



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/24/0855

Re: Property at 15D Kerrsview Terrace, Dundee, DD4 9BQ (“the Property”)

Parties:

Mr Graham Robertson, C/O Easylets Ltd, 125 Nethergate, Dundee, DD1 4DW (“the Applicant”)

Ms Kim Thomson, 15D Kerrsview Terrace, Dundee, DD4 9BQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined not to grant an eviction order as it would not be reasonable to do so in the circumstances existing as at the time of this decision.

Background

- 1 By application to the Tribunal dated 21 February 2024 the Applicant sought an eviction order against the Respondent under ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicants submitted the following:-
 - (i) Copy Private Residential Tenancy Agreement between the parties;
 - (ii) Notice to Leave dated 23 November 2023, confirming that proceedings would not be raised any earlier than 18 February 2024 and email to the Respondent with said Notice to Leave of that same date;
 - (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council and proof of delivery by email; and
 - (iv) Screenshot of the Tayside Solicitors Property Centre website confirming that the property was marketed and under offer.

- 2 The Tribunal was also in receipt of Title Sheet ANG18097 which confirmed the Applicant to be the registered owner of the property.
- 3 By Notice of Acceptance of Application dated 14 March 2024 a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion, to take place on 26 July 2024 by teleconference. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017.
- 4 On 25 June 2024 the Tribunal received an email from Kenneth Marshall of Dundee Law Centre with a response to the application on behalf of the Respondent. In summary Mr Marshall stated that the Respondent did not want to be evicted and was well settled in the subjects, having lived there for five years. She was born on 9 January 1965 and suffered from various health issues including mitral stenosis, depression, arthritis of the knees and lower spine and a hiatus hernia. She lived alone with her two dogs and would find it difficult to obtain suitable accommodation in her preferred area. There had been no issues with the conduct of the tenancy. The Respondent understood the landlord intended to sell the property but wished the Tribunal to make a determination as to the reasonableness of making an eviction order. She was unaware as to the full details of the Applicant's reasons for selling but she understood the rent was not covering the mortgage, although she did not know what the mortgage payments were. The Respondent was making payments of rent which would cover at least part of the mortgage costs by way of universal credit and her own funds.
- 5 On 17 July 2024 the Tribunal received a further email from Mr Marshall with a letter from Maryfield Medical Centre that summarised the Respondent's medical history, which included anxiety, a hiatus hernia and mitral stenosis. The letter listed the various medication the Respondent had been prescribed and stated that the Respondent had reported a worsening in her shortness of breath, acid reflux symptoms, chest pain and anxiety at the thought of leaving the property.
- 6 On 23 July 2024 the Tribunal received written representations from the Applicant which included an unsigned letter from the Applicant and a signed letter from his solicitor on headed paper. The letter from the Applicant's solicitor confirmed that an offer had been received for the property and had been accepted, with an entry date of 11 March 2024 agreed. The sale had been put on hold as the Respondent was still in the property, but the prospective purchasers were still keen to proceed with the sale, and were awaiting the outcome of the Tribunal proceedings. The letter from the Applicant confirmed that he intended to sell the property due to rising costs, and also to purchase a property with his partner. The Applicant outlined the circumstances regarding the offer that had been received from the prospective purchasers, stating that he had suffered from financial and emotional hardship due to the Respondent's failure to leave the property voluntarily. The rent did not cover the mortgage

and other associated costs. The Applicant had also been fearful to increase the rent in case that was seen as harassment towards the Respondent. The Applicant was having sleepless nights and suffering from stress and anxiety as a result of the eviction process. He and his partner had to put their plans on hold. The property was never intended to be a rental property, the Applicant had always planned to live there and had no plans to be a landlord. The Applicant's view was that the eviction process was as much about the Respondent obtaining accommodation from the local authority as it was about the sale of the property. It was the local authority's responsibility to provide the Respondent with accommodation. The Respondent had been given ample opportunity to obtain another property and the Applicant had always tried to be fair in his dealings with her. The Respondent had never indicated that it was her intention to stay in the property, and had told the Applicant that she would move in with a friend, or her son, if she could not find another private rental.

- 7 On 26 July 2024 the Tribunal received further written representations from the Applicant with an unsigned letter from the prospective purchaser. In summary the letter confirmed that the prospective purchasers wished to proceed with their purchase of the property. They were currently living with family members in unsuitable conditions. The prospective purchasers had been left feeling stressed and disappointed after their plans were put on hold. They had been left in limbo and it had put significant strain on their relationship. They had considered pulling out of the sale but loved the area and the property. They were therefore determined to see the matter through.

Case Management Discussion

- 8 The Case Management Discussion took place on 26 July 2024. The Applicant was represented by Mr Gardiner of Easylets Ltd. The Respondent was present and accompanied by her son as an observer. She was represented by Mr Kenneth Marshall of Dundee Law Centre.
- 9 The Tribunal explained the purpose of the Case Management Discussion and invited parties to make submissions on the application. As a preliminary matter the Tribunal noted that the Applicant's representative had submitted additional written representations shortly prior to the discussion. Whilst the Tribunal members had received and considered these, Mr Marshall advised that he had not yet had sight of them. The Tribunal clerk confirmed that the representations had been sent on to the email address provided but agreed to resend the documents to Mr Marshall.
- 10 Mr Gardiner confirmed that his firm had acted as letting agent for the Applicant since 2020 when the Applicant moved out of the address. The Respondent had taken on the tenancy and she had lived there ever since. Mr Gardiner had been instructed by the Applicant to serve a Notice to Leave in November 2023. He referred to the additional representations that had been submitted which gave further detail as to the background to the case. The Applicant wished to sell the property and had a prospective purchaser. The property had been on the market since January 2024 with an agreed move in date of mid-March. However the date of entry had been pushed back as the Applicant required

vacant possession. Mr Gardiner confirmed that the Respondent would have been aware that the property was on the market. There had been viewings carried out when she was in the property.

- 11 Mr Marshall confirmed that the Respondent liked the property, and the area in which it was located. If she was evicted the local authority would likely house her in temporary accommodation pending an offer of social housing. She was on the local authority waiting list. Mr Marshall advised that the Respondent had suffered a stroke the week prior to the Case Management Discussion and was not in the best condition health wise. She wished a managed move from the property. Mr Marshall confirmed that she did not wish to be evicted, she wanted to move out on her own terms. An eviction order would leave her with no discretion.
- 12 Mr Marshall advised that he was not clear on the basis for the landlord's intention to sell. He had not seen sufficient evidence to establish this but accepted that his position may change depending on the content of the Applicant's recent written representations. He confirmed that the Respondent disputed the application on the basis that there was at present insufficient evidence to establish the landlord's intention to sell, and it would be unreasonable for the Tribunal to make an eviction order.
- 13 In response to questions from the Tribunal Mr Marshall advised that there were around 30 steps that required to be managed to access the property and these did present some difficulty for the Respondent. She resided alone with her two dogs. She was settled in the area, and would likely require a ground floor property. She had looked at private rents but these had proved to be too expensive. She was in receipt of universal credit which made it challenging in terms of finding an affordable rent.
- 14 The Tribunal noted that the issues to be resolved were (1) whether the landlord intends to sell the property within three months of the eviction order being granted and (2) whether it is reasonable in the particular circumstances of this case to make an eviction order. The Tribunal therefore determined to fix a hearing in the matter for the 17th September 2024 at 10am.
- 15 Following the Case Management Discussion the Tribunal received an email from Mr Marshall on 13 September 2024 with a copy of the Upper Tribunal for Scotland's decision in the case of *Manson and Downie v Turner*, UTS/AP/23/0018.
- 16 On 16 September 2024 the Applicant emailed a second letter from his solicitor dated 10 September 2024. The letter confirmed that the prospective purchasers were awaiting the outcome of the Tribunal hearing and had requested the home report be refreshed again, showing their continued interest.

The Hearing

- 17 The hearing took place on 17 September 2024. The Applicant was represented by Mr Gardiner who was accompanied by his colleague Chantelle Gunn. The Applicant himself was not in attendance. The Respondent was present and represented by Mr Marshall.
- 18 As a preliminary issue the Tribunal noted that due to an administrative oversight a Direction had not been issued to the parties in advance of the hearing. The Tribunal queried whether either party had any additional documents or witnesses that hadn't been intimated. Both Mr Gardiner and Mr Marshall confirmed that they had submitted all relevant documentation and there was no further evidence to present. They also confirmed that they were both content for the hearing to continue by teleconference, as opposed to video conference as had been discussed at the Case Management Discussion.
- 19 The Tribunal proceeded to hear evidence from both Mr Gardiner and the Respondent. For the avoidance of doubt the following is a summary of the evidence and does not constitute a verbatim account of the hearing.
- 20 Mr Gardiner confirmed that the Applicant sought possession of the property. He had previously lived in it as his principal home before renting it out. It was his only rental property. He had chosen to let the property to the Respondent, who was a friend of his colleague. He never intended to become a landlord and this was causing him a great deal of anxiety and stress, as well as emotional and financial hardship. The property costs outweighed the rental income. In November 2023 he had instructed Mr Gardiner to serve the Respondent with a notice to leave. The Applicant knew there was a process he had to go through to sell the property and he was terrified to increase the rent in case it was seen as intimidating or threatening towards the Respondent. He had therefore used Mr Gardiner's letting agency so that he could be fair and impartial.
- 21 Mr Gardiner confirmed that the Applicant required to sell the property so that he and his partner could purchase a new home. The eviction process had delayed this. The past five months had been a living hell for the Applicant and he wanted it to be over. He was not suited to be a landlord and never intended to venture into the profession against.
- 22 Mr Gardiner confirmed that there had been a discussion with the Respondent when the notice to leave was served, and she was advised of the Applicant's intentions. The Respondent had indicated she would move into a friend's home. The Applicant had offered not to insist on the final months rent if the Respondent vacated at the end of the notice period, in order to assist her with her moving costs. The property had therefore been placed on the market and an offer was received in January 2024. Mr Gardiner made reference to the correspondence from the Applicant's solicitor which had been submitted to the Tribunal. The Respondent had approached the local authority, who had told her that they would not support her until she was involuntarily homeless. The Applicant had therefore made the application to the Tribunal.

- 23 Mr Gardiner explained that the Applicant's intention to sell was clear from the fact that the property had been marketed, and an offer accepted. The Respondent had been issued with the required notices and had been given a reasonable time frame to find alternative accommodation. The local authority had stated that they would not be in a position to offer accommodation until such time as an eviction order is granted. It was only fair that a date should be fixed for the Respondent to vacate so that the prospective purchasers could be given an entry date. Mr Gardiner noted the Respondent's physical issues, which indicated she would have difficulty walking up stairs. The property was a top floor flat. Mr Gardiner noted the Respondent also suffered from poor mental health. He submitted that the same could be said for the Applicant.
- 24 In response to questions from the Tribunal Mr Gardiner confirmed that the Applicant had discussed the situation with the Respondent at the commencement of the process. The prospective purchasers had confirmed again that they were still intending on proceeding with their purchase of the property.
- 25 Mr Marshall was given an opportunity to cross-examine Mr Gardiner. He asked Mr Gardiner what the current mortgage costs were. Mr Gardiner explained that the Applicant's mortgage had moved to a variable rate. The last mortgage payment in September was for £558. Prior to that it had been for £567. The rent was £500, less the management fee of 12% per month. The Applicant also had income tax to pay on his rental income at the rate of 20%. The Applicant was paying approximately £200 more than he was receiving in rent. Mr Marshall asked if this was the only property owned and let by the Applicant. Mr Gardiner confirmed that it was. The Applicant was in employment but wasn't particularly wealthy. He did not want to be a landlord again. Mr Gardiner did not have details regarding the Applicant's income but he had shown he was under financial stress in terms of the additional payments he was having to make towards his mortgage.
- 26 Mr Marshall confirmed that he would primarily speak on behalf of the Respondent, as her speech had been impaired by her recent stroke. He confirmed that she accepted the landlord wanted to sell the property. There was no dispute about that. What she had not realised was that the Applicant required an eviction order. She found this out when she contacted the local authority regarding rehousing. The Respondent also didn't realise that she could defend the application on the grounds of reasonableness. She wanted to stay in the property. Whilst it was a top floor flat, that was more than compensated for by the area in which the property was located. It was quiet and residential. The Respondent was aware that the local authority could offer her properties anywhere in the area. The condition of the properties may be poor and in an area she did not like. Mr Marshall confirmed that he had several clients who found themselves in a position where they had been offered properties by the local authority which they could not bear to live in.

- 27 Mr Marshall noted that the Tribunal could give weight to the Applicant's property rights when assessing reasonableness. He referred to his written submissions, advising that the Respondent was particularly worried about not being able to take her dogs to temporary accommodation, and having to put them into kennels. Mr Marshall confirmed that the Respondent had tried to seek accommodation in the private sector, however the lowest rent she could find was £700 per month. Her housing element of universal credit only paid around £300 per month. Mr Marshall confirmed that the Respondent had always paid her rent and kept the account up to date. Her recent stroke had made her vulnerable about her physical condition and she had recently been diagnosed with type 2 diabetes. Her health was not great. She therefore wanted to keep living in the property, albeit she accepted that her rent would increase over time. Mr Marshall referred to the decision of the Upper Tribunal for Scotland in the case of *Manson and Downie v Turner*. The case confirmed that the Tribunal could take into account all relevant facts. Mr Marshall reiterated that the Respondent had been in the property since 2020 and had conducted her tenancy well. She would face hardship if she had to move from the area in which she had settled. She was suffering from stress as a result of her stroke and diabetes, as well as not knowing whether she was going to be housed, or made homeless. The stress was unbearable.
- 28 In response to questions from the Tribunal Mr Marshall confirmed that the Respondent had a scan of her lungs scheduled on 23rd September 2024. A report would then go to her cardiologist. The stroke had been caused by a mitrial valve, therefore the doctor would await the outcome of the scan before deciding what further treatment may be required. The Respondent confirmed that she had no friends she could live with. There was no offer of alternative accommodation on the table. It was just the Respondent and her two dogs. The Respondent confirmed that she was 59 years old.
- 29 Mr Gardiner confirmed he had nothing to ask in terms of cross-examination.
- 30 Both parties were given the opportunity to make closing submissions. Mr Marshall advised that the Respondent accepted that the Applicant wished to sell the property. However it was a question of reasonableness. The Applicant had not produced any evidence regarding his financial position, nor his partners. That could be relevant if he was financially stable in terms of his need to sell the property.
- 31 Mr Gardiner advised that he did not know the Applicant's income. The Applicant was 36 years old. Mr Gardiner noted that the Applicant had previously worked with the Respondent's son in a similar role at the same company, working as a car salesman. Mr Gardiner did not believe the Applicant was wealthy. The Respondent advised that her son earned around £80,000 per year, which included commission.
- 32 The hearing concluded thereafter and the Tribunal determined to issue its decision in writing.

Relevant Legislation

- 33 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Private Housing Tenancies (Scotland) Act 2016, as amended:-

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,

(b) the tenant occupies the property (or any part of it) as the tenant’s only or principal home, and

(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

51 First-tier Tribunal’s power to issue an eviction order

(1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

Schedule 3, Part 1

1 Landlord intends to sell

(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, and

(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.

Findings in Fact

34 The parties entered into a Tenancy Agreement in respect of the property which commenced on 1 July 2020.

35 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

36 On 23 November 2023 the Applicant's representative emailed a Notice to Leave to the Respondent.

37 The Notice to Leave cited ground 1 and confirmed that proceedings would not be raised any earlier than 18 February 2024.

- 38 The Notice to Leave is in the format prescribed by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 39 The Applicant has title to sell the property.
- 40 The Applicant has marketed the property for sale. On 22 January 2024 the Applicant received an offer to purchase the property. The Applicant accepted the offer and a provisional entry date was set for 11 March 2024. The entry date was postponed pending the outcome of this application.
- 41 The prospective purchasers who made the offer still intend on purchasing the property and are currently residing with family members as a temporary measure.
- 42 The property has a mortgage in place. The rent received under the terms of the tenancy does not fully cover the mortgage costs.
- 43 The Applicant requires to sell the property due to rising costs, and to purchase a property with his partner. The Applicant currently resides with his partner.
- 44 The ongoing eviction process is causing the Applicant stress.
- 45 The Applicant intends to conclude the sale of the property within three months of the Respondent ceasing to occupy.
- 46 The Applicant does not own any other properties. The Applicant is employed as a car salesman.
- 47 The Applicant is 36 years old.
- 48 The Respondent is a single female who resides in the property with her two dogs.
- 49 The Respondent has sought assistance with rehousing from the local authority. The Respondent has been advised that her application will not progress until an eviction order is made by the Tribunal.
- 50 The Respondent suffers from various health issues including diabetes, mitral stenosis, depression, arthritis of the knees and lower spine and a hiatus hernia. The Respondent has recently suffered a stroke. The Respondent is awaiting a scan to determine further treatment.
- 51 The Respondent has resided in the property for over four years. The Respondent is settled in the property and the surrounding area.

- 52 The Respondent has not found an affordable private let in the area. The Respondent has no family or friends she can reside with.
- 53 The Respondent has complied with her obligations under the tenancy agreement between the parties.
- 54 The Respondent is 59 years old.

Reasons for Decision

- 55 In reaching its decision the Tribunal took into account the application and written representations from the parties together with the submissions and evidence heard at the Case Management Discussion and hearing. The Tribunal had sympathy for both parties in this situation and gave careful consideration to the positions set out on both sides.
- 56 The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicants' intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.
- 57 The Tribunal was further satisfied on the basis of its findings in fact that the Applicants had title to sell the property and intended to do so within three months of the Respondent having vacated. The Tribunal accepted that his intention was genuine based on the fact that he had marketed the property and had accepted an offer from prospective purchasers. The Tribunal therefore had to consider whether it was reasonable in the circumstances of the case to make the order.
- 58 The Tribunal had regard to the decision of the Upper Tribunal for Scotland in *Manson and Downie v Turner*. The Tribunal accepted that in assessing whether an eviction order is reasonable it must consider and weigh all available facts relevant to that decision, and that whilst the landlord's intention may be reasonable that did not necessarily mean that it would be reasonable to make an eviction order. The property rights of a landlord should not be given primacy over the occupancy rights of a tenant, and vice versa.
- 59 The Tribunal accepted that the Applicant intended to sell the property as a result of increased costs and his desire to purchase a property with his partner. The Applicant had set out the impact of the ongoing eviction process upon both his mental health, and his future plans. The Tribunal accepted his evidence in this regard, as put forward by Mr Gardiner. However the Applicant himself had not given evidence at the hearing therefore the Tribunal had been unable to question him further on this. He had not submitted any evidence of his financial

position, other than his own unsigned statement and Mr Gardiner's submissions at the Case Management Discussion and hearing, and Mr Gardiner had been unable to confirm his income. The Applicant had not led any evidence to suggest he himself was at risk of homelessness. He was employed, aged 36, and in a relationship with his partner, with whom he resided.

- 60 The Tribunal did take into account the fact that the mortgage costs were not being covered by the rent. The Tribunal noted however that it would be open to the Applicant to review the rent by way of the statutory process set out in the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal also noted that the Applicant was not a professional landlord and wished to leave the rental sector.
- 61 The Tribunal also took into account the fact that there was a prospective purchaser who wished to purchase the property, and an offer had been accepted by the Applicant. However, again, the prospective purchaser had not given evidence at the hearing, and the Tribunal had therefore been unable to seek further information from them on their own circumstances. The Tribunal could therefore give less weight to this as a relevant fact.
- 62 The Tribunal considered it could give significant weight to the Respondent's personal circumstances, concluding that she was a vulnerable adult with various health conditions she suffered from, as evidenced by the correspondence from her medical practice. The Tribunal accepted that she had recently suffered a stroke and was undergoing scans to identify what further treatment may be required. There was no imminent guarantee that she would be able to obtain suitable alternative accommodation, and the Tribunal considered it could reasonably assume that, were she to be temporarily housed by the local authority, this could have a detrimental impact on her health. The Tribunal accepted that there were no other viable options for her in terms of rehousing. She was settled in the property, having resided there for over four years. There had been no known conduct issues during that time, and her rent was up to date. The Respondent had attended both the Case Management Discussion, and the hearing, and had given evidence to the Tribunal when able to do so.
- 63 The Tribunal has to assess reasonableness based on the circumstances as they exist at the time of the decision. Having weighed the above facts as relevant to the reasonableness of making an eviction order, the Tribunal concluded that it would not be reasonable to make an eviction order at this time. The Tribunal considered it could give greater weight to the Respondent's circumstances, particularly her recent health issues, and concluded that the potential prejudice to the Respondent were she to be evicted from the property at this particular point in time outweighed any prejudice to the Applicant were she to remain in the property. Whilst the Tribunal accepted that the Applicant would be in a better financial position if the property were to be sold, ultimately

that did not take precedence over the potential risk to the Respondent's health in this case were an eviction order to be granted.

64 For the avoidance of doubt this decision does not prevent the Applicant from submitting a further application to the Tribunal at a future date.

65 The Tribunal therefore determined not to make an eviction order in this case as it would be unreasonable to do so based on the circumstances as they exist at this time. The decision of the Tribunal was unanimous.

Right of Appeal

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

R. O'Hare

17 October 2024

Legal Member/Chair

Date