



**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/23/1843**

**Re: Property at 108 Forth Street, Flat 2/1, Glasgow, G41 2TB (“the Property”)**

**Parties:**

**Mrs Mamoon Bibi, XX Hillend Road, Clarkston, Glasgow, G76 XXX (“the Applicant”)**

**Mrs Ahlam Hamdan, 108 Forth Street, Flat 2/1, Glasgow, G41 2TB (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

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

**Findings in Fact**

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under a Private Residential Tenancy Agreement.
2. The Property has historically been in ownership of the Badar family. The Applicant is the wife of Dr Athar Badar. She holds the Property for the beneficial interest of the Badar family.
3. The Respondent has lived in the Property for approximately twenty years. In that time, she has generally complied with her tenancy obligations.
4. The Property is a two-bedroom flat.

5. The Applicant resides with her husband, their two children, and her husband's elderly parents at XX Hillend Road, Clarkston ("the Badar Home"). The Badar Home is owned by Dr Badar's parents.
6. The Badar Home is in need of repair.
7. The Property is part of a block of flats that is not managed by the property factor. The Badar family have had difficulties procuring repairs to the common parts due to the failure of other owners paying their share.
8. The Badar family wish to sell the Property.
9. The Badar family intend to apply the net free proceeds of sale of the Property to repairs to the Badar Home, the purchase of a new car for Dr Badar's parents, and any balance to be applied to the purchase of a new home for the Applicant, Dr Badar and their children.
10. The Badar family marketed the Property for sale with Allen & Harris, estate agents.
11. An offer to purchase the Property was received from a friend of the Respondent. The proposed purchase did not progress.
12. Due to the need to seek eviction through the Tribunal, and on the advice of solicitors, the Property was withdrawn from the market. It will be remarketed following the eviction of the Respondent.
13. The Respondent lives with her two adult daughters.
14. The Respondent is in part-time employment, and receives Universal Credit.
15. The Respondent's eldest daughter is seeking employment. Her youngest daughter is studying at the University of Strathclyde.
16. The Respondent's daughters were, until approximately two years ago, living with their father in Lebanon.
17. The Respondent's daughters are suffering from bouts of poor mental health due to the loss of their father in the war in Lebanon.
18. For cultural reasons, and mental health reasons, it is preferable for the Respondent and her daughters to be housed together.
19. The Property has not been adapted for the Respondent's use.
20. Neither the Respondent nor her daughters access local specialist services.
21. The Respondent does not drive, and requires to be close to her work.

22. The rent payable by the Respondent is considerably under the market rate.
23. The market rent for a two-bedroom property in the private rented sector is unaffordable for the Respondent.
24. The Respondent has made enquiries with the local authority and housing associations regarding housing and homelessness. On the basis that she wishes to be housed with her daughters, she has been assessed as requiring a three-bedroom property.
25. The Respondent is likely to receive housing priority from the local authority if an eviction order is granted.

### **Findings in Fact and Law**

1. The Applicant is entitled to sell the Property.
2. The Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.
3. In all of the circumstances, it is reasonable to issue an eviction order.

### **Statement of Reasons**

1. This Application called for a Hearing on 16 December 2024. The Applicant was represented by Mr Caldwell, solicitor. The Respondent was represented by Miss Sloey, solicitor.
2. This is an Application for an eviction order. The Applicant relies on ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. She contends that she intends to sell the Property and that it is reasonable to grant an eviction order. Previously, the Tribunal raised a query regarding whether the tenancy was a Private Residential Tenancy. However, it is a matter of agreement between the Parties that the tenancy in this case was a Private Residential Tenancy.
3. This Application has suffered from an unfortunate procedural history that has caused it to take far longer than it ought to have to get to this point. The Application was originally lodged in June 2023 and a Case Management Discussion assigned for September 2023. At the CMD, it was discovered that the Respondent had been resident in the Property for approximately twenty years. A query was then raised regarding whether the tenancy was, in fact, a Private Residential Tenancy. The Application was continued to March 2024, at which point it was agreed between the parties that the tenancy was a PRT. The points put in issue by the defender were: (i) whether the Applicant truly intended to sell the Property; and (ii) if so, whether it was reasonable in all of

the circumstances to grant the eviction order. The Tribunal fixed a Hearing. A date of 7 August 2024 was proposed, but it seems never formally fixed. The failure to fix a date was discovered by Mr Caldwell during his preparations in early August 2024. The Tribunal, in haste, assigned a Hearing for late August 2024, but that was not suitable for the Respondent's representative or her proposed witness. In light of that, the Tribunal cancelled the Hearing and fixed a Hearing for 16 December 2024. This Decision follows that Hearing.

4. Miss Sloey confirmed at the outset that the Respondent maintained both arms of her defence. She wished to put the Applicant to proof on whether her stated intention to sell the Property was genuine. If the Applicant established that the intention was genuine, the Respondent's position was that, in all of the circumstances, it was not reasonable to grant the eviction order.

### Evidence

5. The Tribunal heard evidence from four witnesses. For the Applicant, we heard from Dr Athar Badar (the Applicant's husband) and Mamoon Bibi (the Applicant). For the Respondent, we heard from Ahlam Hamdan (the Respondent) and Rawan Hamdan (the Respondent's eldest daughter).

#### *Dr Athar Ali Badar*

6. Dr Badar is forty-two years old. He is the husband of the Applicant. He resides with the Applicant and two children at XX Hillend Road, Clarkston ("the Badar Home"). The Badar Home is owned by Dr Badar's parents, who also reside there. Dr Badar's father is 85 years old and his mother is 69 or 70 years old.
7. Dr Badar is a medical doctor. He has two sons. [REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]
8. Dr Badar spoke to the Badar Home having been adapted for H benefit in 2022. An extension had been added to create a downstairs living area and wet room bathroom. The kitchen had been extended with a ramp up into it for H wheelchair. The doorways had been widened for wheelchair access. The works had cost approximately £90,000 and were paid for by Dr Badar's parents. The original intention had been to sell the Property to fund those works, but there were ultimately completed by his parents using their savings.

9. Dr Badar confirmed that the Property had been owned by his parents since 1990 or 1991, and that the Respondent had lived in the Property for about twenty years. Predominantly, Dr Badar's mother had managed the tenancy. More recently, due to his mother having a recent period of ill-health as well as generally getting older, Dr Badar had become more involved in management. Dr Badar described the Property as having two bedrooms, a living room, a kitchen, a bathroom and a hallway.
10. Dr Badar described the Property as a "family asset". It had been owned by his parents. Title was then transferred to Dr Badar's brother. It was then transferred to the Applicant about ten years ago. However, the Applicant has no involvement in the management of the tenancy.
11. Dr Badar spoke to the Respondent, to the best of his knowledge, originally moving into the Property with her husband and two daughters. In or around the late 2000s, the Respondent and her husband separated, and he left with their daughters. The Respondent thereafter lived alone at the Property until recently. The Respondent now lives at the Property with her two daughters, who he believed were in their late teens or early twenties.
12. Dr Badar spoke to the decision being taken to sell the Property. Following some clarification being sought by the Tribunal, Dr Badar spoke to being diagnosed with a cardiac condition in 2019 and undergoing surgery. Then, in 2020, the Covid pandemic occurred. Dr Badar spoke to being unable to come home for fear of how H might be affected by the virus. Dr Badar lived with friends and in hospital accommodation during that time. Separately, as H was aging, the Applicant was finding it increasingly difficult to carry him. Whilst Dr Badar and his wife aspired to live in their own house, they had been unable to identify a suitable property for H needs. Meanwhile, Dr Badar's parents were getting older. His mother was finding it increasingly stressful to manage the Property. The Property is a flat dwellinghouse within a block. The block does not have a property factor to manage the common areas, and attempts by the Badars to appoint one have been unsuccessful. The roof of the block has suffered persistently from leaks. At times, the Badars have paid the full cost of repairing the roof and then sought to recover contributions from other owners. Some owners have paid their full share when called upon to do so, but not all have. In light of all of those factors, the Badar family agreed that the Property should be sold, and that the funds realised from the sale could be used to fund the necessary adaptations to the Badar Home for H.
13. Dr Badar spoke to informal family discussions taking place sometime in Summer or late 2021 regarding how to broach the subject of sale with the Respondent. He said that his mother approached the Respondent to tell her about the Property being put on the market. Dr Badar was not directly involved in that discussion.
14. Dr Badar spoke to the process of sale becoming more formal in early 2022. The Badar family instructed Allen & Harris, estate agents, to market the Property. Allen & Harris instructed a Home Report be carried out. A copy of

the Home Report has been produced by the Applicant (Production 5). It is dated 4 May 2022. The market valuation of the Property was £180,000. Allen & Harris took photographs and a video of the Property and listed it on their website for sale. Dr Badar could not remember whether the listing expressly stated that there was a sitting tenant. However, the Respondent was aware of the listing because she was there when the survey was undertaken and the marketing photographs taken.

15. Dr Badar said that the Respondent had approached his family to say that she had a friend who was interested in purchasing the Property. Dr Badar could not remember the friend's name, but confirmed that an offer of £165,000 was received, on the basis of a quick completion. Dr Badar said that the offer was acceptable, but that it fell through. He spoke of the friend repeatedly missing deadlines and, when called, promising that everything was in hand. He spoke of promises to complete imminently. However, the sale fell through. Then, towards the end of 2022, the Respondent came forward with a different friend who said that he was helping the Respondent to try to secure a mortgage and that, if she was unable to do so, then the friend would buy the Property. However, no offer was received from either of them. Dr Badar said that he never got a reason for that.
16. Also towards the end of 2022, Dr Badar said that the family received a call from Allen & Harris to say that the Respondent had been uncooperative with viewings. They said that they would call the Respondent to arrange access, she would undertake to check and call them back, and then would not call back. Allen & Harris would then chase a response, the Respondent would undertake to check and call them back, but then not, and so the process would repeat. It was clear that progress was not being made, so the decision was taken to remove the Respondent. The Property was taken off the market while that got resolved. Dr Badar said that the intention is to reinstruct Allen & Harris to market the Property once the Respondent is removed.
17. Dr Badar confirmed that things had moved on since the original decision to sell the Property. Whereas the sale proceeds were going to be used to fund the extension works, the intention now was to: (i) fund repairs to the Badar Home, including roof repairs; (ii) purchase a new car for Dr Badar's parents; and (iii) partially fund a deposit for Dr Badar and his wife to purchase a home of their own, once they identify one. Regarding the repairs, reference was made to an email and quotation produced by the Applicant (Production 6).
18. Dr Badar confirmed that there was no mortgage lending over the Property. Generally, he was complimentary about the Respondent as a tenant. She had paid rent, and there were no issues prior to the current steps to evict her. Dr Badar spoke to some repairing issues that had been raised after the decision to sell the Property had been made, but confirmed that all repairs were attended to swiftly. He suggested that the Respondent had been belligerent towards contractors more recently, but that was again after the steps to evict her had started. He described his dealings with the Respondent now as being more stressful and challenging.

19. Dr Badar said that the difficulties evicting the Respondent and selling the Property were having an impact on his family. He described the process as stressful and time consuming. He said that his family life was already stressful. His elderly father has mild dementia. His mother has been seriously unwell following a serious bleed in her gut. He has two sons with complex care needs. All the while, this process has taken a long time to reach a conclusion. It has been unpleasant.
20. Dr Badar confirmed that his parents have another rental property in London. They would have liked to have sold that as well, but there has historically been little interest in that property. Dr Badar said that it had been extended in a dysfunctional way. Dr Badar also confirmed that he and his wife had, through a limited company, purchased a residential property as an investment in April 2024. He said that the intention there was to try to build up equity in that Property to either: (i) allow them to purchase a property of their own, if one could be found; or (ii) buy out his siblings from their shares of the Badar Home, when his parents ultimately pass away.
21. In cross-examination, Dr Badar reaffirmed that the Property had been marketed for sale. It had been removed when it became clear that the Respondent was not going to move out. He was asked why he had not taken steps to replace Allen & Harris with a different estate agent, and he confirmed that he confirmed that he did not want to replace Allen & Harris. He was happy with their service. The issue was the Respondent's continued occupation; not the estate agent. Dr Badar was unable to say what steps Allen & Harris had taken to have the Respondent comply with requests for access. He was reliant on the information given to him by Allen & Harris. He could not recall whether the Property had been marketed with a sitting tenant, though the initial marketing was when he thought that the Respondent was coming to the end of her tenancy.
22. Dr Badar was asked when he came to the decision to market the Property without a sitting tenant. He said that he had gone to considerable lengths to sell without evicting the Respondent, including contacting auction sites. The advice that he has received is that best value will be obtained by selling with vacant possession.
23. Dr Badar was asked about the extent of repair needed to his parents' home. He accepted that the wants of repair did not make the property uninhabitable, but the work needed to be done. He accepted that the risk of his family being made homeless was low. Dr Badar accepted that there were likely other ways to fund the works, but that would require obtaining mortgage financing. The sale of the Property was the preferred option to fund works.
24. Dr Badar was unable to say how frequently the Property was inspected. He said that inspections had been infrequent during Covid. Insofar as repairs were concerned, the Property was repaired when his family were made aware of a need for repair.

25. Dr Badar spoke to having suffered a cardiac event in 2019 and having required surgery. He spoke to returning to work and during the Covid-19 pandemic. He said that, in a perfect world, his family would have sold the Property, purchased a home and undertaken adaptations to that for his son's use. Circumstances changed that, which is why his parents' house was adapted. It remains his aspiration that he will be able to find a Property for his family that suits their needs, though he also confirmed that he may consider buying his parents' property in the future.

*Mamoon Bibi*

26. The Applicant gave evidence next. She confirmed that she is the notional landlord, but that the reality was that she was landlord in name only. The Property belongs to her husband's family, in her eyes, and she deals with it as directed. She has no involvement in decision making. The Property had been managed by her mother-in-law and, more recently, by her husband. Beyond that, she did not know much at all about the letting.
27. In cross-examination, the Applicant said that the reason for selling the Property was to lessen the family burden, and to raise funds for her father-in-law. She also spoke of her and her husband wanting their own property to have their own space. They had wanted to buy a house a few years prior, but that was overtaken by her husband's health issues and then the pandemic. Her youngest son's health issues presented a challenge for her as he got older, bigger and heavier, and so her parents-in-law's home was extended and adapted for him.

*Ahlam Hamdan*

28. The Respondent confirmed that she lived at the Property with her daughters. She is employed at the Crowne Plaza Hotel and the Riverside Beauty Salon as a beauty therapist. Her daughters are both adults, aged 22 and 25. Neither are employed. Her youngest daughter is in higher education, studying at the University of Strathclyde. Her eldest daughter is seeking employment.
29. The Respondent spoke to having lived in the Property for around 20 years. She had originally moved in with her husband and daughters. However, following the breakdown of her marriage, her husband had moved back to Lebanon with their daughters. Her daughters had returned to Scotland in the last few years due to the war in Lebanon. Unfortunately, her husband was killed in the war. She spoke of her daughters' stress following their father's passing. They are on medication for their mental health. The Respondent has gastric problems. Neither the Respondent nor her daughters are in receipt of any local specialist services.
30. The Respondent confirmed that she was looking for alternative accommodation. She had made several applications to housing associations. She said that her landlord had not been supportive of her finding alternative



accommodation. Her position was that her landlords had never undertaken any maintenance in the near twenty year period that she lived in the Property, until a repairing issue was raised by Glasgow City Council. The Respondent said that she had not notified the need for repair to the Council. She said that, shortly before the pandemic began, some people from the Council inspected the Property. The outcome of that inspection was that the bathroom needed work, windows needed replaced, and the boiler needed replaced. Those works were undertaken, and she was happy with the outcome.

31. The Respondent also spoke of a long-term issue with water ingress through the roof. That had been ongoing for approximately ten years. She said that she had been told by the Badar family that the other owners in the block would not chip in for the repair costs, which is why it had not been done. Her view was that this was not her problem. She was paying rent, and it was for the landlord to address the issue. In the end, she said that she arranged for the ceiling to be repaired, and agreed that her costs could be deducted from rent.
32. The Respondent said that she had nowhere to go if she was evicted. She was in contact with the homelessness team at the local authority, and with multiple housing associations. The issue was that she had been allocated a number of points, and now had to wait. She denied that she had been offered an alternative property already. Her position was that she had not had any offers of alternative housing.
33. The Respondent spoke of the first attempt to sell the Property to her friend. She said that, in anticipation of a proposed sale, her tenancy deposit had been returned to her. The intention had been for her friend to take a mortgage to buy the property, but his surveyor had told him that it would be near impossible to obtain mortgage financing due to the need for repair and refurbishment. When the sale fell through, Dr Badar's mother had asked her to attend a meeting to repay her tenancy deposit and sign a new tenancy agreement. The Respondent said that this sought to increase the rent and add new terms to the tenancy which were unacceptable to her. The Respondent said that she offered to repay the tenancy deposit in cash, but that this offer was refused.
34. In cross examination, the Respondent said that she had tried to apply for two-bedroom properties but that she had been refused because her two daughters were over 16. Insofar as they were going to be living together, they had been assessed as needing a three-bedroom property. The Respondent said that she would have preferred a two-bedroom property because the rent for a three-bedroom property would be higher. The Property has two bedrooms, and it has sufficient space for the family. The Respondent's position was that, both culturally and for the specific circumstances of the family following her former husband's death, her daughters needed to live with her.
35. The Respondent confirmed that she had not applied for private lets. She said that the rent was too high when she looked previously. That was why she was

focused on social housing. She works part-time, and her income is supplemented from Universal Credit. Her entitlement to housing benefit is restricted because she has two adult daughters living with her. There is an expectation that adult children will contribute to rent. The Respondent's eldest daughter is not employed and does not receive Universal Credit. The Respondent's youngest daughter is in higher education and receives a bursary, but does not receive any assistance with housing costs.

36. The Respondent said that the private lets she had identified for two-bedroom properties had rent in the region of £1,200 per month. Her rent is currently £530 per month, and her original rent was £475 per month. The Respondent accepted that her current rent is far below the market value.
37. The Respondent spoke of being unsure of whether the Badars truly intended to sell the Property. She denied having prevented access to Allen & Harris for property viewings, saying that she could only not accommodate access when she was working. Her view was that the Badars had changed their mind about selling. She spoke in re-examination about two viewings having taken place.

#### *Rawan Hamdan*

38. Miss Hamdan is the eldest daughter of the Respondent. She confirmed that she lives with her mother and sister at the Property. She is currently unemployed and seeking employment. She is applying for jobs and sometimes gets benefits.
39. Miss Hamdan spoke of her family's attempts to find somewhere else to live. She spoke about applying to housing associations. She said that they had contacted Shelter Scotland and also homeless shelters. She said that, without proof of homelessness, most were not assisting. She said that, whilst they had looked at private lets, social housing was the preferred option. They viewed it as "more secure".
40. Miss Hamdan said that the flat had been in poor condition, but had been fixed. She spoke about having nowhere to move to when the works were being carried out and of booking tickets to Lebanon that were then cancelled. She said that her family did not want to impede a sale of the Property, but they had nowhere else to go. She said that someone from Glasgow City Council knocked the door and said that they were doing a "check". The bathroom needed works, and some windows needed replaced. The Property was cold. The works were done and they were happy.
41. Miss Hamdan described the housing waiting list as the principal barrier to their moving on. Her family needed to live together. She referred to that being the done thing in their community. In addition, given what they had been through with her father's death, the family cannot live separately. Due to the age of her and her sister, the family had been assessed as needing a three-bedroom

property. She suggested that they needed somewhere on the south-side of Glasgow to be close to her mother's work.

42. Miss Hamdan spoke of a family friend who was going to buy the Property from the Applicant, but that the sale had fallen through. Her understanding was that the offer had not been accepted.
43. In cross-examination, Miss Hamdan expressed doubts about the Badar family's intention to sell the Property. She said that they had indicated an intention to sell, then would not sell to the Hamdan family friend, then raised the rent, and now want to sell again. However, there is no advert for the Property anywhere.
44. Miss Hamdan asserted that the family had not been offered a two-bedroom property to move to. They had been assessed as requiring a three-bedroom property because of the age of her and her sister. She said that they did not really want to consider the private let market because it lacked certainty. She spoke of friends with private lets who get settled and then receive notices to leave. A social tenancy offers better security long-term. She accepted that her family would likely get more assistance with their housing needs if an eviction order was granted.

## Submissions

### *Applicant's Submissions*

45. Mr Caldwell invited the Tribunal to accept the Applicant's and Dr Badar's evidence as credible and reliable. He took the Tribunal through the procedural history of the case, which was unfortunately lengthy. He then turned attention to the substance of the case. There were, he said, two issues to determine: (i) Is there a genuine intention to sell the Property; and (ii) is it reasonable in all of the circumstances of the case to grant the eviction order?
46. Mr Caldwell highlighted that the Respondent had, at the first CMD, conceded that the Applicant intended to sell the Property. That was subsequently recanted. Mr Caldwell directed the Tribunal to the evidence of Dr Badar and the Applicant. He submitted that the beneficial interest in the Property lies with the Badar family, and that the Applicant is a nominal landlord. He invited the Tribunal to accept the evidence that steps had been taken already to sell the Property, that the continued management of the Property was causing stress to Dr Badar's elderly parents, that interactions with between the Badar family and the Respondent had become difficult due to a lack of co-operation, and that there was a need to realise the value of the Property for the purposes of repairs to the Badar family home. There was, he said, ample evidence to support a finding that the Badar family intended to sell the Property. He directed the Tribunal to the Upper Tribunal's decision in *Stainthorpe v Carruthers*, 2024 Hous. L.R. 39, where, at paragraph 48, Sheriff Jamieson appeared to find favour with the decision of Lord Sumption in *S Franses Ltd v Cavendish Hotel (London) Ltd*, [2019] A.C. 249:-

*“Lord Sumption remarked... in relation to “intention” cases that: “We have to proceed on the footing litigants are honest or, if they are not, that they will be found out by the experienced judges who hear these cases.””*

In this case, he said, Dr Badar has stated an intention, and that evidence ought to be accepted. The barrier of intention is a low bar, and one that the evidence easily surpasses.

47. Turning to the question of reasonableness, with reference to the Upper Tribunal’s decision in *Manson and others v Turner*, 2023 UT 38, Mr Caldwell submitted that the question of reasonableness relates to both the reasonableness of the intention to sell and whether, in all of the circumstances, it is reasonable to grant an eviction order. He submitted that reasonableness has to be looked at from both sides. It is an assessment having regard to all of the circumstances.
48. In this case, it is not a social tenancy. As a matter of principle, owners of property ought to be allowed to deal with that property as they wish. It is not reasonable for a private sector tenant to expect to have a tenancy for life. The circumstances of the Applicant’s family were referred to. Reference was made to the repairing difficulties caused by the Property not having a property factor. Good reason had been given for wanting to sell.
49. It was accepted that the Respondent had been in possession for a long time. However, she had known since at least 2022 that the Applicant wished to sell. She has had that full period within which to search for an find suitable alternative accommodation. As it happens, the challenge she faces in finding alternative accommodation is linked, in part, to her having the current tenancy. Homelessness services are under no obligation to assist until an order for eviction is granted. The Respondent’s preference for a social tenancy was well understood: it would give permanent right to reside. However, the Respondent has been a tenant in the private sector for a long time, and was paying well under market rent. Mr Caldwell said that she had the ability to look to the private sector and was choosing not to do so.
50. Another challenge that the Respondent faces is the size of property she now requires. That is due to her now adult daughters residing with her. That is a comparatively new development, having only occurred in the last two years. Whilst acknowledging the evidence heard from the Respondent and her daughter regarding cultural reasons for the family staying together, as well as the evidence of a need for family support, his submission ultimately was that the Respondent’s daughters are adults, and they are capable of living elsewhere.
51. Mr Caldwell’s submission was that refusing the order would amount to a decision that the Respondent could live in the Property for as long as she wants. That is not reasonable. He moved the Tribunal to grant the order.

### *Respondent's Submissions*

52. Ms Sloey agreed with Mr Caldwell that the issues to be determined were whether the intention to sell the Property was genuine, and whether it was reasonable to grant the eviction order. In respect of reasonableness, she said that this had to be considered in all of the circumstances. An owner's right to sell does not, she said, take priority over all issues.
53. On the question of intention, Ms Sloey accepted that there had been an early concession by the Respondent that the intention to sell was genuine. That concession was made prior to the instruction by the Respondent of a solicitor, and was retracted following legal advice. Ms Sloey's submission was that there were oddities in this case raising questions about the supposed intention. The Property was up for sale, and then it was not. There is no copy of the advert anywhere. One would have expected a copy to have been retained.
54. Insofar as the evidence heard, Dr Badar's evidence was that the Property had been taken off of the market because the Respondent had failed to engage with Allen & Harris. However, that was directly contradicted by the Respondent and her daughter. Ms Sloey submitted that Dr Badar was evasive when giving his evidence, and unsure of the timeline of events. In the circumstances, she submitted that the evidence of the Respondent and her daughter should be preferred to Dr Badar.
55. On the evidence heard, the proposed sale to the Respondent's friend fell apart in late 2022. However, notice to leave was not served until 2023. That gap tended to suggest that there was no real intention to sell. Had there been, the notice would have been served more swiftly.
56. For those reasons, Ms Sloey invited the Tribunal to find that Ground 1 was not established in this case.
57. In the event that the Tribunal was satisfied that the Applicant had an intention to sell, then the final matter for determination was reasonableness in all of the circumstances.
58. Ms Sloey founded on the Applicant's stated intention for the funds. She said that, if there was a need to raise financing to service repairs to the Badar family home, then those funds could be raised in other ways. They had raised the necessary finances to complete the extension and adaptation of the home in 2022. The Applicant and Dr Badar had purchased another investment property that could be sold. The rent payable by the Respondent could be increased.
59. Ms Sloey said that the Respondent had taken active steps to find alternative accommodation. She has applied for social housing. She has researched private sector accommodation and found it to be unaffordable for her on her limited means. Her current rent is below the market rate, but that does not

change the fact that market rent is unaffordable for her for a two-bedroom property.

60. The Respondent receives income from part-time employment and Universal Credit. Her daughters are adults and are not in employment. Her youngest daughter is a student. They are all at risk of street homelessness. On the face of it, they ought to be entitled to accommodation, but the practical reality is that there is insufficient housing in Glasgow to accommodate all on the housing list. Keeping the family together makes finding suitable accommodation more challenging, but there are cultural and mental health reasons why they should not be separated.
61. The Respondent has been a good tenant. She pays her rent. She has invested her own money into the repair and condition of the Property over time. There are outstanding repairs issues being looked into by Glasgow City Council at present, though evidence was not led in respect of those.
62. In all of the circumstances, Ms Sloey moved the Tribunal to refuse the Application.

### Discussion

63. This Application seeks an eviction order under Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016. It is a matter of agreement between the Parties that, in order to grant an eviction order under that Ground, the Tribunal must be satisfied of two things: (i) that there is a genuine intention to sell the Property; and (ii) that it is reasonable in all of the circumstances to grant the eviction order in those circumstances.
64. For the most part, the evidence of the Parties was consistent, and in that respect the evidence of the witnesses was generally accepted as credible and reliable. The only matters where they diverged were (i) whether the Respondent had reported repairs issues to Glasgow City Council without notifying the Badar family, (ii) whether the Respondent was happy with the repairs undertaken or had complained, and (iii) whether the Applicant's intention to sell was genuine. From the evidence heard, the Tribunal was satisfied that nothing turned on the first two of those matters. The fact was that the Council had become aware of a need for repair, had ordered repairs, the Badar family arranged for those repairs to be completed, and the Respondent was now happy. Those circumstances do not affect either of the matters that the Tribunal has to determine. The third matter, however, was critical to determination of this Application.
65. Having regard to the question of intention to sell, the Tribunal prefers the evidence of Dr Badar and the Applicant. The Tribunal considered Mr Caldwell's submission that the bar for determining a subjective intention was low. I think that submission perhaps goes too far. The Tribunal's view of Lord Sumption's remarks in *S Franses Ltd*, as referred to by the Upper Tribunal in *Stainthorpe*, is that the Tribunal ought to proceed on the basis that a stated

intention is genuinely held unless good reason to doubt that intention comes out in the other evidence in the case. The Tribunal did not find any reason to doubt the stated intention to sell. Credible reasons for wishing to realise funds in the Property were asserted. A credible explanation was given for why the Property had been put on the market and then removed. Additionally, if the Applicant is lying about her stated intention, then she is exposing herself to proceedings by the Respondent for Wrongful Termination by Eviction Order under section 57 of the 2016 Act. Taking all of that into consideration, the Tribunal was satisfied that the Applicant intends to sell the Property. That being the case, consideration turned to whether it was reasonable in all of the circumstances to grant an eviction order.

66. The correct approach to determining reasonableness is, in the Tribunal's view, that set out by Lord Greene MR in *Cumming v Danson*, [1942] 2 All ER 653, at page 655:-

*"[I]n considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."*

67. We accept Ms Sloey's submission that the mere fact that the Applicant wishes to sell the Property is not a decisive factor of itself. If it were, then Ground 1 would be established by intention alone (as, indeed, it used to be prior to the legislative changes made during, and fortified after, the pandemic). However, the Applicant's desire to sell the Property is a significant factor which ought, in our view, to attract considerable weight. There is force in Mr Caldwell's submission that the private rented sector differs from the social rented sector in that it does not afford a tenancy for life, subject to meeting the tenant's obligations. A landlord in the private rented sector is making an investment for personal gain as opposed to meeting social/charitable aims, and the Tribunal ought to be slow to import into that capitalist purpose an altruistic one. The private rented sector may assist local government in meeting housing need, but that is not its primary purpose. Further, where a private landlord no longer wishes to be a private landlord, it ought not to be the function of the Tribunal to force them continue in that role against their will. That is not to say that there will never be circumstances where the Tribunal determines that it is unreasonable to grant an order under Ground 1, but the intention to sell is, of itself, a weighty factor.
68. In the present circumstances, the Applicant intends to sell. That intention is born of three things: (i) she is bound to account to the Badar family for the Property, and they have demanded its sale; (ii) there is a desire to raise funds for the repair of the Badar family home; and (iii) the issues arising out of the common parts of the Property mean that the Applicant and the Badar family

generally no longer wish to let out the Property. The Tribunal gives that consideration the greatest weight.

69. Separately, the Applicant is bound to a tenancy agreement that allows her to recover an exceptionally low rent. Her ability to increase that rent is limited by statute. It seems unlikely that she will be able to recover a market rent for the Property in the near future if the eviction order was refused.
70. The Respondent is likely to find alternative accommodation with assistance from the local authority. That is not to say that she would not require to enter temporary accommodation first, or that she will necessarily be kept together with her daughters. However, the grant of an eviction order will have the effect of prioritising her housing need with the local authority.
71. The Tribunal accepts that there are cultural and mental health reasons for trying to keep the Respondent and her daughters housed together. However, the reality is that the Respondent's daughters are adults. They will have their own entitlement to income assistance, including housing benefit. They are capable of independent living, and the Tribunal is not satisfied that reasons given for housing them together, and the likely difficulty in finding suitable properties for that purpose, carries greater weight than allowing the Applicant to sell her Property.
72. Accordingly, having had regard to all of the circumstances in this case, the Tribunal determined that it was reasonable to grant the eviction order.

### Decision

73. Accordingly, the Tribunal unanimously determined that Ground 1 for eviction is established and that it was reasonable to grant an eviction order.
74. For the purposes of section 51(4) of the 2016 Act, the Private Residential Tenancy between the Parties will terminate on 14 February 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.**

# A Upton

14 January 2025

**Legal Member/Chair**

**Date**

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