Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 ("the 1988 Act")

Chamber Ref: FTS/HPC/EV/23/1722

Re: Property at 3 Robertson Court, Armadale, West Lothian, EH48 3LS ("the Property")

Parties:

Mrs Lorraine Ford, 5 Breadalbane Place, Polmont, FK2 0RF ("the Applicant")

Mr Gerard Boyle, Ms Katrine Boyle, 3 Robertson Court, Armadale, West Lothian, EH48 3LS ("the Respondents")

Tribunal Members:

Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession should be granted against the Respondent in favour of the Applicants.

Background

1. The Applicant seeks an order for possession of the property in terms of Section 33 of the 1988 Act. A tenancy agreement, Notices to Quit, Section 33 Notices, Section 11 Notice, correspondence between the parties and a copy of a decision of the Upper Tribunal in relation to a previous application were submitted with the application.

2. The application was served on the Respondents by Sheriff Officer and parties were advised that a case management discussion ("CMD") would take place by telephone conference call on 7 December 2023 at 2pm. On 29 November 2023, the Tribunal received an email from the First Respondent's GP regarding medical issues and the possibility of a postponement. On 6 December 2023, the Tribunal decided to postpone the CMD, and a letter was issued to the Respondents by post. At 7.25 pm on 6 December 2023, the second Respondent made a request to postpone the CMD by email and gave consent

for future correspondence to be by email. She referred to the email from the GP and also stated that their landline had not been working. She said that this had prevented them from consulting their doctors as they are housebound and require telephone consultations. However, their doctors will not make telephone consultations using mobile phones. She stated that the landline had been fixed and a telephone consultation arranged for the following day.

3. The parties were notified that a CMD would take place by telephone conference call on 18 January 2024 at 2pm.

4. At 10.09am on 18 January 2024, the First Respondent lodged a copy of the decision of the Upper Tribunal already submitted by the Applicant.

5. The CMD took place on 18 January 2024. The Applicant participated and was supported by her son and daughter. She was represented by Mrs MacDonald, solicitor and Mr Anderson, Advocate. The Respondents did not participate. After the start of the CMD, the Tribunal was notified that the email from the Respondent received at 10.09am had contained a link to a written submission. The submission included a postponement request. The Tribunal adjourned the CMD to consider the submission.

Summary of Discussion at CMD

6. Before the Tribunal had been made aware of the postponement request, the Tribunal advised the Applicant and her representatives that, as the Upper Tribunal had determined that the tenancy agreement between the parties dated 8 October 2018 is a short assured tenancy in terms of Section 32 of the 1988 Act, the application would be proceeding on that basis without any further enquiry by the Tribunal. In response to questions from the Tribunal, Mr Anderson stated that the Applicant relies on the Notice to quit which was served on the Respondents on 14 April 2022. This had terminated the tenancy contract on 30 June 2022. As there is conflicting case law on whether a separate section 33 notice is required (as opposed to one which is incorporated into the Notice to Quit) a further section 33 notice was served on 2 February 2023. The second Notice to Quit which was served on this date could be disregarded. The Tribunal noted that the Notices and other documents lodged by the Applicant appeared to be in order and to comply with the relevant provisions of the1988 Act.

7. Following the adjournment to consider the submission from the Respondents, the Tribunal invited Mr Anderson to address them on the postponement request. Mr Anderson stated that the CMD should proceed. He pointed out that it was not the first postponement requested in relation to the application and that there had been a pattern of last-minute submissions and delays on the part of the Respondents in the previous case. He stated that the Respondents have had ample time to prepare for the CMD and lodge documents. However, it was clear from the submission that they had done nothing until the day of the CMD. Mr Anderson added that a postponement request should be accompanied by evidence to support it. The Respondents had submitted no evidence of any

medical conditions and stated that they have not been in a hospital for several years, which casts doubt on the claims that are made. In the previous case there were also unsubstantiated claims made about medical conditions. They should have provided evidence which establishes that they were unable to participate, otherwise the CMD should proceed. Mr Anderson also pointed out that the submission provided no information about when the Respondents would be fit to take part. They were not entitled to an indefinite delay. The Applicant is entitled to a decision on her application. Mr Anderson concluded by referring to the overriding objective which requires the Tribunal to avoid delay. He also stated that if the Tribunal was not minded to continue with the CMD, the application should proceed to a hearing restricted to the reasonableness of granting the order.

8. The Legal Member of the Tribunal advised the Applicant that they had decided to adjourn the CMD for the following reasons:-

(a) The application under consideration was a new case, which started in 2023, and the Tribunal should not be influenced by the previous proceedings between the parties.

(b) The Respondents are unrepresented and may not have appreciated that they should have submitted evidence to support their request.

(c) The previous request was supported/submitted by the GP.

(d) The overriding objective requires the Tribunal to assist parties to present their case and to ensure that parties are on an even footing procedurally.

(e) As the postponement request had been received a short time before the CMD and did not come to light until after the CMD had started, the Tribunal had been unable to make decision and have that decision notified to the Respondents before the start of the CMD.

9. The Tribunal noted that this was the second postponement request for similar reasons and, as the CMD was taking place by conference call, the Respondents should have been able to participate. The Tribunal determined that the CMD should be adjourned to a hearing and not a further CMD. As the Respondent's submission indicated that they wish to oppose the application, a further CMD was unnecessary and could result in delay, which the Tribunal is required to avoid. However, as the Respondents did not participate in the CMD, the hearing would not be restricted to the question of reasonableness until the Respondent's position had been clarified.

10. Mr Anderson told the Tribunal that he would prefer an in person hearing. Although preferable, the Tribunal noted that the Respondents had indicated that they are effectively housebound. In the circumstances, the Tribunal determined that the hearing should take place by video conference or telephone conference call. However, if the Respondents failed to provide evidence of their medical conditions, the Tribunal might elect to convert the hearing to an in

person hearing.

11. The Tribunal indicated that a direction would be issued which would provide a timetable for documents and witnesses. In addition, the direction would require the Respondents to provide a submission regarding the documents lodged with the application and the validity of the notices, if they wished to challenge these. If they failed to do this, the hearing would be restricted to the question of reasonableness. They would also be required to provide medical evidence to support their defence to the application and directed to provide medical vouching in support of any further postponement/adjournment requests.

12. Following the CMD, the Tribunal issued a note summarising the discussion which had taken place and a direction. The direction required the Respondents to provide – (i) A submission regarding the documents lodged with the application which addressed the validity of the notices, if they intended to challenge these at the hearing, and (ii) Medical evidence to evidence all health conditions and disabilities suffered by them, to include treatment being received and prognosis for recovery. The Respondents were also directed to confirm if they could participate in a hearing by video conference and provide a note of any dates upon which they could not attend or participate in a hearing. The Direction contained the following statement – "**The Tribunal notes that the Respondents have twice sought a postponement for medical reasons. The Respondents are hereby notified that if they request a further postponement for substantially similar reasons and this is not supported by medical evidence which establishes to the Tribunal's satisfaction that they cannot participate, the Tribunal may refuse the postponement and proceed with the hearing in their absence if they fail to attend".**

13. In response to the direction the First Respondent stated that he could not participate in a video conference but might be able to manage a telephone conference call, depending on how he was feeling, as he had done so before. He then stated that both his health and that of his sister had deteriorated for various reasons including their inability to tolerate hospital environments, the threat of eviction which had been ongoing for three and a half years, the pandemic, and the financial problems and wars affecting the world. He added that they would prefer a later rather than an earlier date so that there was time for their doctors to treat them and provide the documents requested. Mr Boyle added that he has suffered from depression since the age of 19 but is unable to take antidepressants because they could interfere with his cardiac problems. He has been unable to leave the house since 2003 or to receive visitors.

14. The parties were notified that a hearing would take place by telephone conference call on 10 June 2024 at 10am. Prior to the hearing the Applicant lodged a letter from her GP dated 27 February 2024. The Respondents did not lodge any further documents or submissions.

The Hearing

Preliminary matters.

15. Mr Anderson told the Tribunal that he would only be leading evidence from the Applicant, if this was required. Mr Boyle said that Ms Boyle was present in the room with him but that he was representing them both and only he would give evidence. He said that his sister might want him to pass on some information.

16. Mr Anderson advised the Tribunal that he was not clear what the Respondent's position is in relation to the application. He said that they had previously indicated a willingness to vacate the property and that the Applicant was willing to be reasonable and to allow them further time to do this if the matter could be resolved on that basis. Mr Boyle told the Tribunal that the application is opposed and that he and his sister wish to remain in the property. He denied that they had previously indicated that they were prepared to move. In response to questions from the Tribunal, he referred to the Upper Tribunal decision in the previous application which indicated that the Respondents personal circumstances had not properly been taken into account and that this should not be allowed to happen again.

17. Mr Anderson advised the Tribunal that he intended to refer to some of the documents lodged during the hearing. He said that, as the hearing was taking place by telephone conference call, it would be necessary for the Tribunal Members and the Respondents to have all relevant documents to hand. Mr Boyle stated that he had three folders of documents, although he could not currently locate the Upper Tribunal decision. He said that he had difficulty in organising his papers. The Tribunal noted that it would have been easier to share documents at an in person hearing or a hearing by video conference but that the teleconference had been arranged at the request of the Respondents and that they were responsible for their own papers. The Tribunal noted that time would be taken during the hearing to ensure that document under discussion at any point was clearly identified.

18. Mr Anderson then asked for clarification of the scope of the hearing. The Tribunal noted that the Respondents had failed to lodge a written submission regarding the documents lodged with the application, including the notices which had been served. They had been directed to do so if they wished to challenge the validity of the notices. In the absence of this the Tribunal had stated that the hearing would be restricted to the issue of reasonableness. The Tribunal had already considered the documents, and these appeared to be in order. Furthermore, Mr Boyle had indicated at the start of the hearing, that he wished the Tribunal to consider part 4 of the appeal decision which related to the previous FTT decision and the issue of reasonableness.

Mrs Ford's evidence

19. Mrs Ford told the Tribunal that her full name is Lorraine Roberston Ford and that her date of birth is 20 February 1958. She is a clerical assistant in a school

in Falkirk. She inherited the property from her husband following his death on 22 November 2017. He was the sole owner. It had been his mothers house, and she had never taken anything to do with it. She has had a number of bereavements and health problems and wants to sell the property and move on. She has never wanted to be a landlord. She can't deal with the stress and the associated admin such as insuring the property. Mrs Ford stated that she cannot sell the property because the tenants won't leave. She was referred to document 9 in the application bundle. She confirmed that it is a letter from Allen and Harris Estate Agents dated 2 July 2021. This states that it will not be possible to progress the sale until the tenants have moved out. She was then referred to document 14, an email from her solicitor sent to the Respondents on her instructions on 17 June 2021. This email states that access is required for a surveyor and estate agent and asks them to provide a suitable date. They did not do so. There have also been problems with access for other reasons. They were given 7 days notice that contractors needed access for PAT testing and smoke alarms. The contractor attended but did not get access. They were given another 7 days notice for another date. The Respondents replied to this email and said that they would not allow access at any time. They said that PAT testing was not required as they had replaced items and fitted an alarm. They accused her solicitor of harassing them. She had wanted to fit smoke alarms because there had been a fire in a property near to her home.

20. Mrs Ford was referred to an email to the Respondents dated 27 February 2023 and to a letter that had been attached to it (Document 21). The letter is from her solicitor to the Respondents. It states that access was not provided, although notice had been given and that this was required for PAT testing and smoke alarms. The letter points out that the Applicant is under a legal obligation to provide these. The letter then specifies another date for the contractor to attend. Mrs Ford confirmed that this was the letter she had previously referred to. She said that she had to pay a fee to the contractor who had previously attended of £30 or £40 for the visit when access was not allowed. She was then referred to document 22 and confirmed that it was the email from Mr Boyle which states that access will not be provided. There have been no attempts to get access since that time. Mrs Ford says that she does not know what fire alarms have been installed in the house as the only information she has was provided by Mr Boyle. Similarly, the only information she has about the alleged health problems has come from the Respondents. No medical evidence, other than the GP email sent to the Tribunal on 29 November 2023, have been produced. The Applicant was then referred to document 16, an email from Mrs Ford to her solicitor with a letter from Mrs Ford's employer.

21. At this point in the hearing, Mr Boyle interrupted and said that his sister had become unwell and that he would have to attend to her. The Tribunal adjourned the hearing for 15 minutes to allow him to do so. When everyone had re-joined the call Mr Boyle said that he had dealt with the situation but that neither of them was able to continue with the hearing. The Legal Member of the Tribunal reminded Mr Boyle of the terms of the direction and the fact that no medical evidence had been submitted in support of their defence to the application or the request to adjourn. In the absence to this, the Legal Member stated that the Tribunal was not prepared to adjourn the hearing at this point and that it was in

his interests to remain on the call. Mr Boyle said that he was not prepared to do so and disconnected.

22. After the hearing resumed, Mrs Ford said that the letter from her employer related to how she had been coping at work as a result of depression and anxiety. Her workmates and boss had been really supportive. She stated that she has enough on her plate and does not want the additional burden of a let property. Her husband used to deal with everything, such as house and car insurance. She can't cope with them. In relation to the letter from her boss and the letter from her GP she stated that her mental health is still as outlined in those letters. Although she believes that the tenancy agreement prohibits smoking in the property the Respondents smoke there or they used to do so. She has never met the Respondents. Her husband dealt with them and then her son arranged the new tenancy agreement.

23. In response to questions from the Tribunal, Mrs Ford said that this is the only rental property that she owns and that she does not know when the last EICR was carried out due to access issues. The Respondents were asked for access in 2018/2019. Mr Boyle said his sister's cancer had returned and it was not a good time. She decided to give them some space. Her daughter in law told them it was a legal requirement. There is no gas in the property. There are no arrears of rent. Mrs Ford thinks that some of the rent is paid by the Council. The tenancy started about 2010. The last time she was in the house was before they became the tenants. Initially their mother lived there as well until she passed away. She has never seen any medical evidence about their conditions. She has not considered making an application under the right of entry procedure because she was unaware of it. She did think about trying to sell the property with the Respondents as tenants. However, they would not allow access for the home report so would not allow viewers and she is concerned that no one would want to buy the property because of the history with these tenants. There are also concerns about the condition of the property. Mrs Ford continues to attend the GP and mental health nurse and is prescribed anti-depressants and sleeping tablets.

Final submissions.

24. Mr Anderson made reference to the Upper Tribunal decision in the previous case involving the parties and the test for establishing reasonableness . He stated that the Applicant had established that it was reasonable for order for possession to be granted. He said that the Applicant has an inherent right to deal with the property as she chooses. She had never wanted or chosen to be a landlord and finds it stressful and onerous. She wants to sell with vacant possession for two reasons. The first is that there are practical difficulties with these particular tenants which makes is unrealistic to attempt to sell while they remain in the property. They don't allow access, so viewings are unlikely to be allowed. Furthermore, as there has been no access to the property for several years there are concerns about the condition of it and whether it could be sold at present. The second reason is that, as the Tribunal knows, there is a limited market for properties being sold with a tenant in occupation and this is likely to affect the prospects of securing a sale and the price. Mr Anderson then told the

Tribunal that the tenancy was not sustainable in the absence of a working relationship between landlord and tenant. He concluded by stating that the Respondents will be entitled to assistance from the Local Authority as they will not be intentionally homeless in terms of the 1987 Act. He reminded the Tribunal that the Respondents health conditions are entirely unvouched. The only medical evidence submitted is the GP email from 29 November 2023 which actually undermines the Respondents position as the GP did not state that Mr Boyle was unfit to participate in the CMD. In the absence of medical vouching, which is readily obtainable, the representations cannot be relied upon. In response to a question from the tribunal about a delay in enforcement being ordered, if the Tribunal finds in favour of the Applicant, Mr Anderson stated that this is not justified in the circumstances. The Respondents have been aware for over three years that the Applicant seeks possession of the property and they have not vouched their alleged health conditions. He pointed out that they will get priority from the Local Authority only once an eviction is imminent.

Findings in Fact

25. The Applicant is the owner and landlord of the property.

26. The Applicant became the landlord of the property when she inherited it following the death of her husband in 2017.

27. Prior to 2017, the Applicant was not involved in any tenancy related matters connected to the property.

28. The Applicant does not own any other rental properties.

29. The Respondents are brother and sister. The are the tenants of the property in terms of a short assured tenancy agreement. They have resided in the property since 2010.

30. The Applicant served a Notice to Quit the Respondents on 13 April 2022.

31. The Applicant served a section 33 notice on the Respondents on 2 February 2023.

32. The Applicant wishes to sell the property and has wanted to do so since 2020.

33. The Applicant served an invalid Notice to leave on the Respondents in July 2020 which stated that the Applicant wished to sell the property.

34. The Respondents have been aware since July 2020 that the Applicant wished to recover possession of the property in order to sell it.

35. The Applicant suffers from anxiety and depression. These conditions cause her to experience low mood, loss of appetite and poor sleep. She is under the care of her GP and a Mental Health nurse and is prescribed sleeping tablets and

antidepressants.

36. The Applicant has never wanted to be a landlord. She finds the administrative tasks associated with being a landlord onerous and stressful. She has little understanding of her tenancy related obligations.

37. The Respondents have refused and failed to allow access for essential safety inspections required in terms of the repairing standard.

38. The Respondents wish to stay in the property.

39. The Respondents have found the eviction proceedings stressful.

Reasons for Decision

40. The application was submitted with a short assured tenancy agreement dated 8 October 2018. The term of the tenancy was 1 October 2018 until 30 September 2019 with a provision that it would continue on a monthly basis thereafter.

41. Both parties lodged a copy of the Upper Tribunal decision in an appeal by the present Respondents against a decision of the First Tier Tribunal to grant an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016. The Upper Tribunal allowed the appeal on two grounds and refused it on five other grounds. The decision of the FTT was quashed and the Upper Tribunal remade the decision on the application in terms of Section 47(2)(a) of the Tribunals (Scotland) Act 2014. The Upper Tribunal determined that the application for an eviction order should be refused and concluded that the tenancy agreement between the parties is a short assured tenancy within the meaning of section 32(3)(b) of the Housing (Scotland) Act 1988 as saved by regulation 6(c) of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No 3 Amendment, Saving Provision and Revocation) regulations 2017. The tenancy is therefore an short assured tenancy under the 1988 Act

42. As the Respondents did not attend the CMD, the Tribunal issued a direction which required the Respondents to provide a written submission on the validity of the Notice to Quit, Section 33 notice and section 11 notice sent to the Local Authority, if they intended to challenge them. This submission had to be lodged prior to the hearing. The Respondents did not lodge a submission. At the start of the hearing, the Tribunal asked the first Respondent to clarify their position in relation to the case. He referred to the Upper Tribunal decision in relation to appeal ground 4 – reasonableness. The Tribunal noted that the Respondents opposition to the application is based on whether it would be reasonable to grant an order for possession.

43. From the documents submitted with the application, and the information provided at the CMD, the Tribunal is satisfied that the Applicants served a Notice to Quit on 13 April 2022 by recorded delivery post. This were delivered on 14 April 2022. The Notice to Quit called upon the Respondents to vacate the property on 30 June 2022, an ish date. The Notice contained the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. Section 33 Notices were served on 2 February 2023, also by recorded delivery post, and gave the Respondent more than 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

44. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states "(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e) that it is reasonable to make an order for possession" Subsection 2 states "The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months". The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondents, giving at least two months' notice that the Applicant required possession of the property.

45. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

46. The Tribunal did not hear evidence from either Respondent. They did not participate in the CMD on 18 January 2024. They joined the hearing but chose to leave the call while the Applicant was still giving her evidence. Mr Boyle told the Tribunal at the outset that he was not sure how long he and the Ms Boyle would be able to stay on the call, due to health issues. The Tribunal noted that the Respondents had failed to provide any medical evidence to vouch their health issues, despite being specifically directed to do. The Tribunal also confirmed that breaks could be provided, when required. During the hearing Mr Boyle said that his sister was feeling unwell, and the hearing was adjourned for 15 minutes. The Respondents re-joined the call after the adjournment, but declined to continue with the hearing. They were notified that the hearing would proceed to a conclusion as they had failed to provide the required medical evidence to support an adjournment.

47. The Respondents did not lodge any documentary evidence in support of their defence to the application. The only medical evidence lodged was an email, sent by Mr Boyle's GP on 29 November 2023. This indicated that Mr Boyle was seeking a postponement of the CMD due to take place on 6 December 2024. Dr Matthew stated that she had visited Mr Boyle that morning at home and that "he has asked me to email you to ask for his tribunal to be postponed on the grounds of poor health. I do agree that he is currently unwell…He gave me permission to let you know that he has suffered chest pain and palpitations and on examination this morning he has a fast heart rate. I recommended that he should be referred to hospital to be seen by a cardiologist. I believe the stress of the upcoming tribunal has been contributing to his symptoms, but we do need to investigate further to ascertain what the underlying physical cause is and work out what treatment options are available". The email goes on to say that the Respondents have had problems with their landline and suggests that the Tribunal contact him to "judge for yourself" whether a delay should be allowed.

48. On 18 January 2024 Mr Boyle lodged a submission which incorporated a postponement request in relation to the second CMD. This states;- that no one should face eviction when the other occupant of the house is dying: that Ms Boyle has metastatic cancer and that a tumour in her lymph gland may burst through the skin and accelerate her death; that the stress of caring for her for 5 years has been enormous; that she has other health issues as a the result of a serious accident; that Ms Boyle becomes very stressed when his heart condition flares up; that Mr Boyle suffers from depression and anxiety since 1981 and cardiac and respiratory problems since 1990; that he can't concentrate or prepare for the tribunal due to stress and anxiety. The submission goes on to state that their medical conditions are documented but neither of them can tolerate hospital environments due to "anaphylactic level reactions to bleach and commercial cleaning products." Therefore, they treat their medical conditions using "natural alternative treatments". He hoped that his sister would be allowed to die in peace. They have been good tenants, always paid their rent on time, not damaged the property or caused trouble with neighbours. They have not asked for items to be renewed and paid themselves for new fridge, cooker and dishwasher.

49. The email from the first Respondent's GP only establishes that she had been asked to make a home visit, that Mr Boyle complained of chest pain and palpitations and that he had a fast heart rate on examination on 29 November 2023. There is no reference to a history of cardiac problems or to any other diagnosed health issues such as the depression and anxiety referred to in the submission. Furthermore, although Mr Boyle has stated that he has cardiac problems since 1990, the GP makes reference to it as a new problem which requires investigation. In relation to the second Respondent, no medical evidence has been submitted. In the absence of this evidence, and any oral evidence from the Respondents, the Tribunal is not satisfied that the Respondents have established that they suffer from the health problems referred to in the submissions. Even if not currently undergoing treatment for these conditions, their GPs would have been able to confirm the diagnosis, assuming that they have been diagnosed by medical professionals. The Tribunal accepts the statement that they have found the eviction proceedings

stressful. This is the case for most tenants going through the process. However, there is no evidence of any serious medical conditions which require to be taken into account in assessing the reasonableness of the application.

50. The Tribunal found the Applicant to be generally credible and reliable. Her evidence was consistent with the documentary evidence submitted, including her GP report and letter from her manager. Based on the documents lodged, and the evidence given at the hearing, the Tribunal is satisfied that the Applicant is an "accidental" landlord. Her husband decided to keep and rent out a property which had belonged to his mother. Mrs Ford inherited the property (and the tenants) when he died, unexpectedly. The Tribunal is also satisfied that she has found the situation stressful and difficult and that she does not want to continue to be a landlord. It was clear that she has little knowledge or understanding of the legal obligations which apply to private landlords in relation to the repairing standard. The Tribunal is not persuaded that the Applicant's mental health issues are solely due to the tenancy and the protracted legal processes which she has undergone, but they have contributed to her ill health.

51. Both parties referred to the Upper Tribunal in the previous case. The Respondents had appealed against a decision of the FTT to grant an order for eviction. There are two aspects of the appeal decision which are relevant to the present case. The first is outlined in paragraph 41 of this decision. The second relates to the decision by the FTT that it would be reasonable to grant an order for eviction. Sheriff Jamieson makes the following remarks in his judgement;- (49)The FTT's task is to consider whether, in all the circumstances, granting the order for possession is reasonable, not the most reasonable course of action nor one within a range of possible actions. (East Lothian Council v Duffy 2012 SLT 113). At (51) Sheriff Jamieson notes that the FTT had "noted" the position regarding health issues but was of the view that Mr Boyle had indicated a "volition" to move from the property. The FTT did not consider the ongoing health issues or potential difficulties in being re-housed to be reasonable grounds to refuse to grant the order. (51 and 52). Sheriff Jamieson concluded that the FTT erred in the "exercise of its assessment of reasonableness". "It misdirected itself in law and has failed to demonstrate that it took into account and properly weighed and balanced, all relevant considerations, in reaching that conclusion". (57). Sheriff Jamieson noted that the alleged "volition" expressed by Mr Boyle had clearly been based on a misunderstanding, namely that he would have no other option than to move. (59). The FTT placed "undue weight" on this factor and failed to identify all the relevant circumstances which should be taken into account and to "weigh those in the balance in assessing the reasonableness of granting he order." They also reversed the statutory test and "effectively placed an onus on the appellants to show reasonable grounds for the application to be refused".(62).Sheriff Jamieson goes on to point out that the FTT's reasons make no reference to Mrs Ford's circumstances, why she wanted to sell, whether being a landlord affected her health and wellbeing and how this compared with Mr and Mrs Boyle's health issues. Furthermore, there was no refence to the length of the tenancy, whether they had been good tenants and how these factors had been weighed up.(65).

52. The Tribunal had regard to the following factors: -

(a) Although they failed to give evidence at the hearing, the Respondents' submissions make it clear that they do not want to move out of the property. There is no reference to attempts to obtain alternative accommodation elsewhere or a desire to do this.

(b) Although not established in evidence, it seems unlikely that either Respondent is in employment since they have stated that they are housebound and in ill health.

(c) The only tenancy related issue which was established is that the Respondents have failed and refused to provide access to the property. The Applicant requires access to ensure that she fulfils her repairing standard obligations in relation to the property. The Respondents are legally obliged to provide access. In an email dated 1 March 2023 sent to the Applicant's solicitor, Mr Boyle stated that no one would be granted access to carry out PAT testing or to install alarms on 2 March "or any other date" because of the Respondent's health conditions.

(d) The Applicant has been trying to recover possession of the property since July 2020, when she served a Notice to leave on the Respondents on the ground that she wanted to sell the property.

(e) The Applicant wishes to sell the property. She has never wanted to be a landlord. She is unsure of her obligations as landlord and finds the administrative tasks associated with owing a let property onerous and stressful.

(f) It is likely that the Applicant would find it difficult to sell without vacant possession as the Respondents have refused to provide access to the property. The market is also more limited with a sitting tenant, and the price may be affected.

(g) The Applicant has experienced mental health difficulties as a result of the loss of her husband, health issues and other bereavements. The burden of dealing with the property, the Respondents as tenants and attempts to recover possession the property have contributed to her health difficulties. The Applicant is keen to sell the property so that she can put these difficulties behind her and move on with her life.

53. Having regard to the factors outlined in paragraph 52, the Tribunal is satisfied that the Applicants circumstances outweigh the Respondents desire to remain at the property and the fact that they have lived there for 14 years, without any major issues or concerns, other than their refusal to allow access. The Tribunal is satisfied that it would be reasonable to grant the order for possession. In the Upper Tribunal decision Sheriff Jamieson cautions against placing "undue weight" on the likelihood of the Respondents receiving assistance for the Local Authority. In this case, the Tribunal takes the view that little weight should be given to this factor. There is legislation which requires the Local Authority to assist persons who become homeless. However, in the absence of any

evidence or submissions from the Respondents, it is not known whether they have sought advice from the Council, intend to do so, would prefer to continue to rent in the private sector or have other accommodation already available to them.

54. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order. The Tribunal then considered whether to order a delay in execution of the order for possession in terms of Rule 16A of the Procedure Rules. This was opposed by the Applicant. As the Respondent had left the hearing, their views could not be obtained. In the circumstances and in the absence of a request or any information from the Respondent, the Tribunal determined that it should not order a delay in enforcement.

Decision

55. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Josephine Bonnar, Legal Member **21 June 2024**