

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Scotland)(Tenancies) Act 2016**

Chamber Ref: FTS/HPC/EV/24/2223

**Re: Property at 2 Bowmore Crescent, Thorntonhall, South Lanarkshire, G74 5DD
("the Property")**

Parties:

Mrs Susan Hannay, 8 Glen Quoich, East Kilbride, G74 2JE ("the Applicant")

**Mr Craig Muir, Ms Jade Soler, 2 Bowmore Crescent, Thorntonhall, South
Lanarkshire, G74 5DD ("the Respondent")**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Second Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined to grant an order for eviction relying on ground 1
(landlord intends to sell) in schedule 3 of the Private Housing (Tenancies)
(Scotland) Act 2016. The Tribunal determined that it was reasonable to
suspend enforcement of the order until 31 March 2025.**

Background

1. By application dated 15 May 2024 the applicant seeks an order for eviction
relying on ground 1 – landlord intends to sell in schedule 3 of the Private
Housing (Scotland)(Tenancies) Act 2016.
2. The applicant lodged the following documents with the application:

- Copy tenancy agreement commencing 17 November 2020
 - Notice to leave dated 9 February 2024
 - Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003
 - Letter from Property Store relating to the sale of the property
 - Home report
 - Copy offer from the first respondent to purchase the property
 - Correspondence between the applicant's agent and the first respondent regarding rent arrears and proof of funds to purchase.
3. The first respondent lodged written representations in advance of the scheduled case management discussion ("cmd") setting out his personal circumstances, his intention to purchase the property and advising that his legal representative would be in contact with the Tribunal.

Case management discussion- 11 October 2024 - teleconference

4. A cmd took place via teleconference on 11 October 2024. The applicant was represented by Ms Donnelly from TC Young solicitors. The first respondent was in attendance. He stated that he appeared on behalf of both respondents. He explained that he is the partner of Ms Soler, the second respondent who was unable to attend due to a close family bereavement.
5. Ms Donnelly sought an order for eviction. She stated that in the past few days the first respondent had made a formal offer to purchase the property from the applicant via his conveyancing solicitor. The offer was to purchase the property for the cash sum of £960,000. Ms Donnelly stated that the applicant had concerns regarding whether the offer was genuine and whether the first respondent had the financial resources to honour the offer. Ms Donnelly

highlighted that the first respondent had made a similar cash offer earlier in the year to purchase the property. He had failed to follow through on the offer. Ms Donnelly stated that there were currently rent arrears of £11,916 outstanding.

6. Ms Donnelly stated that there had been previous issues with rent arrears. A previous action had been raised against the respondents in respect of rent arrears in excess of £30,000. A hearing had been assigned in relation to that application however the application had been dismissed as the respondents repaid the outstanding balance the day before the hearing.
7. The first respondent opposed an order for eviction being granted. He did not dispute the information provided by Ms Donnelly in relation to the offers for purchase, arrears and previous application. He confirmed that he had recently submitted a cash offer to purchase the property. Mr Muir stated that he would like the purchase of the property to be completed as soon as possible which would be assisted by the fact that a cash offer had been made.
8. The first respondent confirmed that there had been arrears of £11,916 however he stated that he had transferred funds to clear the outstanding balance on the morning of the cmd.
9. The first respondent stated that the respondents lived with their 3 children aged 1, 3 and 8. He stated that his 3 year old was seriously ill with a tumour in her left ventricle. He stated that his daughter's health had been his primary focus since she had become ill.
10. The first respondent indicated that he intended to seek legal advice in relation to opposing an order for eviction being made.

11. Given the dispute between the parties related to the credibility of the offer to purchase and the reasonableness of granting an order the Tribunal considered it necessary to fix a hearing in relation to the application.

12. The Tribunal issued a note to parties following the cmd setting out the issues that were in dispute and requesting that parties lodge productions/updated written representations no later than 14 days prior to the hearing. Given the areas of dispute between the parties the Tribunal requested that the respondent lodge the following in advance of the hearing:

- Documents demonstrating his current financial position and ability to maintain payment of the rent on an ongoing basis, for example – bank statements / salary slips.
- In the event that the sale of the property has not completed due to Mr Muir's failure to make payment any relevant documents explaining the reasons for that.
- Evidence confirming the respondent's daughter's medical condition.
- Any other relevant evidence relating to the respondent's family's personal circumstances.
- Written confirmation from Jade Soler, the second respondent, agreeing to Mr Muir appearing on behalf of both respondents.

13. A hearing was scheduled to take place via teleconference on 3 February 2024. The format of the hearing was agreed by parties at the conclusion of the cmd.

Preliminary issue – request to adjourn the hearing

14. The first respondent emailed the Tribunal on 28 January 2025. He stated that he had left the UK at short notice that morning to travel to Malta due to the ill health of the grandmother of his partner, the second respondent. He stated that his partner was very close to her grandmother and that he would be unlikely to be able to return to the UK by 3 February 2025 for the hearing. He requested that the case be “temporarily put on hold” until his return. He stated that his focus was on his partner’s wellbeing as she had a very close relationship with her grandmother.

15. The Tribunal sought the views of the applicant in relation to the postponement request and requested that the respondent provide the following additional evidence prior to a decision being made in relation to the adjournment:

- Documentary proof of recent travel to Malta.
- An explanation for why the respondent could not return to the UK for the hearing.
- Documentary evidence of the second respondent’s grandmother’s illness.

16. The applicant opposed any adjournment. In their written response to the adjournment request they stated that prior to the previous cmd the first respondent had stated that the second respondent’s grandmother had passed away. That would appear to contradict the current position presented in support of the postponement request. They stated that no progress had been made in relation to the sale of the property, largely due to a delay in the first respondent providing evidence of a suitable source of funds via his conveyancing solicitor. The applicant’s representative referred to documentation which had been

lodged to support this position. The applicant's representative also referred to the respondent's failure to lodge any documents, authorities or witness lists in advance of the Hearing as had been requested in the cmd note. They stated that had the respondents genuinely intended to appear at the Hearing, they would have complied with the request of the Tribunal in advance. They stated that the applicant intends to sell the property and any further delay will prejudice her.

17. Further representations were received from the first respondent on 30 January 2025. In summary, the first respondent stated that he had specified travel to Malta in error in his initial postponement request. He had in fact travelled to Madrid. He provided copies of air tickets showing that he had travelled to Madrid on 28 January 2025 from Glasgow. He stated that the bereavement prior to the previous cmd had been his wife's other grandmother who had resided in Malta. He stated that he needed to stay with his family to provide support during the first respondent's grandmother's serious illness. He stated that his partner was struggling to cope with the situation. In relation to any delay to the purchase of the property he stated that money laundering checks were proceeding in the usual way and there was no issue with the sale proceeding. He stated that he had sought legal advice in relation to securing representation at the hearing from a firm of solicitors. He had been advised that they would require four to six weeks to prepare the case. A message from the legal firm dated 30 January 2025 confirming that they would not be able to attend an evidential hearing at short notice was provided.

18. Rule 28 states:

Adjournment or postponement of a hearing

28.—*(1) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time, adjourn or postpone a hearing.*

(2) Where a party applies for an adjournment or postponement of a hearing, that party must—

(a) if practicable, notify all other parties of the application for an adjournment or postponement;

(b) show good reason why an adjournment or postponement is necessary; and

(c) at the direction of the First-tier Tribunal produce evidence of any fact or matter relied on in support of the application for an adjournment or postponement.

(3) The First-tier Tribunal may only adjourn or postpone a hearing at the request of a party on cause shown.

19. The Tribunal gave careful consideration to the request to postpone the hearing.

Having taken into account the information provided by both parties in respect of the postponement request the Tribunal refused the application for a postponement. The Tribunal gave particular weight to the fact that the respondents did not appear to have prepared for the hearing and had not lodged any evidence or written representations to support their opposition to the application which had been specified in the cmd note. The Tribunal considered that in the absence of any preparation for the hearing and the lack of any progress on the sale of the property the first respondent may be seeking to adjourn the hearing so as to avoid the matter proceeding. No evidence had been produced to substantiate the ill health of the respondents' relative.

20. The Tribunal also considered that, even if the second respondent's grandmother was seriously ill, that did not justify non-attendance at the hearing by the first respondent, particularly given the possible consequences of the hearing. The first respondent did not set out why it would not have been possible for him to attend the hearing and then return to supporting his partner.
21. The Tribunal took into account that the first respondent had stated at the hearing that he would secure legal representation and did not find it reasonable that an adjournment be allowed for him to access legal representation at this stage of the proceedings as he had ample opportunity to arrange representation prior to the hearing. No explanation was provided as to why the respondents had delayed in securing legal representation.
22. The Tribunal considered that there would be prejudice to the applicant who had instructed legal representation and arranged for witnesses to attend the hearing. There would be financial costs to her associated with any adjournment. There was also prejudice arising from the possible delay in the process being concluded.
23. Taking all the information provided into account the Tribunal did not consider there was a good reason to postpone the hearing in the circumstances.

Hearing – 3 February 2025 – videoconference

24. The applicant was in attendance with her representative, Ms Donnelly, solicitor, TC Young. The first respondent was in attendance. The second respondent was not present. The Tribunal was satisfied that the second respondent had been properly notified of the hearing and proceeded in her absence in terms of

rule 24.1. The first respondent confirmed that the second respondent was aware of the hearing taking place.

25. In advance of the hearing the applicant had submitted a second inventory of productions on 21 January 2025 which included:

- Correspondence between the parties' solicitors relating to the progress of the sale of the property to the first respondent.
- Correspondence between the applicant's letting agent and the first respondent in relation to payment of rent.
- Rent statement as at 14 January 2025.
- Summary of the applicant's net income for the tax year 2023/2024.
- Email inspection report from the applicant's letting agent dated 28 August 2024.

26. The applicant also notified the Tribunal that 2 witnesses would be attending the hearing, Richard Hannay and Christopher Hannay, the applicant's sons.

27. The second inventory of productions was emailed to the first named respondent by the Tribunal on 28 January 2025. The email was sent to the email address provided by the respondent and used by him to contact the Tribunal on numerous occasions. The documents were sent by post to the second named respondent.

28. Prior to the hearing the respondents had lodged no additional documents or written evidence in compliance with the requests set out in the case management discussion note.

29. The first respondent joined the teleconference from his car. He stated that he had just arrived back from Spain. The Tribunal asked Mr Muir if he sought to adjourn the hearing due to any technical issues that may arise from his location.

He was clear that he did not and indicated that he thought it was in all parties' interests for the matter to proceed to conclusion.

30. The Tribunal heard evidence from the applicant, Richard Hannay, Christopher Hannay and the first respondent.

Summary of the applicant's evidence

31. The applicant is 76 years old. She is retired. She lived at the property as her principal residence until 2018 when her husband passed away. The property is large with 6 bedrooms. After her husband passed away she moved to a smaller property to be close to her family and friends. Her initial intention had been to sell the property however the market was quiet at that time and as an alternative it was decided that the property would be rented out to provide some income to the applicant. The applicant advised that her sons Richard and Chris help her out with the management of the property. She stated that Chris deals with the financial side of things with Richard assisting with dealing with the letting agents and other issues. She stated that it had been a very stressful time for her recently and that her life had been put on hold due to the tenancy with the respondents. She stated that she couldn't have coped on her own. She stated that the respondents moved into the property about 4 years ago. She stated that everything was a bit of jumble as it was so awful and stressful. She stated that she has 6 grandchildren. It had always been her husband's wish to help them through university. She wanted to sell the property so that she could settle her finances and help out her grandchildren.
32. The first respondent did not dispute any of the applicant's evidence.

Summary of Richard Hannay's evidence

33. Richard Hannay is 48 years old and employed as a project manager. He is the applicant's son. He provides support to the applicant and assists with communication with the letting agents - the Property Store. Mr Hannay advised that the applicant couldn't live in the property after his father passed away as it was too big for her to live in on her own. He stated that the property was put on the market but it didn't sell as the market was flat just prior to lockdown. He stated that as the property didn't sell the applicant decided to let it out. Mr Hannay stated that this was the only rental property owned by the applicant. The property has 6 bedrooms, an annexe flat and a triple garage. It is in an affluent area. Mr Hannay stated that the first respondent had submitted an offer to purchase the property in April 2024 for a purchase price of £925,000. He stated that the offer was made in writing by the first respondent's solicitors. He stated that despite numerous requests the first respondent failed to produce any proof that he had the funds to purchase the property and the sale did not proceed. Mr Hannay confirmed that another offer to purchase the property for £960,000 had been received from the first respondent on 7 October 2024. Mr Hannay stated that the offer was higher than the valuation within the home report that had been prepared. He was not sure why the first respondent had offered more than the home report valuation. He stated that the family are very sceptical about the offer being honoured. Mr Hannay stated that he has been dealing with the letting agents and solicitors in relation to the sale of the property on behalf of the applicant. He stated that the property is taking up a huge amount of his personal time and there is a great deal of stress associated with

it. He has had to take time off work to deal with issues arising from the property and is very worried about the impact of the tenancy on his mother.

34. In relation to the most recent offer to purchase Mr Hannay advised that a qualified acceptance was sent on 15 October 2024. The offer which had been made on 7 October 2024 was just before the case management discussion. Mr Hannay advised that since the 15 October 2024 there had been no progress as the conveyancing solicitors were waiting for anti-money laundering checks to be carried out by the first respondent's solicitors and confirmation relating to the source of funds for the purchase. Mr Hannay stated that the family did not believe that the first respondent had funds to purchase the property. An order was sought in order that the property could be sold on the open market.

35. Mr Hannay stated that there had been numerous occasions when the respondents had built up significant rent arrears. He referred to a previous application to evict the respondents where rent arrears had reached £30,000. He advised that the respondents had paid the outstanding arrears on the morning of the hearing which led to the application being dismissed. He stated that a similar pattern of arrears had begun again. He stated that arrears had reached a significant level prior to the case management discussion on 11 October 2024. He stated that at the cmd the first respondent had stated that he had paid off the arrears on the morning of the cmd. Mr Hannay stated that this had been untrue. He referred to the rent statement and correspondence from letting agents that had been lodged. He stated that nothing had been paid by the respondent until just before Christmas when a lump sum of £15,000 had been paid. Prior to that no payments had been made from the end of July 2024. He stated that this payment had not cleared the outstanding arrears and that

no payment had been received on 1 February 2025. Mr Hannay stated that the family have no confidence the first respondent will do what he says he will do. He stated that there is a pattern of behaviour whereby the first respondent makes promises which he does not keep.

36. Mr Hannay advised that recently the letting agents had advised him that there had been difficulties in gaining access to the property. When the letting agents attended the property they were not able to gain access to the property. He advised that there were some concerns about the condition of the property due to the lack of access.

Summary of Christopher Hannay's evidence

37. Christopher Hannay is 51 years old and an accountant. He is the applicant's son. He stated that he helps his mother with her finances including her tax returns, insurances and advice on her financial situation. Mr Hannay stated that his mother has a fairly minimal income at present. He referred to a statement of her income that had been submitted to the Tribunal. This showed that in addition to income from the property the applicant also received income from a pension and a small annuity. He confirmed that the monthly rent payable by the respondents is £3,038. Tax allowable costs on the property were £8,000 last year. Mr Hannay stated that at present the applicant does not have sufficient income to cover the costs associated with the property and she needs to sell it. Mr Hannay stated that the costs associated with the property included repairs. The property was large and recently 2 boilers had been replaced as well as repairs to the roof, issues with mould and replacement of a dishwasher. Mr Hannay stated that legal fees payable in respect of the property were currently

at £14,000 and would likely increase. He stated that property management fees also required to be paid as could be seen in the statement from the letting agents that had been submitted to the Tribunal. Mr Hannay stated that the pattern of large amounts of rent arrears building up had impacted his mother as she was not receiving a regular income during those periods but was still liable for the costs and expenses associated with the property. Mr Hannay stated that his mother is 76 but her plans for the future were on hold until she could sell the property.

Summary of the first respondent's evidence

38. The first respondent is 37 years old. He stated that he resides with his partner the second respondent and their 3 children aged 9, 4 and 2. He did not dispute the evidence from the applicant and her two sons except in relation to the current level of arrears. In that regard he stated that there were no arrears at present. The first respondent accepted that arrears had built up to in 2024 and stated that he made a payment of £15,000 on 20 December 2025. He stated that he made a further payment for January which meant that the rent account was up to date.

39. The offer to purchase the property: The first respondent expressed regret that matters had gotten to this stage. He stated that it had never been his intention that it would be necessary to have a hearing on the eviction application. He stated that he had put in an offer to purchase the property at an amount higher than the home report to reflect how important the property was to his family. He stated that the offer had been made in good faith and that he had sums in excess of the £960,000 in an account in the United States of America. The first

respondent stated that delays in this sum being released were the reason that missives had not concluded. He stated that his bank account in the US got blocked in September. In relation to questions from the Ms Donnelly regarding the delays in providing documents to his conveyancing solicitors regarding anti money laundering checks and confirmation of the source of funds for the purchase the first respondent stated that it was his understanding that the checks were a normal part of the process. He stated that he had been working day and night to try and sort things out. He stated that he could submit documents now that would show that he could pay for the property. He apologised for not providing the information in advance of the hearing. The first respondent stated that he would try and get the sale to progress as quickly as possible as it was still his intention to buy the property.

40. Financial circumstances: The first respondent stated that he continues to be employed as the CEO of a technology company called Digital Self Inc. He stated that he has significant financial resources and the reason the sale of the property had not progressed was not due to a lack of funds but rather administrative issues relating to the release of funds from abroad. The first respondent stated that due to tax reasons he does not reside in the UK for more than 90 days per year however his family are there on a full-time basis. He stated that he has a particular connection with the property as it is his family's home however he would have the resources to rent or buy an alternative property for the family if necessary.

41. Personal circumstances: In relation to the family's personal circumstances the first respondent stated that there had been a lot of difficulties recently. He stated that his 4 year old daughter had been critically ill with a tumour on her left

ventricle. Thankfully she had made a major recovery however there was still one cyst on the left ventricle. The first respondent stated that his wife also had health issues. He stated that she had been diagnosed with cancer after their youngest daughter had been born. He advised that she was still undergoing treatment. He stated that as soon as she gets back from Madrid where she was with her ill grandmother she would be undergoing radiation treatment. The first respondent had no explanation for his failure to lodge any evidence in respect of the medical issues affecting the family. The first respondent stated that the present process had put a strain on his relationship with the second respondent. The first respondent stated that the family had moved into the property after they had returned to Scotland to visit the first respondent's mother. They had decided to make a more permanent base for the family and had rented the property. The first respondent stated that his children were well settled in the local area and attend local school and nursery. He advised that his mother provided support to the family. He was concerned at how unsettling it would be for the children to have to leave the family home, particularly given the challenges the family had faced.

42. The first respondent stated that the property had been rented unfurnished and it would take some time to put in place arrangements to find somewhere else to live and move the family's possessions.
43. The first respondent stated there were a number of repairs issues that had arisen within the property. He stated that the property was an unsafe environment and the family had stopped inviting people to visit.

Suspension of enforcement

44. The Tribunal sought parties' submissions on whether it was appropriate to suspend enforcement of an eviction order under rule 16A(d) in the event that an order for eviction was granted.
45. The applicant's representative submitted that there was no justification for delay in enforcement of the order. She referred to the length of time that the respondents had been aware of the process. She referred to the fact that the first respondent had been engaged in the process since the cmd on 7 October 2024. She stated that the first respondent would have been well aware of the risk of an eviction order being granted. Ms Donnelly also submitted that the Tribunal should take into account that the respondents have the means to find an alternative property and were not in a situation where they required to seek assistance under the homelessness legislation from the local authority. She also submitted that any delay would impact the applicant as she had ongoing costs arising from the property and delay her placing the property on the market.
46. The first respondent stated that due to the size to the property and the amount of furniture he would not be able to make arrangements to move quickly. It would take time to move the whole family and find a suitable alternative property. The first respondent was not clear on how long would be required but stated that perhaps six to eight weeks would be needed.

Submissions

47. Ms Donnelly invited the Tribunal to make an order. She submitted that as it was admitted that there was an intention to sell the main question for the Tribunal was reasonableness. Ms Donnelly invited the Tribunal to consider

the relevant legal authorities which had been submitted. She submitted that the following matters should be considered by the Tribunal in reaching its decision:

The applicant intended to sell the property. It was having a financial impact on her and her wish to support her grandchildren. Ms Donnelly referred to the impact that the intermittent rental payments and outgoings associated with the property were having on the applicant. Ms Donnelly referred to Christopher Hannay's evidence on the financial impact of the property.

Ms Donnelly submitted that the first respondent's evidence was not credible or reliable. She referred to his statement at the cmd that he had paid rent when nothing had been paid by that date. He had also said at the cmd that he would buy the property imminently. She referred to the first respondent's failure to provide vouching on his financial circumstances, medical issues and reasonableness. She referred to the fact that the first respondent maintained the position that he is a global business owner and is of sufficient means to buy another property. She stated that there was no evidence to support the position that the first respondent must remain in this particular property or that removing from it would be very unsettling.

48. The first respondent restated his opposition to an order being granted and his regret that matters had reached this stage. He advised that he would be seeking to move the purchase along as soon as possible and maintained that he would be in a position to purchase the property.

Findings in fact and law

49. The applicant intends to sell the property.

50. Notwithstanding the personal circumstances of the respondents and their family, it is reasonable to grant an order for eviction relying on ground 1 in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Findings in fact

51. The applicant is 76 years old. She resided in the property as her principal residence until 2018 when her husband passed away.

52. The applicant is retired and has six grandchildren.

53. After her husband passed away the applicant moved to a smaller property.

54. The applicant intends to use the proceeds from the sale to assist her grandchildren with the costs of attending university.

55. Proceeds from the sale of the property would allow the applicant to live more comfortably and without the stress of worrying about covering the costs of the property.

56. The applicant relies on her sons Richard and Christopher Hannay to assist her with the administration associated with the tenancy.

57. The applicant attempted to sell the property in 2018 however due to market conditions the property did not sell.

58. As the property did not sell the applicant decided to rent it out in order that she could receive some rental income.

59. The applicant has no other rental properties.

60. Parties entered into a private residential tenancy agreement with a commencement date of 23 November 2020.

61. Rent payable in terms of the tenancy agreement is £3,038 per month.
62. The property is a six-bedroom detached house with a triple garage with accommodation above.
63. A home report carried dated 8 March 2023 estimated the market value of the property to be £875,000.
64. On 3 April 2024 the first respondent made an offer to purchase the property for the sum of £925,000 through his solicitor.
65. The applicant's solicitors requested that the first respondent's solicitors provide proof of funds prior to accepting the offer. Numerous requests were made for the proof of funds. After no proof of funds was received the applicant's solicitors rejected the offer.
66. The respondents have built up rent arrears on a number of occasions. The first respondent will allow rent arrears to build up before paying a large lump sum to reduce the amount outstanding. Most recently on 20 December 2024 the first respondent made a lump sum payment of £15,000 towards the rent account.
67. The respondents' pattern of rental payments has an impact on the applicant's finances and ability to cover ongoing costs associated with the property including property management fees, legal fees and maintenance costs.
68. Legal fees payable in connection with property amounted to £14,000.
69. Recent maintenance issues included replacing 2 gas boilers, roof repairs and replacement of a dishwasher.
70. A notice to leave dated 9 February 2023 was served on the respondents by email. The notice specified that the 6 May 2024 was the earliest date an application could be made to the Tribunal.

71. At the case management discussion on 11 October 2024 the first respondent advised the Tribunal that he had made a payment on the morning of the discussion which cleared the arrears. This statement was untrue.
72. On 7 October 2024 the first respondent submitted a further offer to purchase the property for the sum of £960,000 through his solicitors, Kaur Sutherland.
73. The applicant's solicitors issued a qualified acceptance to the offer on 15 October 2024 specifying a date of entry of 8 November. The applicant's solicitors requested that the first respondent's solicitors confirm that they were satisfied on all matters relating to the first respondent's source of wealth prior to proceeding further.
74. The first respondent has not provided documentation to his solicitors to enable them to be satisfied in relation to his source of wealth and accordingly no progress had been made as at the date of the hearing.
75. The applicant has no faith in the first respondent providing the requested information and purchasing the property.
76. The applicant and her family do not believe that the first respondent has the funds necessary to purchase the property.
77. The respondents did not pay any rent between July 2024 and December 2024.
78. The first respondent paid £15,000 on 20 December 2024 towards the rent account leaving £2,992 outstanding as at that date.
79. The first respondent is 37 years old and resides with the second respondent and their 3 children aged 9, 4 and 2.
80. The first respondent is the CEO of a technology company called Digital Self Inc.
81. The first respondent failed to provide documentation to his conveyancing solicitors to show the source of funds needed to purchase the property.

82. The first respondent has the financial means to secure alternative accommodation for his family in the event that an eviction order is granted.
83. The first respondent spends the majority of his time outside the UK for tax reasons.
84. The first respondent's children attend nursery and school in the local area and are well settled within the area.
85. The first respondent failed to produce any evidence to substantiate his claims that he has sufficient funds to purchase the property in a US bank account.
86. The property was rented as unfurnished. A large amount of the respondents' furniture and possessions are within the property.

Reasons for the decision

87. Ground 1 in schedule 3 of the Private Housing (Tenancies) (Scotland) Act states:

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

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if the landlord—

(a) is entitled to sell the let property,

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

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

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

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

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

88. The Tribunal accepted the evidence that the applicant intended to sell the property. This was not disputed by the respondent.

89. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. It is well established that in determining whether it is reasonable to grant an order all relevant circumstances are taken into account, including personal circumstances, *Barclay v Hannah* 1947 SLT 235 and *Cumming v Danson* 2 ALL ER 653. The Tribunal had regard to the Upper Tier Tribunal's decision in an eviction application also relying on ground 1 *Caroline Manson and David Downie against Virginie and Iain Turner* UTS/AP/23/0018 – in determining whether it was reasonable to grant an order the Tribunal was required not only to identify the factors which it had taken into account, but also to explain why it had given more weight to those factors supporting the conclusion which it reached, relative to those which pointed the other way. Parties should be left in no doubt as to why the Tribunal reached the conclusion that it did. In assessing whether it is reasonable to grant an order all available facts relevant to the decision required to be considered and weighed in the balance, for and against.

90. The Tribunal took into account the application and documents lodged by the parties together with the oral representations and evidence heard at the cmd and hearing in reaching a decision.
91. The Tribunal found the applicant to be credible and reliable and accepted her evidence as truthful. In relation to the question of reasonableness the Tribunal gave great weight to the impact of the ongoing tenancy on the applicant. She was 76 years old. She wished to sell the property in order to settle her finances and provide assistance to her grandchildren. The property was a significant asset, the sale of which would provide her and her family with financial security. The property was the applicant's former family home where she resided with her husband before he passed away. She wanted to sell the property to help out her family which seemed a reasonable position.
92. The Tribunal accepted the applicant's evidence that the failure of the respondents to remove from the property and the issues arising from the first respondent's conduct were a source of great stress. The Tribunal gave weight to the applicant's age and the fact that she relied heavily on her two sons to support her with the oversight of the tenancy. The Tribunal took into account that the tenancy was having a detrimental effect on the applicant's wellbeing.
93. The Tribunal accepted the evidence from Christopher Hannay and Richard Hannay that the tenancy had a negative financial impact on the applicant. Both witnesses were credible and the Tribunal accepted their evidence as truthful. The Tribunal accepted that the conduct of the tenancy had placed a considerable administrative burden on Richard Hannay.
94. The Tribunal took into account that the respondents' pattern of building up significant rent arrears amounting to thousands of pounds over many months

before paying them off left the applicant in a difficult situation as she had to cover the outgoings associated with the property in the absence of regular rental payments. The first respondent did not dispute that arrears had built to a level where he made a lump sum payment of £15,000 on 20 December 2024 towards the rent account. There was no reason given by the first respondent to indicate that the previous pattern in relation to rent arrears would not continue if the tenancy was not brought to an end.

95. The Tribunal accepted that the applicant had no faith in the first respondent completing the purchase of the property. Given the first respondent's failure to provide his solicitor with the required documents and the lack of progress since the cmd this seemed reasonable.

96. The Tribunal did not find the first respondent's evidence to be credible or reliable. The first respondent had not lodged any documents to substantiate his financial circumstances. The first respondent stated that the delays in the purchase of the property were due to funds not being released from an account in the US however, his explanation for that was not substantiated by any documentary evidence.

97. The Tribunal took into account that the notice to leave had been served in February 2024. The first respondent had had ample opportunity to lodge any documents required to verify his circumstances or secure legal representation. The Tribunal concluded that the first respondent's statement that documents could now be lodged lacked any credibility and was a delaying tactic.

98. The Tribunal took into account that the first respondent had stated at the cmd that he had transferred funds on the morning of the cmd to clear the outstanding rent arrears balance of £11,916. This had been untrue and led

the Tribunal to have doubts regarding the truthfulness of much of the first respondent's evidence. It had been accepted by the first respondent that no payment had been made until 20 December 2024 in respect of the arrears.

99. The Tribunal gave weight to the first respondent's conduct as a tenant – he had allowed arrears to build up on multiple occasions with no explanation as to why, particularly as he maintained that he had significant sums of money.

100. The Tribunal gave weight to the fact that the first respondent had failed to provide proof of the source of funds to his conveyancing solicitors and provided no clear reason for this. His position that that the sale was proceeding in the usual fashion lacked credibility.

101. The Tribunal considered the impact that an order for eviction would have on the first respondent's family. The Tribunal gave significant weight to the fact that there were three young children in the property who were well settled there and had links with the local area through school and nursery. Moving house at short notice would inevitably be unsettling for them. The first respondent had raised the second respondent and his daughter's medical conditions as a reason why an order should not be granted. The first respondent failed to lodge any documentary evidence substantiating the medical conditions referred to.

102. The Tribunal accepted the first respondent's evidence that he had been under significant stress as a result of the present proceedings and that was impacting both respondents.

103. The Tribunal gave significant weight to the first respondent's evidence that he would be in a position to buy an alternative property for his family. The Tribunal took into account that the family may have a particular attachment to the property and had resided there since 2020 however, their situation was not

one where they would be reliant on assistance from the local authority to find alternate accommodation.

104. The Tribunal took into account the issues of disrepair raised by the first respondent. No documentary evidence had been submitted to support the claims of disrepair. The Tribunal took into account that the Richard Hannay stated that there had been difficulty in gaining access to the property and the Tribunal accepted Christopher Hannay's evidence that repairs had been carried out recently. The Tribunal did not accept the first respondent's evidence that the applicants were failing to meet their duties to carry out repairs. The Tribunal did not consider the issues of disrepair to be a weighty issue in relation to the question of reasonableness.

105. The Tribunal considered that when balancing competing factors on the issue of reasonableness the fact that the respondents had significant financial resources at their disposal to secure alternate accommodation was a persuasive factor in favour of granting an order. The respondents would be negatively impacted by an eviction order but the impact on them and their family was significantly offset by their ability to fund alternative accommodation of a high quality. The impact of the tenancy continuing on the applicant was detrimental. Given her age and stated intentions for the proceeds of the sale and the fact that she was intending to exit the rental market, which she found to be very stressful the Tribunal determined that it was reasonable to grant an order.

106. The Tribunal took into account the first respondent's evidence that he would be able to afford alternative accommodation but would require some time to find a property and make arrangements to move. The Tribunal considered

that given the size of the property, the fact that there were 3 young children in the property and the practicalities of making arrangements to find an alternative property– it would be reasonable to suspend enforcement of the eviction order until 31 March 2025. This would allow a seven week period for arrangements to be made.

107. Taking the foregoing factors into account the Tribunal determined that on balance it was reasonable that an order for eviction be granted. The Tribunal suspends enforcement of the order until 31 March 2025.

Right of Appeal

In terms of Section 46 of the Tribunal (Shelter 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.

Mary-Claire Kelly

Legal Member/Chair

4 February 2025_____
Date