



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/24/0706

Re: Property at 24 Parkgrove Terrace, Edinburgh, EH4 7NX (“the Property”)

Parties:

Mr Robert Wallace, 17 Clermiston Green, Edinburgh, EH4 7PB (“the Applicant”)

Miss Melanie Joanne Barker, 24 Parkgrove Terrace, Edinburgh, EH4 7NX (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent

Findings in Fact

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of a Private Residential Tenancy Agreement.
2. The Applicant bought the Property in 2016 with inheritance that he received following his mother’s passing together with some savings. It was an investment for his family’s future. It was intended that the Property be let out for additional income.
3. The Respondent has been the Applicant’s tenant since 2021. She was not his first tenant.

4. The Applicant owns three properties with his partner, Miss Jacqueline Thomson: (i) his own home, (ii) the Property and (iii) his daughter's flat. All are owned outright without mortgage lending.
5. The flat has two bedrooms and was bought for Stephanie Wallace to live in to (i) ease overcrowding at the family home, and (ii) aid her recovery from a period of poor mental health. It was not visaged to be a long-term property. It was bought using money gifted to the Applicant by his father.
6. The flat is no longer suitable for Miss Wallace and her family. It is small, cramped and damp. It requires works to remedy the damp that cannot be undertaken with an occupier living in it. The bedrooms are too small for two young children. There is a lack of storage space. There is no facility to dry washing outside.
7. The Property is a two-bedroom good size and in good condition. It would be good as a family home, and would let Stephanie's partner move in. It has a small garden.
8. After deduction of management fees by his letting agent, the Applicant receives about £812 per month in hand from the rent for the Property.
9. The Applicant intends to sell the flat.
10. The Applicant and his partner cannot afford to purchase another property for their daughter to live without obtaining mortgage financing, even with the net free proceeds of sale from the flat.
11. The Applicant and Miss Thomson are motivated by concern for the health and wellbeing of their daughter.
12. The Respondent is 48 years old and turns 49 in January 2025.
13. Within six weeks of moving into the Property in or around May 2021, the Respondent's health went into decline. She contracted the Delta variant of Covid-19. She was hospitalised twice. She was bed bound for around three months. She already suffered from asthma. She suffers from long Covid. She has extreme fatigue. She can neither sit nor stand for any length of time. She has developed unusual allergic reactions to things that she previously had no intolerance to. She suffers from cognitive challenges. Her hair fell out. Her condition triggered early menopause. She developed inflammatory arthritis. She is also autistic, and was first diagnosed as being on the autistic spectrum as a child.
14. The Respondent subsequently lost her job. She is now in receipt of universal credit. Her benefits include housing benefit that covers her rent in full. She aspires to get well and get back into work.

15. The Respondent has suffered periods of depression and has had suicidal thoughts.
16. The Respondent has sought medical help, but her treatment has made very little difference.
17. The Respondent manages her condition through strict routine. She has to rest well for at least a full day prior to any activity, and then rest the day after to recover. She limits her daily activities so that she is only ascending and descending the stairs at the Property once or twice a day. Generally, she stays in bed upstairs, which is also where the only bathroom in the Property is.
18. The Respondent's GP surgery is at the end of her road, approximately 50 metres from the Property. However, the Respondent typically accesses her GP appointments by telephone.
19. The Respondent has no local support network. She has friends who live in London, Liverpool, Durham and Newcastle who check on her from time to time.
20. The Respondent does not get any home care support.
21. The Property does not meet the Respondent's needs present.
22. The Respondent intends to remove from the Property when she finds suitable accommodation.
23. The Respondent has made enquiries with the local authority regarding social housing, and is awaiting assessment by the occupational health team.
24. The Respondent says that she has no intention or desire to return to England. She intends to remain in Edinburgh.
25. The Respondent has met all of her obligations under her tenancy agreement.
26. It is more likely than not that the local authority would be able to find suitable accommodation to house the Respondent quicker than it would be able to find suitable accommodation to house Miss Wallace, her children and her partner.
27. The Applicants are likely to take further steps to recover the Property in the interests of assisting their daughter.

Findings in Fact and Law

1. The Applicant gave valid Notice to Leave to the Respondent relying upon Ground 5 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016

2. Stephanie Wallace is a qualifying relative of the Applicant within the meaning of Paragraph 5(5)(b) of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016.
3. It is reasonable to grant an eviction order.
4. Ground 5 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 applies.
5. The Private Residential Tenancy between the parties will terminate on 14 March 2025.

Statement of Reasons

1. This Application called for a Hearing on 5 December 2024 by teleconference call. The Applicant was represented by Ms Doyle, solicitor. The Respondent was represented by Mr Wilson, lay representative.
2. In this Application the Applicant seeks an eviction order under Ground 5 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), which is in the following terms:-

“5 Family member intends to live in property

- (1) It is an eviction ground that a member of the landlord's family intends to live in the let property.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
 - (a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and
 - (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
- (3) A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—
 - (a) the family member is incapable of having, or expressing, that intention, and
 - (b) the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.
- (4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—
 - (a) in a qualifying relationship with the landlord,
 - (b) a qualifying relative of the landlord,
 - (c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

- (d) in a qualifying relationship with a qualifying relative of the landlord.
- (5) For the purposes of sub-paragraph (4)—
 - (a) two people are in a qualifying relationship with one another if they are—
 - (i) married to each other,
 - (ii) in a civil partnership with each other, or
 - (iii) living together as though they were married,
 - (b) “a *qualifying relative*” means a parent, grandparent, child, grandchild, brother or sister,
 - (c) a relationship of the half blood is to be regarded as a relationship of the whole blood,
 - (d) a person's stepchild is to be regarded as the person's child,
 - (e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.
- (7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.”

3. It is a matter of agreement between the parties that the Applicant wishes his daughter, Stephanie Wallace, to live in the Property with her partner and two children. In that respect, the first part of Ground 5(2) is met: Stephanie Wallace is a qualifying relative of the Applicant, and she intends to live in the Property as her only home for at least three months. The only question that remains for the Tribunal to determine is whether it is reasonable to grant the eviction order.

Evidence

4. The Tribunal heard evidence from four witnesses:- Stephanie Wallace (the Applicant's daughter), Robert Wallace (the Applicant), Jacqueline Thomson (the Applicant's partner) and Melanie Barker (the Respondent).

Stephanie Wallace

5. The Tribunal heard evidence from Stephanie Wallace first. She is the daughter of the Applicant and his partner, Jacqueline Thomson. An affidavit from Miss Wallace was lodged by the Applicant with the Tribunal, and Miss Wallace adopted that affidavit as her evidence.

6. Miss Wallace has recently given birth to her second child. She is currently living in a small two-bedroom flat with her two children. The flat is owned by her parents. Her eldest child is from a previous relationship, and is now five years old. Her newborn is under one-month old. Miss Wallace is in a stable

relationship with the father of her youngest child. He lives with his parents, who are neighbours of the Applicant.

7. Miss Wallace is in part-time employment. She works in a playgroup at Cramond. She is currently on maternity leave. She is in receipt of universal credit, which includes an allocation for housing benefit. Her housing benefit does not cover her full housing cost. Her shortfall is £250 per month.
8. Miss Wallace confirmed that her partner is in full-time employment as a sign fitter. He does not receive any benefits.
9. Miss Wallace confirmed that she moved into her flat in or around Summer 2020. She was unable to say whether the flat was purchased by her parents for her use. She spoke of the flat no longer being suitable for her needs. Her affidavit explained that there is no garden or drying green, and no outdoor space for her daughter to play. She described the flat as cramped. She said that there was not enough space for her and her two daughters, let alone her partner as well. It is against that background that she was hoping to move into the Property. It also has two bedrooms, but the Property has more space. She could live there with her partner and two children. It would be a family home. It has a small garden for the children to play in. It is close to both sets of parents for support.
10. Miss Wallace explained that she and her partner had looked for alternative accommodation but had been unable to find anything suitable. The suitable properties in Edinburgh were outwith their budget, with rent being comfortably in excess of £1,000 per month. They would need to move out of Edinburgh to find property in their rental range, which would move them away from work and family.

Robert Wallace

11. The Applicant confirmed that he works for the NHS as a porter. He lives with his partner, Jacqueline Thomson. She is also employed, as a Clinical Support Worker. Both earn a modest income.
12. The Applicant confirmed that he bought the Property in 2016 with inheritance that he received following his mother's passing together with some savings. It was an investment for his family's future. It was intended that the Property be let out for additional income. He said that there had been four or five tenants in the Property since he bought it. The Respondent has been his tenant since 2021.
13. The Applicant confirmed that he owned three properties, all with Miss Thomson: (i) his own home, (ii) the Property and (iii) his daughter's flat. All were owned outright without mortgage lending. He explained that the flat had been bought for Stephanie. At the time the flat was bought, Stephanie had been living with the Applicant and Miss Thomson, as well as her sister, at their home. Stephanie had a new baby at the time. The Applicant described a

difficult living situation. His home was, and is, a two-bedroom house, and it had four adults and an infant living in it. It was overcrowded. Then the flat came up for sale. It was quite near the Applicant's home and, as a two-bedroom flat, seemed ideal for Stephanie and her baby. It gave her space and privacy, but was still close.

14. The Applicant said that he approached his own father, who was in his eighties, and it was agreed that the Applicant would get an advance on his inheritance which, together with savings, bought the flat for Stephanie. She is liable to pay rent. Her rent is mostly covered by housing benefit, but she is responsible for a shortfall. The Applicant conceded that she sometimes missed a payment, and that he did not generally chase it. He said that his motivation was to try to help Stephanie out.
15. The Applicant spoke about the flat not being suitable for Stephanie anymore. It was small, cramped and damp. It had issues with mould that could not be sorted out with Stephanie and the children in place, but they had nowhere to go. He spoke of the flat needing near constant re-decorating because of the damp. It had to be wallpapered frequently. By contrast, the Property was a good size and in good condition. It would be good as a family home, and would let Stephanie's partner move in.
16. The Applicant confirmed that, after deduction of management fees by his letting agent, he received about £812 per month in hand from the rent for the Property. The Applicant (with some assistance from Miss Thomson, who seemed to have a better grasp of the figures) confirmed that Stephanie's rent was £775, of which Stephanie paid £250 and her benefit covered £525. The Applicant suggested that he would likely let Stephanie and her family live in the Property rent free. When it was pointed out that this would be a sizeable drop in income for him, he confirmed that if Stephanie moved out of the flat then he would likely sell it and use the capital as a retirement fund.
17. The Applicant was asked whether he had considered selling the flat to fund the purchase of a new house for Stephanie. He said that was not possible. Even with the funds from the sale of the flat, he would not be able to buy a new house without mortgage lending. At his age, he was not prepared to get a mortgage and thought he would be unlikely to get one anyway. Stephanie and her partner were unlikely to be able to get a mortgage either, so it was a non-starter. The Applicant stressed that he just wanted to help his daughter out.

Jacqueline Thomson

18. Miss Thomson is the long-term partner of the Applicant, and mother of Stephanie Wallace. She and the Applicant have been together for 43 years.
19. Miss Thomson spoke of the Property having been bought with the Applicant's inheritance after his mother's death. It was bought with the inheritance and savings. It was bought looking ahead to retirement, and for additional income. The additional income was not much, after maintenance of the Property was

taken into account. The money received from rental was put into a separate bank account that only has about £7,000 in it at the moment.

20. Miss Thomson spoke in greater detail about how the flat came to be bought. She spoke of Stephanie suffering from poor mental health in 2019/2020, following the birth of her first child. Stephanie had suffered from severe low mood and depression. She had felt abandoned by her former partner. She was living at home in a crowded house with a new baby. Miss Thomson described Stephanie as becoming a “shell of herself”. She spoke of Stephanie hitting her head off of walls, and literally tearing her hair out. Miss Thomson generally painted a picture of a young woman in turmoil and struggling. She lamented that she and the Applicant had been working full-time and had not always been available to help out. Fortunately, Stephanie sought professional medical help, and she is in a better place now. Miss Thomson caveated that by saying that Stephanie is still not “100%”, but it was clear that she felt Stephanie had improved markedly.
21. Part of what seemed to help was Stephanie and her daughter moving out of the family home and into the flat. The flat had been bought to get Stephanie some space, but close to her family. Miss Thomson spoke of approaching the Applicant’s father to seek help buying it, and of the Applicant effectively getting his inheritance in advance.
22. At first, the flat seemed like the ideal solution. It was small, but that was fine for a single mother and a baby. It was never a “forever home”, but it was ok for the time being. However, they soon noticed problems with damp and mould, which kept coming back. They then discovered that there had been a fire in the flat upstairs, and the fire service had attended to put it out. As a result, the flat had suffered significant water ingress, and never really dried out. The wallpaper kept peeling, and it needed regular decoration. Now, Stephanie has a new baby again and the problems are more acute. There is no drying green, so all clothing has to be dried inside. The flat is very small, meaning that there is a lack of space for the two children. There is barely space for furniture to store clothes. It is not big enough for Stephanie’s partner to move in because there is no storage space for his things. There is not enough space for two single beds in the children’s bedroom. The flat is on the ground floor, but there are approximately ten stairs up from street level to the entrance door. Put simply, the flat does not meet Stephanie’s needs anymore.
23. Miss Thomson expressed her concern for her daughter’s wellbeing. She spoke of her concerns that Stephanie’s mental health would deteriorate if she was stuck in the flat. Stephanie wants to live with her partner, and Miss Thomson was afraid that being unable to live as a family, and being a lone parent night after night, would negatively affect Stephanie.
24. Like the Applicant, Miss Thomson asserted a desire to help Stephanie. She spoke of Stephanie having been through a lot, and of wanting to help her out. That is why Miss Thomson wanted to see Stephanie move into the Property. It is a good size, has a lot more space, has a garden, has no damp or mould

issues, and is close to the Applicant and Miss Thomson, as well as Stephanie's partner's family. Miss Thomson repeatedly described the Property as a "family home".

25. Miss Thomson was asked about Stephanie's failure to pay full rent as it fell due. She spoke of not putting pressure on her to make up rent arrears, and again referred to wanting to support her daughter. When asked about the potential drop in income if Stephanie was to move into the Property, she also spoke of selling the flat to support their retirement. When asked whether the sale of the flat could be used to fund another purchase, she also asserted that would not be possible without additional mortgage lending. She said that she and the Applicant were too old to be taking out a mortgage, and that Stephanie and her partner would not be able to get a mortgage. Stephanie's income is too low, and her partner has only just gone back to work following a two-year absence. Miss Thomson explained that he had suffered a workplace injury to the brain which had caused epilepsy. His lack of recent employment history almost certainly meant that he would be unable to find a mortgage lender willing to lend.
26. It was put to Miss Thomson that she had previously held herself out to be the Applicant's wife in previous proceedings before the Tribunal when that was, in fact, not true. Miss Thomson advised that the Tribunal member had called her "Mrs Wallace" and that she just had not corrected them. She said that it happened all the time and that she rarely corrected people for it. She had been with the Applicant for a long time. They were like husband and wife.
27. It was put to Miss Thomson that she had previously told the Tribunal, in previous proceedings for eviction on the same ground, that she only owned her home and the Property, but that was a lie because she also owned the flat. Miss Thomson's response was that she did not remember being asked about any other properties but, if she had been, then she had not understood the question to be about anything other than her house and the Property.

Melanie Barker

28. The Respondent is 48 years old. She turns 49 in January 2025. She spoke of moving into the Property in or around late May/early June 2021. She previously lived in London. Around that time, she received notice to end her previous tenancy. An opportunity arose for her at work to help build an office location in Edinburgh, and she decided to take that opportunity. She had no remaining ties to London, so decided to start a new life in Edinburgh.
29. The Respondent spoke of doing an online viewing of the Property because of Covid restrictions. Initially, having viewed the Property, someone else was offered the let and it was taken off the market. However, that fell through and the Property came back on the market. The Respondent moved quickly to secure the Property, and moving in became straightforward.

30. However, within six weeks of moving in, the Respondent's health went into decline. She contracted the Delta variant of Covid-19, and she said that her health "fell off a cliff". She was hospitalised twice. She was bed bound for around three months. She had no local support system, though she had a friend in London who was offering support remotely. She already suffered from asthma, which did not help matters. Unfortunately, the Respondent did not truly recover. She suffers the ill-effects of long Covid. She has extreme fatigue. She can neither sit nor stand for any length of time. She has developed unusual allergic reactions to things that she previously had no intolerance to. She suffers from cognitive challenges, which also made it challenging for her to give her evidence in these proceedings. Her hair fell out. Her condition triggered early menopause. She developed inflammatory arthritis. All of this is more particularly set out in medical reports produced by the Respondent to the Tribunal. The Respondent is also autistic, and was first diagnosed as being on the autistic spectrum as a child.
31. The Respondent subsequently lost her job. She is now in receipt of universal credit. Her benefits include housing benefit that covers her rent in full. She said that she was not a "benefits person", and described finding it difficult to rely on that. She described herself as a strong person, and asserted that she did not want to rely on others. She aspires to get well and get back into work.
32. The Respondent spoke of having depression and feeling suicidal. She has sought medical help, but her treatment has made very little difference. She spoke of managing her condition through strict routine. She has to rest well for at least a full day prior to any activity, and then rest the day after to recover. She limits her daily activities so that she is only ascending and descending the stairs at the Property once or twice a day. Generally, she stays in bed upstairs, which is also where the only bathroom in the Property is.
33. The Respondent's GP surgery is at the end of her road. From its own online search, the Tribunal notes that it is only about fifty metres from the front door of the Property. However, the Respondent confirmed that her GP appointments were almost always by telephone. She spoke of taking part in a study into the effect of long Covid on the brain, but that she did so principally to get a brain scan as she had become convinced that she had developed brain damage.
34. The Respondent spoke of the Property being her home and only sanctuary. She has no other support network. She has friends who live in London, Liverpool, Durham and Newcastle, but does not have a local network she can call upon. She has no rich relatives that can give her money for a house. She said that the Property was her only constant. In her eyes, taking the Property away would take away any real chance at independence. She previously made enquiries about getting home care, but felt those were not taken seriously at the time. At the moment, she does not get any care support.
35. The Respondent accepted that the Property does not meet her needs at present. She is hoping to find alternative accommodation that is more suitable

and, if she does, she intends to leave of her own volition. She remains hopeful of recovering her health, and spoke of needing a stress-free period to heal. She asserted that the stress of these, and prior, Tribunal proceedings was taking a toll and preventing her from recovering.

36. If she does not recover, the Respondent says that she intends to look at social housing alternatives. She is already in contact with the local authority about that, and made an application in mid-November 2024 to the local authority for housing. She is currently awaiting an assessment by the occupational health team for that purpose. She has been advised not to look at the Private Sector for new accommodation. The local authority is aware of these proceedings.
37. The Respondent also spoke of looking at Sheltered Housing as an alternative. However, there is an age restriction and she will not be eligible for this until she turns 50 in January 2026.
38. The Respondent says that she has no intention or desire to return to England. She intends to remain in Edinburgh.

Submissions

39. For the Applicant, Ms Doyle moved the Tribunal to find that it was reasonable to grant the eviction order and to do so. She described the Tribunal's role in this case as unenviable; having to choose between two parties in very different but very difficult circumstances. She asserted sympathy for the Respondent's position, but submitted that having regard to all of the circumstances it was reasonable to grant the order.
40. Ms Doyle spoke about the Applicant's financial position as he approaches retirement. She spoke of the family having a traditional view that the older generations should help the younger ones. She spoke about the circumstances leading to the purchase of the flat for Stephanie Wallace, and their fear that an inability to rehome Stephanie in the Property could cause her mental health issues to recur.
41. Ms Doyle spoke of the family as working hard, living modestly, and saving where they could. Both the Property and the flat were purchased with retirement planning in mind, but also with one eye on their daughters' futures. The Applicant and Miss Thomson are not of unlimited means. They are unable to subsidise another property purchase for Stephanie within the relevant area. They would require mortgage lending and are not in a position to obtain that.
42. Ms Doyle made reference to the discretionary nature of Ground 5 for eviction. She highlighted that Ground 5 was previously a mandatory ground until tenant protection measures were brought in during the Covid-19 pandemic. When the Respondent was offered her tenancy, the tenant protection measures that made Ground 5 discretionary as a temporary measure. It was not anticipated

that such protection would be made permanent. It was submitted by Ms Doyle that, had the Applicant known that all mandatory grounds for eviction may be removed, he may have made a different choice in 2021.

43. Ultimately, Ms Doyle's submission was that the flat was no longer suitable for Stephanie Wallace and the Property was required for her to make a permanent home with her partner and children. She compared the two properties to emphasise that point. She highlighted that, if Stephanie could not move into the Property, then she would have to source another house elsewhere. To be within her budget, she would need to move out of Edinburgh and away from her family. Given her previous mental health difficulties, that was not tenable. Stephanie and her young family need family support, and they all live within close proximity of the Property.
44. Ms Doyle commended the Respondent on her resilience in the face of her illness. However, she submitted that the Respondent's resilience tended to suggest that she was capable of thriving in other surrounds. It was within her means to find and settle in alternative accommodation. Ms Doyle questioned the logic of focusing on sheltered housing, and submitted that it would be easier for a single person to find suitable accommodation than it would be for a family of four.
45. For the Respondent, Mr Wilson adopted his written submissions which had been lodged by email on 19 June 2024. In terms thereof, Mr Wilson submitted that the approach to questions of reasonableness is set out in *Cumming v Danson*, 1942 2 All E.R. 653, and *Alam v Ross*, FTS/HPC/EV/21/1348 and 1349.
46. Mr Wilson agreed that Tribunal's role was unenviable here. He referred to the previous application for an eviction order brought by the Applicant against the Respondent. In that case, the Tribunal refused the order because it was not satisfied that Miss Wallace intended to live in the Property. Here, he conceded, that fact was agreed. The only question was whether the Tribunal should exercise its discretion to grant or refuse the eviction order.
47. Mr Wilson made reference to the Respondent's medical conditions. She has to shield to avoid the risk of further infection. He referred to the proximity of the Respondent's GP to the Property. He referred to the likely difficulty for the Respondent in finding alternative accommodation, including the likelihood that she would be made homeless and housed in a combination of hotel accommodation and temporary accommodation until suitable housing was found. He referred to sheltered housing being a potentially suitable alternative, but to that being unattainable before the Respondent turns 50 in January 2026. Ultimately, he submitted that eviction would be detrimental to the Respondent's physical and mental health. When questioned by the Tribunal, Mr Wilson conceded that the Property did not meet the Respondent's needs, but submitted that the benefit of stability, notwithstanding a lack of suitability, in the Property was more beneficial than the likely impact of instability whilst the Respondent passed through multiple

alternative accommodations, including hotel and temporary accommodation, which was also unlikely to be suitable for the Respondent's needs.

48. Mr Wilson contrasted that against the Applicant's position, under reference to Stephanie Wallace's circumstances. He challenged the suggestion that council tax would be less expensive for the Property than the flat given that, as a recipient of universal credit, Miss Wallace likely received Council Tax Reduction. Expressing sympathy for Miss Wallace's living conditions, Mr Wilson suggested that the rental income received by the Applicant could be used to subsidise Miss Wallace's rent at a different Property. The Applicant, he said, would not suffer any adverse financial impact if the order was refused.
49. Mr Wilson sought to attack the evidence of Jacqueline Thomson as being incredible and unreliable. Specifically, he said that the evidence she gave at the Hearing in the previous proceedings regarding the properties she owned was inconsistent with what was said this time. His submission was that she had lied in those proceedings, and her evidence should be treated with caution.
50. Ultimately, Mr Wilson's submission was that the Respondent had kept to her end of the bargain. She paid her rent. She did not cause trouble. It followed that she should not be penalised by removing her from her home.

Discussion

51. Representatives for both parties commented on the task that faces the Tribunal in this case. This is, without question, an exceptionally difficult case to determine.
52. Firstly, the Tribunal agrees with Mr Wilson that the correct approach to determining reasonableness is as set out in paragraphs 31 and 32 of *Alam v Ross*, under reference to *Cumming v Danson*:-
 - "31. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties
 32. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

"[I]n 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”.

53. The task for the Tribunal is to consider all of the facts of the case and determine whether it is reasonable to grant the order sought. In this case, there was relatively little that was ultimately in dispute between the parties from a factual perspective. The only challenge made to the evidence of the parties was the submission by Mr Wilson that Miss Thomson’s evidence was incredible and unreliable. Having considered that submission, the Tribunal considered that whilst the evidence given by Miss Thomson was not, on the face of it, consistent with her evidence in this case, her explanation that she misunderstood the question was plausible. In any event, if there was merit in the criticism that she deliberately lied to the previous Tribunal (which, for the avoidance of doubt, the Tribunal does not accept), there was nothing in her evidence to this Tribunal to suggest that she was being anything other than truthful here. Indeed, the Tribunal found all of the witnesses to be credible and reliable, and accepted their evidence in full.
54. The Tribunal has had regard to the Respondent’s circumstances. She has obviously become very unwell over the past four years. That notwithstanding, she has complied with all of her obligations and no criticism of her is presented by the Applicant. She has been a good tenant. The Tribunal accepted that her health, both physical and mental, are likely to be negatively affected by her requiring to remove from the Property.
55. As regards the Applicant, he and his wife are not in a position, even after sale of the flat, to purchase a new property for his daughter within the local area without mortgage lending. At their age, their reluctance to seek lending is understandable. Miss Wallace and her partner will not be in a position to obtain mortgage financing. The Applicant also stands to suffer no adverse financial impact from a decision to refuse the eviction order. However, this is not an action about finances. The Applicant’s motivation is the protection of his daughter’s health and wellbeing. The Tribunal accepted that the flat is unsuitable for the continued occupation of Miss Wallace and her children. It is damp and prone to mould. It needs substantial work that cannot be undertaken whilst they live there. It is too small for Miss Wallace and her children to live in with her new partner. Miss Wallace has a history of poor mental health, and her current mental health is put at risk by her inability to live with her partner following the recent birth of her youngest child. She requires to be near to family for support. The Property is within a geographical area that would allow for that support. Miss Wallace and her partner cannot afford to rent other suitable properties in the area. They would need to move away from the area to find suitable properties, which would impact on her access to family support.
56. That being the case, we are presented with the need to choose between two vulnerable women over who should live in the Property. Both the Respondent

and Miss Wallace have their own personal challenges. Both stand to benefit to some degree by being allowed to live in the Property. Both would suffer in some fashion by a decision that they should not be allowed to live in the Property.

57. The Tribunal accepted Ms Doyle's submission that it will likely be easier for the local authority to find accommodation that meets the Respondent's needs, as a single person with specific medical needs, than it will be to find accommodation for a family of four. The Tribunal also considered that there is weight in the proposition that the Applicant should be able to use property that he owns to safeguard his family and their interests. That is a strong factor, even in the face of the Respondent's own needs and the likely impact on her.
58. However, the Tribunal's role is to look at all of the circumstances of the case "as a man of the world" might do. In this case, the Tribunal has taken a step back to look at the circumstances in the round. This is the second time that the Applicants have sought to recover the Property for their daughter. They were steadfast in their resolve to recover the Property for her benefit. They want to find somewhere else for their daughter to live. The Respondent's evidence is that the continued uncertainty over whether she can remain in the Property is causing her anxiety and, by extension, harm. The Tribunal determined that the refusal of the eviction order is unlikely to give the Respondent the certainty that she feels she needs. It is clear that the Applicants will continue to push for her eviction in order to make provision for their daughter. It seems inevitable that their next step, if the order was refused, would be to seek her eviction in order to sell the Property and purchase another property for their daughter to live in.
59. Even if the Applicants did draw a line after these proceedings, refusing to grant the order would not produce a positive result for anyone. The Respondent would still be living in a property entirely unsuitable for her needs, and which leaves her largely confined upstairs. Meanwhile, Miss Wallace, her children and her partner would likely be forced to move away from the area, but in the meantime Miss Wallace would likely be stuck in a property which is prejudicial to her health, and her children's health.
60. By contrast, granting the order will result in Miss Wallace and her family being housed in a suitable, stable family home close to the ongoing family support they require. It will also put the Respondent on track to being placed in accommodation that actually meets her needs, and will provide her with longer term stability to focus on getting well.

Decision

61. For all of those reasons, and having carefully weighed the evidence and submissions of the parties, the Tribunal unanimously determined that it is reasonable to grant the eviction order in this case.

62. Given that this is a no fault eviction, that the Respondent has complied with all that has been asked of her, that she requires assessment by the occupational health team at the local authority and that such assessment is likely to be delayed by the upcoming festive season, the Tribunal determined of its own accord that enforcement of the eviction order should be superseded until 14 March 2025 to allow the Respondent an opportunity to be assessed and work with the local authority to find suitable accommodation. The Tribunal recognises that the Respondent may not be housed within that timeframe, but enforcement cannot be superseded indefinitely pending suitable housing being found.
63. For the purposes of section 51(4) of the 2016 Act, the Private Residential Tenancy between the parties will terminate on 14 March 2025.

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.

16/12/2024

Legal Member/Chair

Date