



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51(1) of the Private Housing  
(Tenancies)(Scotland ) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/0729**

**Re: Property at Flat 0/2,10 Nithsdale Drive,Glasgow G41 2PN (“the Property”)**

**Parties:**

**Mr Clive Schmulian, Mr Craig Richardson 146 Terregles Avenue, Pollokshields,  
Glasgow G414RU; 2 North Deanpark Avenue,Bothwell, Glasgow,G718HH “the  
Applicants”)**

**Miss Cara Clark, Flat 0/2, 10 Nithsdale Drive, Glasgow, G41 2PN(“the  
Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The Tribunal granted an eviction order in terms of Ground 3 of Schedule 3 of the  
Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the landlords intend  
to refurbish the let property, are entitled to do so, the works are significantly  
disruptive anf it would be impracticable for the tenant to continue to occupy  
the let property given the nature of the refurbishment intended and given these  
facts the Tribunal considers it reasonable to grant an order**

**Background**

**1.This application for an eviction order in terms of Rule 109 of the tribunal rules of  
procedure was first received by the tribunal on 7<sup>th</sup> March 2023 and accepted by the  
tribunal on 12th of May 2023. A case management discussion was initially fixed for  
14th July 2023 at 2pm.**

**Case Management Discussion**

2. The case management discussion was attended by Ms Gallagher and Ms Melon of One Stop Properties appearing as representatives for the Applicants and the Respondent Miss Clark was represented by Ms Berry of Govan Law Centre.

3. The tribunal had sight of the application, a tenancy agreement which had commenced on 17<sup>th</sup> October 2018 with two tenants, one of whom was the Respondent, a Notice to Leave setting out that the landlord intended to refurbish the let property, emails sending the Notice to Leave to the Respondent and to the other tenant named in the agreement, proof of postage of the Notice to Leave, a specialist survey report carried out on the property, a sheet giving additional information regarding the application, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, an e mail from an environmental health official at Glasgow City Council, a series of photographs, an e mail intimating a change of landlord, ownership details for the property and a sketch plan. The Tribunal members did not appear to have received an email or other communication showing that the Section 11 Notice had been sent to Glasgow City Council. Ms Gallagher indicated that she had submitted this and resent it to the Tribunal and the Tribunal members were able to have sight of this during the case management discussion.

4. For the Applicants Ms Gallagher set out that extensive work was required at the property, and it had been deemed to be uninhabitable. The Respondent could not stay at the property due to the nature of the work required. The other tenant had vacated the property in November 2022. Ms Gallagher indicated that many efforts had been made to assist the Respondent and that she did not appear to want to leave the property. Ms Gallagher indicated that she had worked with a few external agencies to try to assist in finding alternative accommodation for the Respondent. Alternative accommodation had been offered and turned down and it was understood that temporary accommodation offered by the council had also been refused. Ms Gallagher was aware that the Respondent has mental health issues and was very concerned that her health would suffer if she remained in the property and that the condition of the property would continue to deteriorate. Ms Gallagher was seeking that an eviction order be granted at the case management discussion.

5. For the Respondent Ms Berry said that she had recently been instructed and had only recently seen the Tribunal papers received by the Respondent. Ms Berry explained that it was understood there were issues with the property, and she had seen the property for herself. The Respondent had mental health issues and disability to be considered and current property offered does not meet her needs. She has nowhere else to go currently. Ms Berry was instructed to seek a hearing on the reasonableness of making an eviction order. She expected that the hearing could be restricted to this issue but had to see the full papers including the intimation of the Section 11 Notice.

6. Ms Gallagher for the Applicants opposed a hearing being fixed and indicated that she believed that it was not reasonable to keep the Respondent in the property and she reiterated her concerns regarding the Respondent's health and the fact that the longer matters continued the more the property would deteriorate.

7. The Tribunal members adjourned to consider whether to fix a hearing. The Tribunal allowed a hearing to be fixed and considered that it was appropriate to allow the Respondent to lead evidence on the issue of reasonableness as appropriate.

8. It was agreed that the hearing would take place by audio teleconference and the Tribunal indicated that a Direction would be issued to confirm the details of any witnesses to be called at the hearing and the productions which would be relied on by parties.

9. Prior to the Hearing Ms Berry confirmed in representations that the issues she was raising were that the Applicants had not provided sufficient evidence to establish that they intend to refurbish the property, as required by Sections 3(2)(a) and 3(3) of the 2016 Act; (ii) The Applicants have not provided sufficient evidence to establish that it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended, as required by Section 3(2)(c) of the 2016 Act; (iii) It would not be reasonable to issue an eviction order, in terms of Section 3(2)(d) of the 2016 Act (as amended by Section 43 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022)

10. The Respondent's representative indicated that she took no issue with the eviction procedure in this application.

11. For the Applicant before the Hearing in addition to productions already lodged Ms Gallagher lodged an email dated 16<sup>th</sup> August 2023 from an environmental health officer at Glasgow City Council and an email dated 14<sup>th</sup> August 2023 from a social worker, also at Glasgow City Council.

## **Hearing**

12. A hearing by audio teleconference took place on 3<sup>rd</sup> November and both parties confirmed they were not leading any witnesses. Ms Gallagher for the Applicant sought to rely on her own knowledge of the situation at the property, the productions lodged by her for the Applicant, her representations already lodged and information from one of the landlords received on the day of the Hearing. Ms Berry relied on her short written representations which she had lodged and information which she gave which came from the Respondent.

13. A private residential tenancy had been entered into at property with effect from 17<sup>th</sup> October 2018. There was another tenant at the property, named in the tenancy agreement who had left the property in November 2022. A Notice to Leave had been served on both tenants and a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 had been intimated to Glasgow City Council.

14. The let property is a ground floor flat with two bedrooms. In 2022 there was a leak from a first-floor flat which caused damage to the let property, and the Applicant's representative lodged photographs of the property showing what was said to be mould and discolouration on the walls and fungus growing at the property. The Applicants had instructed a survey of the property for dampness, and this took place in July 2022.

15. Early in November 2022 one of the property landlords received an email from a Mr True, environmental health officer at Glasgow City Council setting out that they had

received a complaint from the Respondent and the other tenant at the property alleging the property to be uninhabitable and had carried out an inspection at the property. The email set out that the living room at the property had dampness, water markings, flaking paint on the wall and ceiling and defective windows allowing wind penetration which it was said were not suitable for escape from a fire. The rear bedroom at the property was said to have water moisture affecting the length of a wall and severe mould or spore growth, eroding wall surface due to high water content, defective windows allowing wind penetration which were said not to be suitable for escape in the event of a fire, in the other bedroom the windows were said to be defective allowing wind and water penetration and said not to be suitable for escape in the event of a fire with what was described as 100% water moisture on one wall and powdery deposit on the wall surfaces close to the floor with rising damp being the probable cause. In the bathroom the email stated that the windows were defective allowing wind and water ingress and not suitable for escape in the event of fire. There was said to be 100% water content, severe staining and mould growth of the storage cupboard wall. There was no reading of dampness for the kitchen wall other than a typical reading for the presence of condensation.

16. The email from the environmental health officer stated that he could justify on his findings a serious health nuisance and a failure of the tolerable and repairing standards for the tenants. Mr True also stated that in his opinion the property was uninhabitable and would require extensive renovation work to bring it back to a habitable standard. Mr True also observed that both tenants had a diagnosed asthmatic condition and that the condition of the property would most certainly be having a detrimental effect on their health.

17. Ms Gallagher for the Applicants referred to a survey report dated 25th July 2022 prepared by Mr Caldwell of Rowallan Specialist Surveys at the property on behalf of the Applicants. The report referred to an inspection in relation to dampness. The report indicated that there was extensive damage to wall and ceiling fabric towards the rear of the property. It referred to water ingress from a bathroom of the property above and suggested that this should be attended to without delay. The report referred to moisture ingress in the front elevation of the living room and suggested that there may be similar water ingress issues in the front bedroom to which they had no access at that time. It was suggested that moisture penetration may have resulted in fungal decay to concealed timbers and recommended that these areas were exposed for further inspection. The report further indicated that instrumental and visual inspection indicated the presence of rising damp to certain walls at the property and the treatment for these was indicated. The recommendations for work to be carried out included removal and setting aside of skirtings, facings and reinstating these on completion and providing temporary protection to bath and wall tiling/ panelling remaining in place during the works. The work required was also said to include stripping out and removing a lowered ceiling to the bathroom, hacking and removing the wall plaster to areas and heights as indicated on a plan lodged. The report also indicated a requirement for stripping out and removing wall linings to areas and heights as indicated on the plan and clearing all accumulated debris behind. The report further said that ceiling linings and cornice required to be stripped out and removed in areas indicated on the plan. It was suggested that exposed mid floor timbers required to be inspected and treated with fungicide or preservative and if sound, to be injected with preservative or a supplementary report to be provided. The report further suggested

that floorboards required to be lifted along the front and the rear elevations to inspect joist ends. It said if these were sound that these required to be treated with fungicide or preservative, otherwise that a supplementary report be provided in relation to their condition. Existing floorboards would be relayed, renewing any damaged sections in pre-treated timber. A chemical damp proof course was recommended to be installed using a low-pressure injection/silane diffusion method as appropriate to the walls indicated on the plan. It was further suggested that a ventilated lathed membrane to exposed surfaces of masonry to isolate substrate from plaster finish was required with bonding plaster plasterboard to be applied to the membrane followed by finishing plaster. Wall strapping where applicable was to be replaced and the new treated timbers fixed by means of mild steel hold fast or hammer fixings. Wall and ceiling linings required to be reinstated having been disturbed with plasterboard with a skim coat finished. All ceilings would finish square edge and no allowance was made for reinstatement of any cornice which might be present. The bathroom ceiling would also require to be reinstated.

18. The report indicated that for the work to be carried out all fixtures fittings floor covering stored articles etc would require to be moved from the designated areas which required treatment. At the time of inspection, the report said it was not possible to ascertain the construction of the masonry or the nature of the mortar joints and the cost assessment had therefore been based on the masonry being level, in sound condition and bonded with mortar. The report allowed for the fact that extra work might be found to be necessary due to the poor condition of the masonry.

19. The cost assessment of required work set out in the survey report amounted to £27,000 including VAT at 20%.

20. The sketch plan which accompanied the report indicated that the work described in the report was applicable to some degree to every room at the property.

21. The surveyor's report did not include reference to work required to the windows at the property which had been described as defective by the environmental health officer in his email in November 2022.

22. Ms Gallagher advised the Tribunal that on behalf of the Applicants that an attempt had been made to start the work by installing industrial humidifiers at the property on 11<sup>th</sup> November 2022 as the Applicants had been advised that this was required before any work could be carried out. Ms Gallagher said that these machines are noisy and costly to run, and she understood that the Respondent could not cope with the presence of the drying out equipment and had switched off the machines and asked that they be removed. Ms Gallagher indicated that she was directly aware that the Respondent had switched these off as she had told her that she had done this. The equipment was removed on 15<sup>th</sup> November 2022.

23. Ms Gallagher understood that the drying out process would take more than a week or two and that the humidifiers would have required to be there to dry out the property for a period of three weeks. She said the Applicants were not clear how long it would take to lift floorboards, remove walls and do all the other required work and until the property was fully cleared it was not possible to know the full extent of the remedial work required.

24. Ms Gallagher advised that there had been a history over time of attempts to engage with the Respondent. Once the property had been said to be uninhabitable, the other tenant had moved out within a short time. The Respondent she said had refused to leave the property until permanent accommodation had been found for her. Ms Gallagher said that she had refused properties offered through Glasgow City Council Homelessness Team and also the Applicant's representatives themselves. The latest difficulty from September of 2023 was that the Applicants' representatives were not being given access to the property in order to do required gas safety checks and access for this had been refused three times. Ms Gallagher said were aware of an e-mail from the social work department in relation to scheduled appointments during the period of the tenancy. Ms Gallagher indicated that the Respondent's mother would assist in facilitating scheduled appointments for access to the property. The Applicants' representatives had now received an e-mail indicating that the Respondent's mother would not support any scheduled appointments for gas safety checks. They had ongoing concerns regarding this given the history of the condition of the property and given the nature of the checks required i.e. for gas safety.

25. Ms Gallagher indicated that she understood the Respondent had been offered several different alternative properties but had refused these. She pointed to an email dated 16<sup>th</sup> August 2023 from Graham True, the environmental health officer who had visited the property in November 2022. In this email he said that the Respondent had dismissed all reasoning and refused accommodation offers based on the fact that her dog would not be allowed to move with her. Ms Gallagher indicated she understood that the Respondent would not leave the property until permanent accommodation was found for her. Ms Gallagher suggested that the Applicants' representatives had reached out on a number of occasions to try to provide a solution for the Respondent because they were concerned that she was remaining in a property which had been declared to be uninhabitable in terms of the inspection carried out in November 2022.

26. Ms Gallagher reiterated throughout the hearing her concern for the Respondent. She said that when the joint tenant had been in occupation at the property, she had supported the Respondent and there was concern that she was living at the property without support.

27. In the email dated 16<sup>th</sup> August 2023 Mr True the environmental health officer who had inspected the property in November 2022 expressed the opinion that the property will require extensive renovation to bring it back to a habitable standard and that this cannot be obtained due to the amount, type of building work required with the Respondent still present.

28. There was discussion during the tribunal as to whether there could be an agreement over the Respondent moving out for a period whilst the work was carried out. Ms Berry suggested that the Respondent may be willing to move out if the renovations could be carried out in a few weeks. Ms Gallagher indicated that in terms of the Rowallan report and the amount of work involved, her understanding was that the work would require to be undertaken over at least three months and it could be longer depending on what was found. Ms Gallagher also indicated that she had no confidence that an agreement could be reached standing the number of times that

they had tried to assist the Respondent in the past and arrangements had been made only to have these broken by the Respondent.

29. Ms Gallagher indicated that having dealt with the Respondent through the tenancy she was of the view that she required support and would on occasion withdraw from that support. When the joint tenant was in place, she said matters were fine, but she believed that due to the various difficulties which the Respondent had, she could not cope with people coming in and out of the property. She described the situation as when the Respondent's mother was "on the scene," she would give support but then there were times when support wasn't given when progress could not be made towards dealing with the issues. Ms Gallagher indicated that she felt as though the Applicants had exhausted every avenue to assist the Respondent whilst remaining very concerned about the deteriorating condition of the property as the required work had not been done.

30. Ms Gallagher also explained that she understood enforcement action had been taken regarding the property above with the ongoing leak, but no enforcement action was taken in respect of the condition of this property by Glasgow City Council because the Applicants' agents were dealing with matters.

31. For the Respondent Ms Berry indicated that the Respondent suffers from severe mental health issues. Ms Berry had had the opportunity to speak with the Respondent in the week before the hearing. She accepted there had been periods of time when the Respondent was not engaging with her family or SAMH. She pointed out that in terms of the legal and practical position in respect of rehousing that the Respondent had the maximum number of points that could be made available to her so an eviction order would not assist her in obtaining accommodation suitable for her needs. She indicated that due to social anxiety and other difficulties the Respondent wished to live in the Govanhill area to be close to her support network. She indicated that the Respondent would cooperate with moving out to allow renovation of the property if another suitable property was available and if she knew how long it would take. She said that after a period of withdrawal from support the Respondent was now engaging with advocacy support and with her SAMH project worker. Ms Berry accepted that there had been denied entry in relation to the gas safety check, but this had been because the Respondent had been ill. She had had Covid and could not allow entry. Any instances of refused entry to the property had been because she was unwell, and she was now willing to allow the gas safety check to go ahead. She accepted that offers of alternative property had been refused because these were not suitable for the Respondent's needs. She could not go into temporary accommodation such as a hotel because of her mental health conditions. Ms Berry advised that she now had someone who was prepared to take her dog and she would move to a suitable property without the dog. She was seeking a one-bedroom property. She denied that the Respondent had prevented the drying out of the property by switching off the dehumidifiers but said that these were removed because the leak in the flat upstairs had recurred during the drying out period.

32. Ms Berry's position was that the evidence before the tribunal was not sufficient to allow the eviction ground to be made out in that there was no evidence of a contract being in place for the extensive renovation work which she accepted was required to be carried out and it was not clear whether it would be impracticable for the Respondent to move out during the period of any renovation being carried out.

33. The tribunal Legal member asked Ms Gallagher if she could obtain further evidence as to the intention of the landlords regarding refurbishment and any further information as to the scope of required works at the property as of November 2023. The tribunal adjourned to allow her time to attempt to obtain any information.

34. Ms Gallagher during the adjournment lodged emails which she had obtained from contractors, McMillan Cleaning and Restoration and an e-mail from the surveyor at Rowallan who had prepared the earlier report. In his e-mail of 3rd November 2023 to Ms Gallagher Mr Caldow confirmed a time on site in the region of six weeks to undertake specialist remedial works as per the original report. This further information suggested that preparatory and reinstatement works would be required by others and a reasonable drying out time for decoration would be required. The e-mail also indicated that in the event that damage had become progressively worse following the inspection which had taken place in July 2022, remedial works and timescales would be subject to reassessment.

35. Ms Gallagher also lodged an e-mail from McMillan's cleaning and Restoration regarding drying restoration works at the property. This e-mail confirmed that they had visited the property on the 27th of October 2022 to carry out a moisture survey and had recommended a drying plan to dry the property back and had received instructions to proceed and had installed equipment at the property. The e-mail confirmed that a visit had been arranged on Monday the 7th of November, 2022 but the tenant had not granted access. When they returned on Friday 11th November, they installed the equipment when they returned on Tuesday the 15th of November the tenant was not running the equipment and they had been asked to remove it. At that time, they had estimated approximately 3 weeks' drying time for the works. The e-mail further indicated that if the drying equipment was to be reinstalled they would recommend a moisture survey first to assess damage a year on, to see then if other areas had naturally dried back, were the same as had previously been found or if they had deteriorated. The e-mail indicated it was difficult to put a timeline on this but in a worst-case scenario a drying schedule would take approximately 4 weeks but could increase if the property was in poor condition and it would require the property to be vacant.

36. Ms Berry had no objection to the Tribunal considering this information, but she required time to take instructions on the timescales mentioned from her client and the Tribunal adjourned to allow her to take instructions.

37. Ms Berry was able to obtain instructions from the Respondent. She said the Respondent did not accept the evidence demonstrated that the work could not be done unless she was staying away from the property. She said that the Respondent reported that most of the damp had now dried out and there was only dampness in one room at the property and that there were areas of the property where she could remain whilst the work was carried out. She confirmed that the Respondent did not accept that she had asked for the drying equipment to be removed from the property, but this had been done because the leak from the flat upstairs stairs had started again. Miss Berry reiterated that it was accepted in general terms that the Respondent had failed to allow access to the property but that she had been unwell at certain times.



38. The tribunal heard final submissions from both parties. Ms Gallagher reiterated her position that the Respondent had turned off the drying equipment machines. She accepted that the leak of the property above had recurred after initially being fixed and there was a short time between the leak recurring being fixed and the drying equipment being installed. She was adamant that the machines were not functioning at the time that she had visited the property and that the Respondent had switched these off.

39. Ms Gallagher indicated she had spoken to one of the landlords over the lunchtime break at the hearing and he had confirmed that it was still his intention to carry out all the renovation work at the property but he was so concerned about the possibility of a recurrence of a situation of a leak from another property and the ongoing difficulties in trying to alleviate this that he intended to consider selling the property in the event that an eviction order was granted and the work could be carried out. Ms Gallagher indicated to the Tribunal that although no contract was yet in place it was likely that the original contractors would be used.

40. Miss Gallagher submitted that it was reasonable that an eviction order be granted. Despite assurances from the Respondent that she would give access this simply could not be facilitated in the current situation. Ms Gallagher accepted that she appeared now to be accepting support over a short period of time but the landlord had a concern that if the Respondent agreed to move out to allow work to be carried out they had no confidence that such an agreement could be carried forward and the situation would simply continue for the landlord some 6 to 12 months going forward with the works still requiring to be counted out. She pointed again to the Rowallan report and referred to the fact that the bathroom, living room and bedrooms were affected and the only room apparently unaffected was the kitchen. She highlighted that it was not in dispute that the property was uninhabitable, and she considered it absurd to leave the Respondent in the property. She was concerned that anyone be allowed to live in the property in its current condition. She said that the landlord Mr Richardson could not cope with the situation and the endless stress caused by attempts to deal with the need for renovation.

41. Miss Berry for the Respondent said on her behalf that the evidence had not been made out that the Respondent would require to move out of the property for the refurbishment to take place. The Respondent said that her bedroom was not currently affected by dampness and that work could be carried out with her in occupation. She said that the Respondent should not be punished for the landlord's failure to carry out the work and that she had not obstructed access to the property since the drying equipment had been installed. She submitted it was not reasonable for an eviction order to be granted. The property had not been seen since 2022 and at that time the leak had not yet been repaired. She said that the property was now in better condition and the dampness was residual.

42. Ms Gallagher pointed to the fact that the work involved the ceiling and the timbers and submitted that it was not reasonable to have anyone living in the property while this work was ongoing. She referred to the initial e-mail from Mr Graham True environmental health officer which had confirmed that the Respondent had a diagnosis of asthma which was not being assisted by being at the property. She referred to the time scales given in the emails which had been obtained by her during the hearing

She referred to the need for drying out, the specialist works required which did not include time for plastering, redecoration and repairs to the windows and submitted that it appeared that at least three months would be required. In her experience in dealing with properties she said this would be the very least period she expected the renovations would require and in her view is more likely that it would take up to six months.

43. The tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Applicable Law**

#### **Private Housing (Tenancies (Scotland ) Act 2016 Schedule 3 Ground 3**

##### **Landlord intends to refurbish.**

3(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

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

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(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 an eviction order on account of those facts.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.

### **Findings in Fact**

44. A private residential tenancy was entered into at the property with effect from 17th October 2018 between previous landlords, the Respondent and another individual as a joint tenant.

45. In 2021 the Respondent and the other tenant were given notice that the now Applicants had acquired the property and would be taking over as landlords in terms of the tenancy agreement

46. The Applicants own the let property and are entitled to refurbish it.

47. In 2022 a leak developed from a property on the first floor at the address above the let property.

48. This leak caused substantial ongoing water ingress to the let property.

49. The Applicants commissioned a specialist survey report in relation to dampness of the property and this took place in July 2022.

50. This report found extensive damage to walls and ceiling fabric at the rear of the property and suggested that issues with water ingress from the bathroom of a property above this property should be attended to without delay.

51. The report noted evidence of moisture ingress to the front elevation of the living room and noted that although access to the front bedroom was not available there were similar issues with water ingress in that room.

52. The report noted evidence of historic damp staining to the rear of the living room and indicated that moisture penetration could have resulted in fungal decay to concealed timbers which it recommended were exposed for a further inspection.

53. The report recommended specialist work be carried out in relation to removing and setting aside skirtings and facings and reinstating these when work was complete, providing protection to the bath and wall tiling in the bathroom, stripping out and removing the bathroom walls and ceiling, removing wall plaster in the various affected rooms, stripping it and removing wall linings and cleaning accumulated debris, stripping out and removing ceiling linings and cornicing, inspecting exposed mid floor timbers and if appropriate treating these with fungicide, test boring of lintels and injecting them with preservative, lifting floorboards along front and rear elevations and inspecting joists and if appropriate treating them with fungicide

54. Further specialist work was recommended in relation to the installation of a chemical damp proof course and membrane to be put in place on exposed surfaces of masonry with application of plasterboard and finishing plaster at the end of this work.

55. The report further suggested that when the work was done wall strapping would require to be replaced in new treated timbers wall and ceiling linings which had been disturbed with required plasterboard finish and the ceiling to the bathroom would require to be reinstated with framing plasterboard and a skim coat.

56. The report suggested that all fixtures fittings floor coverings stored articles in the areas designated for treatment would require to be removed before works commenced.

57. Sometime after this report was prepared the Respondent and a joint tenant complained to Glasgow City Council that the property was uninhabitable and an inspection of the property by an environmental health officer was carried out in November 2022.

58. At that time the environmental health officer Mr. Graham True said that the property was uninhabitable and required extensive work to bring it back to a habitable standard and that given both tenants' asthmatic conditions the condition of the property would likely be detrimental to their health.

59. Mr True noted in his inspection dampness, water markings and flaking paint within the living room, 100% water moisture in the rear bedroom affecting the full length and width of a dividing wall and severe mould spore growth in this room. He also noted in the front bedroom 100% water moisture readings on the lower right-hand wall rising up from the ground level and indicated that rising damp might be a probable cause for a powdery deposit on the wall surfaces.

60. Mr True also noted 100% water content within the bathroom with severe staining and mould growth on the storage cupboard wall.

61. In each of the rooms considered by Mr True he indicated that the windows were regarded as defective, and this allowed wind penetration, and these were not suitable for escape in the event of a fire. In the front bedroom a damaged windowpane was allowing rainwater to enter the room.

62. Following the inspection by the environmental health officer the Applicants' agents attempted to begin work at the property and installed drying out equipment there with effect from 11th November 2022 having initially been refused access to the property by the Respondent to install this equipment.

63. This equipment was removed on 15th November 2022 as the Applicants' representative discovered that the Respondent had switched off the machinery

effectively stopping any drying out process and the leak from the flat upstairs had occurred again.

64. The joint tenant left the property shortly after the inspection by environmental health to live in other accommodation

65. The Respondent indicated that she did not wish to leave the let property until permanent accommodation is found for her and has refused a number of offers of alternative accommodation as being unsuitable for her needs.

66. The Respondent has a number of health conditions including social anxiety and wishes to stay in the same geographical area in order that she can maintain her support networks.

67. Since the joint tenant left the property the Applicant's agents have engaged with the Respondent repeatedly in an effort to find her alternative accommodation in order that the required work at the property could be carried out.

68. Since the joint tenant moved from the property on a number of occasions access to the property for the Applicants' representatives has been refused by the Respondent.

69. Since the removal of the drying equipment from the property in November 2022 none of the required work as set out in the specialist surveyors report in July 2022 has been carried out.

70. In August 2023 in an e-mail sent to the Applicants' representatives Mr True the environmental health officer who inspected the property confirmed that in his opinion due to the extensive nature and type of building work required at the property to bring it back to a habitable standard this could not be achieved with the Respondent present at the property.

71. On 3rd November 2023 Mr Caldow from Rowallan specialist surveyors confirmed in e-mail that the specialist works required at the property would take in the region of six weeks after an initial preparatory work was carried out, but the time scale would depend on the condition of the property at the time and might have to be revised.

72. On 3rd November 2023 in an e-mail sent to the Applicant's representative confirmed that a worst-case scenario in respect of drying out time required at the property would be 4 weeks and this would require the property to be vacant.

73. The likely timescale to carry out the required works at the property including any work in relation to final decoration and replacement or refurbishment of windows is in the region of at least three months.

74. The extensive work required at the property is significantly disruptive to anyone living at the property and given the nature of the work and the likely timescale it would be impracticable for the Respondent to continue to occupy the property when work is carried out.

75. A Notice to Leave dated 5<sup>th</sup> December 2022 giving details of the eviction ground was sent by post to both tenants setting out that an application to the Tribunal would not be made before 2<sup>nd</sup> March 2023.

76. A Notice in terms of section 11 of the Homelessness etc (Scotland ) Act 2003 was sent to Glasgow City Council in relation to this application.

77. The Applicants intend to refurbish the let property and may sell it after it is refurbished due to the ongoing stress to them of the current situation regarding the condition of the property.

### **Reasons for Decision**

78. The tribunal was satisfied that the eviction ground had been made out and there was no dispute that this property was in need of substantial renovation including work to ceilings, floors, walls, windows and internal decoration. The windows represent a risk in the event of fire. There was very little factual dispute between the parties regarding the circumstances. In her oral submissions to the tribunal Ms Gallagher suggested that the drying equipment had been removed in November 2022 because the Respondent had switched it off and could not live with it being switched on at the property. The Respondent was adamant in terms of what she had told her solicitor that the machines were removed because the leak from the flat above was ongoing. The Tribunal noted that Ms Gallagher indicated that the leak had been resolved at that stage but in her written representations she had suggested both, the Respondent had switched off the drying machinery but there had been no further point in having the machinery there as the leak had recurred. The Tribunal therefore accepted that there were two reasons for the removal of the drying machinery at that time.

79. The Tribunal accepted the productions lodged by the Applicant together with the representations of Ms Gallagher and all the information she put before the tribunal as to the efforts made by the Applicants to assist the Respondent, the repeated refusal of access by the Respondent and the ongoing intention of the landlords to refurbish the property. For the Respondent it was argued that whilst there may have been occasions in which access was refused this was only when the Respondent was ill. The Tribunal does not criticise the Respondent in respect of these matters as it was clear from the

positions of both parties that her mental health issues and lack of support at times have affected the way she has engaged with the tenancy after the first tenant left the property.

80. The areas of dispute related to whether the tribunal had sufficient information to show that the Applicants had the intention to refurbish the property and whether it had been shown that it was impracticable for the Respondent to remain living at the property while the works were carried out. The Applicant's solicitor had pointed to the fact that no contract or proof of engagement of a contractor to carry out the works had been provided to the tribunal in terms of ground 3(3) of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

### **The Issue of Intention to Refurbish**

81. In terms of the tribunal's assessment of Ground 3 it was not accepted that it necessarily requires contractual documentation to demonstrate the intention of the party as the documents mentioned in Ground 3(3) are given as examples. In this case a specialist survey report had been obtained in July 2022 and this was followed up by a detailed environmental health inspection. The tribunal was satisfied that in terms of the information before it that it could infer from the circumstances that the landlords intended to refurbish the property once the issues were brought to their attention by the environmental health inspection and as of the date of the hearing when this was confirmed. To support that finding the tribunal had regard to the instruction of the specialist survey report in July of 2022 setting out that work to the value of £27000 plus VAT was required, the fact that the work started in that the industrial drying machines were installed in the property in November 2022 but required to be removed having been switched off by the Respondent and because of an ongoing leak from the flat above and the assertion at the hearing made through the Applicants' representative that the landlords still intended to refurbish the property but might now consider selling it because of the history of the matter. The Tribunal was of the view that the Applicants could not be criticised for not having taken forward a contract for the refurbishment given the history their dealings with the Respondent and the fact that it was clear the full extent of the work required could not be known until they could gain vacant possession of the property. The Applicants' representatives had made ongoing efforts to engage with the Respondent in an effort to assist her to obtain other accommodation to allow the work to go ahead but this had not been successful. Whilst the tribunal noted that the Respondent had effectively on occasions refused to engage with the Respondents and refused to leave the property, the tribunal did not suggest that she was in any way deliberately destructive but accepted that this was simply the way she has reacted over the period of many months perhaps because of her health

difficulties and her requirements for another property in the area where she has her support network.

82. In deciding that the Applicants have the requisite intention to carry out “significantly disruptive works” to the property the Tribunal had regard to the case of *Nicholas Charlton v the Josephine Marshall Trust [2020] CSIH 11* and the approach referred to within this case arising from the review of the approach to intention within other cases quoted, and formed the view that the Applicant has a settled intention to go ahead with the works and has decided to go about this work and can do so when an eviction order is in place. The Tribunal was satisfied that the Applicants had gone beyond mere intention and were not motivated in any way simply to evict the Respondent but had a genuine desire to assist her and to carry out the substantial works required at the property.

83. Given the nature of the work required and the length of time this would take in terms of the information available, the Tribunal was satisfied that the work required was significantly disruptive and it would be impracticable for the Respondent to remain in the property when this was going on.

### **The Issue of Reasonableness**

84. The Tribunal considered all the information before it. Whilst it was clear that the Respondent wished to remain in a particular geographical area in Glasgow and this might suit her needs the Tribunal considered that it was reasonable to grant the order to allow the work to go ahead, noting that in the most recent e mail dated 3<sup>rd</sup> November 2023 the drying out period for the property alone was said to be in the region of four weeks and the environmental health officer who had first inspected the property had said in August 2023 that the extensive nature of the work required would require that the Respondent was not present at the time. In making this decision the Tribunal balanced the needs of the Respondent to find another property suitable for her needs within the same geographical area against the condition of the property, the concern expressed at the time of the extensive dampness found in 2022 and the environmental health officer’s statement regarding the health of the occupants and their diagnosed asthmatic conditions which were said to be detrimentally affected by the ongoing condition of the property, the whole circumstances of the condition of the property and the history of efforts to engage with the issues, and the Applicants’ wish to refurbish it and move on due to the ongoing stress of the situation. Having balanced



the interests of both the Applicants and Respondent the Tribunal took the view having regard to the approach set out in *Barclay v Hannah 1947 SC 45* that the interests of the Applicants in refurbishing the property to the extent that is required when taken together with all their other circumstances weigh in favour of an order being granted in this application. Whilst the Respondent does wish to stay in a particular area for support and wishes to secure permanent accommodation before moving out it cannot be appropriate for her to remain in occupation in a property needing such extensive work which was described as uninhabitable at the time of inspection in 2022.

## **Decision**

**The Tribunal granted an eviction order in terms of Ground 3 of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the landlords intend to refurbish the let property, are entitled to do so, the works are significantly disruptive and it would be impracticable for the tenant to continue to occupy the let property given the nature of the refurbishment intended and given these facts the Tribunal considers it reasonable to grant an order.**

## **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**

3.11.23  
\_\_\_\_\_  
**Date**