



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/1633

Re: Property at B/1, 7 Niddrie Square, Glasgow, G42 8QX (“the Property”)

Parties:

Mrs Allison Hussain, 430 Shields Rd, Glasgow, G41 1NS (“the Applicant”)

Mr Saif Monir, B/1, 7 Niddrie Square, Glasgow, G42 8QX (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. The application submitted on 18 May 2023 sought an eviction order in terms of Ground 1A of the 2016 Act, namely that the landlord intends to sell the Property to alleviate financial hardship. This is in respect of a Private Residential Tenancy between the parties, said tenancy having commenced on 12 April 2020.
2. A Case Management Discussion (“CMD”) took place by telephone conference call on 22 August 2023 at 10am and was attended by the Applicant’s representative, Mr Saqib Deen of Apex Services, the Respondent and the Respondent’s representative, Ms Lyndsey McBride of Govanhill Law Centre. Written Submissions had been lodged in advance of the CMD on behalf of the

Respondent, together with a First Inventory of Productions for the Respondent. Further written representations and documents had also been lodged on behalf of the Applicant, including financial information relating to the Applicant which the Respondent's representative had asked not to be circulated.

3. Given that the application was opposed by the Respondent and that there were various issues in dispute and/or to be further clarified, the matter was adjourned to an Evidential Hearing to take place in-person at Glasgow Tribunals Centre on 21 November 2023 at 10am. The Tribunal also issued a Direction to parties following the CMD, requiring both parties to provide details of any witnesses that they wished to call to give evidence at the Evidential Hearing and to lodge any documents upon which they wished to rely. In addition, the Applicant was required to provide:-

“Any financial or other documentation that the Applicant wishes to provide to the Tribunal in support of the eviction ground that she is relying upon (1A), namely that the landlord intends to sell to alleviate financial hardship.”

Some further written representations and documentation were submitted by parties prior to the Evidential Hearing in response to the Direction, including updated Written Submissions on behalf of the Respondent. The First Inventory of Productions for the Respondent was re-submitted in advance of the Evidential Hearing. No witness details were provided by either party.

Evidential Hearing/Outcome

1. An Evidential Hearing took place at Glasgow Tribunals Centre, Room 111, on 21 November 2023 at 10am. In attendance were the Applicant's representative, Mr Saqib Deen of Apex Services, the Respondent and the Respondent's representative, Ms Lyndsey McBride of Govanhill Law Centre. Also attending was Mr Shah Satar of Apex Services, in the capacity of observer only. The Applicant was not in attendance. Mr Deen explained that this was due to childcare issues. On being asked if the Applicant would be available to join the proceedings by telephone, or even to provide telephone instructions to Mr Deen should that prove necessary, Mr Deen indicated that she could not, due to the childcare issues. The Tribunal indicated that this was not particularly satisfactory, given that this was an Evidential Hearing but noted that Mr Deen was not seeking a postponement and wished to proceed in the absence of the Applicant. Ms McBride indicated that she was happy for the matter to proceed by way of submissions only and with reference to the documentation lodged.
2. The Tribunal decided to proceed on this basis but indicated that, in addition to hearing submissions from parties' representatives, they would wish to hear evidence from the Respondent, who was personally present. This was agreed. The Tribunal proceeded to hear evidence from the Respondent and thereafter heard submissions from both representatives and asked a number of questions of both the Respondent and the parties' representatives. Both representatives summed up and the Tribunal brought the Evidential Hearing to a close and adjourned to deliberate.

3. Having deliberated in detail, the Tribunal determined that further evidence is required and that, under Rule 21 – *Powers of the First-tier Tribunal to require production of evidence* – specifically Rule 21(1)(b), a Direction would be issued in this regard.

Further Direction/Procedure

4. A Hearing Note outlining the above, together with a further Direction from the Tribunal, both dated 21 November 2023, were issued to parties following the Evidential Hearing. The Direction required the Applicant to provide, by 15 December 2023:-

“Correspondence from the Applicant’s current mortgage lender dated after 1 November 2023, confirming the up-to-date status of the mortgage over the Property, including the amount currently owing, the date that the mortgage will reach its term and that there is no option to remortgage or extend the mortgage term”.

5. The Applicant’s representative emailed the Tribunal on 11 December 2023 explaining that a letter had been requested from the Applicant’s mortgage lender and was currently awaited. On 13 December 2023, the Applicant’s representative emailed the Tribunal, attaching an email dated 12 December 2023 from Mr Mark Mooney, Commercial Relationship Manager (on behalf of Applicant’s mortgage lender) and a letter dated 6 December 2023 from the Applicant’s mortgage lender, enclosing mortgage statement information. This documentation was circulated to the Respondent’s representative, who was advised that the Tribunal wished to provide her an opportunity to comment on same and requested any response be lodged by 4 January 2024. She lodged a detailed response to same on 22 December 2023 which was circulated to the Applicant’s representative and the Tribunal Members on 3 January 2024. A further response from The Applicant’s representative was submitted on 10 January 2024, attaching an email dated 5 January 2024 from the Applicant’s estate agent, Slater Hogg, confirming their valuation of the Property.
6. The Tribunal Members considered all the further documentation and representations produced on behalf of the parties and considered that the proceedings could now be determined without a further Evidential Hearing, in terms of Rule 18(1)(a) and (2) of the Regulations which are as follows:-

“Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and
(b) must make a decision without a hearing where the decision relates to—
(i) correcting; or
(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.”

The Tribunal also considered that this accorded with the Tribunal's overriding objective, in terms of Rule 3 of the Regulations, to deal with the proceedings justly in a manner proportionate to the complexity of the issues, flexibly, ensuring that parties are on an equal footing procedurally and able to participate fully and avoiding delay so far as compatible with the proper consideration of the issues. The Tribunal accordingly proceeded to determine the proceedings and to grant the order sought.

Documentary Evidence

7. The documentary evidence submitted on behalf of the Applicant and considered by the Tribunal was as follows:-
- i. Land Certificate GLA 106463 in respect of the Property;
 - ii. Tenancy Agreement between the parties dated 12 March 2020;
 - iii. Notice to Leave dated 20 January 2023 and proof of service of same on the Respondent by email dated 20 January 2023;
 - iv. Section 11 Notice to Glasgow City Council and proof of service of same by email dated 18 May 2023;
 - v. Statement showing mortgage payments due and payments made between July 2022 and December 2022/January 2023 prepared by Mr Mark Mooney, Commercial Relationship Manager (on behalf of Applicant's mortgage lender);
 - vi. Agency Agreement between Applicant and Slater Hogg dated 5 May 2023 re marketing of the Property;
 - vii. Letter from Applicant confirming anticipated timescale for the sale;
 - viii. Screenshot of message from Applicant's husband, Mr Usman Hussain to Applicant's representative dated 22 August 2023, confirming his new address and his separation from the Applicant;
 - ix. Utility bill from OVO Energy addressed to Applicant's husband at his new address dated 9 October 2023;

- x. Letter to Applicant from NRAM (successors of Northern Rock plc) dated 30 April 2021 confirming date of mortgage term ending (1 May 2024) and that mortgage cannot be extended beyond that date;
 - xi. Letter to Applicant from NRAM dated 18 May 2023 confirming change in interest rate and mortgage payment as from 1 June 2023 and outstanding balance of mortgage (£177,166.82);
 - xii. Redacted Income and Expenditure statement for Applicant submitted to Tribunal on 10 November 2023;
 - xiii. Letter dated 10 August 2023 from Mr Imran Shah, Accountant, of Apex Services (Applicant's representatives) relating to the Income and Expenditure figures (letter lodged at the Evidential Hearing);
 - xiv. Email dated 12 December 2023 from Mr Mark Mooney, Commercial Relationship Manager (on behalf of mortgage lender) confirming that mortgage recently sold by NRAM to Topaz Finance Ltd trading as Hessonite Mortgages, that neither offer new lending facilities and that full repayment of mortgage is required on 1 May 2024 when the mortgage term expires;
 - xv. Letter to Applicant dated 6 December 2023 from the Applicant's mortgage lender, enclosing updated mortgage information and statements;
 - xvi. Email dated 5 January 2024 from the Applicant's estate agent, Slater Hogg, confirming their valuation of the Property (circa £230,000).
8. The documentary evidence submitted on behalf of the Respondent (First Inventory of Productions for the Respondent) and considered by the Tribunal was as follows:-
- i. Air B'n'B receipt for Property address for period 21 May 2019 to 28 May 2019;
 - ii. Text message exchange between Respondent and Applicant dated June 2019;
 - iii. Email exchange between client and Glasgow City Council dated 21 January 2021 to 28 January 2021 regarding Property possibly being let out as an HMO;
 - iv. Tribunal Statement of Decision relating to the Property dated 2 March 2022 in case reference FTS/HPC/RP/21/0233 relating to a Rent Relief Order being imposed on basis of non-compliance with a Repairing Standard Enforcement Order;
 - v. Report from Respondent's GP dated 16 August 2023.

Oral Evidence – Respondent

9. The Respondent, Mr Saif Monir, gave evidence at the Evidential Hearing. He stated that he was 29 years old, not working and in receipt of benefits. He lives alone and has no children or other dependents. He stated that eviction would

have a detrimental impact on him and that the fear would paralyse him. He has been at the property for a long while and has friends there and relationships with his neighbours. There is familiarity for him and a support system there. He is involved in the local community and the maintenance of the square where the flat is situated. He wants to move beyond this but in his own time. Mr Monir has sought alternative accommodation through a housing association and he is on the waiting list there. An application has been made but he understands nothing will happen until an eviction order is granted. He has not yet made progress with an application to the local authority through the homelessness team (his agent, Ms McBride explained that there is a lack of temporary accommodation available and a points system, whereby he would only be given more points if an eviction is granted at the end of this process). Reference was made to the letter submitted by Mr Monir's GP outlining some mental health issues. Mr Monir explained that he suffers from depression and anxiety and that he has undiagnosed ADHD. He stated that this results in him using up a lot of energy on small things. Mr Monir stated that the Tribunal proceedings previously and currently negatively affect his mental health. In response to questions from the Tribunal Members, Mr Monir stated that he has poor mental health since he was a child. He has not held any tenancies before this one. His mum lives locally but their relationship is "raw" and she re-married recently, so living with her is not an option. He also has siblings in the area but they are not in a position to accommodate him either. He confirmed that, longterm, he would like to own his home. As to this Property, he reiterated that he will move on at some point but not for around 6 months or so. Mr Monir confirmed that the housing association he has applied to is Wheatley Group. Reference was also made to the previous Tribunal decision lodged on his behalf, in a repairs application case. Mr Monir confirmed that nothing had changed with the outstanding repairs required at the Property and that a 40% rent reduction is still in place. Mr Deen, the Applicant's representative, did not wish to ask Mr Monir any questions in cross-examination.

Submissions on behalf of Applicant

10. Mr Deen, the Applicant's representative, put forward submissions at the Evidential Hearing on behalf of the Applicant. He confirmed that she needs to sell the property within the next few months as the mortgage on the property expires at the end of April 2024. She does not have any option to re-mortgage or extend the mortgage, which is a buy-to-let mortgage. Northern Rock, the original mortgage lender went bust years ago and the government backed organisation that took over these mortgages have basically been closing the mortgage book down, as and when the mortgages end and do not offer new mortgages. The Applicant also has issues with credit and is experiencing financial hardship. Reference was made by Mr Deen to the various documents lodged with the Tribunal on behalf of the Applicant relating to her mortgage situation and finances. The Applicant's husband is separated from her and has moved out of their property where she still lives with their children to a separate address in Skirving street. His income has not therefore been included in the income and expenditure figures produced for the Applicant. Mr Deen stated that the figures showing are out of date now as there have been two more mortgage

rate increases since then. This is unsustainable for the Applicant and she also faces having to repay around £177,000 to her mortgage in April 2024.

11. In response to questions from the Tribunal Members. Mr Deen confirmed that the Applicant does rent out two other properties but that she has more time with these as it is only this mortgage which ends in April 2024 and which she needs to sell now. The Applicant needs to place this property on the market as soon as possible in order to sell before then, or it will be repossessed. She has no other option. The property is not actively being marketed as yet. Mr Deen referred to the agency agreement lodged with Slater Hogg who will market the property once it is vacant and has been re-decorated for the market. Mr Deen stated that his company have had difficulties getting access to the property to carry out the repairs on it. The property maintenance team found Mr Monir too difficult to deal with and gave up trying. Mr Deen confirmed that he understands the Applicant and her husband separated around four or five months ago. He does not know exactly as he has a working relationship with the Applicant and thinks she was embarrassed to tell him. She does not have financial support from her husband who also supports his own elderly parents. The Applicant has three children. Mr Deen does not know whether the Applicant's husband pays her child maintenance. The Applicant has four properties in total, one of which she lives in and has a mortgage to pay. The other three, including this one, are rented out and currently tenanted, the other two being Ettrick Place and Deanston Drive. They bring rental income in but all have mortgages over them too. Although they all have equity in them, there is more equity in this Property, as it is in Strathbungo and is worth around £220,000. Overall, the Applicant has a current monthly shortfall of £1,073. Mr Deen referred to the Income and Expenditure information submitted which he confirmed was prepared by the Applicant herself and provided to him.

Submissions on behalf of the Respondent

12. Ms McBride, the Respondent's representative, put forward submissions on behalf of the Respondent at the Evidential Hearing. She initially asked some questions of Mr Deen, following on from his submissions. Ms McBride commented on the Income and Expenditure details put forward for the Applicant, stating that much of the information was redacted and was not substantiated. She asked if Mr Deen had seen any information to back up the figures to which he responded no, and reiterated that the information had been prepared solely by the Applicant herself. Ms McBride asked if all the property is jointly owned. Mr Deen confirmed that it was owned only by the Applicant. He clarified that the Applicant used to live in a rented property in East Renfrewshire but now lives in one of her own properties in Shields Road and so has a mortgage to pay there. Ms McBride mentioned discrepancies in the information provided concerning the Council Tax banding stated and the amount of Council Tax paid and asked if the Applicant has applied for the single person's discount following her separation. Mr Deen stated that he was not aware of this but responded that the single person's discount would only make a difference of around £30 per month. Ms McBride referred to Mr Deen's comment that the information provided was not up to date as it did not include recent interest rate

risers and submitted that it is clear that the Income and Expenditure information is not accurate as at today's date and should not be relied on. Ms McBride referred to the figure stated for utilities of £500 for the three rental properties and asked why that has been included, when the utilities are the responsibility of the tenants, including the Respondent in terms of his lease. Mr Deen stated that it was his understanding that the utilities stayed in the Applicant's name and that she paid them, and that she was also responsible for all the factoring fees. Mr Deen, however, conceded that it would have been preferable if the Applicant had been able to attend the Evidential Hearing and answer some of these questions. He was unsure if the Applicant's husband provides financial support for his elderly parents. As to the stated shortfall in the Applicant's monthly finances of £1,073, Mr Deen referred to a letter dated 10 August 2023 from their accountant. (It transpired that this letter had not been circulated previously so Mr Deen provided a copy to the Tribunal at the hearing, which was also shown to Ms McBride). In response to questions from Ms McBride, Mr Deen advised that the accountant works with Apex Services, that he had not seen the figures produced by the Applicant but was just commenting on the apparent shortfall and that he was not aware of the Applicant having received any other independent financial advice. Mr Deen was asked if, rather than selling the Property, it could have been an option for the Applicant to carry out the repairs needed to the Property, which would have increased the rent currently being paid by 40%, bringing it back up to £500 per month or to bring in additional tenants again, given that the Property has two bedrooms and that the Respondent is currently the only tenant there. Mr Deen responded that the Applicant does not want the further financial headaches and distress and needs to sell the Property as the mortgage lender wants their money back at the end of the mortgage terms in a few months' time. He further explained that the Property is not registered as an HMO and that this led to the other tenants who were originally resident there being asked to leave. Ms McBride asked Mr Deen how much he would expect the Property to attract by way of rent if it was rented out now to its full potential to which Mr Deen responded around £1,200 per month. He further explained that even that amount of rent would be an insufficient yield for a buy-to-let lender to consider lending the amount required on this Property. The Applicant has no intention of letting this Property out again. She has to sell as her hands are tied. Otherwise, the Property will be repossessed by the mortgage lender and this would result in the Applicant having bad credit for at least the next 6 years and being unable to secure further lending, increasing her financial hardship. Mr Deen stated that an increase in the rental income on the Property would be immaterial because the mortgage payments have gone up and up. Ms McBride then covered the background to the repairs side of things and both Mr Deen and Mr Monir made some comments in this regard. Mr Deen reiterated that access had been difficult and stated that he had had personal experience of Mr Monir shouting at him and asking him to leave the Property. Mr Monir said that he had complained about various repairs issues umpteen times and that there were issues with the electricity and gas, rats and the dishwasher. His main point of contact used to be the Applicant's husband, then Apex, rather than the Applicant herself. The rats and some other things were addressed but the other things remain outstanding. He just wants the repairs addressed and for the Property to be

safe. He denied having been difficult about access as he wanted things fixed. He conceded that he may not have been in sometimes when tradesmen attended but said this was because he was not given advance notification. He also conceded that he had asked Mr Deen to leave the Property at one point and explained that he had felt uncomfortable as it was not a friendly environment.

Summing-up at Evidential Hearing

13. Mr Deen summed up for the Applicant by stating that all of the financial information is in front of the Tribunal and that it is clear that there is currently a financial deficit for the Applicant every month. She has to pay back the mortgage in full in April 2024 so requires to sell. She intends to do so as soon as she gets possession of the Property. She has a selling agent, Slater Hogg, lined up. It is reasonable for the Tribunal to grant the eviction order. It is not possible for the Applicant to re-mortgage or extend her existing mortgage. If she does not pay off her mortgage, the lender will repossess and this will affect the Applicant's financial ability to secure any lending in the future. As to Mr Monir's arguments about reasonableness, Mr Deen stated that he is aware of the difficulties with housing associations and the local authority currently and that homelessness is not a nice thing for anyone. However, Mr Monir will be higher up the points system if an eviction order is granted. Mr Monir does not need a big house such as this. He only needs one bedroom or a studio flat, or he could consider shared accommodation. The circumstances are unfortunate but it is just, in Mr Deen's opinion, one of those things. Mr Deen stated that he sympathises with Mr Monir's vulnerabilities and health conditions and stated that both the Applicant and Apex are willing to help him out as much as possible and give Mr Monir as much time as possible and not evict him straight away. However, he added that the Applicant would really need to have her property back by the end of January to get it ready for the market for sale as soon as possible. If the Property is not sold within this timescale, the mortgage lender will repossess and Mr Monir will then be in the same position anyway as he would still require to leave the Property. Mr Monir himself stated that he does not consider this as his permanent home. Mr Deen stated that Strathbungo, where the Property is situated is one of the most popular areas in Glasgow and he is certain, from his own experience, that the Property would sell within a month of going onto the market as it would make a good family home. The Applicant also cannot keep up her current payment commitments. If she sells the Property, this will reduce her monthly commitments and may mean that she will not require to sell her other properties.

14. Miss McBride summed up for the Respondent. In her submission, the ground for eviction here has not been satisfied. There were discrepancies in the evidence put forward in support of the ground on behalf of the Applicant. It has been stated that the property will take a couple of months to bring it up to standard. Mr Deen also said that the Applicant would allow Mr Monir to stay on for a period. This does not accord with the ground for eviction which requires the property to be put up for sale within three months of the eviction. In addition, the financial information was shown to be inaccurate and is, in Ms McBride's

submission, not an accurate representation of the Applicant's financial position. The Applicant has not given evidence herself today to establish financial hardship. As to reasonableness, Mr Monir has met all his rent payments. He is a single person and if evicted would require to go into emergency temporary accommodation which can involve hostels and hotels. This would not be suitable given his health conditions and would be detrimental to his health. In her view, it is unreasonable for an eviction order to be granted as other possible options for the Applicant have not been explored. The Applicant is a private landlord with a business structure. She has other properties and has not considered other options. The Applicant has not therefore satisfied the ground for eviction that she applied under.

Supplementary Submissions

15. In response to the further documentation lodged (as narrated in paragraph 7 xiv and xv above) on behalf of the Applicant in compliance with the Tribunal's Direction issued after the Evidential Hearing, the Respondent's representative lodged further written submissions on 22 December 2023. These submissions are summarised as follows:-

- As the mortgage is an interest-only mortgage, the Applicant would have been aware since the outset of the mortgage of the obligation to pay back the capital at the end of the mortgage term and has not provided details of any savings or other funds available to pay off the outstanding mortgage; nor whether she has discussed options available with the lender during the mortgage term such as transferring it to a repayment mortgage; nor whether she has explored remortgaging with a different lender;
- It was stated at the Evidential Hearing by the Applicant's representative that the Property is valued at around £210,000 but no documentary evidence has been produced of the current valuation or therefore that the likely sale price would be sufficient to pay off the mortgage;
- That it is apparent from the mortgage statements produced that during 2022 and 2023, the Applicant has been making monthly payments towards the mortgage which are in excess of the required monthly payments, indicating that she is able to cover the current monthly mortgage payments;
- That the Applicant's representative conceded at the Evidential Hearing that there were inaccuracies in the Income and Expenditure figures produced and that the financial adviser from Apex Services who had produced the letter dated 10 August 2023 in support of the Applicant's position had not seen evidence backing the figures stated; there was therefore no evidence produced from an independent financial adviser confirming the accuracy of the Applicant's financial position or that selling the Property would alleviate financial hardship;
- Whilst it is acknowledged that the mortgage term expires on 1 May 2024, there was not sufficient evidence of the Applicant experiencing financial

hardship or that the Property is intended to be sold to alleviate such financial hardship, and therefore it was not reasonable to evict.

16. In response to the further submissions on behalf of the Respondent, the Applicant's representative lodged further written submissions on 10 January 2024, together with the further document narrated in paragraph 7 xvi above, namely email from Slater Hogg, the Applicant's estate agent, confirming their valuation of the Property at around £230,000. The submissions reiterated some of the submissions already made on behalf of the Applicant at the Evidential Hearing but also stated that it was unreasonable to think that the Applicant would have £170,000 of savings to pay off a mortgage during a cost of living crisis; that many landlords have buy-to-let mortgages over properties which they do not intend to keep forever – they are bought as investments in the hope of an increase in equity over the mortgage term and tend to be sold at the end of the mortgage term to realise the equity; that the Applicant has no intention of re-mortgaging the Property as she would be well past retirement age and into her seventies by the end of a new mortgage term; that the Applicant intends to sell the Property to improve her financial position; that if she does not do so, the mortgage lender will repossess which will adversely affect the landlord's financial position and the likely equity achieved on sale.

Findings in Fact

1. The Applicant is the sole owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 12 April 2020.
3. A Notice to Leave in proper form and giving the requisite period of notice was sent by email to the Respondent on 20 January 2023.
4. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 17 April 2023.
5. The Tribunal Application was submitted on 18 May 2023.
6. The Respondent is still in occupation.
7. The Applicant intends to sell the Property as soon as possible once she obtains vacant possession.
8. The Applicant has entered into an agreement with Countrywide Estate Agents trading as Slater Hogg dated 5 May 2023 in respect of the sale of the Property.
9. The Property is currently valued at around £230,000.
10. There is a Standard Security granted by the Applicant over the Property registered against the title GLA106463 on 19 April 2005, initially in favour of

Northern Rock PLC, subsequently assigned to NRAM Limited and recently acquired by Topaz Finance Ltd trading as Hessonite Mortgages.

11. The mortgage is an interest-only mortgage, with a current balance outstanding of around £177,000.
12. The mortgage term ends on 1 May 2024 when the full balance of the mortgage requires to be paid back.
13. It is not possible for the Applicant to extend the mortgage term or re-mortgage with her current mortgage lender as they do not offer any new lending facilities.
14. The mortgage is a variable-rate mortgage and the monthly mortgage payments have increased several times in recent years in line with rising interest rates.
15. The monthly mortgage payments due had increased from £819.28 in July 2022 to £1,076.98 in January 2023 (when Notice to Leave was served) and £1,288.40 in June 2023 (just after this application was submitted).
16. The Applicant and her husband have been residing separately since in or around August 2023.
17. The Applicant has three children who reside with her.
18. The rent due in respect of the tenancy is £500 per calendar month.
19. The rent is subject to a 40% reduction (reducing the rent payable to £300 per calendar month) in terms of a Rent Relief Order dated 2 March 2022 imposed by the Tribunal in a separate case in respect of non-compliance with a Repairing Standard Enforcement Order over the Property.
20. The Applicant is suffering financial hardship and requires to sell the Property to alleviate same.
21. The Respondent pays the rent due and is not in arrears of rent.
22. The Respondent is settled in the Property, has family and friends in the local area and links with the local community.
23. The Property is a two-bedroom flat and was a shared flat when the Respondent moved in.
24. The Respondent now resides in the Property alone.
25. The Respondent is 29 years old, not working and in receipt of benefits.

26. The Respondent has long-term mental health problems and receives treatment from his GP for anxiety and depression.
27. The Respondent has applied for housing with a housing association and is currently on their waiting list.
28. The Respondent has not yet made a homeless application to the local authority, on the advice of his representative, as he would not be considered for temporary accommodation unless and until an eviction order is granted.
29. The Respondent does not consider the Property to be his long-term home and intends to move out at some point.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the oral and written representations and submissions of the parties' representatives before, during and after the Evidential Hearing and the oral evidence given at the Evidential Hearing by the Respondent, Mr Monir.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act. No issue was taken on behalf of the Respondent in respect of these 'technical' aspects of the application.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell to alleviate financial hardship (Ground 1A of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1A were met. Ground 1A is as follows:-

"Landlord intends to sell property to alleviate financial hardship

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

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord—

(i) is entitled to sell the let property,

(ii) is suffering financial hardship, and

(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph

(2)(a)(iii) includes (for example)—

(a) a letter of advice from an approved money advisor or a local authority debt advice service,

(b) a letter of advice from an independent financial advisor,

(c) a letter of advice from a chartered accountant,

(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(e) 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, and

(f) an affidavit stating that the landlord has that intention.

4. The Tribunal was satisfied that the Applicant was entitled to sell as it was noted that the title to the Property was registered in her sole name in terms of Land Certificate GLA 106463.
5. The Tribunal was satisfied that it is the Applicant's intention to sell, or at least market it for sale, for market value within 3 months of the Respondent ceasing to occupy the Property. An agency agreement between the Applicant and her estate agents had been produced from which it was apparent that the estate agents had been instructed in the marketing of the Property on 5 May 2023, prior to this application being lodged with the Tribunal.
6. As to market value, it had been put forward on behalf of the Applicant at the Evidential Hearing that the Property was considered to be worth around £220,000 and that it was likely to sell very quickly as it is situated in a very popular area. This was subsequently substantiated by the email produced from the estate agents instructed in the marketing of the Property dated 6 February 2024, confirming their current valuation of the Property as £230,000. This was considered by the Tribunal to be more than sufficient to pay off the outstanding mortgage of around £177,000 and answered the relevant criticism raised by the Respondent's representative in her Supplementary Submissions.
7. The Respondent's representative also submitted that contradictory information had been put forward on behalf of the Applicant as to the timescale for the Property being placed on the market and suggested that this was not in compliance with the 3 month timescale required in terms of the legislation. This was on the basis of a statement by the Applicant's representative at the CMD that it was thought a period of around 4 months would be required for the Property to be repaired and put into marketable condition and his statement at the Evidential Hearing that the Applicant would be prepared to give the Respondent some extra time to find alternative accommodation and move out of the Property. The Tribunal considered that the

statement made by the Applicant's representative at the CMD had just been meant in general terms. Clarification was provided on this point in terms of the letter lodged prior to the Evidential Hearing from the Applicant dated 17 November 2023 confirming her intended timescale for selling the Property was "...as soon as reasonably practical following vacant possession, subject to any works required. Ideally, this would be within 2 months of vacant possession." The Tribunal also considered that the Applicant's representative's his statement at the Evidential Hearing was made in the hope that the Tribunal would be issuing an eviction order that day and the likely timescale for the order being enforceable, given that an eviction order under this ground is not subject to a delay in the normal timescales for implementation of an order, this ground not being caught by the protections in the Cost of Living (Tenant Protection)(Scotland) Act 2022. The Tribunal was satisfied from the evidence that it was the Applicant's intention to market or sell within the 3 month period in terms of the legislation, and indeed, intended to do so sooner than this, if possible.

8. The Tribunal was also satisfied that the Applicant is suffering financial hardship and intends to alleviate that hardship by selling the Property. The Tribunal agreed with the submissions made by the Respondent's representative regarding the Income and Expenditure figures produced by the Applicant. The Tribunal could not be certain that these figures were accurate. The Applicant had not attended the Evidential Hearing to give evidence on her own behalf and the questions raised by the Respondent's representative regarding the figures, and questions that the Tribunal Members had, could not be adequately answered by her representative as he had, by his own admission, not been involved in preparing the figures, which had been supplied to him by the Applicant herself. Likewise, the letter produced at the hearing from Mr Shah, the financial adviser/accountant from the Applicant representative's company, was not considered by the Tribunal to substantiate the figures as he too had not verified them. The Tribunal agreed with the Respondent's representative that the letter from Mr Shah was not evidence of the type envisaged in the legislation, namely "a letter of advice from an independent financial adviser" or from "a chartered accountant". The Tribunal accordingly disregarded the Income and Expenditure figures, on the basis that they appeared to contain discrepancies, were not sufficiently comprehensive and could not be considered sufficiently reliable. However, the Tribunal did take into account, in assessing whether the Applicant was suffering financial hardship, the fact that evidence had been produced from the Applicant's current mortgage lender in respect of this Property, showing that this was a variable rate mortgage and that there had been several mortgage interest rate rises over 2022 and 2023, which had significantly increased the monthly mortgage payments due by just under £470 between July 2022 and June 2023. The Tribunal was satisfied that this factor alone significantly increased the Applicant's outgoings in respect of this Property and the difference between the monthly rental (£500 if full rent was being paid) and the monthly mortgage payment due (taken as £1,288.40, being the most recent figure available from the information from the mortgage lender). The Tribunal took into account the submissions of the Respondent's representative as to the rent having been set too low at £500 at the outset of the tenancy and that the Applicant could have been receiving the full rental of £500 per month, had the repairs to the Property been carried out and the RSEO and rent reduction of 40% removed. However, the

Tribunal did not consider that just because the Applicant may have contributed to her financial hardship through her own action or inaction, meant that she was excluded from claiming financial hardship, as the legislation does not qualify “financial hardship” in that way.

9. However, the Tribunal considered that the most significant factor in establishing that the Applicant was suffering financial hardship and intended to sell the Property to alleviate same was that the Applicant’s interest-only mortgage over the Property was due to reach the end of its term on 1 May 2024, when the sum of around £177,000 required to be repaid. The Tribunal was satisfied from the evidence produced from the Applicant’s current lender that she could not extend the mortgage term nor re-mortgage through them as they do not offer any new lending facilities in respect of former Northern Rock plc mortgages. The Tribunal was also satisfied that, if the mortgage was not paid back by that date, that the mortgage lender would no doubt re-possess the Property, which would be of significant detriment to the Applicant’s financial position and future credit rating, as per the submissions put forward on behalf of the Applicant. The Tribunal considered that it was reasonable for the Applicant to wish to sell the Property in these circumstances in order to avoid the consequences of re-possession and to improve her financial position, both in terms of releasing the equity in the Property and relieving herself of a property which she had been renting out at a significant loss for some time and in terms of which her monthly losses have been steadily increasing with mortgage rate rises. The Tribunal noted the Respondent’s representative’s submissions that, although it was accepted that the mortgage term was coming to an end, evidence had not been produced to show that the Applicant did not have other savings or capital which she could use to pay off the outstanding mortgage nor that she had approached other lenders to try and secure a new mortgage over the Property. However, the Tribunal was satisfied, from the submissions of her representative, that the Applicant had discounted other options, such as trying to secure a new mortgage, as not viable due to her age and other circumstances. In any event, the Tribunal did not consider that it was necessary, in terms of Ground 1A, for the Applicant to show that selling the property was the only way to alleviate her financial hardship. The Tribunal noted that the terms “financial hardship” and “alleviate” are not defined in the 2016 Act. The provisions of Ground 1A list the types of evidence “tending to show” that the landlord has the intention to sell to alleviate financial hardship. One of these is a letter of engagement from an estate agent concerning the sale of the let property. The Applicant has produced an agency agreement establishing that an estate agent has already been instructed to market the property and a more recent email from the same estate agent confirming their current valuation of the Property. The Tribunal considers that this evidence, in addition to the evidence narrated above concerning the mortgage term ending fairly imminently and the increased monthly mortgage payments, is sufficient to establish Ground 1A that the Applicant is suffering financial hardship and has the intention to sell to alleviate financial hardship.
10. In addition, the Tribunal was satisfied that it was reasonable in all the circumstances to grant the eviction order sought. In favour of the Applicant, the Tribunal considered the circumstances and evidence narrated above which had

satisfied the Tribunal that the other elements of Ground 1A were met, namely that she was suffering financial hardship and intended to sell the Property to alleviate same. The Tribunal also noted what had been submitted regarding the Applicant's personal circumstances, in terms of her recent separation from her husband and that they have three dependent children who continue to reside with her. This was supported by the message produced from the Applicant's husband to the Applicant's representative and the utility bill from October 2023 addressed to him at a separate address. The Tribunal also considered the Respondent's circumstances and his position in respect of the application. The Tribunal had had the benefit of hearing evidence directly from the Respondent at the Evidential Hearing and considered that he had given his evidence in a candid and credible manner. The Tribunal accepted his evidence that he was settled in the Property and the local area and sympathised with him in that he was facing eviction through no fault of his own but, rather, as a result of changes in the Applicant's circumstances. The Tribunal did not doubt that eviction would be an upheaval for the Respondent and might impact negatively on his existing mental health issues. However, the Respondent had been aware that the tenancy was potentially being terminated since at least January 2023 when the Notice to Leave was served. He was receiving advice in respect of his housing situation from his representative, was on a waiting list for housing with a local housing association and intended to contact the local authority in respect of homelessness and alternative housing if an eviction order is granted. Indeed, it appears to be the case that his application(s) for social housing will be prioritised if an eviction order is granted. The Respondent himself stated in his evidence that he does not consider the Property to be his long-term home and that he intended to move on at some point. He lives alone, has no dependants and initially occupied the Property as a shared flat. He does not require a two-bedroom Property. Furthermore, if the Property were to be repossessed by the Applicant's mortgage lender, the Respondent would inevitably require to leave the Property in any event and find alternative accommodation. Weighing the circumstances of both parties and the likely effects of the Tribunal not granting the eviction order sought by the Applicant in terms of her financial circumstances against the consequences for the Respondent of the order being granted, the Tribunal considered it reasonable to grant the eviction order. Ultimately, the Tribunal agreed with the submissions put forward on behalf of the Applicant that, in the circumstances, she was entitled to sell her own Property and that it would be significantly prejudicial to her financial circumstances if she was unable to do so or if her ability to do so was to be subject to a lengthy delay.

11. The Tribunal determined that an order for recovery of possession of the Property could properly be granted.
12. The Tribunal's decision was unanimous.

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.

N Weir

Legal Member/Chair

1 February 2024
Date