



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

Chamber Ref: FTS/HPC/EV/24/1739

Re: Property at 3 Lewis Gardens, Bearsden, G61 4EB ("the Property")

Parties:

Ogo Ekweozor or Holley, 3 Brandon Court, Southsea, England, PO5 1PF ("the Applicant")

Ana Maria Ortega, 3 Lewis Gardens, Bearsden, G61 4EB ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

- 1.1 At the Hearing, which took place by telephone conference on 12 December 2024, the Applicant was in attendance and was represented by Mr Ross O'Donnell of Patten & Prentice, Solicitors, Greenock. The Respondent was also present and was represented by Mr Raymond Heath of East Dunbarton CAB.
- 1.2 Prior to the Hearing Mr O'Donnell on behalf of the Applicant lodged additional documentation by emails dated 27 November and 4 and 9 December 2024. Mr Heath had no objection to the Applicant's late productions.
- 1.3 Mr Heath on behalf of the Respondent had also lodged documentation by email dated 15 October 2024.

Background

- 2.1 A CMD had previously taken place on 11 September 2024. That CMD was adjourned to the Hearing to allow disputed issues identified between the parties to be determined by the Tribunal.
- 2.2 The Notes of the CMD record that only the reasonableness of granting an eviction order is a matter of dispute between the parties and identifies the issues to be resolved between the parties to be:-
 - i. To what extent is the Applicant financially disadvantaged by continuing to rent the Property to the Respondent?
 - ii. To what extent would the grant of an eviction order impact negatively upon the Respondent's health or finances?
 - iii. Balancing the interests of the Applicant and the Respondent, is it reasonable to issue an eviction order?

The Hearing

- 3.1 At the Hearing the Tribunal heard evidence only from the Applicant and the Respondent.

Evidence of Applicant

- 3.2 The Applicant's date of birth is 14 November 1980.
- 3.3 She resides at 3 Brandon Court, Southsea, PO5 1PF. She has lived there for 13 years and rents that property. She lives with her husband and three children aged nine years and eight years (twins).
- 3.4 The Applicant is self employed as a business consultant helping businesses with digital marketing. Her work requires that she travels a lot to the USA where she has clients.
- 3.5 The only the property owned by the Applicant is the Property which was previously owned by her parents. She bought the Property from her parents in 2009 after they retired and moved back to Nigeria.
- 3.6 The Property is a semi-detached house with three bedrooms.
- 3.7 The Applicant purchased the Property for £150,000 and took a mortgage with Nationwide for that purpose in the sum of £132,381.02 The mortgage term is 30 years.
- 3.8 The Property is now likely to sell at £280,000.
- 3.9 The Respondent moved into the Property in 2009. The Applicant was introduced to the Respondent by a member of her Church who said the Respondent was from Mexico and had a young son. She needed a property and a lot of help.
- 3.10 The Respondent's son is now aged 29.
- 3.11 The Applicant has no other connections in Scotland other than the Property.
- 3.12 Document 1 – the Applicant identified this document to be the tenancy agreement with the Respondent which began on 10 December 2015. She confirmed there had been previous tenancy agreement between the parties which began in 2009.
- 3.13 The rent in terms of the current tenancy agreement is £725 per calendar month and was previously £650 per calendar month under the previous tenancy agreement. The rent remains unchanged at £725 per calendar month with no increase having ever taken place.
- 3.14 In 2021 the Applicant had a conversation with the Respondent about increasing the rent as she has fallen behind with her mortgage payments. The Respondent gave the Applicant a list of repairs required to the Property. The Applicant carried out those repairs and then spoke to the Respondent again about increasing the rent. The Respondent stated she would stop paying the rent if it was increased. The Applicant then served a Notice on the Respondent by recorded delivery post which was signed for by the Respondent's son. The Respondent claimed she did not receive that Notice and the Applicant thereafter instructed Mr O'Donnell's firm to deal with serving a Notice to Quit. By then the Applicant had spent £10,000 on the house. At that stage the Applicant was in arrears of her mortgage in the sum of around £1000 but could not see the situation getting any better.
- 3.15 The monthly mortgage payments have increased to £733 per month.
- 3.16 The Applicant never made any money on the Property.
- 3.17 Document 5 - is a mortgage statement for the year 2009. At that time the rent was only £650 per month. The mortgage payment was £624.27 and the Applicant therefore made a profit of only £26 each month.
- 3.18 The Applicant's decision to rent the Property to the Respondent was a compassionate one. It was not intended to be a long-term plan.

- 3.19 Document 6 - is a mortgage statement from 2023 when the mortgage arrears had started to increase. This was when the situation began to get really difficult. The mortgage has increased to £733 and arrears had accrued to £926.75.
- 3.20 Document 7 - is a letter from Nationwide litigation team dated 5 June 2024. By that stage the arrears are £3,106.39.
- 3.21 Document 8 - is another letter from Nationwide dated 25 June 2024 stating that legal action is to be started on account of the arrears.
- 3.22 The Applicant stated that legal action had not yet been taken. However, if the Applicant does not pay a significant amount of the arrears balance by the end of 2024 then Nationwide would start court proceedings. She had hoped to be able to sell the Property by now.
- 3.23 The Applicant is in regular contact with Nationwide telling them that she is trying to deal with the balance and pay additional funds when she can. The current mortgage arrears are in excess of £4000 and interest is accruing thereon.
- 3.24 The Applicant hopes to pay 50% of the arrears balance by the end of 2024.
- 3.25 Document 10 - is the mortgage statement which shows the current arrears balance to be £4,325.84.
- 3.26 The mortgage has 9 years left to run.
- 3.27 If the arrears are not paid Nationwide will repossess the Property.
- 3.28 The Applicant said she had barely paid anything that she had borrowed, only the interest on the mortgage.
- 3.29 Repossession of the Property would be devastating.
- 3.30 The Applicant's savings are depleted. Her parents and sister have provided financial help with the mortgage. The situation affects her children as she has required to take loans to pay for outgoings, for example school fees for the last semester.
- 3.31 The situation is very stressful. The Applicant is on stress/anxiety medication, takes a anti-dizziness medication and has tinnitus, all of which is stress related.
- 3.32 The Applicant has taken out multiple loans and credit cards to get by. The loans and credit card debt impact her credit rating which is also affected by the mortgage arrears.
- 3.33 The Applicant stated that maintenance of the Property is a big issue. She had proposed that the respondent pay £825 per month by way of rent. The Respondent wanted the roof replaced as she said it leaks. In 2023 the Applicant therefore paid £7800 for a new roof to be installed.
- 3.34 Documents 12 and 13 - show the payments being made to the roofing contractor.
- 3.35 With regard to other repairs on 3 August 2023 a sum of £126 was spent on boiler maintenance, on 14 August 2023 a sum of £100.70 was spent on cooker repair, on 19 December 2023 landlord registration fees were incurred and on 16 November fees were paid to Stirling Park. These costs are not covered by the rent. The Applicant stated that in 2023 she made a total loss on the Property of £8,040.87 and required to use her savings to the pay that amount. It is not affordable to continue to own and lease the Property.
- 3.36 In 2024, repairs are £3,177.47 to date.
- 3.37 The Respondent stated that as Christians it is very important for her children to go to a Christian school and school fees are therefore required to be paid at £4000 per annum per child. The Applicant had no funds to settle the school fees prior to the last semester and the school was initially not going to allow her children to return. However, a couple of weeks grace was given and she required to take out a loan to meet the fees required. The interest rate on that loan is "massive".
- 3.38 Document 11 - reflects an exchange of emails with the school. Not being able to send the children to the school would be devastating on them given the friendships they have built there.

- 3.39 The Applicant stated that she has loans and credit cards to repay and would sell the Property quickly in order to get those creditors off her back.
- 3.40 She told the Respondent in 2023 that she was intending to sell the Property. She carried out the repairs but the Respondent still refused to pay any more of rent. The Applicant has approached Slater Hogg & Howison to market the Property for sale and the Respondent allowed them to inspect on 4 July 2023.
- 3.41 Document 15 - is their feedback after that viewing.
- 3.42 Document 16 - reflects Slater Hogg & Howison's view that the Applicant would be better to sell the Property once the Respondent leaves. She has set up a hat shop within the Property and the Applicant would be better to redecorate before marketing for sale.
- 3.43 The Applicant anticipates that there would be equity of £140,000-£150,000 from the sale available to pay off her debts and keep some savings for her children.
- 3.44 Selling the Property would be a huge relief and the stress currently experienced would be gone.
- 3.45 There are other things the Applicant is unable to do as she does not have funds to do so such as replace her car.
- 3.46 The Applicant was aware that the Respondent is a highly skilled hat designer but did not appreciate she was selling her products from the Property or the scale of the Respondent's business. The Applicant described the Respondent's activities as being like a retail store. She described the Respondent's business as very successful with celebrity clients and many awards. Part of the rent (£290) each month is paid from the Respondent's business account. £435 is paid from the Respondent's personal account. The Applicant said the Respondent has a team working with her.
- 3.47 Payment of rent by the Respondent has never been an issue.
- 3.48 Document 14 – is an email from Slater Hogg & Howison stating that the current market rent for the Property should be £1400 to £1500 per month
- 3.49 If an eviction order is not granted there will be a devastating effect on all of the Applicant's family affecting their living, livelihood, schooling and even payment of their rent.
- 3.50 If an eviction order is granted but enforcement delayed, that will put the Applicant in even more debt as Nationwide require a significant payment by the end of the year and the loan for school fees only covers part of the school year with more fees being due next year.
- 3.51 Under cross examination by Mr Heath the Applicant acknowledged that the difference between the rent paid by the Respondent (£725 per month) and the monthly mortgage commitment to Nationwide (£733 per month) is only £8. Mr Heath therefore questioned how the mortgage arrears has accrued given the Applicant acknowledges that the Respondent has always paid her rent on time. The Applicant explained that the expenses required for maintenance of the Property come out of the same account and the Respondent also requests repairs. Accordingly, the funds in the account are used to fund the repairs leaving insufficient for the mortgage payment.
- 3.52 Mr Heath suggested that there would always be maintenance costs on any property and that the costs should be factored into the rent charge. The Applicant acknowledged the maintenance costs were not built in to the rent and when she tried to increase the rent the Respondent refused to pay more.
- 3.53 Mr Heath asked the Applicant if she paid her own rent privately which the Applicant acknowledged and whether the rental payments increased each year which the Applicant also acknowledged to be correct. Why did the Applicant therefore not follow the correct procedure to increase the rent? The Applicant stated that when the Respondent refused to pay any more she could see the Property becoming a burden

and decided to pursue the eviction process. She took the Respondent in on a compassionate basis and the arrangement was intended to be short term. She said that any repairs required get done quickly and once the repairs on the Respondent's list had been effected she was still not prepared to accept an increase the rent.

Evidence of Respondent

- 4.1 With regard to her physical and mental health the Respondent stated that she is taking anti-depressants. She saw her Doctor 10 days ago and her anti-depressant's remain at the same level as over the last five years.
- 4.2 She is finding the situation very stressful.
- 4.3 She has damaged very severely the tendons in her left arm and has had surgery. The surgeon was going to carry out the same procedure in her right arm but the Respondent said she is not prepared to go through that again.
- 4.4 Her health has deteriorated since Covid and she has been diagnosed with osteoarthritis in her hands and feet. It is difficult for her to perform certain jobs. Some days she cannot stand due to the pain and she has been referred to the orthopaedic clinic.
- 4.5 She is stressed due to the uncertainty as to where she will end up living.
- 4.6 She finds it appalling that the Applicant has judged that she is doing well by looking at her website. The Respondent said she is very creative but in the past few years she has had no work at all. She is dependent upon Universal Credit paid monthly and Personal Independence Payments.
- 4.7 When she had her surgery she was not able to do normal things in the house, for example, wash her hair.
- 4.8 In the last year she has been in the worst possible state, dragging herself to do some work.
- 4.9 She has certain benefits which help to cover the cost of her rent which are paid to the Applicant from her personal account. Every year she requires to show HMRC that part of her rent is being paid through her business account even although she is not doing any business. She has decided to shut down that account with HMRC as there is no point recording losses every year.
- 4.10 Whilst the website is still live that doesn't mean that the Respondent is making money. She doesn't have staff. There was one girl shown on the website who previously worked with the Respondent but is now in Sweden.
- 4.11 The Respondent's most recent profit and loss account showed a loss of £1700.
- 4.12 The Respondent said she has been a very good tenant and has not demanded or asked for anything on a whim. The boiler broke down and she was left without heating for 10 days until the until she got the local authority involved. Nothing is done by way of maintenance until the situation is urgent and even then the Respondent looks for suppliers and obtains quotations that are as cheap as she can achieve for the Applicant. The Respondent keeps the house clean and in good order.
- 4.13 There is no retail shop in the Property and neighbours would testify to that. Her business occupies only one room in the Property.
- 4.14 The Respondent said the Applicant never had a conversation with her about the rent. The Applicant sent the Respondent an email saying she was going to have to increase her rent by 15 to 20%. The Respondent replied saying all repairs needed to be taken care of before she would pay an increased rent.
- 4.15 She has taken care of the house as if it was her own. Her son has painted the entire house.

- 4.16 She has received a letter of reference from the Applicant to help her find other accommodation.
- 4.17 There has been no regular maintenance of the Property for many years. Only Works have only been done to the boiler and the electrics and with the roof works being done last year. These are the big items of repair, the Respondent takes care of everything else.
- 4.18 Under cross-examination from Mr O'Donnell the Respondent said she had been looking for a property locally and had already registered with the homeless team and housing associations in Glasgow.
- 4.19 Her health is affected by the weather and she thought that moving down south would be of benefit. She was very hopeful of a successful application to Bristol City Council but that was not possible.
- 4.20 She has been told that her application for housing locally will not be dealt with until an eviction order is granted.
- 4.21 The Respondent is looking for a two-bedroom property preferably with a garage as she has a lot of hats to store.
- 4.22 It is her intention to continue to live with her son who is self-employed doing removals, a business he started around 4 to 5 months ago.
- 4.23 The Respondent's son contributes to the rent when possible but is responsible for his own expenses.
- 4.24 The Respondent said she had sought the opinion of her General Practitioner on the impact an eviction would have. She has also seen a Consultant and a therapist but has been discharged from the physiotherapy as the activities were causing more damage than good. The Respondent is waiting for another appointment at the elbow clinic.
- 4.25 Mr O'Donnell asked the Respondent what steps the Respondent is taking to find private accommodation. The Respondent stated that she has been looking anywhere using the Internet. It is very difficult to find anything that suits.
- 4.26 The Respondent has little by way of savings and has been trying to be frugal in order to save for a deposit. Her son has been doing the same.
- 4.27 The Respondent said she cannot be that fussy. She would leave tomorrow if she had somewhere else to go. She has looked in Glasgow and Edinburgh, Bristol, Leeds and the surrounding areas. The Respondent said she had applied to East Dunbartonshire Council many years ago. The homelessness unit is aware of the Respondent's situation but cannot do anything about it until an eviction date is set. She has also applied to the Common Housing Register.

Following the evidence the parties' representatives made the following Submissions:-

Submissions for the Applicant

- 5.1 Addressing the three disputed issues for determination by the Tribunal Mr O'Donnell made the following submissions: –
 - i. It is overwhelmingly clear that the Applicant is and will continue to be seriously financially disadvantaged by the ongoing tenancy. The Applicant spoke at length in her evidence to chronic issues arising out of the mortgage arrears to her detriment and of the warning of legal proceedings from Nationwide. The Applicant discussed her personal circumstances and the grave consequences for herself and her family if an eviction order is not granted.
 - ii. The Respondent has led no documentary evidence to support her position. The Respondent gave oral evidence only on a generic basis relative to her

health and the financial effects of an eviction order. Mr O'Donnell said it was difficult for the Tribunal to attribute any weight to that. There are two adults in the Respondent's household to contribute to rent.

- iii. With regard to reasonableness it is for the Tribunal to consider the whole circumstances of the case. Mr O'Donnell made passing reference to the cases of *Manson & Dowie v Turner & Turner* (2003) UT 38 and *Stainthorpe v Carruthers and Swan* (2024) UT 30, particularly to the latter in that it refers to a landlord's right of property being preferred. He said it is entirely reasonable that an eviction order be granted and prejudice to the Applicant by not granting an order would be greater than the prejudice to the Respondent if an order is granted. He suggested that if an eviction order is granted there should be no suspension or only for a relatively short period.

Submissions for the Respondent

- 5.2 Mr Heath said he relied upon the Respondent's evidence on the impact of an order being granted on her.
- 5.3 The Respondent has paid her rent in full. The difference between the rent and mortgage is only £8 per month.
- 5.4 The Applicant has owned the Property for 20 years and there would always be maintenance required. She could have increased the rent but didn't do so. He said the Tribunal should not be persuaded that the applicant is financially disadvantaged. The Respondent had met her obligations.

The Tribunal adjourned to consider its determination.

Findings in Fact

- 6.1 The Tribunal made the following findings in fact:-
 - 6.1.1 The Applicant's date of birth is 14 November 1980.
 - 6.1.2 She resides at 3 Brandon Court, Southsea, PO5 1PF. She has lived there for 13 years and rents that property. She lives with her husband and three children aged nine years and eight years (twins).
 - 6.1.3 The Applicant is self employed as a business consultant helping businesses with digital marketing. Her work requires that she travels a lot to the USA where she has clients.
 - 6.1.4 The Property is owned by the Applicant.
 - 6.1.5 The Applicant bought the Property from her parents in 2009 after they retired and moved back to Nigeria.
 - 6.1.6 The Property is a semi-detached house with three bedrooms.
 - 6.1.7 The Applicant purchased the Property in 2009 for £150,000 and took a mortgage with Nationwide for that purpose in the sum of £132,381.02. The mortgage term is 30 years.
 - 6.1.8 The Property is now likely to sell at £280,000.
 - 6.1.9 The Respondent moved into the Property in 2009.
 - 6.1.10 Following an initial tenancy agreement that began in 2009 the Applicant leased the Property to the Respondent in terms of a Short Assured Tenancy ("the SAT") that commenced on 10 December 2015.
 - 6.1.11 In terms of the SAT the initial term was agreed to be for the period to 10 December 2017 and thereafter the tenancy was agreed to continue on a month to month basis.
 - 6.1.12 The rent payable in terms of the SAT is £725 per month. The rent has never been increased.

- 6.1.13 The Respondent has always paid her rent in full and on time.
- 6.1.14 The current market rent for the Property is £1400 to £1500 per month.
- 6.1.15 The monthly mortgage payments by the Applicant to Nationwide are now £733 per month.
- 6.1.16 By the end of 2023, the Applicant had accrued mortgage arrears of £926.75.
- 6.1.17 By 5 June 2024 the mortgage arrears due by the Applicant had increased to £3,106.39 and Nationwide was threatening legal action.
- 6.1.18 The current mortgage arrears balance is £4,325.84.
- 6.1.19 The Applicant is in regular contact with Nationwide trying to deal with the arrears balance and pay additional funds when she can. She hopes to pay 50% of the arrears balance by the end of 2024.
- 6.1.20 The Applicant has paid only a modest amount towards the capital of the mortgage over the mortgage term to date.
- 6.1.21 In 2023 the Applicant paid approximately £7800 for a new roof to be installed on the Property. Additional sums were spent on boiler maintenance and cooker repairs. In 2023 the Applicant she made a total loss on the Property of £8,040.87 and required to use her savings to the pay that amount.
- 6.1.22 In 2024, repairs are £3,177.47 to date.
- 6.1.23 It is not affordable for the Applicant to continue to own and lease the Property.
- 6.1.24 The Applicant has approached Slater Hogg & Howison to market the Property for sale.
- 6.1.25 Repossession of the Property by Nationwide would be devastating for the Applicant.
- 6.1.26 The Applicant has required to take a loan to pay school fees for her three children. Further school fees will be due next year and a further loan will be required for that purpose.
- 6.1.27 The Applicant is unable to do things she needs to do, such as replace her car, due to a lack of funds.
- 6.1.28 On 13 February 2024, the Applicant served on the Respondent by recorded delivery post a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 ("the 1988") Act, both of which are valid.
- 6.1.29 The Notice to Quit terminated the contractual tenancy created by the SAT as at 10 April 2024.
- 6.1.30 The Section 33 Notice sought the removal of the Respondent by 14 April 2024.
- 6.1.31 The SAT has reached its ish and that tacit relocation is not operating.
- 6.1.32 The Applicant has served on East Dunbartonshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- 6.1.33 The Respondent has various health issues including damaged tendons in her arms, osteoarthritis in her hands and feet as well as mental health issues.
- 6.1.34 The Respondent is in receipt of Universal Credit and Personal Independence Payments.
- 6.1.35 Part of the rent (£290) each month is paid from the Respondent's business account. £435 is paid from the Respondent's personal account.
- 6.1.36 The Respondent runs or at least has run a millinery business from the Property.
- 6.1.37 The Respondent has been looking for a property locally and has registered with the homeless team and housing associations in Glasgow.
- 6.1.38 The Respondent's health is affected by the weather and she thought that moving down south would be of benefit. However, her application to Bristol City Council for accommodation was not successful.
- 6.1.39 The Respondent has been told that her application for housing locally will not be dealt with until an eviction order is granted.

- 6.1.40 The homelessness unit is aware of the Respondent's situation but cannot do anything about it until an eviction date is set. She has also applied to the Common Housing Register.
- 6.1.41 The Respondent is looking for a two-bedroom property preferably with a garage as she has a lot of hats to store.
- 6.1.42 The Respondent intends to continue to live with her son who is self-employed doing removals, a business he started around 4 to 5 months ago.
- 6.1.43 The Respondent has searched for private rented accommodation using the Internet.
- 6.1.44 The Respondent has little by way of savings and has been trying to be frugal in order to save for a deposit.
- 6.1.45 The Respondent would leave the Property if she had somewhere else to go.
- 6.1.46 Both parties are finding the current situation extremely stressful.

Reasons for Decision

- 7.1 The Tribunal considered the Applicant credible and reliable in her evidence. The Applicant's evidence was thorough and supported by documentary evidence. The Respondent's evidence was generally credible and reliable but largely unsupported by relevant documentary evidence or any other form of corroboration. That said, the evidence of each party was largely unchallenged by the other and there were almost no contentious matters of fact, the only exception being the Applicant's statement that, on account of the Respondent's website, her business was successfully trading which the Respondent robustly denied.

- 7.2 The application proceeds upon Section 33 of the 1988 Act which states:-

"Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession."

- 7.3 Only the reasonableness of granting an eviction order is a matter of dispute between the parties.

In *Manson & Dowie v Turner & Turner* (2003) UT 38 referring to the assessment of reasonableness in the context of a Private Residential Tenancy the Upper Tribunal stated:-

"As noted above, the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to

reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b). The intentions of the landlord are therefore clearly relevant, and the FTS is entitled if not bound to consider whether they are reasonable. Furthermore the FTS would be entitled, at least in principle, to find that the landlord's intentions outweighed the matters put in evidence by the tenant. Put another way, the FTS would be entitled in principle to conclude both that the landlord's intentions were subjectively reasonable, and that they made it objectively reasonable to issue an eviction order. The FTS' emphasis in its written reasons on the respondents' intentions is therefore not of itself sufficient to establish that the FTS has departed from the "all the circumstances" approach to which it correctly directed itself. The FTS' errors in this case were in relation to fact finding and in failing to explain why the respondents' interests and intentions outweighed those of the appellants, not its general approach to assessment of reasonableness."

In *Stainthorpe v Carruthers and Swan* (2024) UT 30 in considering the assessment of reasonableness the Upper Tribunal stated:-

"Is it Reasonable to Grant an Order for Possession?"

74. The UTS must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

75. Its decision on reasonableness is not in itself a finding in fact, but instead a concept or conclusion determined by an exercise of judgment (City of Edinburgh Council v Forbes 2002 Hous. L. R. 61, at paragraph 7-16 , per Sheriff Principal Nicholson QC). Its assessment as to whether it is reasonable for the UTS to make an order for possession must take account all relevant circumstances as they exist at the date of the hearing (Cumming v Danson [1942] All ER 653 at 655). It may take into account in assessing reasonableness whether the parties' intentions are subjectively reasonable and it must "objectively balance the rights and interests of both parties" (Manson and Downie v Turner (2003 UT 38 at paragraphs 41 and 42; see also City of Glasgow District Council v Erhaigonoma 1993 S.C.L.R 592).

76. The relevant circumstances on the appellant's side are his legal right to use and dispose of his property as he thinks fit within the constraints of planning and building law, and his subjectively reasonable wish to reconstruct the house for transfer to his stepson for use as a family home. Those on the respondents' side are their long period of occupancy of the house, emotional attachment to it, the age of the second respondent, the reduced state of their health, their difficulties in finding a house to rent of equivalent amenity, the loss of their supportive neighbours, and their subjectively reasonable wish to live in the house indefinitely."

The Upper Tribunal further stated:-

"81. Ultimately, the subjectively reasonable intention of the appellant to reconstruct the house and eventually transfer ownership to his stepson to benefit his stepson and his stepson's wife, and the diminution in the standard of living of the respondents if they are required to remove from the house that they enjoy living in, deserve equal consideration. These are therefore countervailing circumstances.

82. Accordingly, I consider the deciding factor to be that the appellant exercises a right of property, whereby he can use or dispose of the house as he thinks fit. I therefore agree with the appellant's submission that those interests must take precedence over the wishes of the respondents to continue in occupation of the property indefinitely.

83. The proper balance between the parties' interests can in my opinion appropriately be struck in this case by postponing the date for possession to allow the respondents time to find alternative accommodation, and the appellant time to complete his plans by instructing the contractor, finalising his financial arrangements and obtaining his building warrant. I have so ordered."

7.4 The Tribunal therefore carefully considered all of the parties' circumstances and each of the disputed issues for determination.

7.5 *To what extent is the Applicant financially disadvantaged by continuing to rent the Property to the Respondent?*

There is considerable evidence that the Applicant is financially disadvantaged by continuing to rent the Property to the Respondent. It may be said that the Applicant has been somewhat naïve as a landlord. In particular, whatever the Respondent's objections, the Applicant could and should have increased the rent from time to time during the period of the SAT within the confines of any legal restrictions. She elected not to do that and, as a result, has not made a commercial success of the enterprise as a whole. The Applicant has recently undertaken repairs at significant cost – the roof repairs – the result of which is that she has required to use personal savings to subsidise the cost of those works. She has been unable to "balance the books" relative to the Property with mortgage arrears therefore accruing which, if not reduced significantly in early course may result in the mortgage provider, Nationwide, commencing repossession proceeding which would be to the very considerable financial detriment of the Applicant. The Applicant has required to incur additional debt to pay school fees which will increase further as the school year progresses if the Property remains unsold. Her ability to fund other needs, such as replacing her car, are also affected by her current financial predicament all of which would be relieved by the release of the equity in the Property on a sale.

7.6 *To what extent would the grant of an eviction order impact negatively upon the Respondent's health or finances?*

There was little evidence of the extent to which an eviction order would impact negatively on the Respondent's health or finances. Whilst the Respondent gave evidence of and the Tribunal accepted various health challenges that she is dealing with there was no evidence from the Respondent or elsewhere that those health issues would worsen or treatment would be compromised as a consequence of an eviction order being granted. With regard to the Respondent's finances the only evidence heard was relative to the Respondent living frugally to save for a deposit in the absence of any savings but this state of affairs does not arise by virtue of the grant of an eviction order per se.

7.7 *Balancing the interests of the Applicant and the Respondent, is it reasonable to issue an eviction order?*

The Tribunal carefully weighed and balanced all the relevant facts found by it which bear on reasonableness.

The Tribunal is satisfied that the Applicant intends to sell the Property as soon as vacant possession is recovered. Her stated intention to sell the Property is borne out by the pressure applied by Nationwide to clear the current mortgage arrears balance to a significant extent by the end of 2024 and the threat of legal proceedings to repossess the Property intimated by Nationwide in June 2024 which is still in the background. The Applicant has no other connection with Scotland. The Applicant has not made a commercial success of renting the Property to the Respondent. Not only have mortgage arrears accrued over recent years but substantial repairs have recently been effected, in particular, to keep the Property wind and watertight. The Applicant has barely made any "return" on the Property over the years and latterly her repairing obligations relative to the Property have been such that she has used her personal savings to fund works to the Property with the result she has required to incur additional debt to pay school fees which will increase further as the school year progresses and if the Property remains unsold. Her ability to fund other needs, such as replacing her car, are also affected by her current financial predicament all of which would be relieved by the release of the equity in the Property on a sale.

The Tribunal understood the Respondent's desire to remain in occupation of the Property with her adult son. She has been a good tenant, paying her rent in full and on time each month. The size of the Property suits her well and finding any alternative accommodation in the public or private sectors is very difficult. She would move from the Property if she could find somewhere else to live. The Respondent also has various health issues to contend with.

Both parties are under considerable stress.

The Applicant's intention to sell the Property is subjectively reasonable and her legal right to dispose of the Property to repay the mortgage and relieve financial stress currently being endured takes precedence over the Respondent's wish to continue in occupation of the Property and the fact she cannot find somewhere else suitable to live.

On that basis the Tribunal concludes that it is reasonable to grant an eviction order.

- 7.8 Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure alternative accommodation. Accordingly, the Tribunal determined that the order cannot be enforced until the end of February 2025.

Determination

- 7.9 The Tribunal determined that an eviction order should be granted against the Respondent in favour of the Applicant suspended to the end of February 2025.

Right of Appeal

- 8.0 **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.



Gillian Buchanan

—
Legal Member/Chair

——— **12 December 2024**
Date