



**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/23/2973

**Re: Property at Flat 0/1 190 Dumbarton Road, Old Kilpatrick, G60 5DT (“the
Property”)**

Parties:

**Mrs Elaine McNally, Andrew McNally, Flat 0/1 190 Dumbarton Road, Old
Kilpatrick, G60 5DT (“the Applicants”)**

**Mr David Lawson, Dawn Blair, Flat 0/1 190 Dumbarton Road, Old Kilpatrick,
G60 5DT (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicants were entitled to an order for the
eviction of the Respondents from the property.**

Background

1. By application dated 29 August 2023 and as amended the Applicants’ representatives, Source Property, Clydebank, applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants’ representatives submitted a copy of a tenancy agreement, Notice to Leave, Section 11 Notice, together with other documents in support of the application.
2. By Notice of Acceptance dated 28 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 17 January 2024.

The Case Management Discussion

4. A CMD was held by teleconference on 5 March 2024. The Applicants did not attend but were represented by Mr Kris Brown from the Applicants' representatives. and the Respondents attended in person.
5. The parties were in agreement that the Respondent had commenced their tenancy of the property on 5 November 2019 at a rent of £650.00 per month. They were also agreed that the Respondents had been served with notices to Leave dated 31 May 2023 under Ground 5 of Schedule 3 of the 2016 Act providing that an application would not be made to the tribunal before 26 August 2023. Mr brown confirmed that a Section 11 Notice had been sent to West Dumbarton Council by email on 29 August 2023.
6. The Respondents did not indicate that they were opposing the order sought and suggested there was nothing they could do. The tribunal explained that although procedurally the Applicants had served a valid notice to leave the Tribunal still had to be satisfied in the circumstances that it would be reasonable to grant the order sought.
7. For the Applicants, Mr Brown explained the Applicants were in poor health, Mrs McNally he said was suffering from MS and her husband has suffered a stroke. Mr Brown said that the Applicants no longer wished to be landlords and as their daughter had been served with a Notice to Leave where she was staying it suited the family for her to move into the property as this would allow the Applicants to give up being landlords and mean that their daughter would be living closed to them which would assist them given their health issues. Mr Brown said he did not know the Applicants exact ages but thought they were in their late sixties or early seventies. Mr Brown said he was uncertain if the Applicants' daughter was intending living in the property which had four bedrooms, on her own or not.
8. For the Respondents Ms Blair explained that she had three children aged 16, 18 and 24. She said that her 24-year-old daughter had recently moved into her own accommodation but her two sons continued to live at home. Ms Blair also explained that Mr Lawson's son who was aged 12 also stayed with them at weekends and during school holidays. In response to a query from the Tribunal Ms Blair confirmed both her sons suffered from asthma.
9. Mr Lawson explained that the Respondents had applied to all the local housing associations and the local council but had not had any success in being rehoused. He confirmed that the family were on the homeless register and Ms Blair said that if the Tribunal granted an eviction order the council would carry out a 30- and 60-day review but that they had been told that the housing stock

was very low so they did not know what their chances were of finding suitable accommodation.

10. Mr Brown confirmed that the Respondents' rent was paid up to date and there were no issues with the Respondents as tenants. Nevertheless, he submitted, given the Applicants situation it was reasonable to grant the order.

Findings in Fact

11. The Respondents commenced a Private Residential Tenancy of the property on 5 November 2019.
12. A Notice to Leave under Ground 5 of Schedule 3 of the 2016 Act was served on the Respondent on 31 May 2023.
13. A Section 11 Notice was sent to West Dumbarton Council on 29 August 2023.
14. The Applicants' daughter has been served with a Notice to Leave her current property and the Applicants wish the property back in order that their daughter can live there.
15. The Applicant, Mrs Elaine McNally suffers from MS. and wishes to stop being a landlord
16. The Applicant, Mr Andrew McNally has suffered a stroke and wishes to stop being a landlord.
17. If the Applicants' daughter moves into the property, she will be living closer to the Applicants than she does at present and will be better placed to look after them given their ill health.
18. The Respondents lives in the property with Ms Blair's 16 and 18-year-old sons.
19. Mr Lawson's 12-year-old son stays with the Respondent at weekends and during holidays.
20. Ms Blair's 24-year-old daughter has recently moved out of the property into her own home.
21. The Respondents' rent is paid up to date.
22. The Respondent have not so far been given any priority for being rehoused and have been told that three- and four-bedroom housing stock is low.

Reasons for Decision

23. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 5 November 2019. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 5 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to West Dumbarton Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that the Applicants' daughter intends to occupy the property as her principal residence.
24. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand there were the Applicants who due to ill health were no longer wishing to remain as landlords and who wished to have their daughter living closer to them to assist with their needs. At the same time the Applicants' daughter needed to find somewhere to live as she too had been served with a Notice to Leave. On the other hand, the Tribunal also had to take account of the needs of the Respondents who had to care for two not yet adult sons who were asthmatic, full time, together with a 12-year-old son, part-time. There was no suggestion that the Respondents were anything other than good tenants who paid their rent on time. The Tribunal also took into account the fact that the Respondents had been told that three- and four-bedroom houses were in short supply and certainly prior to any order being granted the Respondents had not been given any indication that they were being given priority for being rehoused although they had been told that if an order was granted their applications would be subject to 30- and 60-day reviews.
25. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicants in this application were such that although there would undoubtedly be an adverse impact on the Respondents and their family it was reasonable to grant the order. The Tribunal considered that given the age and ill health of the Applicants it was understandable that they would wish to be relieved of the stress of being landlords and would also wish to have their daughter living closer to them to give them additional support. In reaching its decision the Tribunal acknowledged that the Respondents had been good tenants and that finding suitable alternative accommodation would not be easy however the Tribunal noted that the Respondents had applied to the local authority and local housing associations and that their applications would be reviewed if an order for eviction was granted. Therefore, the Tribunal would hope by granting an extension of time to sixty days before the order for eviction came into force would give the Respondents sufficient time for them to obtain alternative accommodation and

that having granted an order for eviction, they would receive priority for rehousing given their family circumstances.

Decision

26. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for the eviction of the Respondent from the property.

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.

G. Harding

5 March 2024