



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/24/0824

Re: Property at 284 Maxwell Road , 0/2, Glasgow, G41 1TD ("the Property")

Parties:

Mr Mohammed Ameen and Mrs Naheed Ameen, 69 Langhaul Road, Glasgow, G53 7SE ("the Applicants")

Mr Mohammed Riyazi Abul Barakath, 284 Maxwell Road , 0/2, Glasgow, G41 1TD ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

1.1 At the Hearing, which took place by telephone conference on 4 March 2025, the Applicants were in attendance and were represented by Mr Sattar of Apex Property Services (Scotland) Limited. The Respondent was also in attendance and was represented by Ms Rachel Moon of Govanhill Law Centre.

Background

2.1 A CMD had previously taken place on 28 October 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 the issues to be resolved as:-

- i. Having regard to the various Notices to Leave served by the Applicants on the Respondents between 8 October 2022 and 14 June 2023, is the Applicants' true intention to recover possession of the Property in order to gift the Property to their son and his future wife?
- ii. Have the Applicants produced sufficient evidence of their son's intention to occupy the Property as his only or principal home for at least 3 months in terms of Ground 5 of Schedule 3 of the 2016 Act?
- iii. Have there been any discussions between the Applicants and the Respondent with regard to the Notices to Leave served?
- iv. What factors favour the grant of an eviction order?
- v. What factors favour the refusal of an eviction order?

- vi. Balancing the factors above, is it reasonable to issue an eviction order?

The Hearing

3.1 At the Hearing the Tribunal heard from Mr Sattar for the Applicants and from the Applicants as required. The Tribunal also heard from Ms Moon for the Respondent and from the Respondent.

Evidence for the Applicants

- 3.2 Mr Sattar stated that the Applicants want the Property vacated to allow it to be gifted to their son.
- 3.3 The Applicants' son had an Islamic wedding ceremony in February 2025 and will have a civil wedding ceremony in August 2025.
- 3.4 The Property is presently occupied by the Respondent's family comprising four adults and a 14-year-old child.
- 3.5 The Applicants' home at 69 Langhaul Road, Glasgow, G53 7SE is to be gifted to two of the Applicants' daughters. Of the properties owned by the Applicants, that property is the most expensive. The Applicants will each put in place a Will to deal with that arrangement and Mr Sattar is dealing with that under Islamic Law.
- 3.6 The Applicants' other property at 11 Herriet Street, Glasgow has been gifted to the Applicants' other daughter. She moved there in January 2025.
- 3.7 The Applicants accept various Notices to Leave have been served. These reflect the changes in the Applicants' plans particularly as a result of their son having decided to get married in 2024. There had been a lot of planning within the Applicants' family and after discussion it was decided to gift the Property to their son.
- 3.8 The Notice to Leave dated 8 October 2022 was prepared by the Second Applicant. At that time the Applicants' daughter was to be moving from London and it was intended that she would move to the Property. The Property would be refurbished in order to allow her to move in.
- 3.9 A further Notice to Leave was served on 24 February 2023, signed by the First Applicant. Again that Notice was served on the basis that the their daughter was to be moving in. The Applicants were unsure what they were going to do and were also unsure if the first Notice had been properly served. The first Notice was sent by ordinary post. The Tribunal also noted the first Notice to Leave served dated 8 October 2022 was incomplete in that the requisite date before which an eviction application would not be raised had not been completed. It would therefore be of doubtful validity.
- 3.10 The third Notice to Leave was served by Sheriff Officers in June 2023 and forms the basis for these proceedings.
- 3.11 In response to the Tribunal's questions relative to the "Declaration" of the Applicants, Shahid Pervez referred to thereon is a retired solicitor who is no longer practising and is not a Notary Public. The Tribunal noted Mr Pervez had not signed the Declaration.
- 3.12 The Applicants own no other properties.
- 3.13 The Applicants' son is presently living with the Applicants in the family home which is a detached house. He works at Barclays Bank spending one day in the office and four days working from home.
- 3.14 The Applicants' daughter-in-law will not move in with their son meantime. Mr Sattar referred to Islamic culture and indicated that the Applicants' son and his wife will move into the Property in August 2025 after they are legally married by virtue of the civil ceremony due to take place at that time.

- 3.15 The property at Herriet Street lay empty for approximately 1 to 2 months prior to the Applicants' daughter moving in. During that period that property was refurbished and cleaned up. That property had been rented for approximately one year previously.

Mrs Moon for the Respondent had no cross examination for the Applicants.

Evidence for the Respondent

- 4.1 Ms Moon questioned the Applicants' son's intention to move into the Property as his permanent home for at least three months. She said he had not given evidence at the Hearing and had he been present, she would have asked whether he had looked for other properties and had financial resources to buy his own property.
- 4.2 Ms Moon stated that the Notices served by the Applicants were not genuine.
- 4.3 She referred to the Respondent having three years of uncertainty about whether he and his family would lose their home.
- 4.4 Ms Moon also referred to the Rent Increase Notice previously served by the Applicants in terms of which they sought to increase the rent payable by the Respondent to £1400 per month. The proposed rent increase was referred to the Rent Service Agency and ultimately the parties reached agreement that the rent should be paid at an increased rate of £850 per month. Ms Moon questioned whether or not, if the Respondent had agreed to increase the rent to £1400 per month, these proceedings would have been raised at all.
- 4.5 She said the Applicants had not made out the ground of eviction.
- 4.6 Further, it was not reasonable for an eviction order to be granted.
- 4.7 Under questioning from Ms Moon, the Respondent stated that he is a freelance interpreter and delivery driver.
- 4.8 His household comprises that his wife and three children born in 2001, 2003 and 2010 respectively.
- 4.9 None of his children are married.
- 4.10 The oldest two children are in higher education.
- 4.11 His wife also attends a three month education course and is hopeful that she will have a job at the end of that period.
- 4.12 The Respondent said that the Property was rented to him by an agent of the Applicants. He paid a deposit of £750 together with the first month's rent of £750 to MLK Lettings and got a receipt. The rent was subsequently collected by MLK Lettings and he had a good relationship with them. When the boiler broke down, Mr Amin immediately arranged repair.
- 4.13 There are no rent arrears due.
- 4.14 The Respondent stated that he received and understood the Notices served. He started looking elsewhere for accommodation. However he could not secure any property due to his low income.
- 4.15 Universal Credit tops up the rent due.
- 4.16 Every reason in each of the Notices to Leave is different.
- 4.17 The Respondent sought help to find reasonable rented property. His wife does not drive and they could not stay further afield.
- 4.18 He is on a list of more than three housing associations and has also been looking for a private let too. He first applied to the housing associations in 2022 after the first Notice to Leave was served. He applied to Gorbals, Southside and Govan Housing Associations. He also applied for mid-market rentals too and looked in the private sector but it was impossible to find a property due to the high rent. His housing association applications are still current together with his midmarket rental application.
- 4.19 He is asking the Tribunal for an extension to stay in the Property for one more year.

- 4.20 The Respondent is the sole breadwinner within his family.
- 4.21 The Respondent could not say how long it might take to secure a suitable property. The Respondent referred to having only 30 or 40 points when 80 - 90 points are needed for emergency accommodation to be allocated.
- 4.22 With regard to homeless accommodation the Respondent said that that the local authority cannot do anything until he is homeless.
- 4.23 The Respondent said he had been looking online at letting and estate agent websites. When the Respondent says he is assisted by Universal Credit prospective landlords seek additional guarantees from an independent party which the Respondent does not have. He has no family or friends here. He moved from Leicester to Glasgow for the higher education of his children. Rents in the private sector are £1200-£1300 per month and smaller properties are not suitable.
- 4.24 In response to a question from Ms Moon as to how an eviction order might affect the Respondent, he said his family would be split up and would live in different properties. He does not know where they might be placed. His youngest child is at school and is within walking distance of the school where he undertakes Islamic studies. His education would be affected. He is doing well.
- 4.25 The Respondent said that he would need to travel to work. He could not imagine living in bed-and-breakfast accommodation. He doesn't deny that the Property belongs to the Applicants but his situation does not allow him to move.
- 4.26 Ms Moon referred to there being a housing crisis in Glasgow with waiting lists being the longest they have ever been. She stated that the Respondent's family would be considered separately due to there being adult children and they would be placed into hotel or bed-and-breakfast accommodation.
- 4.27 The Respondent's youngest child is in third year at secondary school. His walk is 15 to 20 minutes.
- 4.28 The Respondent's 21 year old child is studying a Masters in education at Glasgow University. She is in year three of a five year course. She is not working and undertakes both mainstream and religious studies.
- 4.29 The Respondent's eldest child has completed his Masters in Civil Engineering and is planning further studies. The Respondent was not clear what he is currently doing. He believed he was undertaking voluntary work but was not sure if he was being paid for any work. He said it was difficult to converse with that son.
- 4.30 With regard to his wife's course, the Respondent stated that she had qualified from a previous course had been selected as one of 10/50 students for this course. She started three weeks ago on placement as a classroom assistant. She hopes to have the opportunity to work at the end of this course.
- 4.31 There are no health issues within his family other than relative to the Respondent.
- 4.32 With regard to housing costs, he receives Universal Credit of around £600-£800 each month. The figure goes up and down and he pays around £250 per month from his own resources. His oldest child is not contributing to the household income but the Respondent has stopped paying for his expenses such as attending a gym.
- 4.33 The Respondent said he is self-employed. He works around 60 hours per week to gain an average monthly income of around £2000. His wife does not receive any bursary. She has no income.
- 4.34 Ms Moon referred to housing association waiting lists being up to 7 to 10 years in length.

Further Submissions for Applicants

- 5.1 Mr Satter said there was no deposit paid to the Applicants. MLK Lettings had ceased trading. He said it was two month's rent that was paid in advance.

- 5.2 He said the rent for the Property had not increased since 2019 and the proposed increase took into account the increase in the mortgage which the Applicants were paying out of their own pockets.
- 5.3 The Property is located within an old tenement building and the rents in the area are much more than that charged to the Respondent. The Applicants believed they were entitled to a rent increase.
- 5.4 The mortgage is around £800 per month. Factors fees are around £300 per month which includes buildings insurance. Mortgage payments are on an interest only basis.

Findings in Fact

- 6.1 The Applicants are the heritable proprietors of the Property.
- 6.2 The Applicants leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement (erroneously described therein as a Short Assured Tenancy), the start date of which was agreed to be 3 September 2019 ("the PRT").
- 6.3 The Applicants want the Property vacated to allow it to be gifted to their son.
- 6.4 The Applicants' son had an Islamic wedding ceremony in February 2025 and will have a civil wedding ceremony in August 2025.
- 6.5 The Applicants' home at 69 Langhaul Road, Glasgow, G53 7SE is to be gifted to two of the Applicants' daughters. The Applicants will each put in place a Will to deal with that arrangement under Islamic Law.
- 6.6 The Applicants' other property at 11 Herriet Street, Glasgow has been gifted to the Applicants' other daughter. She moved there in January 2025.
- 6.7 The Notice to Leave dated 8 October 2022 was prepared by the Second Applicant. At that time the Applicants' daughter was to be moving from London and it was intended that she would move to the Property. The Property would be refurbished in order to allow her to move in. This Notice was sent by ordinary post and was incomplete in that the requisite date before which an eviction application would not be raised had not been completed. That Notice was invalid.
- 6.8 The Notice to Leave dated 24 February 2023, signed by the First Applicant, was served on the basis that the their daughter was to be moving into the Property.
- 6.9 On 14 June 2023 the Applicants served on the Respondent by Sheriff Officers a Notice to Leave seeking to recover possession of the Property by 7 September 2023 on the basis that a family member of the Applicants intended to live in the Property.
- 6.10 The Applicants served on Glasgow City Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- 6.11 The Applicants own no other properties.
- 6.12 The Applicants' son is presently living with the Applicants in the family home which is a detached house.
- 6.13 The Applicants' son and his wife will move into the Property in August 2025 after they are legally married by virtue of the civil ceremony due to take place at that time.
- 6.14 The property at Herriet Street lay empty for approximately 1 to 2 months prior to the Applicants' daughter moving in. That property had been rented for approximately one year previously
- 6.15 The Respondent works around 60 hours per week and earns around £2000 per month.
- 6.16 The Respondent's wife is not in employment. She is undertaking a further 3 month course of study at College and hopes to gain employment thereafter.
- 6.17 The Respondent's eldest child is 23 years of age. He has completed his Masters in Civil Engineering. He is contemplating further studies. He is not in paid employment and does not contribute to the household finances.

- 6.18 The Respondent's 21 year old child is studying a Masters in education at Glasgow University. She is in year three of a five year course. She is not working and undertakes both mainstream and religious studies.
- 6.19 The Respondent's youngest child is in 3rd year at secondary school.
- 6.20 The Respondent receives Universal Credit.
- 6.21 The Respondent has applied to Gorbals, Southside and Govan Housing Associations for alternative accommodation. He has also applied for mid-market rentals and looked in the private sector without success.
- 6.22 Given his financial situation, private landlords seek additional Guarantees from third parties which the Respondent cannot provide.

Reasons for Decision

- 7.1 The Tribunal considered the Applicants and the Respondent both generally credible and reliable in their evidence.
- 7.2 The application proceeds upon Ground 5 of Schedule 3 of the 2016 Act.

Ground 5 states –

"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."

7.3 Dealing with each of the issues to be resolved in turn:-

i. *Having regard to the various Notices to Leave served by the Applicants on the Respondents between 8 October 2022 and 14 June 2023, is the Applicants' true intention to recover possession of the Property in order to gift the Property to their son and his future wife?*

Sub-paragraph 2(a) of Ground 5 requires that the Applicants' family member, intends to occupy the Property as his only or principal home for at least 3 months. The Tribunal accepted that the Applicants' son intends to occupy the Property as his only or principal home for at least three months. He has recently married under Islamic Law and is due to have a civil wedding ceremony in August after which he will move into the Property with his new wife. Whilst the Applicants have served various Notices to Leave on the Respondent the Tribunal accepted that the Applicants' plans for the Property had changed and that they had put in place arrangements to gift to each of their children one of their properties or a share in a property, those decisions being made having regard to their children's circumstances.

ii. *Have the Applicants produced sufficient evidence of their son's intention to occupy the Property as his only or principal home for at least 3 months in terms of Ground 5 of Schedule 3 of the 2016 Act?*

The Tribunal accepted the Declaration signed by the Applicants as sufficient evidence under subsection 5(7). The Tribunal also accepted the Applicant's oral evidence and the oral submissions made on their behalves at the Hearing.

iii. *Have there been any discussions between the Applicants and the Respondent with regard to the Notices to Leave served?*

At the Hearing neither party referred to there being any discussions directly with the other relative to the Notices to Leave.

iv. *What factors favour the grant of an eviction order?*

The Applicants have the legal right to use and dispose of the Property as they think fit and it is reasonable for them to wish to gift the Property to their son and his new wife to occupy as their only or principal home for at least three months. The Applicants have put in place arrangements to gift to each of their children one of their properties or a share in a property, those decisions being made having regard to their children's circumstances. The Applicants' son and his new wife will not take occupation of the Property until after their civil wedding ceremony in August 2025.

Whilst the Applicants have served various Notices to Leave on the Respondent since October 2022 these Notices have given the Respondent notice of their desire to recover possession of the Property for their family generally and, by the Respondent's own admission, he started to look for alternative accommodation immediately after the first Notice to Leave was served. He has therefore had from October 2022 to find alternative accommodation which is a significant period of time.

The Respondent's ability to find alternative accommodation is being hampered by the size of accommodation needed for his family and his low income. The Respondent's elder son in particular is now at least 23 years of age, is not working and is not contributing to the household finances. Indeed he is apparently contemplating a further course of study and is wholly dependent upon the Respondent. The Respondent's wife is also not working therefore limiting further the income available to pay a higher rent.

v. *What factors favour the refusal of an eviction order?*

The Respondent is the sole breadwinner in his household. He has a young son still at secondary school and his middle child is studying fulltime at University. He has sought to find alternative accommodation since after the first Notice to Leave was served in October 2022 without success. He does not want his family to be split up should they require to move into homeless accommodation as a result of an eviction order being granted. He is unable to provide a third party Guarantee for a let in the private sector.

vi. *Balancing the factors above, is it reasonable to issue an eviction order?*

The Tribunal considered whether it would be reasonable to grant an eviction order.

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)."

The Tribunal sought to objectively balance the rights and interests of the parties. It took into account the parties' circumstances as at the Hearing.

The Applicants' position outweighed that of the Respondent. The Respondent has known since October 2022 that the Applicants wished to recover possession of the Property. As stated above, the Respondent's ability to find alternative accommodation is being hampered by the size of accommodation needed for his entire family and his low income supplemented by Universal Credit. Significantly, the Respondent's elder son is at least 23 years of age, is not working and is not contributing to the household finances. He is an adult and the Respondent did not appear to know what he was doing. He ought not to be supported by the Respondent in this way. Indeed he is apparently contemplating a further course of study and is wholly dependent upon the Respondent with that state of affairs being likely to continue. The Respondent's wife is also not working therefore limiting

further the income available to pay a higher rent in the private sector. She will shortly complete her further course of study and ought to take steps to secure employment.

The Tribunal determined that the proper balance between the parties' interests could appropriately be struck by postponing the date for possession to allow the Respondent additional time to find alternative accommodation.

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

- 7.4 Having reached the decision to grant an eviction order the Tribunal carefully considered the extent to which it should 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 and determined that the order cannot be enforced until after 12noon on 30 June 2025.

Decision

The Tribunal determined that an eviction order should be granted against the Respondent in favour of the Applicants suspended to 12 noon on 30 June 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.

G.Buchanan

Legal Member/Chair

— **4 March 2025**
Date