

**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 (“the Act”)**

**Chamber Ref: FTS/HPC/EV/24/2556**

**Re: Property at 9 Barnton Park Crescent, Barnton, EH4 6ER (“the Property”)**

**Parties:**

**Dawn Massie, E26 Whispering Pines, Jumeirah Golf Estate, United Arab Emirates (“the Applicant”)**

**Alana Moss, Thomas Moss, 9 Barnton Park Crescent, Barnton, EH4 6ER (“the Respondents”)**

**Tribunal Members:**

**James Bauld (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted**

**Background**

1. By application dated 5 June 2024 the applicant sought an eviction order under section 51 of Private Housing (Tenancies) (Scotland) Act (“the 2016 Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 6 August 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. The eviction order was sought based on two grounds contained within schedule 3 of the 2016 Act, namely ground 3 (that the landlord intends to carry out

significantly disruptive works to, or in relation to, the let property) and ground 4 ( that the landlord intends to live in the let property).

3. A Case Management Discussion (CMD) took to take place on 25 November 2024.the tribunal issued a Note after the CMD detailing what had been discussed and agreed and setting out what still required to be determined by the tribunal.
4. Reference is made to the note issued after the CMD. It was agreed that the parties were respectively the landlord and tenant of the property under a lease which had been granted in October 2022. It was agreed that appropriate notice had been given to the respondents regarding the landlord's intention to seek an eviction order and it had been conceded by the respondents that the two grounds for eviction were established
5. The only matter effectively to be determined was the question of whether it was reasonable to grant the eviction order. A hearing was fixed to take place on 9 May 2025. Appropriate intimation of that hearing was given to both parties.

### **The hearing**

6. The applicant was present at the hearing and was represented by Mrs Elaine Elder from Aberdeen Considine, Solicitors. The respondents were also both present. The applicant's husband, Mr. Derek Massie was also in attendance
7. The tribunal explained to parties the purpose of the hearing and the overriding objective of the tribunal and thereafter the tribunal asked various questions of the parties regarding the application.

### **Discussions at the hearing**

8. The tribunal indicated to parties that it was in receipt of their respective written submission and the case papers and that it would use the hearing to ask questions seeking to clarify certain matters.
9. The tribunal began by asking questions of the respondents. In response to questions they indicated that they had approached the local council to try to

obtain alternative accommodation but had been unsuccessful. They had also been looking for accommodation within the private sector but had been unable to secure any other private tenancy. They indicated that they had made applications and had viewed properties but then been told by landlords or letting agents that they did not meet the necessary criteria.

10. Mrs Moss indicated that she was not in employment as she suffered from ill health. Mr Moss indicated that he was self-employed as a power washer along with a friend. They ran a business together. On being questioned by the tribunal, Mr Moss indicated that his annual earnings in the last tax year from that business had been approximately £38,000.
11. Mrs Moss indicated that she received a number of state benefits including Universal Credit of £2780 per month. This included an element in respect of housing costs of £1380. Additionally she received Adult Disability Payment which will shortly rise to approximately £700 per month and that Mr Moss also receives Carers Allowance in respect of their son of approximately £380 per month.
12. The respondents indicated that they occupy the property with their three children, two sons aged 16 and 3 and a 12-year-old daughter. They indicated that their 16-year-old son has Asperger's syndrome.
13. Mrs Moss indicated that they have been in discussions not just with the council but with local housing associations but that at present she has been told that all social housing allocations in Edinburgh are being given only to applicants who already have obtained homeless priority status. She indicated that they are looking for a four bedroom property to accommodate their family size. She conceded that the current property is only a three bedroom property but indicated that her older son is using the conservatory as a bedroom.
14. The tribunal then heard from the applicants and noted that they are both retired. They had lived abroad for a long period of time but purchased the particular property with the intention of it being their retirement home upon their return to Scotland. They wish to carry out significant renovations and refurbishment to the property and had lodged with the tribunal plans showing the extent of the works. On completion of the works they intend to occupy the property as their home.

15. Mrs Massie indicated that the likely cost of these works would be approximately £100,000-£150,000. She could not be more specific as she had hoped these works would be done last year but they had been delayed because the respondents had not removed from the property. Costs involved in such works were being affected by inflation. It was indicated the refurbishment works would take approximately five months to complete.
16. The applicant and her husband indicated that when they agreed to let this property to the respondent they had advised the letting agent of their plans that it would be their retirement home and that they intended to return permanently to Scotland in around 2024. They were unaware that this information had not been transmitted to the respondents.
17. The applicant indicated that the letting agents had been able to access the property in the last week to carry out an inspection and had noted some outstanding repairs issues which led her to believe that the respondents were not maintaining the interior of the property properly.
18. The solicitor for the applicants indicated to the tribunal that they had provided a list of available properties to let in the private sector in Edinburgh within a 3 mile radius of the property. This search disclosed dozens of properties available for let, all at rents of a similar or indeed lower level to the rent currently being paid by the respondent.
19. Mrs Moss indicated that they had viewed a property in the last week but again had been told that they did not meet the relevant criteria. She could not specify what criteria were being applied by the letting agents but indicated that it seemed to be an income based matter. She indicated that the letting agent seem to believe that applicants for these types of private sector lets required an annual income of approximately £80,000.
20. There was some discussion regarding the apparent removal of the canopy at the front door of the building and a suggestion from the respondents that this had left the property in a state where a repair was needed
21. Parties were asked whether the tribunal, if it was considering granting an eviction order should delay it. The solicitor for the applicants indicated that in

her view any delay should be restricted to a period of no more than two months.

22. The respondents indicated that they did not believe that any delay would give them any additional assistance. It was simply their position that it was not reasonable that they should be evicted.

## **Decision and reasons**

23. The order for possession was sought by the landlord on two grounds specified in the 2016 Act and properly narrated in the notice served upon the tenant.

24. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.

25. The tribunal noted that it had been conceded by the respondents at the CMD that the landlord intends to refurbish the property and thereafter to occupy it as her principal home along with her husband.

26. The ground for eviction was accordingly established and indeed was conceded as established by the respondents.

27. The grounds for eviction under which this application was made are two grounds contained in schedule 3 of the 2016 Act. The grounds are ground 3 (that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property) and ground 4 (that the landlord intends to live in the let property). When the 2016 Act was originally passed, those grounds of eviction were mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.

28. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on these grounds can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact

29. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

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

30. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
31. The tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the landlord in this application for the following reasons.
32. The tribunal noted that it was accepted by the respondents that the landlord intends to refurbish the property and to occupy it. The tribunal accepts that has been the long term intention of the applicant since purchasing the property. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa.
33. The applicant and her husband wish to occupy the property as their retirement home. The property was specifically purchased by the applicant for their retirement given that it is on one level and has easy access to public transport. It is in an area of Edinburgh where they wish to live and is close to friends and family. The applicant and her husband are currently staying in other properties

including short term lets and staying with friends. They are incurring costs in storage of furniture and belongings. If eviction is refused, they will effectively be denied access to a property which they own, which they purchased to use as their retirement home and which they intend to occupy for that reason.

34. The respondents have occupied the property for a period of less than three years. They were given notice to leave in June 2024. They have had a period of almost a year to find alternative accommodation. They have indicated to the tribunal that they are able to afford the rent for this property which is £1750 per month. There are significant numbers of available properties at that rent or lower in the Edinburgh area
35. The respondents indicate that letting agents have said to them that tenants of such properties require an annual income of approximately £80,000. In their own evidence the respondents indicated that they are currently receiving approximately £3850 per month in benefits. Additionally the respondents also have an income from Mr Moss's self-employment of £38,000 per year. The benefit income totals just over £46,000 per year. That income is a "net" income. It is not subject to income tax. A person who was in employment would require to earn an annual salary of approximately £65,000 to have a net income of £3850 per month. The respondents therefore have an equivalent to a gross annual income of just over £100,000. While the tribunal notes the health problems which have been narrated by the respondents, it appears clear to the tribunal that the respondents have sufficient income to enable them to secure alternative property in the private sector in Edinburgh within a number of areas.
36. If an eviction order is granted, then the respondents may also then be given additional priority from the council and housing associations in respect of the allocation of social housing
37. In all the circumstances the tribunal find that the balance of reasonableness favours the applicants. They wish to occupy property which they purchased for a specific purpose. That purpose is being unfairly denied to them if the eviction order is not granted.
38. The tribunal has noted that the respondents do not think that any delay to the order would assist them. The tribunal in granting the order will indicate that the order cannot be enforced until 30 June 2025 at the earliest which does allow a short additional period beyond the usual delay which applies when eviction orders are granted

## **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.**

**James Bauld**

**9 May 2025**

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**Legal Member/Chair**

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**Date**