



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

**Chamber Ref: FTS/HPC/EV/23/3274**

**Re: Property at 28 Kilmaurs Street, Glasgow, G51 4UF (“the Property”)**

**Parties:**

**Mrs Kanwal Khan, 1 Overlee Road, Glasgow, G76 7TH (“the Applicant”)**

**Mrs Shazia Malik, 28 Kilmaurs Street, Glasgow, G51 4UF (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that an eviction order be granted against the Respondent in respect of the Property.**

1. This is an application for recovery of the Property. The application is dated 15 September 2023. The Applicant is seeking recovery under Ground 1, Part 3 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 as amended. Ground 1 states that it is an eviction ground that the landlord intends to sell the let property.
2. A case management discussion had been held on 21 December 2023. A Hearing had been scheduled for 2 April 2024 and had been adjourned without any evidence being heard.

**The Hearing**

3. A Hearing was held at Glasgow Tribunal Centre on 13 June 2024.

4. The Applicant was in attendance and gave evidence. She was represented by Mr Joe McHugh, solicitor.
5. The Respondent was in attendance and gave evidence. She was represented by Ms Holly Sloey, solicitor.
6. Prior to the Hearing, both parties lodged productions and the Respondent submitted written representations.
7. Ms Sofia Rehman, Urdu interpreter assisted.

### **Preliminary Matters**

8. Ms Sloey acknowledged that she had lodged some documentation the day before the Hearing and asked that it be allowed to be submitted. Mr McHugh raised no objection and the tribunal determined that it was just to allow this late submission of documents.
9. At the case management discussion, the Respondent's representative had raised an issue of whether a private residential tenancy existed.
10. Ms Sloey helpfully advised that this was no longer an issue and that the Applicant accepted that a private residential tenancy existed in respect of the Property. She also indicated that it was accepted that the Applicant owned the Property, was entitled to sell it and that she intended to put it up for sale if she obtained vacant possession.
11. At the case management discussion, it had been a matter of agreement that a notice to leave had been served on the Respondent and that the appropriate notice under Section 11 of The Homelessness etc. (Scotland) Act 2003 had been sent to Glasgow City Council.
12. Ms Sloey confirmed that the issue for determination by the tribunal was in relation to the reasonableness of granting the order of eviction.

### **13. Documents before the tribunal**

- (i) Copy of the private residential tenancy agreement for the Property dated 8 August 2022 showing the commencement of the tenancy to be 8 August 2022 and the monthly rent to be £650.
- (ii) Notice to Leave dated 20 March 2023.
- (iii) Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003.
- (iv) Letter of engagement from Austin Lafferty, Solicitors, dated 13 September 2023 in connection with sale of the Property.
- (v) Applicant's Halifax Mastercard statement.
- (vi) Applicant's Bank of Scotland Mastercard statement

- (vii) Letter from Govanhill Housing Association relating to 213 Langside Road, Glasgow.
- (viii) TSB Mortgage Offer dated 7 July 2022.
- (ix) Documents relating to Applicant's financial position.
- (x) Medical records of Respondent, including letters from health care professionals

#### 14. Findings in Fact

- (i) The Applicant is the owner of the Property.
- (ii) The Applicant is entitled to sell the Property.
- (iii) The Applicant intends to market the Property on the open market within three months of gaining possession of it.
- (iv) The Applicant and the Respondents entered into a Private Residential Tenancy Agreement for the Property on 8 August 2022.
- (v) Prior to the commencement of the Private Residential Tenancy Agreement, the Respondent occupied the Property under a Short Assured Tenancy Agreement.
- (vi) The Property has been the home of the Respondent for eight years.
- (vii) The monthly rent is £650.
- (viii) The Applicant gave the Respondent Notice to Leave on 20 March 2023.
- (ix) The Notice to Leave indicated that any proceedings for eviction would not be commenced prior to 30 June 2023.
- (x) The Private Residential Agreement dated 8 August 2023 contains eviction grounds including Ground 1: *"The landlord intends to sell the property for market value within three months of the tenant leaving the property."*
- (xi) The Notice to Leave referred to Ground 1 being relied on by the Applicant as the reason for seeking recovery of the Property.
- (xii) The application for an order of eviction was submitted on 15 September 2023.
- (xiii) The Respondent continues to reside in the Property along with her children aged 22, 15 and 14.
- (xiv) The Applicant has a mortgage with TSB over the Property which is currently on a fixed rate.
- (xv) The mortgage terms will change in September 2024 and the Applicant will require to pay interest at the standard variable rate.
- (xvi) The current monthly mortgage payment made by the Applicant is £600.
- (xvii) The monthly mortgage payment required in September 2024 will be in excess of £859.
- (xviii) The monthly property insurance premium for the Property is £31.
- (xix) The annual cost for the Gas Safety Check is in the region of £50.
- (xx) The cost of the electrical installation condition report for the Property is £300 and is due every five years.
- (xxi) The Applicant is responsible for repairs to the Property.
- (xxii) The Applicant owns a buy to let property at 213 Langside Road, Glasgow for which she has paid the sum of £25,133.78 in respect of a share of common repair works.
- (xxiii) The Applicant owes in excess of £10500 in credit card debt.
- (xxiv) The Applicant owes £35800 to family members.

- (xxv) The Applicant and her husband are in employment.
- (xxvi) The Applicant and her husband have five children aged between five and fifteen who live with them.
- (xxvii) The Respondent lives in the Property with her twenty two year old son and two other children aged fifteen and fourteen.
- (xxviii) The Respondent is in receipt of housing benefit of £550.
- (xxix) The Respondent has significant health issues for which she has been prescribed medication and for which she may require certain treatment in the future.
- (xxx) The Respondent has submitted two housing applications to housing associations.

## 15. Findings in Fact and Law

- (i) The Applicant is the owner of the Property and, as such, is entitled to sell it.
- (ii) The Applicant intends to sell the Property within three months of gaining vacant possession.
- (iii) It is reasonable to issue an eviction order in respect of the Property.

## The Law

### Private Housing (Tenancies) (Scotland) Act 2016

#### SCHEDULE 3 EVICTION GROUNDS

*(introduced by section 51)*

#### PART 1

#### LET PROPERTY REQUIRED FOR ANOTHER PURPOSE

### ***Landlord intends to sell***

*1 (1) It is an eviction ground that the landlord intends to sell the let property.*

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

*(a) is entitled to sell the let property,*

*(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*

*(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

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

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

*(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*

## **Submissions**

16. Mr McHugh and Ms Sloey made oral submissions.

17. Mr McHugh said that the Applicant cannot repay her debt without selling the Property. He said that currently the rent received by her does not meet all the financial commitments she has in respect of the Property and that matters will deteriorate in September when she has to pay £250 more in mortgage repayments.

18. Mr McHugh said that it is not reasonable for the Applicant's family members to wait indefinitely for payment.

19. Mr McHugh said that the evidence of the Respondent is that the Property is damp and that she wants to live in a two bedroom property whereas the Property has four bedrooms. He said that, from the evidence of the Respondent, the Property is not suitable for her needs.

20. Mr McHugh submitted that, if the application for eviction were not granted, significant financial hardship would be caused to the Applicant together with associated "mental anguish."

21. Ms Sloey submitted that it is not reasonable to evict the Respondent. She said that the tribunal had heard evidence with regard to the Respondent's health issues and that it should rely on this together with the documentary evidence which had been lodged.

22. Ms Sloey said that the tribunal should have regard to the fact that the respondent had tried to find alternative housing and also to the fact that she is in receipt of Adult Disability Payment.

23. Ms Sloey submitted that the tribunal should have regard to the fact that not only the Respondent but also her children would be homeless if the eviction decree were granted. The location of temporary accommodation provided by the Council could disrupt the schooling of the children.

24. Ms Sloey submitted that the Applicant had not evidenced that she had financial hardship and that she had not provided evidence that she had explored all options to alleviate her position. She said that it was significant that the Applicant

had not sought advice from a debt specialist. Ms Sloey said that much of the money owed by the Applicant was to family members and that there would therefore be less impact on her were the eviction order not granted. She said that this contrasted with the position of the Respondent who could be street homeless. She said that this was notwithstanding the Council's obligations with regard to housing those who find themselves homeless. She said that the declared housing emergency has meant that actions of Judicial Review have had to be raised against Councils which have not complied with their statutory obligations.

## **Reasons**

25. The tribunal had regard to the documentation and representations which had been lodged by the parties.
26. There was a discussion about the nature of the evidence. Some involved personal financial information of both parties and some involved personal medical information about each party, particularly the Respondent. Mr McHugh and Ms Sloey agreed that the Decision could be written in such a way as to protect the personal information of each party as much as possible whilst at the same time reflect the balancing act carried out by the tribunal and the nature of the information which it considered.
27. The Applicant and Respondent were credible and reliable witnesses. Much of the evidence given was either not challenged by the opposing party or was accepted by it and it is useful to set out what was not contested.

## *Not contested*

28. The Property had been the matrimonial home of the Applicant prior to her moving from it when she had put it on the rental market. The Respondent had lived in the Property for eight years.
29. The Applicant intends to sell the Property if she is successful in recovering it and she intends to market it within three months of gaining vacant possession.
30. The current monthly mortgage payment for the Property is £600 and the monthly insurance premium is £31. There are annual charges of around £50 for a Gas Safety Check and a cost every five years of £500 for an electrical installation condition report.
31. The Applicant is responsible for the cost of repairs to ensure that the Property continues to meet the repairing standard.

32. The Applicant has debts in excess of £47000.
33. The Applicant owns a property at 213 Langside Road, Glasgow and for which she has paid £25133.78 in respect of common repairs. Part of the debt which she owes is as a consequence of this payment. This property is mortgaged.
34. The Applicant, her husband and their five children live in a house which was bought in November 2020. It is mortgaged.
35. The Respondent has significant health issues.
36. The Applicant's financial situation is causing her distress.
37. The Respondent lives in the Property with her three children, aged twenty two, fourteen and fifteen.
38. The Respondent has applied for social housing.

*Other evidence*

39. The Applicant set out details about her financial situation in relation to the Property and referred to the vouching which had been lodged. She said that the Property's rent is below the level consistent with the market rental. She said that she had raised the rent only once during the Respondent's residence in the Property. She said that this level of rent was significant when she sought to re-mortgage. She could not get a good rate because the level of rent would require to be 125% of the rental income. As a consequence of the fixed mortgage rate coming to an end in September 2024, she will require to pay mortgage interest at the variable rate and she referred the tribunal to the TSB mortgage illustration which she had lodged. This showed that, in September/October 2024 the mortgage rate would increase to the variable rate. The Applicant said that this is currently over 9%. She said that the mortgage payment would then be £859 per month.
40. The Applicant said that the Property would sell for around £135/140,000 on the open market and that the outstanding mortgage is in the region of £97000. She said that the sale of the Property would allow her to repay almost all her debts.
41. The Applicant said that her situation was so bad that it could not be eased by the rent being increased. She said it could never be enough to deal with the financial pressure she is under. She said that she had the burden of the Property which does not have enough income to pay the outgoings on it and that this will increase in September.
42. The Applicant said that she no longer wants to be a landlord and that she wants to sell the Property so that she can repay the mortgage and also deal with her other debts. The Applicant referred to the credit card statements which she had

lodged and said that the debts had accrued when she was trying to “keep her head above water.” The Applicant said that it is her intention to sell this property as soon as it is possible to do so. The Applicant detailed what she owed to family members who had loaned her money to help her out.

43. The Applicant said that the Property at Langside Road cannot be sold in its current state and that the common repair works had not yet started. She said that she had to pay the sum of £25133.78 in respect of these works because otherwise she would have had to pay double because she would not have got a grant for the same amount. She explained that her total share for the works is in excess of £50000.
44. The Applicant said that she and her family had moved to their home in November 2020 and that a considerable amount required to be spent on it to make it habitable.
45. The Applicant disclosed her income and that of her husband and she said that it was a struggle to meet the costs of the family household. She detailed the items of family expenditure which she met with difficulty and what steps she takes to mitigate matters. She described living “from paycheque to paycheque.”
46. The Applicant said that she is extremely stressed because of her financial situation and that the sale of the Property would alleviate this. She said that the Respondent has been a good tenant and that, on her part, she had carried out a considerable amount of work to ensure that the Property is of a good standard. She said that in recent years she had replaced the central heating boiler and refurbished the bathroom.
47. The Applicant said that she could not afford to employ a letting agent for the Property. She said that she had not sought advice from a debt advice agency. She said that her brother is a mortgage broker and that she had relied on him with regard to mortgage advice. She said that she knew that there was no alternative to paying the variable rate for the mortgage.
48. It was put to the Applicant that, since much of the debt was due to family members, there was no pressure to repay it. The Applicant said that her relatives wanted the money back. She said that one planned to move home and needed the money and another wanted to retire. She said that people’s lives have “been on hold.” She said that relationships within the family are strained because of the debts.
49. The tribunal heard details about the Respondent’s medical issues and reference was made to the information which had been lodged in relation to her medical records and letters concerning her health.
50. The Respondent said that she spent most of the time at home because of her health issues and is looked after by her twenty two year old son. She said that this son planned to move out and that she would ideally like a two bedroomed property.



51. The Respondent's evidence was that she had applied for social housing but that she did not have enough "points" and that she had been told to contact the local authority if an order of eviction was granted. The Respondent said that she could not afford to rent a property in the private sector because of the level of rent and the deposit that would be required. She said that her twenty two year old son has only occasional work and no income from benefits because she does not want him to be in receipt of benefits. The written representations of the Respondent state that she has made applications to two housing associations.

52. The Respondent said that there is dampness in the Property.

53. The Respondent said that, if it were her choice, she would not stay in the Property "one day more."

### **Discussion and Determination**

54. The tribunal had regard to the approach which should be taken on such applications as set out by Sheriff Collins in *Manson and Downie v Turner* 2023UT38. It is only possible to grant an eviction order pursuant to ground 1 if a tribunal is satisfied that the facts in sub paragraphs 2 (a) and (b) are established and that it is reasonable to do so on account of those facts per sub paragraph 2 (c).

55. The first matter to be established is whether the Applicant is entitled to sell the Property. This was conceded by the Respondent. The tribunal was satisfied that the Applicant is entitled to sell the Property.

56. The next matter to be established is whether the Applicants intend to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. The tribunal accepted the evidence of the Applicant in this regard which was not challenged by the Respondent. The letter from the Applicant's solicitor supported this. The tribunal also considered that the evidence before it in connection with the Applicant's financial position was indicative of the Applicant's desire to sell.

57. The tribunal had to determine whether it was reasonable to issue an eviction order. Such a determination is arrived at after a weighing and balancing exercise. The tribunal is obliged to consider the whole of the circumstances and take into account all factors. In *Cumming v Danson* [1942] 2 All ER653, Lord Greene MR said: *".... In considering reasonableness... it is in my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the*

*situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”*

58. In considering reasonableness the tribunal requires to balance the rights of both parties and to discard any issues which it does not consider to be relevant. In *Manson v Turner*, Sheriff Collins referred to the need to balance the rights and interests of both parties.
59. The tribunal considered that the Applicant had good and valid reasons to sell the Property. The tribunal accepted that her financial situation was poor and, in coming to this view, it had regard to the documentary evidence and the oral evidence in relation to the mortgage position and the debts. This evidence, in large part, was not challenged by the Respondent.
60. The tribunal accepted that the Applicant's poor financial position would be ameliorated by the sale of the Property. It attached no weight to the Applicant not having sought debt advice. The Applicant's financial position was clear and she had a plan to deal with it.
61. The tribunal accepted that the Respondent has significant health issues and she was to be commended in being so transparent and open in providing evidence on the matters. It could not have been easy for her.
62. The tribunal accepted that the Respondent had made attempts to get social housing. It made no finding on whether the Property was damp but, if it is the case, then there was merit in Mr McHugh's position that the Property was unsuitable for her because of this and also since she wanted a property which is smaller.
63. The tribunal noted the evidence of the Respondent that she did not want to stay in the Property a day more than she needed to.
64. The tribunal accepted that, if the Respondent was evicted, there would be a significant impact on the family since they would have to leave what has been their home for eight years. No evidence had been led with regard to the schoolchildren residing in the Property but the tribunal accepted that eviction may lead to disruption in their schooling. It is a matter within judicial knowledge

that the Respondent would not necessarily be housed in accommodation close to the existing school or schools.

65. The tribunal accepted that ownership of the Property is a financial burden for the Applicant and that the income from rent does not meet its costs when repairing obligations are included and that this will get worse in September 2024.
66. The tribunal noted the view of Sheriff Jamieson in *Stainthorpe v Carruthers and Swan* 2024UT30 at paragraph 76 where he stated that a relevant circumstance is a landlord's right to "use and dispose of his property as he thinks fit." That circumstance is relevant in this case and is linked with the financial position of the Applicant and her desire to reduce her indebtedness.
67. Set against the Applicant's position is that of the Respondent who has health issues, a family and who has lived in the Property for eight years.
68. The tribunal did not accept that the Respondent would be street homeless. Local authorities have an obligation to provide housing and, if it fails their statutory duties, there are legal remedies which can be pursued.
69. The tribunal finds that it is reasonable to grant the order. In balancing the rights of both parties, the tribunal considers that the balance falls in favour of the Applicant. In arriving at its determination, the tribunal had regard to all the evidence and the submissions of the parties.

## **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

**Martin McAllister**

**Martin J. McAllister  
Legal Member  
18 June 2024**