if suitable alternative accommodation is available, the Respondent is and always has been willing to remove from the Property.
113. The Tribunal hopes that the granting of the eviction order will allow the necessary authorities to properly and promptly consider the Respondent's housing needs and allocate to him suitable alternative accommodation as near as possible to his preferred area to allow him to retain in so far as is possible the routines that bring such benefit to him. He should make them aware of this decision at the earliest opportunity.

Decision

The Tribunal grants the Application and makes an eviction order in favour of the Applicant against the Respondent.

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.



Legal Member/Chair

6 December 2023

Date