Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/EV/22/2683

Property at 36 Dalmahoy Crescent, Balerno, EH14 7BX ("the Property")

Parties:

Nicholas Karl Hocking, Flat 10 28 Citypark Way, Edinburgh, EH14 7BX ("the Applicant")

Campbell Taylor, Louise Drysdale, 36 Dalmahoy Crescent, Balerno, EH14 7BX ("the Respondents")

Tribunal Members:

Josephine Bonnar (Legal Member) and Angus Lamont (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 Respondents in favour of the Applicant. The Tribunal orders a delay in execution of the order to 30 July 2025.

Background

1. On 5 August 2022, the Applicant lodged an application for an eviction order in terms of Section 51 and Grounds 4 and 11 of the 2016 Act.

2. Following a CMD on 24 November 2022, the Tribunal determined that the application should proceed to a hearing. The hearing took place over two days - by telephone conference call on 21 February and by video conference on 21 April 2023.

3. On 4 May 2023, the Tribunal ("FTT") determined that an eviction order should be granted. A written decision with statement of reasons was issued. The Respondents requested permission to appeal. This was granted by the Tribunal in relation to some of the appeal grounds submitted.

4. On 12 September 2023, the Upper Tribunal suspended the eviction order of the Tribunal.

5. Following further procedure, Sheriff Jamieson of the Upper Tribunal upheld the appeal in relation to some of the appeal grounds, quashed the decision of the FTT and remitted the case to differently constituted Tribunal to consider "at an evidential hearing whether it is both reasonable and proportionate to issue an eviction order on ground 4 in this case". (2024 UT 38).

6. The case was allocated to a differently constituted Tribunal, and a video conference hearing was scheduled for 16 and 17 September 2024. This was postponed at the request of the Respondents due to the non-availability of their legal representatives.

7. The parties were notified on 23 September 2024, that a hearing would take place by video conference on 8 and 9 January 2025. At the request of the Applicant, the Tribunal issued a direction which provided a timetable for the lodging of documents and submissions prior to the hearing. Both parties lodged submissions and documents. There was an issue with the format of the Respondent's documents and a shorter version of the inventory was lodged late. During the hearing, some of the missing documents were provided.

8. The hearing took place by video conference on 8 and 9 January 2025. On 10 February 2025, a further video conference was convened for final submissions. The Applicant was represented by Ms Donnelly. The Respondents were represented by Mr Lindhorst.

9. On 8 and 9 January 2025, the Tribunal heard evidence from both Respondents and the Applicant. Final submissions were made by the parties' legal representatives on 10 February 2025. The Respondent's representative also lodged a written copy of his submission.

The Hearing

Preliminary matters

10. Ms Donnelly told the Tribunal that she had no objection to the late lodging of the Respondent's inventory of productions. By this she meant the shorter version of the documents received by the Tribunal.

11. Mr Lindhorst referred the Tribunal to the decision of the Upper Tribunal ("UT") who had remitted the case back to the First tier Tribunal to hear evidence and decide whether it would be reasonable and proportionate to grant an order for eviction on ground 4. He said that ground 11 had also been considered at the original hearing but was not relevant to the present hearing. As a result, the documents and evidence in relation to repair issues and rent arrears were not relevant and the Tribunal should only hear evidence about the parties' circumstances. The Legal Member advised the parties that evidence and documents in relation to these matters would not be excluded at this stage and

that the evidence would be heard under reservation as to relevancy and competency. This being the case, Mr Lindhorst stated that he had no objection to the Applicant's 6th and 7th Inventories (6th and 7th AIOPs)

The Applicant's evidence

12. Mr Hocking told the Tribunal that he is 57 years of age and currently working as a postman. He inherited the property in 2012 from his mother and has been renting it out since 2016. It is the house that he grew up in, having moved to Edinburgh with his parents, sister and brother in 1975. It is his only rental property although he owns the flat that he lives in. He rented a property in Switzerland while he lived there and sublet it when he returned to Scotland in 2012. He gave it up in 2018. He registered as a landlord in 2016 and has been registered ever since then.

13. Mr Hocking stated that the property is a detached house in Balerno. It has 4 bedrooms and 3 reception rooms but one of these can be used as a bedroom. Based on sales of similar properties, he believes that it is worth between £525,000 and £550,000. In response to questions from his representative, Mr Hocking said that he had submitted information about properties available to buy and rent in the area. (6th AIOP). He looked at a three-mile radius but also looked at Penicuik and Haddington. His valuation of the property is also based on sales in the development. Some sold for over £600,000. He referred to documents in support of his evidence, including a map of the estate and a list of properties with their date of sale. In relation to properties available for rent, he collated a list of these. Some are close to the property. Mr Hocking said that his enquiries have established that there are properties available both to rent and to buy in the area, some are in the same estate.

14. Mr Hocking told the Tribunal that he advertised the property for rent, and the Respondents came to view it. He provided them with a questionnaire to complete if they were interested. They completed it and sent it back. There were discussions about the length of the tenancy. He told them it would not be a "forever" home and the tenancy would not last for more than 5 years. He had rented the property out twice before. The second time, to a family on benefits, had not been so good. He decided to have one more go and if it didn't work out, he wouldn't do it again. The Respondents said that if he decided to sell in 5 years, they might be able to buy it. Both previous tenants had only lived there for a year. There were issues with the Respondents' tenancy from the beginning and he felt that things were not working out. He decided to get the house back and move back in. Mr Hocking was referred to an affidavit in 2nd AIOP. It is dated 30 July 2019 and states that he intends to live in the let property. He said that he had it prepared as he thought evidence had to be attached to the Notice to Leave. He intended to issue the notice to leave at the end of the school year in 2020. However, he then decided to delay because of COVID. He still intends to live in the property. It is much closer to his sister. He is her carer. During COVID he started to work from home and planned to convert the garage at the property to a home office. This would add value to the house. Currently, he resides in a three-bedroom flat. It is close to the city centre and convenient for travelling to Gogarburn and The Gyle where he used to have to go for work. His

sister stays in Lanark Road West which is about a mile from the property. She lives alone and he is the only family she has nearby. Their brother is in Singapore and there are cousins in Cornwall and Switzerland. He referred to item 3 in the 2nd AIOP, a letter from Edinburgh Health and Social Care Partnership dated 22 January 2021. This was issued to provide him with evidence of his carer status during COVID. His sister comes to stay with him from Thursday to Friday every week and for a longer weekend once a month. She has a bedroom in his flat. She is 55 years of age and has learning difficulties, autism and dyspraxia. She has had some recent physical health issues and is monitored by her GP. Mr Hocking is heavily involved and sometimes takes her to medical appointments. On other occasions her support workers take her. Her GP keeps in touch with him to keep him updated. Her support workers are provided by Autism Initiatives. She is supposed to get 16 hours but it's usually only 10 or 12. They help with shopping, washing and cleaning. When she visits him, she either makes her own way, if she has something else on nearby, or he collects her. It takes 45 to 60 minutes to get to her flat, 30 minutes if the roads are quiet. Mr Hocking said that as she gets older, his sister will require more support, and they have discussed her moving in with him. The plan is that he will move back to the property and later she will move in too, within the next 5 to 10 years. She already has limited mobility. Her health issues are likely to get worse. He encourages her to walk, and they go swimming. There would be major benefits to them living closer.

15. Mr Hocking said that he worked for Qlick between October 2022 and May 2024. He provided remote support to clients by video conference. He was a Principal Consultant. He worked remotely and only once had to travel to see a client. He was referred to the 6th AIOP, item 2, a series of fit notes issued by his GP. He said that the stress of being a landlord and the tribunal proceedings going on for three years, had caused him to become anxious. His job requires him to be able to concentrate and it became impossible to do so. His doctor signed him off for anxiety. He has had no previous history of this condition. The doctor prescribed sleeping tablets but he refused the anti-depressants. He referred to his P45 in the 6th AIOP and said that he agreed to leave on 31 May 2024 as he was unable to work. He now works as a postman. He wanted to work and it's not as mentally demanding. There is a lot of walking. His gross income is a quarter of his previous salary. His GP tried to refer him to psychological services but there was nothing available. He has found the walking to be the best therapy. There has been a big impact on his mental health. His doctor thinks that he is depressed, not suicidal, although he has had suicidal thoughts. In response to questions from his representative, Mr Hocking said that his sister is his beneficiary as he has no partner or children. She would not be able to be a landlord.

16. Following a short break Mr Hocking told the Tribunal that there are rent arrears in relation to the property. He referred to a rent statement (item 17 in the 6th AIOP). This shows £11500 outstanding, but the January 2025 payment has also not been received so the total is now £13000. He referred to difficulties getting work done at the property. Peter Cox wanted access to get work carried out. The Respondents refused to accommodate this unless he paid them £500. He agreed to deduct it from the rent account, and it is shown on the statement.

Mr Hocking was referred to letters from Northwood, his previous letting agent. He said that he arranged for these letters *(*item 1 of 6th AIOP) to be issued in terms of the pre action protocol because of the rent arrears. They were issued in July 2024. The Respondents ignored the letters and did not offer a repayment arrangement. In response to questions about the Respondents' income, Mr Hocking said that he understands that all the rent is coming from Universal Credit (UC). This is not being passed on. At the start of the tenancy, they received £1200 from UC, and they were to make up the difference. Now the whole rent charge is covered. He applied to UC for the payments to be made to him, but these did not materialise. Mr Hocking said that the Respondents have two businesses – Pentland Ponies (PP) which started in 2023 and Castlemain Farm (CF) which was incorporated in 2024. The Respondents are the office holders. PP is a horse share business. He has looked on the Companies House website. There are no accounts yet for CF but those for PP indicate that it is not a profitable business. The Respondents have not explained why they stopped paying the rent. They stopped before they made the complaint about the condition of the property. The rent arrears are causing him problems as he is no longer making any money from the property and with the legal fees he has incurred, there is a big hole in his finances. The rental is just a sideline, and he never intended to do it for ever as he is getting older. He can't pass the responsibility to his sister.

17. Mr Hocking told the Tribunal that Northwood no longer manage the property. He referred to a letter from them. He said that he believes that they did everything that they could. Following an inspection in 2023 they identified work required to the kitchen and for dampness. They told him that they found the Respondents difficult and intimidating and the staff were scared to go to the property. They always had to go in pairs. He read out a letter from Northwood (5th item on 6th AIOP). It states that they are terminating the property management agreement, that they do so with regret, and it is an "incredibly rare action". The letter goes on to say that they have tried to mend the relationship between landlord and tenant, but this task has been made "impossible due to lack of access granted by the tenants and their intimidating and threatening behaviour towards both team members and contractors". As a result, the staff would not visit the property and only a "small handful of tradesmen will agree to attend". The letter states that the contract will end on 12 August 2024. However, they would continue to work over the "coming month to try and achieve as much as possible for you". Mr Hocking said that he wanted Northwood to continue to manage the property, but they said that they couldn't charge him when they were unable to do the job. Mr Hocking said that he has not been inside the property since November 2020. He went to the door in January 2021 with a new microwave but since then it's just been email contact. In response to questions about work carried out at the property, Mr Hocking said that he installed a new boiler and radiators before the tenancy started. Since then, there has been new flooring in some rooms, he re-decorated two bedrooms, installed a new bathroom and new back and side doors. The bathroom was fitted because there had been some mould and water marks. In addition, there have been window repairs, and work in relation to the downstairs toilet and kitchen. In total he has spent about £52000. When asked about his responses to reports about repairs he said that he deals with leaks immediately.

He has a homecare contract with British Gas. The Respondents contacted them last week when an issue arose. Mr Hocking was referred to some emails. Item 7/1 of the 6th AIOP is an email dated 1 August 2023. He said it is from a handyman called Marek who stated that he had been called "monkey man" and that the tenants were rude and provocative. Item 7/3 is an email from Peter Cox dated 17 April 2024, stating that the tenant had been "volatile and insistent that the kitchen doors should be renewed" and said that he would be calling his solicitor. The contractor felt threatened by the behaviour, and they felt that the work should be completed when the property is "no longer tenanted". Mr Hocking said that this work had been arranged following a survey, but the contractor felt threatened and left. A previous contractor also refused to do any further work. Mr Hocking referred to 7/5. A cleaner had tried to get access to deal with the mould. 7/7 – there was no response to the request. Item 7/8 is an email to the Respondents providing them with contractor details, but they failed to contact them. Item 7/10 – Mr Hocking had arranged a joiner, but he emailed to say he didn't get access either. Item 7/11 – the door contractor went round and said that the door did not need to be replaced. He said that he felt threatened. Mr Hocking replaced the door anyway. Mr Hocking said that the tenants made a formal complaint and Northwood agreed to do work but could not get access. He was referred to photographs in the 7th AIOP and said that they show work carried out in the kitchen – new PVC window frame, cupboards and upstands. These works had been recommended in the first Peter Cox report. He was referred to a Peter Cox report dated 27 March 2022. In a section which is headed "Recommendations" it says that the tenants should regularly open the windows. They also noticed that the insulation in the loft had been moved back. It's not in the report but was maybe mentioned in an email.

18. Mr Hocking concluded by saying that the Respondents put £16000 into their company. They seem to have the funds to set up businesses. When asked whether the Tribunal should consider a delay in execution if the eviction order is granted, Mr Hocking said that he wants to move into the property as soon as possible and put his flat on the market. He also thinks that an extension will just delay any help that the Local Authority will provide to the Respondents if they can't find alternative accommodation.

19. In response to questions from Mr Lindhorst, Mr Hocking confirmed that his flat has three bedrooms, a sitting room, separate kitchen and bathroom. He previously used one of the bedrooms as an office when working from home but no longer requires to do so. His sister has one of the other bedrooms when she stays. His sister's home is an ex-Council house, an upper flat in a four in a block. Their mother purchased it for her. It has one bedroom and a living room, and the attic has been converted into an additional living room. She has her own door to the street and stairs lead up to the flat. She has been there since 2002, initially renting and then buying it under the right to buy scheme. She lives there alone but needs support. Mr Hocking told the Tribunal that he moved back to Scotland when his mother was dying in 2012. He lived at the property with her until her death and purchased his flat in 2016. In response to questions about his investment in another rental property, he said that he dipped his toe in the rental market and got burnt. The company was wound up last year. In relation to the research, he carried out into available properties, he confirmed

that he just looked online and does not know much about the rental market. He was referred to Item 5/2 of the 5th AIOP (p119), the questionnaire completed by the Respondents and confirmed that it included details of the household, including the dog. He confirmed that they indicated that they wanted the property because they had lived in Currie before. He said that he made it clear that it would not be a "forever" home and not to expect more than 5 years and that he might exit if there were problems. He confirmed that he was aware that they were on benefits, but they said that they expected to be off benefits eventually. He believes that you should not discriminate but his opinion of people on benefits has gone down. He denied that he didn't know much about the benefit system, stating that his sister is on benefits. He also said that he looked into how much the Respondents would get for rent. He asked them for a breakdown of their income and knew that most of the £42000 came from benefits. He confirmed that PP did not appear to be profitable but said that they had put funds into it.

20. Mr Lindhorst asked about Northwood and Mr Hocking said that they kept him informed but that he didn't get every email. When asked about the PARS letters he said that these have to be issued to tenants and confirmed they gave him the option of basing an action on rent arrears. He confirmed that they all post-date the Respondents complaint letter dated 26 June 2024. He denied that the letter was issued because repairs were not being carried out, stating that he and Northwood had tried to get the work done. He was asked about the various complaints in the letter. In relation to the door he said that the contractor said that it was ok, and they only complained when the eviction process started. He said that the reference in the letter to the garage was the first time it was ever mentioned, Northwood said so. In relation to the cracked sink, he said that it didn't leak but he replaced it when the crack got worse. In relation to the kitchen, he said that he had carried out work but had not been able to afford a new kitchen which is what the tenants wanted. The units in the kitchen were of reasonable quality and the worktops were good. He denied that there had been multiple repairs which were not carried out and stated that there were no issues raised until the eviction proceedings began. It was put to Mr Hocking that he was speculating when he attributed the mould issues to the Respondent's use of the property. He said that there were no previous incidents of mould. In relation to re-decoration, Mr Hocking said that the condition of the décor is good. He denied that the Respondents were treated unfairly and said that Northwood tried, and the contractors found them difficult. He denied that Northwood were at fault, stating that they always seemed polite, and they had tried. He agreed that he was not present at the relevant times but said that he also found the Respondents difficult. He said that more than one contractor complained, and that they had shouted at him as well. In relation to entering the property uninvited, Mr Hocking said that this happened once when a builder let him in. When he went with the microwave, he had to ring the door as he expected the old one to be outside for him to collect. He denied that the property was unliveable and stated that he and Northwood had tried their best. He said that he had replaced the sink when the crack got worse, although it wasn't necessary. In relation to the photographs of the kitchen cupboard doors, he said that they look dirty, it might be mould, but he just did what Peter Cox suggested. He would have been happy to do the doors. Peter Cox said they

were ok. He stated that he spoke to a colleague of the Peter Cox employee who attended and was told that Mr Taylor squared up to him. When asked why Northwood continued to write to the Respondents after they had withdrawn, he stated that they finished in August and the letters were sent before that.

21. Mr Lindhorst referred Mr Hocking to the Peter Cox report dated 27 March 2024 (item 6 of the 6th AIOP). Page 6/5 headed "Internal Survey" refers to mould and high humidity levels in the property. It also mentions flaking paint and insulation pulled back. Mr Hocking said that people make mistakes. He was referred to paragraph four which states that trickle vents and two windows were open during the inspection. Mr Hocking said that doesn't mean that the windows are always open. He stated that £2400 was spent on upgrading windows and they were done to a good standard, although maybe not today's standard. He accepted that mould is a danger to people and property and that is why he wanted to treat it. He was referred to the recommendations set out on pages 6/6 and 6/7. Mr Hocking said that there had been a leak which had not been spotted until an inspection. He did not put the vinyl back down until he was sure that there were no other leaks. In relation to the Peter Cox work they eventually did more than is specified in the original survey. The survey had to be re-done due to the passage of time. They added the window repairs, worktops and upstands. In relation to the photographs in the 7th AIOP Mr Hocking said that the plumbing was replaced, and a leak was repaired in January 2024 by Homecare. Peter Cox said not to replace the doors, but he would just have replaced them. He accepted that the Respondents may have been unhappy but that was no reason to be threatening. It could have been resolved. He wanted a solution despite the huge loss. He insisted that he had been responsive. He did the initial work and there were no complaints from July 2019 to July 2020. There were no complaints to Northwood after they took over. In relation to his list of works it was put to him that most were carried out since January 2023. Mr Hocking said that the boiler and bathroom were earlier but otherwise, yes. He confirmed that a lot of repairs were carried out in March 2023, after the first day of the previous hearing. He said that the roof couldn't be done during the winter. The cooker and fridge were "as and when reported". Mitchell did the work within months. The tenants wanted Harling, so Mitchell put on Harling. They were doing work constantly. Mr Lindhorst put it to Mr Hocking that he couldn't have it both ways. He could not say that all work was carried out and say that the Respondents prevented work being carried out. Mr Hocking said that they did prevent Peter Cox and also Burgh Glazing. They stated that there would be no more access. The cleaning company also did not get access. He knows this because he spoke to the joiner, and he has seen the emails. In relation to specific repairs, the kitchen ceiling was fixed in Autumn 2021 and late 2022. It had to be replaced because of a leak but was not repainted in case there was another leak. The kitchen floor was done early in the tenancy, because of a leak. He did not put the vinyl back down in case of another leak. He denied that the kitchen was in a poor condition. He was referred to photographs taken in 2024 and it was put to him that a leak in 2023 which led to a repair in November 2024 could not have been described as a quick repair. He disagreed and said that as soon as a leak is reported Homecare come out.

22. Mr Hocking told the Tribunal that he became aware that there was a dispute over the rent when he read the UC journal entries which were submitted after the start of the hearing. He previously contacted UC, but they just confirmed that the payments would not be made to him. They did not give a reason. He did not know why the payments stopped and had not contacted the tenants to ask for a reason. In response to questions about a previous tenant, Fran Seargent, he said that she was the tenant for a year. It was good at the start but there were rent arrears, and she did not respond to attempts to contact her about this. In relation to her mail Mr Hocking said that he recalled one message about this and thought it was strange that she was trying to collect mail after 6 years. In response to questions about entering the property uninvited, he stated that he would ring the bell, and they let him in. The only time was when the builder let him in. He thought the builder had permission to do so. He denied that he had asked for the property back to turn it into an HMO. The rent arrears were the issue, and the boiler needed replaced and the tenant said that she was struggling to pay the bills. When asked about his connection to the house Mr Hocking said that he has not been inside for four years. He has good memories of the house and has wanted to move back in since 2020.

23. In response to further questions from Ms Donnelly, Mr Hocking said that the student let company was set up in 2017. He invested £60000 and lost £30000. The flats were not actually built, and the company went into receivership. He confirmed that the lack of rental income for the property is having an effect and that he issued the PARS as tenants must be issued with guidance when there are arrears. He told the Tribunal that the Respondents were accompanied by her mother when the first viewed the property and did not raise any concerns about the condition at that point. In relation to the former tenant he stated that there had been one message after the tenancy ended about mail but no contact from her in 2024. His contact details have not changed so she could have contacted him. In relation to the builder letting him into the house he realises that it was wrong to have gone in. He also advised that the relationship between him and the Respondents has been poor since the eviction process started. He said that his sister's flat is not suitable for her in the long term because of the stairs. Her coordination and mobility are getting worse. There is a lift at his flat, but it is not always working so is not suitable either as the flat is on the 4th floor. Also, she needs her own space, and the property has plenty of room and she knows the house and the area.

24. Mr Hocking told the Tribunal that his sister gets between 12 and 16 hours of support per week but does not currently require overnight support. In an emergency he would have to go but this has not been required so far. There have been discussions about her moving in with him and he thinks that will be needed within the next five years, by the time she is 60. In relation to his own health issues, Mr Hocking said that these had been caused by both the tribunal process and the burden of having to continue to be a landlord. If he has to continue the anxiety will remain. He is worried about the property and the financial hole caused by the lack of rent and the legal bills. He thought he would have been able to give up being a landlord easily. He is £30000 in the red.

Ms Drysdale's evidence

25. Ms Drysdale told the Tribunal that she is 30 years of age and lives at the property with her partner, Mr Taylor, their children N, O and R, and Mr Taylor's daughters Morgan and Ellis. They moved because they needed more space and wanted a garden. There are 4 bedrooms, but they also use one of the reception rooms as a bedroom. When they viewed the property her mother Lesley Drysdale came with them. Ms Drysdale referred to the form they filled in for Mr Hocking which confirmed the people in the household. They knew the area and wanted back there because they had a long commute to the horses that they own, and which are based in Currie. They have to visit them at least once and sometimes twice a day. Their previous tenancy was a 2-bedroom flat on the second floor. They told Mr Hocking that they wanted somewhere they could stay for at least 5 years, and he said that wasn't a problem. He told them that he might sell in 5 years, and they said that they might be in a position to buy. They wanted at least 5 years and hopefully longer. In response to questions about the family, Ms Drysdale said that Morgan was at Dundee University but has moved back to live with them. She is a probationer teacher in Tranent and commutes. Its manageable but she doesn't know where she will be next year. Ellis is also still at home and works full time at PP. N is 7 and O is 5. They are at Deanpark Primary. R is 2 and not at nursery yet. The primary school is within walking distance of the property, and they sometimes walk. O has coeliac disease. He becomes very unwell if he eats products containing gluten. The school has to provide a special menu. They are fantastic but it was a long, difficult process as the Consultant had to provide evidence to the school. N has been tested and is clear, but R is in the process of investigation as he is symptomatic. The family have lots of friends in the local community and the kids have their activities. They have family in Juniper Green which is just over a mile away. Campbell's mum has health issues, and his dad needs support. A move would have a bad impact. They will never find another property which will suit. They have been trying to find something and have attended viewings and applied to the Council. They were told that they would be placed in hotels and Airbnb's for two years before being housed. They have been on a wating list since the process started but not offered anything. They have applied for private lets. One landlord said that he knew about the case from the Tribunal website. He did not give reasons but did not offer them the property. It was clear that it was because of the tribunal case. They don't want to move outwith the immediate area because the kids would need to move school and there are the horses. Competition for properties is ridiculous, and you are screened even just to get a viewing. There are also many that they can't afford. Currently they are not in a position to buy. They had hoped to be off UC by now but have been working toward being in a position to buy. The deposit is an issue.

26. In response to questions about their income and UC, Ms Drysdale said that they submit details of their earnings to UC every month. They get a wage from PP and then UC calculates what they are entitled to. In relation to the date that the rent is paid, Ms Drysdale said that they had been on housing benefit, and it switched to UC. Now all their benefit is paid together and the payment date changed to the 19th. Mr Hocking wanted it paid on the 1st of the month, but they

can't control the date that they are paid by UC. She was referred to the PARs letters which were issued after she made her complaint and confirmed that these did not address their issues. They were frustrated by the letters as they had been trying to get things sorted out. They were not being taken seriously. They admit that £13000 is unpaid. They were advised to stop paying and place the finds in a separate bank account so that is what they did. When Mr Hocking contacted UC to request direct payments, UC contacted them. Their payments stopped while they investigated. Then they resumed and we were told to put the funds into an account. She referred to the UC journal screenshots which were lodged. She had to provide them with pictures and documents. She had contacted Environmental services who wanted to inspect. However, she doesn't know if they did. The UC decision maker called, said that there were discrepancies in what Mr Hocking had said and agreed to release the funds to the Respondent. He said that they should be placed in a separate account. That's what they did. In relation to the £500 credit on the rent statement Ms Drysdale said that when Peter Cox came there was a dispute over the doors. They told the man that they were not happy. He agreed with them. They said that they would be speaking to their lawyer. She went out and when she returned the contractor had gone. So, when access was requested again, they said they would need compensation if they had to stay in again. Mr Hocking agreed.

27. In relation to the issue of repairs Ms Drysdale said she fell through the floor which had been damaged by a leak. They cut the lino across. The landlord was aware, it was reported. It had been her understanding that Mr Hocking intended to replace the kitchen. Repair work was carried out in November 2024. There were problems with repairs from the start of the tenancy. She was referred to an email to Mr Hocking dated 1 March 2019 (2nd RIOP, p21) It mentioned various issues, including the oven, living room floor, and toilet. There is a reply from him. Ms Drysdale said that the floor was not fixed quickly. It was patched and then eventually the living room was re-floored. In relation to Mr Hocking entering the property uninvited, Mr Drysdale said that this happened more than once. On a number of occasions, he just knocked the door without notice. On one occasion she was in the shower. She referred to the letter from her mother and confirmed that her mother wrote it. She had phoned her mother after the shower incident as she had been distressed. In relation to the claim that they have been aggressive toward contractors, Ms Drysdale said that before Northwood took over Mr Hocking carried out inspections. He was not happy with the garden and irate about the tree being trimmed. She was shocked and shut the door. She then arranged for her mum to be present when he was due to inspect. She denied that they had been aggressive with the Peter Cox contactor. There was no aggression or raised voices, it was a calm discussion. She said that she would speak to her lawyer, and he said that he would speak to his manager. In relation to the Facebook message from the former tenant she said that the whole conversation had been submitted, and she assumed that the former tenant had looked up the case online, there was no contact between them before. Ms Drysdale said that it is obvious that Mr Hocking is very attached to the property, it is full of his stuff. Her previous experience of renting property was very different. Ms Drysdale referred to emails and a screenshot of her inbox. She said that they show the volume of

correspondence. She said that all issues were not addressed, and they fobbed her off. She said that there were regular inspections, and they were aware of all issues. These included the front door, garage, garden and the crack in the basin. She confirmed that it did not leak but it was growing in size, and it was only a matter of time. She was asked about Mr Burnett, a joiner. She said that she thinks he did attend but there were a lot of emails, and some contractors contacted them direct. She thinks that WJS also attended. She believes that he came to do something else. But there were a lot of emails, and she had a mental breakdown and had to tell Northwood to stop contacting her. She disputes what is claimed in the email. In relation to Marek, he was sent to deal with the bath seal. It was at the height of the issues with her son's coeliac and there were behaviour problems. She phoned her health visitor in a panic and was told to take him straight to A&E. The contractor arrived. He was told he could not get access but barged past Campbell and tried to pass her. He became aggressive. Then his boss called and demanded access. In relation to June 2024, Ms Drysdale said that there were so many contractors, she doesn't know how it was missed. In relation to the mould, the agent was aware but EH needed to see before the work was done. In relation to the door, it was an intermittent fault and as there was no issue when they attended. It was an older UPVC door. Ms Drysdale confirmed that a lot of repairs were carried out and each time they had to get three quotes so a lot of tradesmen. She had to take a lot of time off and doesn't get paid when she is off. Her job involves people paying for a share of the horse. They look after it and sometimes ride it. They need to be accompanied until they are able to ride alone. If she is not there, they can't do it, and she doesn't get paid.

28. Ms Drysdale told the Tribunal that the kitchen leak is now sorted but that there have been issues since the start. The condition was not satisfactory until 2024, and the Respondents were not responsible for the delay. In relation to the possibility of a delay in enforcement, Ms Drysdale said that three months would be fair. When Mr Lindhorst pointed out that this would be before the school term ended in June, she said that it would be good if the children could finish the school year before they had to move out so perhaps two weeks after the end of the school term would be better.

29. In response to questions from Ms Donnelly, Ms Drysdale said that Morgan and Ellis are 24 and 19. Morgan was at Dundee University and then Edinburgh Napier. She doesn't know where she will be placed next year, and Ms Drysdale does not know if she has plans to move out. The girls are aware of the proceedings. Ellis can't afford to rent or buy yet, and she doesn't know if either have approached the Council. Ms Drysdale confirmed that both Respondents and Ellis get an income from PP and that it is the Respondents main source of income, topped up by UC. She said that she has set times each week at PP and confirmed that if she had to take a day off, she would lose £500. When asked if that is what she earns per day she said that her accountant would need to answer that. She confirmed that the evidence of her son's medical condition could be passed on to a new school but said that it takes time and it's a difficult process. Her mum was a landlord but has now sold her rental property and does not have any others so is unable to offer accommodation. She lives nearby but they have no spare bedrooms. Campbell's parents are unable to

offer accommodation although Ellis stays there once a week. Ms Drysdale denied that the complaint about repairs only occurred when Mr Hocking contacted UC stating that he was aware of the issues already. It was put to her that she has not produced most of the emails referred to in her evidence. She said that they were all sent to her inbox. She denied that she only made her complaints when Mr Hocking asked for the UC payments and stated that the Housing department told her to contact Environmental Services. She spoke to someone on the phone, and they said that they would need to come out. She said that she was not sure if they did, she had a mental breakdown with all the correspondence and couldn't deal with it. She stated that it was the decision maker at UC who told her to withhold rent. On the phone. She doesn't know if it was discussed with the solicitor as she doesn't deal with him. It was pointed out that she has not provided any evidence of the separate account, and she said that January's payment has not yet been received. She does not know if UC know about the £500 reduction. They both deal with UC, but Campbell has the bank account. She did not tell UC about the £500. Northwood were told that they were withholding rent in a separate account. She said that she phoned and told them on 30 August as she was still receiving emails from them at that point.

30. It was put to Ms Drysdale that at the previous hearing there was a lot of evidence from the Respondents about a binding arrangement between the parties that they would get first refusal if the house was being sold. She stated that they were going to get help from family but that is no longer available. She said that to buy a property the business turnover has to improve and their reliance on UC must reduce. They have not yet made enquiries about getting a mortgage and having a deposit is a big issue. However, the withheld funds are not going to be used for that. They are separate. Ms Drysdale denied contacting the former tenant, asking how she would know her. She can't recall if they received mail for her. A lot of mail was returned, including some for Mr Hocking's mother. She confirmed that it was bizarre to be contacted by the former tenant. She confirmed that she had repairs issues at a previous tenancy but no problem with the landlord just coming into the property or the issue of all his personal belongings. She is not sure when the shower incident took place, in the first 2 years, and there have been no issues since the email was sent about no access or since he took over again. In relation to contractors attending, she asked if they could all be sent over the course of one week to reduce the time off work. She feels like they were deliberately doing the opposite. She confirmed that Mr Hocking has done a lot of work since 2023. In relation to the Peter Cox contractor, he said that he had to go outside to call his manager. Campbell was in the living room, and he left without saying he was doing so. In relation to her mental breakdown Ms Drysdale said that she was given anxiety medication and referred to Counselling and she is still engaging with that. In response a question about why she wants to stay in the house, given its condition, she stated that there isn't any other accommodation available because of the housing crisis. Temporary accommodation will not be suitable, and the best option is a private let but they are not even getting to the viewing stage because of referencing and landlords being aware of the tribunal proceedings. Once she went to view a property and there were 5 other people there for the same time slot. She also loves the house and feels that it is a

shame that it is in the state that it is in. In relation to finding other accommodation, she has attended 20 viewings and applied for others. When asked why she suggested that a delay in enforcement of three months would be fair she stated that the Council would have to step in. When asked whether the whole family of 7 would present as homeless together Ms Drysdale said that she was not sure.

31. In response to questions from Mr Lindhorst, she said that repair issues were reported and also raised at inspections.

32. In response to questions from the Tribunal, Ms Drysdale said that UC are provided with monthly statements of their income, and they are trying to get off UC. They each take home £1200 per month from the business. Ellis is paid £1500. Ms Drysdale does not know what her older daughter earns. The most they can afford for rent is £2200. Some suitable properties come up in Edinburgh, but most are further out or even in the Borders. They have applied to the Borders. They have applied to housing associations but there are enormous waiting lists. The Homeless Team and Shelter told them that they would be placed in a hotel.

Mr Taylors evidence

33. Mr Taylor stated that he is 49. He said that he agrees 100% with Ms Drysdale's evidence. He stated that he thought that they would have the property for the long term. He had to give away a dog to move there and would not have done so if it was short term. They took it because it was at least 5 years with an option to buy, that is what Mr Hocking said. In relation to repairs, there hasn't been a day without an issue. The repairs are not done properly. When they first met Nick at the property he showed them the stop cock. There was a sponge underneath which he said would need to be squeezed out from time to time. Mr Taylor realised it just need a small adjustment to stop the leak. Mr Hocking agreed to a roof repair which was not carried out. In relation to the complaints from contractors about their behaviour, Mr Taylor told the Tribunal about having to take their sick child to hospital. They apologised to the contractor and explained. The contractor shouted at them that he would not be paid if they did not allow him access. His manager also shouted at them about this. He was astounded. He had explained to him how serious it was. In relation to the condition of the house, Mr Taylor said that he wants the terms of the contract upheld. Environmental Health told them to go to the second stage repair. But he did now understand how to do this and has spent enough money on lawyers. It should not be necessary; he has a contract. He said that although he is dyslexic, he had to take over the emails eventually. He could not understand why a different contractor was employed for the bathroom, surely Peter Cox could have done it as well as the kitchen. He stated that Ms Drysdale has taken the lead in the search for another property He agrees with her evidence and can't add much to it. When asked about the effect of losing the property, Mr Taylor said that his dad is ill, and his mum uses a Zimmer. He himself has a stoma and is unable to lift so moving house would be an issue. The issue has

affected their mental health.

34. In response to questions from Ms Donnelly Mr Taylor said that he hopes to be in a position to buy a property in the next 5 to 6 months. Nothing is certain but if Mr Hocking is willing to sell, he hopes to be able to buy. When asked about how certain he is, Mr Taylor said that he has to take every month as it comes. He confirmed that he is currently unable to purchase. In relation to the complaint letter he said that it took time to get all the information together. Their complaints are all logged with Shelter Scotland. When Nick came to the house uninvited, they called Shelter who told them that they were entitled to 48 hours' notice. He phoned the police and emailed Nick to tell him not to come. In relation to making a repairing standard application, Mr Taylor said that he didn't know how to do it. It would have cost money to employ a lawyer. Ms Donnelly asked whether EH said that they would attend or told him to go to the second stage repair. He said both. He can't remember why they didn't come. They notified Northwood that they were withholding rent. In relation to the incident with the Peter Cox contractor, Mr Taylor said that the contract agreed that the mouldy doors should not be put back on but said that is what the landlord wanted. Then he went out to call his manager. All the Respondents had said was that they would call their lawyer.

35. In relation to a possible delay in execution, Mr Taylor said that it would good if the kids were able to finish the school term.

The Applicant's submissions

36. Ms Donnelly invited the Tribunal to grant the eviction order. She referred to the direction issued by the UT, namely that the Tribunal was to assess the reasonableness and proportionality of granting the order. However, she stated that the issue of proportionality does not apply to private landlords, only public bodies. Furthermore, if the order is reasonable, it is also likely to the proportionate and the 2016 Act already incorporates that requirement. She referred to the cases of Pinnock and Powell. She also referred to the case of McDonald v McDonald 2016 and to Adrian Stalker's book on Evictions in Scotland. She also noted that the UT had directed the Tribunal to consider the four stage test and stated that all four aspects were met in this case.

37. In relation to reasonableness Ms Donnelly referred the Tribunal to relevant cases - City of Edinburgh Council v Forbes 2002 HLR 61, Cumming v Danson 1942 2All ER 653 and Manson v Turner 2023 UT 38.

38. Ms Donnelly then referred the Tribunal to the Applicant's evidence in relation to his intention and the issue of reasonableness. She referred to the fact that he has been planning to move into the property since 2019, his caring responsibilities for his sister, his sisters health issues and disability, the fact that he is her closest relative, the time it takes to travel to Currie to see her, the suitability of her home and his flat, the fact that he is not a commercial landlord, the fact that ground 4 was a mandatory ground at the start of the tenancy and that he made it clear that the tenancy would be for a maximum of 5 years. Ms Donnelly also mentioned the rent arrears of £13000, the demand for a

deduction of £500 for access and the lack of evidence that the Applicant was notified that rent was being withheld or that the funds had been placed in a separate account. She said that the Respondents lacked credibility and reliability. She referred to the evidence of the sums spent by the Applicant on repairs at the property and the costs he has incurred in relation to the legal proceedings. She invited the Tribunal to find the Applicant credible, his evidence being supported by the documentary evidence. She stated that if the tenancy is to continue, access will continue to be an issue. She referred to the correspondence from Northwood and the reasons given for terminating the contract. The Applicant does not want to be a landlord and is now forced to manage the property himself. Ms Donelly referred to the evidence about the Applicant having to give up his job, the health issues he has experienced and the financial impact on him.

39. In relation to the Respondents Ms Donnelly said that their explanation for failing to make a repairing standard application was not credible. They did not contact Environmental Health or make a formal complaint until 2024. There was no evidence of the advice allegedly received from UC. They lacked credibility in relation to various aspects of their evidence, including their financial situation and ability to purchase a property. They have failed to provide documentary evidence in support of their oral evidence. If there has been an adverse impact on their ability to obtain alternative accommodation, that is due to their decision to defend the proceedings. She referred to the evidence which established that the respondents' elder daughters are financially independent. There was no evidence produced of their efforts to obtain alternative accommodation. Given their income and circumstances, they would not be street homeless. She said that the Facebook exchange with the former tenant was not plausible and even if true, the former tenant's views were not relevant.

40. Ms Donnelly said that the condition of the property, access issues and rent arrears are relevant to the issue of reasonableness. These show that the landlord and tenant relationship has broken down irrevocably.

41. Lastly, Ms Donnelly said that a delay in enforcement in terms of Rule 16A(d) of the Procedure Rules is neither appropriate not necessary. The Respondents have been aware of the proceedings and the order sought for several years and a few additional months is unlikely to make any difference at this stage if they have not already secured accommodation. She stated that the Local Authority will only act when an eviction order is granted. No evidence was presented that a delay would be beneficial. She referred to the relevant provision of the Housing (Scotland) Act 1987 Act in term of the Council's obligations.

42. Ms Donnelly concluded by referring to the legal test. She mentioned the case of Angus Housing v Fraser 2004 Hous LR. While the Sheriff accepted that the tenant would experience difficulty finding alternative accommodation, it was reasonable to grant the order. Ms Donnelly referred to the case of Stainthorpe v Carruthers (No 2) 2024 UT 30. In this case the Upper Tribunal determined that the landlord's right of property to use of dispose of that property as he

wished was the deciding factor. However, a different view was taken in Manson v Turner.

The Respondent's submissions.

43. In terms of the legal framework, Mr Lindhorst referred to the 2016 Act and to the UT decision in relation to the previous FTT decision. He said that the hearing was not a complete re-hearing but was subject to this decision and the "parameters set therein (see pp; paras 66 to 100; 101 to 116;126 to 129)". He then referred to certain sections of the decision which state that the evidential hearing is limited to questions of reasonableness and proportionality. In relation to the former that Tribunal was directed to take into account all relevant circumstances as they exist at the date of the hearing "including" the respondent's family circumstances and the Applicant's need to care for his sister. He referred to the four part proportionality test and to ground 4 of schedule 3 of the 2016 Act.

44. Mr Lindhorst states that ground 11 had been canvassed at the previous hearing and rejected as a ground for eviction. As this was not appealed, it is not before the Tribunal and the issues involved are not relevant to the question of whether the order should be granted. However, the landlord's intention is a live issue because the Tribunal must be satisfied that the landlord genuinely intends to take up occupation when the tenants move out. He referred to page 346 of Adrian Stalker's book where it is suggested that, if the tribunal is not satisfied that the landlord intends to do so, they should refuse to grant an order. Alternatively, they might adjourn the CMD and thereby delay granting the order so that the effective date will coincide with the date on which the Applicant intends to move back in. In this case, the Applicant has provided no evidence of steps taken in relation to moving from his current property. Furthermore, there is new evidence that he told a previous tenant that he intended to move back in but then he re-let it. The Tribunal should therefore consider whether such a delay or adjournment would be appropriate. The evidence from the previous tenant was new and only came to light before the new hearing.

45. In relation to retention of rent, this common law remedy has not been displaced by the statutory scheme and the Tribunal is entitled to determine if a reduction in rent is appropriate where there has been a failure or delay to carry out necessary repairs. Mr Lindhorst then referred to the Human Rights Act both in relation to the decision on the application and the issue of anonymisation of the decision before publication.

46. Mr Lindhorst then summarised the background and procedural history of the tenancy and the case. He referred to oral and documentary evidence. He stated that there is no ground relating to breaches of tenancy hearing before this Tribunal for consideration.

47. Mr Lindhorst states that the following factors are relevant and should be considered; -

(a) The Applicant's desire to be in a position to look after his sister. However, this is not immediate as he has a suitable flat which meets this need.

(b) The property's suitability for the Respondents needs, the fact that the are settled in the community and have no suitable alternative accommodation available to them.

48. Mr Lindhorst states that the following factors are irrelevant and should not be considered; -

(a) The Landlord's personal anxieties about being a landlord or the tribunal process. He chose to be a landlord and accepted the responsibilities and legal consequences.

(b) The rent arrears as these are a separate eviction ground which has not been relied on in the application. In any event the tenant's position is that rent is withheld due to the condition of the property.

(c) The Applicant's apparent close personal attachment to the property.

49. In his oral submission, Mr Lindhorst also referred to the housing crisis and the implications for the Respondent should they become homeless. He concluded by stating that it would not be reasonable or proportionate to grant the order. However, he invited the Tribunal to delay execution of the order until July 2025, should it be granted.

Findings in Fact

50. The Applicant is the owner and landlord of the property.

51. The Respondents occupy the property in terms of a private residential tenancy which started on 28 February 2019.

52. The Respondent served a Notice to leave on the Respondents on 22 April 2022. The Notice referred to grounds 4 and 11 of schedule 3 of the 2016 Act

53. The Applicant intends to live in the property when the Respondents cease to occupy it.

54. The Applicant provides care and support for his sister who has learning difficulties and autism. Her mobility is also affected by physical health issues.

55. There are no other family members living in the area who can provide care and support to the Applicant's sister.

56. The property is located near to the Applicant's sisters' home, and it would be easier and more convenient for the Applicant to provide care to his sister if he

resided there.

57. The Applicant has been diagnosed with anxiety and depression. The stress of being the Respondents' landlord as well as the protracted tribunal process have caused or materially contributed to the Applicant's mental health issues.

58. As a result of his mental health difficulties, the Applicant had to give up his job as an IT consultant and now works as a postman. His salary is now a quarter of what he previously earned.

59. The property was managed by Northwood, a letting agent, from 2021 to 12 August 2024. Northwood notified the Applicant and the Respondents on 12 July 2024 that they were terminating the management contract due to the behaviour of the Respondents toward staff and contractors. The Applicant now manages the property himself.

60. The Applicant's sister resides alone and is able to do so with support provided by the Applicant and by carers from Autism Initiatives. They provide 10 to 16 hours of assistance each week.

61. The Applicant's sister stays overnight with the Applicant one a week and has a bedroom at his flat. She stays for several nights once a month.

62. The Applicant intends that his sister will move into the property to reside with him in due course.

63. The Respondents reside at the property with their five children. Two of the children are adults and in employment.

64. Two of the younger children attend a local primary school which is close to the property.

65. One of the younger children has been diagnosed with coeliac disease and requires a special diet at home and at school.

66. The Respondents are directors of a horse share business. The Respondents and one of their adult daughters work at the business and receive a salary. The Respondents invested £16000 when they set up the business.

67. The remainder of the Respondents income comes from universal credit. Universal Credit housing costs cover the whole rent charge.

68. The Respondents have not paid any rent since April 2024 and rent arrears of £13000 have accrued.

69. On 28 June 2024, the Respondents sent a letter of complaint to the letting agent setting out a list of outstanding repairs. They demanded a reduction in rent. They did not state that they were withholding rent.

70. Some of the repairs listed in the letter of complaint have since been addressed.

71. The repairs which the Respondents claim are still required are minor.

72. The Respondents have been uncooperative in relation to repair work being carried out at the property. They have sometimes refused access and have frequently failed to respond the requests for access to the property.

73. The Respondents have been aggressive and intimidating to letting agent staff and contractors instructed to carry out work at the property.

74. The Applicant and his agent have arranged for repairs to be carried out at the property during the tenancy. Some repairs could have been carried out more quickly.

75. The Respondents have not secured alternative accommodation in either the private or social rented sector.

Reasons for Decision

76. As both parties indicate in their submissions, the Tribunal's remit is limited by the UT decision on the appeal and the directions issued by the UT to the Tribunal. The appeal was successful in relation to the following grounds – the adequacy of the reasons given by the FTT in relation to whether it would be reasonable to grant the order, the decision by the FTT to delay execution of the eviction order to 31 August 2023 and the failure by the FTT to consider proportionality. Sheriff Jamieson states, at paragraph 29 "I have decided that the appropriate course is to remit the case for reconsideration by a differently constituted Tribunal at an evidential hearing limited to the questions of reasonableness and proportionality. I include proportionality as it has now been raised by the Appellants as an issue they wish the FTS to consider." Sheriff Jamieson goes on to state that "Determination of these issues requires additional fact finding." And that although reasonableness "is not in itself a finding in fact…..There must be an underlying factual basis upon which the reasonableness assessment is carried out". At paragraph 30 Sheriff Jamieson says that the "assessment of reasonableness must take into account all relevant circumstances as they exist at the hearing". He points out that findings in fact made by the previous Tribunal in relation to parties may have changed and adds "There may also be a need to make more specific findings in fact in relation to the Respondent's child's health difficulties and the Applicant's need to care for his sister". In relation to the human rights aspect of the case, Sheriff Jamieson refers to Stalker, Evictions in Scotland 2nd edition (2021), pages 376 - 380. He then directs the Tribunal to follow the structured approach set out in paragraph 20 of his decision – the four-stage proportionality test.

77. The Respondents did not challenge the validity of documents lodged with the application at first instance or in the appeal. It is a matter of agreement that the tenancy is a private residential tenancy ("PRT") which stared on 28 February

2019. The Tribunal notes that the application was accompanied by a Notice to leave which had been served on the Respondents and a section 11 Notice which had been sent to the Local Authority. The Applicant has therefore complied with Sections 52(3), 52(5), 54, 55 and 56 of the 2016 Act.

78. Both representatives addressed the Tribunal on the issues to be determined by the Tribunal as well as the factors which they submit are relevant to the assessment of reasonableness. Mr Lindhorst also invited the Tribunal to exclude from its consideration a number of issues and factors on the grounds that they are not relevant. It was not argued that Sheriff Jamieson had provided a prescriptive list of the matters upon which further evidence was to be heard. Although he specifically mentioned the Respondent's child's health issues and the Applicant's sister's care needs**,** he does not state that these are the only matters to be considered. Furthermore, he makes specific reference to the case of Cumming v Danson 1942 All ER 653 at 655, stating that "The assessment of reasonableness must take into account all relevant circumstances as they exist at the date of the hearing". The only restriction imposed by the UT is that the evidence and fact finding have to relate to reasonableness and proportionality.

Ground 11

79. Mr Lindhorst states that this ground, and the alleged breaches of tenancy, are not relevant as they were rejected as a ground for eviction by the FTT and this was not appealed. The Tribunal notes that there were several alleged breaches specified in the application. Most were not established at the hearing. The only breach which was established was the late payment of rent each month. The FTT considered this to be a minor breach which did not justify an order for eviction in terms of reasonableness. The Tribunal is therefore satisfied that it should not have regard to the late payment of rent by the Respondents, when assessing reasonableness. Furthermore, since these were not established, the Tribunal is of the view that the breaches which were not established should also be disregarded. However, it does not necessarily follow that the Tribunal is precluded from considering other breaches of tenancy by the Applicant or the Respondents when assessing whether it is reasonable to grant the order for eviction, if they are relevant.

Ground 4 - The Landlord's intention to live in the let property.

80. Although the Respondents accept that the hearing was restricted by the UT to reasonableness and proportionality, they also insist that the Tribunal must be satisfied that the landlord intends to live in the property. The Tribunal notes that the decision of the FTT on this point was not appealed and is not referred to in the appeal decision. Given the very clear instructions in the UT decision, the Tribunal is not persuaded that this is a matter which can be considered or determined. Ground 4 comprises a two-part test. Firstly, it must be established that the landlord intends to reside in the property. Secondly, the Tribunal must be satisfied that it is reasonable to grant an order for eviction on account of that fact. Only part two is currently under consideration. However, if the Tribunal is

wrong, and the Applicant's intention is a live issue, then the Tribunal is persuaded that the evidence clearly established that the Applicant intends to move into the property when it becomes vacant. He provided valid reasons for his decision. His failure to make preparations is irrelevant. The tribunal process started in April 2022. Three years later, the Respondents are still in possession of the property and the Applicant will be aware that success is not guaranteed. The Respondents told the Tribunal that the property is full of his personal possessions, although no details were given. This suggests that he always intended to return. In the circumstances, it seems entirely sensible and reasonable for the Applicant to delay selling his own flat until he has an order for possession. Mr Lindhorst referred to Adrian Stalker book, page 346 and invited the Tribunal to consider adjourning the hearing and delaying the granting of an order until the date upon which the Applicant is ready to move into the property has been reached. The Tribunal is not persuaded this they should consider this this course of action. The Stalker book was written when ground 4 was a mandatory ground, and only the landlord's intention required to be established. This meant that a landlord could expect to be successful as long as they could provide evidence of their intention. Furthermore, there was no evidence presented at the hearing that the Applicant does not intend to move in as soon as the property becomes vacant. His ownership of the flat in Edinburgh does not preclude him from doing this.

Reasonableness – relevant and irrelevant considerations

81. It is for the Tribunal to determine what is relevant and what is not, when assessing the reasonableness of granting the order. Sheriff Jamieson decided that that a further hearing should take place partly because time had passed, and circumstances might have changed, since the original hearing.

82. In the Stalker book there is a discussion about the factors which might be taken into account by courts and tribunals.". On page 144 he refers to the leading Scottish authority Barclay v Hannah 1947 SC 245 and on page 145 states that two important points follow from the case. Firstly, that reasonableness can be the basis for a defence to an action for recovery of possession. Secondly, that the "as the court has a duty, in such cases, to consider the whole circumstances in which the application is made, it follows that anything that might dispose the court to grant decree or decline to grant decree will be relevant". He goes on to refer to the case of Cumming and Danson and then at page 150 states, "the circumstances which might be brought to (the court's) attention are diverse". On page 151 he goes on to say, "The court ought to take into account the effect of granting or refusing to grant the order on both the landlord and tenant." He refers to Cresswell v Hodgeson 1951 2 KB 92, 95 - "the county court judge must look at the effect of the order on each party to it. I do not see how it is possible to consider whether it is reasonable to make an order unless you consider its effect on landlord and tenant, firstly, if you make it, and secondly, if you do not."

83. Both parties are agreed that the Tribunal must consider the Respondent's child's health difficulties and the Applicant's need to provide care for his sister,

these being the matters referred to in the UT decision. Neither suggested that these should be the only considerations. The Applicant also appears to accept that the effect of the order on the Respondents and their housing situation is relevant.

The landlord's "personal anxieties" about being a landlord or the tribunal process.

84. Mr Lindhorst invited the Tribunal to disregard this evidence on the ground that the Applicant chose to be the landlord and must accept the legal consequences of this choice.

85. There appear to be two aspects to this issue. Firsly, the Applicant's statement that he no longer wishes to be a landlord. Secondly, the effect that being a landlord has had on the Applicant's health and wellbeing.

86. It is not disputed that the Applicant made a deliberate choice to let out the property and must accept the consequences of that decision. He inherited the property but did not let it out until four years after the death of his mother. However, schedule 3 the 2016 Act contains 18 different grounds for eviction. A landlord's right to seek eviction is not restricted to circumstances where the tenant is at fault. There are four categories and only one relates to the tenant's conduct. Part 1 contains grounds which permit a landlord to seek recovery of possession precisely because he or she no longer wishes to rent out the property. In terms of ground 1, a landlord is entitled to seek possession of the property where they intend to sell. This ground is widely used, often because landlords want to cease being a landlord because of ill health, because they intend to retire or because the property was an investment which is no longer bringing in sufficient revenue. The Tribunal is therefore persuaded that the Applicant's decision to cease being a landlord (if established) is relevant, assuming he has valid reasons for the decision and the Tribunal is satisfied that his decision is genuine.

87. In terms of the second aspect, the Tribunal notes that when Mr Lindhorst talks about "personal anxieties," he appears to be referring to the Applicant's evidence about his health. This is relevant in the same way that the health and wellbeing of the Respondents 'and their family is relevant. The Respondents provide no authority to contradict this approach. The Applicant's health and wellbeing are part of the circumstances which must be considered if they are connected to his intention to live in the property, being a landlord, his relationship with the Respondents and his ability to manage the property.

88. The Tribunal is satisfied that it is entitled to have regard to the evidence about the Applicant's view on continuing as a landlord, his reasons for reaching this view and his health and wellbeing.

The rent arrears, the condition of the property and the issue of landlord access.

89. The Respondents state that these are irrelevant because rent arrears is a separate eviction ground which has not been included in the application before the Tribunal.

90. Again, the Respondents provide no authority for the argument that these factors cannot be considered. The UT did not stipulate that only matters raised at the original hearing should be considered but all relevant circumstances which exist at the date of the new hearing. There was no evidence about arrears of rent in 2023. This is because there were no arrears. The arrears have accrued since 1 May 2024. The fact that the application is not based on ground 12 is also immaterial. The legislation does not require a landlord to base their application on all grounds which might apply, although they are entitled to do so. However, since the arrears did not exist until 2024, the Applicant could not have included ground 12 when making the application or amended the application to include it before the first hearing. Given the directions issued by the UT, it would not have been possible to introduce a new ground before the hearing in January 2025.

91. The Respondents do not dispute that the rent is unpaid. They state that it is not due. The Tribunal is satisfied that the rent arrears, the reasons for the arrears, whether the Respondents are entitled to withhold rent, the effect of the arrears on the Applicant and the implications for the sustainability of the tenancy are all material considerations.

The Applicant's personal attachment to the property.

92. It is not quite clear what is meant by this. The fact that the property is the former family home is relevant because it is one of the reasons given by the Applicant for deciding that he wants to return to reside there. However, a sentimental attachment to the property is not relevant to the issue of reasonableness. Even it was relevant, the Tribunal is not persuaded that a sentimental attachment has been established. The Applicant chose to purchase a flat in Edinburgh and let the property out. When difficulties developed between him and the tenants, he took a step back, appointed a letting agent, and has not been in the property for several years. The Respondents referred to personal items not having been removed from the property, although they provided no details. However, this does not necessarily imply a sentimental attachment. It might simply be that he had not fully cleared the house before advertising it for rent or that he chose not to do so, because he intended to live there again in the future. Mr Lindhorst referred to the Applicant's comments that the condition of the property was good enough and how he spoke about how it was when he lived there as a child. It is not clear why this would suggest a sentimental attachment. Generally, landlords only spend money on a rental property if they have to do so, to meet their contractual and statutory obligations. The Respondents also relied on the Facebook messages between Ms Drysdale and the former tenant. The Tribunal is satisfied that this evidence should be wholly disregarded. As indicated later in this decision, the Tribunal did not find Ms Drysdale to be a credible witness and her explanation of how she came to be in contact with former tenant was

simply not believable. That a former tenant, who had resided in the property for only one year, would track down the current tenant to ask about mail some six years later, is highly improbable. The Tribunal is not persuaded that the evidence is genuine. However, even if it is, the comments do not alter the Tribunal's view that a sentimental attachment to the property is not established and would not be relevant in any event.

The Respondent's desire to purchase the property.

93. This was a factor heavily relied on by the Respondents at the previous hearing and to a lesser extent at the new hearing. They stated that they were told at the start of the tenancy that they might be able to purchase the property in five years. The reduced focus on this factor appears to be due to change of circumstances. Although the tenancy has now been operating for six years, both Respondents stated that they are not in a position to purchase a property at the present time and that they have not investigated mortgage options. Thereafter, their evidence differed. Ms Drysdale indicated that they will not be able to purchase for a while, due to the absence of a deposit, a continued reliance on benefits and the absence of assistance from family. Mr Taylor stated that he agreed with Ms Drysdale's evidence "100%" but then told the Tribunal that he hopes or even expects to be able to purchase in a few months. He qualified this by saying that he had to take each month as it comes.

94. The Tribunal is not persuaded that this is a relevant consideration. There was no evidence of a formal or informal agreement between the parties. The Respondent's claim is unsupported by any documentary evidence and is disputed by the Applicant. The Respondents may have hoped to remain in the property in the long term, but the 2016 Act does not give tenants a right to buy the property they occupy or guarantee that they will have a minimum period of occupation. The property has not been marketed, and the Applicant is adamant that it is not for sale. The Tribunal is satisfied that the Respondents desire to purchase the property is not relevant to the assessment of reasonableness, particularly as they are not in a position to do so.

Reasonableness

95. The Tribunal found the Applicant to be generally credible and reliable. He gave his evidence in a candid manner, and it was largely supported by documentary evidence. On the other hand, the Tribunal did not find the Respondents to be generally credible or reliable. They provided little in the way of documentary evidence to support what they said, often when it would have been easy to do so. They claim to have set aside the unpaid rent in a separate account but did not provide evidence of this. They contradicted each other and on occasion, themselves. Furthermore, their oral evidence conflicted with documents which had been lodged by both parties. For example, they claimed that they notified the letting agent on 30 August 2024 that they were withholding rent although they had been notified by the letting agent that the contract would terminate on

12 August. Withholding rent was not mentioned in the complaint letter of 28 June 2024, although they had not paid any rent since April 2024. They claimed that they had received correspondence from the agent after 12 August, but the inbox screenshots only go up to the end of July and the PARS letters are dated 15 July and 2 August. In one of the journal entries lodged by the Respondents, the entry for 23 August, there is a message from Ms Drysdale to UC which states that the letting agent is no longer managing the property. Ms Drysdale also told the Tribunal that they had previously lived in a two-bedroom flat. When asked how that had accommodated a family of seven, she hesitated before being corrected by Mr Taylor and saying it had three bedrooms. There were a number of similar inconsistencies throughout their evidence.

The Applicant's caring responsibilities

96. The evidence established that the Applicant is his sister's principal carer, and that he is very involved in her life. Mr Hocking's evidence about this was not disputed by the Respondents. She visits and stays overnight weekly, he is involved in her medical care and is her emergency contact. There are no other family members in the area who can assist with this. However, although the property is more conveniently located in terms of providing this care, the evidence did not establish that the Applicant currently needs to be closer to his sister's home. He has managed to provide care while living in Edinburgh since 2016, with no adverse consequences. His sister is currently able to stay on her own several nights a week, with carers coming in during the day. Although the Tribunal is satisfied that the Applicant intends that his sister will live with him at some point, it is not anticipated that this will be in the immediate future. Furthermore, although the Tribunal accepts that the property would be suitable for the Applicant and his sister, because of its familiarity, size and location, she has not lived there since 2002. Based on the evidence, it appears that the Applicant could purchase a suitable property in the area by selling both of their current flats or his sister could move into his flat. She has a designated bedroom there and already stays one night each week and for a long weekend once a month.

The Respondent's child's health

97. The Tribunal notes that the Respondent's child suffers from coeliac disease and that this has to be managed at home and school with a careful diet. This was not disputed by the Applicant. The Respondents explained that the school had to be provided with medical evidence before they would accommodate a special diet. However, the Tribunal notes that this medical condition is not uncommon. Furthermore, the Respondents now have the medical evidence to provide to a different school, if a new school is required.

The Respondents being settled in the community, the fact that the house is suitable for their needs and is close to their horse share business and extended family.

98. The Tribunal notes that the Respondents' family unit currently comprises seven people. The eldest daughter returned to reside with them after university. She can commute to her present post, although it was suggested that the commute is manageable rather than ideal. At the summer she may have to move to a job which is further afield, and the Respondents do not know if she will still be part of the household. She is also financially independent.

99. The other adult daughter is also in employment, although not completely financially independent. She works at the family horse share business which is nearby. If she is unable to remain in the locality of the business, or she may have to find alternative employment. There was no evidence of any attempts by her to obtain her own accommodation in either the private or social rented sector. Her income is limited but sharing a flat or house might be affordable. As result of her job, she has ties to the area and a move outwith the area would potentially have adverse consequences unless the business moves too.

100. The Respondents have a long-standing connection with the area although they chose to leave it and live in a flat elsewhere for a period of time. During this time, they had a lengthy commute to attend to the horses. They also stated that they have family in the area who rely on them. There was no documentary evidence to support this, and no details were provided of the type or frequency of the care they provide. They also stated that they have looked at accommodation in the Borders which contradicts the statement that they cannot leave the area.

101. The two middle children are at primary school. However, other than the concerns about the coeliac disease, there was no evidence that a move to a different school would be problematic. The Respondents are happy with the school, and it is convenient. But both children are at an early stage in their education and there was no evidence that a move would be detrimental.

102. For the most part the Respondent's evidence on these matters was not contested. The Tribunal is therefore satisfied that it would be more convenient for the Respondents to continue to reside at the property, or a similar property in the same area, because the children are settled at school, and they are close to family members who sometimes need support, and to their business. It was not explicit from the evidence, but the Tribunal inferred that the nature of the business is such that it can move with them, if they have to move out of the area, hence their reference to looking at properties in the Borders.

The Applicant's health and personal circumstances.

103. The Tribunal heard evidence from the Applicant and was provided with documentary evidence in the form of fit notes and a P45. The Tribunal is satisfied that the Applicant developed anxiety and depression in March 2024

and had to be signed off from work. In due course, he decided to resign as he did not feel that he could continue with a job which was mentally demanding. These events took place when the issue of repairs and access to the property was particularly problematic. The Tribunal found Mr Hocking to be a credible witness and is persuaded that the difficulties he was experiencing with the Respondents and the burden of being their landlord, caused his mental health difficulties. He conceded that the tribunal proceedings also played a part. If renting the property to the Respondents is affecting the health and wellbeing of the Applicant, then it must be considered. The Tribunal is also of the view that if a landlord is unable to fulfil his obligations as landlord, due to ill health, then the Tribunal must consider whether that tenancy should be ended. Based on the evidence, the Tribunal is not persuaded that the Applicant has reached that stage. However, his mental health issues are likely to interfere with his ability to manage the property effectively. It is significant that he has had to take a drastic step in relation to his employment. The solution to this situation might be to appoint an agent. However, he tried this already and has reason to believe that the Respondents conduct of the tenancy might lead to a similar result should he try to appoint another agent.

104. The Tribunal heard some evidence about the Applicant's financial position. However, it was not established that the rent arrears and his change of job have put him in dire financial straits. He talked about a hole in his finances, but he did not provide any details or evidence. The Tribunal is therefore not persuaded that there are financial difficulties at the present time. However, the lack of rental income, the continuing maintenance responsibilities for the property and his significant drop in salary are likely to be an issue in the long term.

The availability of suitable alternative accommodation and consequences of eviction.

105. The Respondents claimed that they have made extensive efforts to find alternative accommodation. They also spoke about what may happen if they are evicted and have not secured another private let.

(a) The Respondents stated that they require to stay in the area for school, family and work reasons. However, they also claimed to have looked at accommodation in the Borders and were unhappy that they were not offered the property in question. They also insisted that they were not offered the property because the landlord had checked the Chamber website and found the previous decision, although this was not supported by any evidence. For the reasons previously outlined, the Tribunal is not persuaded that the Respondents require to stay in the area. However, it is accepted that it would be much more convenient and significantly less disruptive for the family if they were able to do so.

(b) The Respondents stated that they had been told by both Shelter and a housing officer that, if they present as homeless, they will spend two years living in hotels before being housed. Again, no documentary evidence was provided.

The Tribunal is not convinced that the Respondent's evidence about what they were told accurately reflects the advice that was given. They may have misunderstood or misinterpreted the comments. In terms of the Housing (Scotland) Act 1987, the Local Authority is obliged to provide a homeless applicant with temporary accommodation while their claim is processed. This obligation continues until they are offered permanent accommodation, if they are entitled to this. If granted, the eviction order would be based on ground 4 of the 2016 Act, a no-fault ground. As they also have dependent children, one of whom has a health issue, it is likely that they would be found entitled to permanent re-housing. In relation to temporary accommodation, Adrian Stalker states at page 153 of Evictions in Scotland, "The quality of temporary accommodation is variable, and single applicants have often been offered B&B or hostel accommodation." He refers to the Homeless Person (Unsuitable Accommodation) (Scotland) Order 2014 which imposes restrictions on the type of accommodation, which is to be offered to certain applicants, including those with children. There is also more recent statutory guidance. It is within the Tribunal's knowledge that some Local Authorities are in breach of these regulations due to the lack of temporary accommodation units in their area. However, the Tribunal is not satisfied that the Respondents oral evidence on this matter is credible. They may have been told that, for a short period, they might be offered this type of accommodation, especially if they delayed making an application to the Council and required to be accommodated at short notice. Given the family circumstances, they would be a priority for more suitable temporary accommodation. The housing officer and/or Shelter may have mentioned a two-year period, but this is more likely to relate to the waiting list for permanent accommodation. It is also likely that they were advised that they should focus on the private sector. The Tribunal notes that the Respondents' prospects might improve if the older children were not part of the family unit which the Council had to accommodate.

(c) The Respondents claim to have applied for numerous properties. Again, little detail and no evidence was provided. Based on their own evidence, they are in position to afford a private let. The Tribunal also notes that Ms Drysdale, when asked about a possible delay in enforcement, said that she thought three months would be "fair". As the Tribunal has discretion to extend the period of enforcement by a much longer period, this was an unexpected response and suggests that the Respondents are more optimistic about finding a new home than was stated earlier in the evidence.

106. The Tribunal is aware that there is a housing crisis in both the private and social rented sector. The Respondents current rent is low for the type of property and location. To stay in the same area, they will certainly have to pay more, as evidenced by the Applicant's research. However, they stated that they could pay up to £2200 per month. Although they are in receipt of UC, they also have income from their business and the two adult children are in a position to contribute if they remain as part of the household. If they find their own accommodation, the Respondents can look at smaller properties.

107. In the Stalker book, at pages 151 – 153, there is a discussion of whether the court or tribunal should take account of the possibility of homelessness. At page 153 he states that there is conflicting authorities on the subject. In Bristol City Council v Mousah 1998 30 HLR 32, Mr Stalker states, "the view was taken that although the court could consider the effect that an order for possession would have on the defendant tenant, it was not entitled to speculate on the outcome of any application that the tenant might make to the local authority as a homeless person". However, in the later case of Croydon London Borough Council v Moody, 1999 31 HLR 738, 745 Evans LJ said "I…remain unconvinced that the judge should, as a matter of law, disregard the fact that the tenant, if evicted, will be liable to be treated as intentionally homeless and secondly, what his fate in fact will be". Mr Stalker suggests that the issue is unresolved. On balance, the Tribunal is of the view that the possibility of a period of homelessness should be considered, although it should be noted that the Respondents are unlikely to be found intentionally homeless and they are able to seek accommodation in the private sector, an option not available to all evicted tenants. Furthermore, potential homelessness is a feature of most eviction applications, and it is highly speculative to conclude that this will be their fate, in the absence of convincing evidence that they have made concerted efforts and failed to find somewhere else to go.

Rent arrears, the condition of the property, access to the property for repairs and the parties' conduct.

108. In relation to these matters, there was little agreement between the parties. However, the following facts were agreed; -

(a) As at the date of the hearing, the sum of £13000 was unpaid.

(b) On 26 June 2024, the Respondents issued a letter of complaint about the condition of the property to the letting agent.

(c) On one occasion, the Respondents refused to allow access to a contractor unless the Applicant paid them the sum of £500. He agreed to credit their rent account with this sum.

(d) The letting agent terminated their management contract with the Applicant in or around August 2024.

(e) On 15 July and 2 August 2024, the letting agent issued letters to the Respondents in accordance with the rent Arrears Pre Action Protocol.

109. The evidence in relation to rent and repairs was contentious. The Respondents claim that they have been withholding rent due to the failure by the Applicant to carry out repairs, some of which have been outstanding since the start of the tenancy. They stated that they were advised by the UC decision maker to withhold the rent and place it in a separate account. They said that

they notified the letting agent of what they were doing by phone call on 30 August 2024. They conceded that some repairs have been carried out, although some of these were recent. The Applicant told the Tribunal that he had been unaware that the Respondents were withholding rent. UC did not tell him why they had refused his request for the rent to be paid to him. He only became aware of the alleged dispute over the rent was when he received copies of the UC journal entries, after the start of the hearing. He also said that the Respondents did not issue their letter of complaint until he had contacted UC about the rent and that he felt that their complaints about him and the condition of the property were due to him raising proceedings for eviction.

110. The Tribunal notes that the Respondents provided very little evidence that they reported repair issues at the property. The lodged a few emails from 2019 and 2020. They also provided a copy of their letter to the letting agent on 28 June 2024, which provides a list of the repairs which were allegedly outstanding. The Tribunal notes that they received a response to this complaint from Northwood on 15 July 2024. This letter notified the Respondents that they would no longer be managing the property from 12 August 2024 and all future communication should be directed to the Applicant. The letter and response deal with the following complaints: -

(a) Defective front door. The response from Northwood states that they had not been aware of this until an inspection which had taken place the day before the letter was received. They said that they would send an engineer. During the hearing, the Respondents said that this has now been fixed or replaced.

(b) Garage door has come off its hinges. The letter from Northwood also states that they had been unaware of this and that they could arrange for this to be addressed. During the hearing the Respondents said that this has still not been fixed.

(c) The condition of the garden and the failure by the Applicant to send a gardener to attend to it. Northwood referred to the tenancy agreement which states that the tenant is responsible for the maintenance of the garden and that the Applicant rejects the claim that he said that he would attend to it. No evidence was provided by the Respondents of a different arrangement. The Respondents said during the hearing that this is still outstanding.

(d) Crack in the bathroom sink downstairs. The Northwood response states that a contractor had been arranged but that the Respondents had not provided a date for access. At the hearing, both parties said this has now been resolved. The Applicant confirmed that he had been aware of the issue but had not previously thought it required to be fixed because there was no leak.

(e) Kitchen in poor condition due to leak. New kitchen is required. Northwood responded stating that a contractor had been instructed to carry out repair work but not to install a new kitchen. They also stated that the Respondents had not provided a date for access and had indicated that they wished to delay this work until Environmental Services had inspected. Both parties confirmed that kitchen works were carried out in November 2024, and the Applicant provided

photographs. The Respondents indicated that this issue has not been fully resolved.

(f) Dining room rug and floor. Northwood responded that a contractor attended to remove the rug and was not granted access and that two separate companies had said that the floor is in good condition. Also, that the Applicant was willing to have a new carpet fitted but the Respondents had failed to respond to a request for a date for access.

(g) A spot of black mould on the bedroom ceiling, peeling paint in the bathroom and wallpaper is stained and peeling. Northwood responded stating that contractors had attempted to get access to deal with the mould. They added that a painter had been instructed. The Respondents indicated during the hearing that this complaint has been partially addressed.

111. The complaint letter, sent almost two months after the Respondents stopped paying rent, makes no reference to withholding rent. The Tribunal is also not persuaded that the letting agent was notified verbally on 30 August 2024, since they stopped managing the property on the 12 August and the Respondents were aware. It was alleged that the Respondents continued to receive correspondence from the letting agent after this date, but the evidence does not support this claim. The inbox screenshots only show emails between June 2023 and July 2024.

112. Based on the evidence, the Tribunal is not satisfied that the Respondents notified the Applicant that they were withholding rent due to the condition of the property or that they have set the rent aside. The latter is required to show good faith on the part of the tenant (Stalker, Page129/130)

113. As this is not an application based on rent arrears, or an application for a payment order for unpaid rent, it is outwith the remit of this Tribunal to determine whether the Respondents were or are entitled to withhold rent or if they are entitled to an abatement of rent. However, the conduct of both parties in relation to the tenancy is material so some assessment of the dispute is required. The Tribunal notes that some of the complaints in the letter of 28 June 2024 have been addressed, but payment of rent has not resumed. Some of the issues in the letter are relatively minor (the garage door and dingy décor) and some (such as the demand for a new kitchen and for a gardener) not justified. The Respondents have not resumed even partial payments of rent and gave no indication at the hearing of when (or if) they intend to do so. Based on the available evidence, the Tribunal is not satisfied that the Respondents have demonstrated grounds to withhold all the rent, and any abatement awarded is likely to be minimal, even if some of the outstanding complaints are established.

114. The Tribunal is also satisfied that the Respondents have been obstructive in relation to access for work at the property. This is documented in the correspondence from Northwood and the contractor emails. To a certain extent, it is not denied by the Respondents. They conceded that they demanded £500 for access to the Peter Cox contractor. Ms Drysdale also said that she stopped replying to emails as she was overwhelmed and suffered mental health

issues. Although not vouched, the Tribunal is prepared to accept that she found the frequency of the emails to be stressful. However, it is entirely unreasonable for the Respondents to complain about the condition of the property on one hand and to refuse to cooperate with the Applicant and his contractors on the other. The screenshots of the inbox certainly show a great many emails, but as copies were not provided it is impossible to determine whether they were excessive. Some appear to be unrelated to repairs. For example, there are emails about the rent arrears. Some appear to refer to gas safety and other mandatory inspections. However, even it is accepted that the volume of emails was onerous, they related to defects which either the Respondents had reported, or the letting agent had identified, during inspections. In terms of the Housing (Scotland) Act 2006 and the tenancy contract, the Respondents are obliged to provide access. It is evident that the Respondents frequently failed to do this. The Tribunal is also satisfied that the Respondents behaviour towards contractors and letting agent staff was unacceptable. This is well documented. (Items 5 and 7 of the 6th AIOP). The letting agent terminated the management contract because of the Respondents "intimidating and threatening" behaviour to staff and contractors. They described their decision as exceptional. Various emails from contractors were submitted. One contractor said he would not return due to "rude and provocative" behaviour and said that he had been called names. The Peter Cox contractor said that the Respondents were "volatile and insistent" and added that he felt threatened. Another contractor said that the attitude of the Respondents changed when they were told that no issue with the door had been identified. They said that the contractor would be liable for £500 if the lock failed again and shouted at the contractor, causing him to leave. The Respondents dismissed this allegation and stated that they were shouted at by a contractor who was refused access because they had to take their child to the hospital. They also stated that a threat to contact their solicitor was not intimidating behaviour. The former incident may have occurred, but it does not mean that their behaviour towards contractors and staff had been acceptable. In relation to the latter, the Tribunal notes that this is a threat which people often find intimidating, particularly if the person making the statement uses an aggressive tone.

115. The Tribunal is therefore satisfied that the Respondents conduct of their tenancy and behaviour towards the Applicant, letting agent and contractors is unsatisfactory. It has caused a breakdown of the landlord/ tenant relationship and caused the Applicant to develop anxiety and depression. The Tribunal accepts that the Applicant made mistakes. However, when he was experiencing problems, he took the sensible decision to appoint a letting agent. He may have delayed and sometimes failed to carry out some of the repairs brought to his attention, but the evidence did not support the claim that these were repeatedly raised with him or his agent and ignored. The Applicant also provided evidence that a significant sum of money has been spent on repairs.

116. In relation to the claims about unannounced visits to the property, the Respondents confirmed that these all occurred early in the tenancy and stopped when they emailed the Applicant to complain. It was also not

established that he had made a habit of walking straight into the property without knocking. The Respondents evidence was that he did not give notice that he was coming. It is not clear why he was not turned away when this was not convenient. It is of concern that the Applicant has not been inside the property since 2020. Presumably, this is because of the difficult relationship which exists. However, as he no longer has an agent, the Applicant will struggle to fulfil his obligations as a landlord if he is unable to inspect. In the circumstances, and given the attitude of the Respondents, it seems unlikely that the relationship can be mended. The sustainability of the tenancy, particularly when no rent is being paid, is problematic.

The balancing exercise

117. Weighing up the relevant considerations, the Tribunal concludes, in relation to the Respondents -

(a) Very little weight attaches to the issue of the Respondent's child's medical condition (Para 97 above). It is not certain that he will require to move school but if this is required, the new school can be provided with the medical evidence to support the request for a special diet.

(b) More weight attaches to the impact on the family unit of having to move from the property (Paras 98 – 102). However, this will only be significant if they have to move from the area and the Tribunal is not satisfied that they have established that this will be the case.

(c) The most significant factor from the Respondent's point of view is the implications for the family of they are unable to obtain alternative accommodation in the social or private sector. (Paras 105 – 107). However, for the reasons previously outlined, it was not definitively established that they will be unable to find somewhere to live or that they will be homeless.

118. From the Applicants point of view, the Tribunal notes; -

(a) The Applicant's caring responsibilities could be more easily discharged if he lived close to his sister (para 96). The Tribunal may have been satisfied that this factor should carry considerable weight if it had not been clear from the evidence, that the care has been provided, without difficulty, for the last eight or nine years, with the Applicant living in Edinburgh. There may be a pressing need for greater proximity in the future, but that point has not yet been reached, and the Applicant and his sister currently occupy accommodation which is suitable for their needs. The Tribunal is satisfied that little weight attaches to this consideration.

(b) The Applicant's health is more significant. (paras 103 to 104). He has had to make some major life changes to deal with his health issues and the Tribunal is satisfied that the stress of being the Respondents' landlord has caused or materially contributed to the condition. His desire to cease being their landlord

is therefore understandable and reasonable.

(c) The rent arrears and conduct of the tenancy (paras 108 to 116). This again carries significant weight. The Tribunal is not persuaded that the Respondents actions are justifiable or reasonable. Their conduct is such that the tenancy is not sustainable.

119. Weighing up all the relevant factors, the Tribunal is of the view that the tenancy and the landlord/tenant relationship is not sustainable. The absence of rent payments, the behaviour of the Respondents to the letting agent, landlord and contractors, the difficulties with access and the effect on the Applicant's health are such that to allow the tenancy to continue would be unreasonable. There will be consequences for the Respondents and eviction from the property will be very disruptive, but these are outweighed by the consequences for the Applicant if the order is refused and he is obliged to continue to let the property to the Respondents in the current circumstances. The Tribunal is satisfied that it would be reasonable to grant the order for eviction.

Proportionality.

120. The Tribunal was invited by the Applicant's representative to determine that this test does not apply to private landlords. She made reference to various cases where the Article 8 rights of tenants were considered. Having reviewed the relevant authorities the Tribunal is of the view that the Applicant's argument is well founded. There is a discussion about defences based on EHCR in relation to private tenancies in Stalker, at pages 376 to 380. On page 379 he states, "There was, for some time, a doubt as to whether the EHCR had any application to eviction proceedings raised by private landlords. On the one hand, section 6(1) of the 1998 Act states that "It is unlawful for a public authority to act in a way which is incompatible with a Convention right" On the other hand, a court or tribunal is a public authority in terms of Section 6(3)(a), and by section 3(1) , any legislative scheme set up to regulate the rights of landlords and tenants in the private sector must "so far as it is possible to do so…be read and given effect in a way which is compatible with the Convention rights ". Mr Stalker goes on to say that the "question was answered" in the case of McDonald v McDonald 2016 UKSC 28, and in particular to paragraphs 40 to 46 of the court's decision. The "Supreme Court held that the provisions of the relevant legislation…. reflect the state's assessment of where to strike the balance between the article 8 right of residential tenants and the right of private sector landlords to protection of their property under article 1 of protocol 1 to the Convention. Accordingly, although article 8 might be engaged when a judge made an order for possession of a tenants' home at the suit of a private sector landlord the tenant's article 8 rights could not be invoked to justify a different order from that mandated by the contractual relationship between the parties and the relevant legislation."

121. Had it not been for the terms of the UT decision and the direction issued by Sheriff Jamieson, the Tribunal would have concluded that no further consideration of proportionality is required. However, at paragraph 34, Sheriff Jamieson states, "The FTS is therefore directed under Section 47(4) of the Tribunals (Scotland) Act 2014 to follow the structured approach set out in paragraph 20 of this decision." The Tribunal therefore considered the four stage test set out in paragraph 20 and makes the following findings: -

(a) **Whether there is a legitimate aim which could justify a restriction of the relevant protected right**. The Tribunal is satisfied that the Applicant's desire to live in a property that he owns in order to be closer to his sister and provide care to her and to cease being a landlord are legitimate aims.

(b) **Whether the measure adopted is rationally connected to that aim.** The Tribunal is satisfied that the seeking of an eviction order is connected to the Applicant's aims.

(c) **Whether that aim could have been achieved by a less intrusive measure**. The Applicant cannot occupy the property unless and until the Respondents vacate it. The Applicant requires an order for eviction in order to recover possession of the property.

(d) **Whether, on a fair balance, the benefits of achieving the aim outweigh the disbenefits resulting from the restriction of the relevant protected right**. Sheriff Jamieson referred again to Stalker, page 376 and to the case of Pinnock, paragraph 56 "it therefore seems highly unlikely, as a practical matter, that it could be reasonable for a court to make an order for possession in circumstances in which it would be disproportionate to do so under Article 8". The Tribunal is satisfied, for the same reasons as are outlined in paragraphs 96 to 119 in relation to reasonableness that the benefits of achieving the aim outweigh the disbenefits.

122. The Tribunal is therefore satisfied that it would be both reasonable and proportionate to grant the order for eviction

Delay in execution of the order – Rule 16A(d) of the 2017 Procedure Rules.

123. The decision of the FTT following the original hearing on this matter was appealed because neither party was invited to address the Tribunal on it and no reasons were given for the date which was chosen.

124. The Tribunal heard evidence from all three parties and submissions from their representatives. The Applicant invited the Tribunal not to order a delay. His reasons were reasonable, and the Tribunal has some sympathy with his request, since the tribunal process has been ongoing since 2022. However, the Respondents argument is more persuasive on this matter. There are seven people in the property, including three young children. They told the Tribunal that they have not yet secured alternative accommodation. The Tribunal was surprised that the Respondents initially indicated that three months would be

"fair". Their subsequent argument that the school summer school holiday period would be preferable is a reasonable one, even if it had to be suggested to them by their representative. The Tribunal is satisfied that a delay in execution to the 30 July 2025 should be ordered.

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.

Josephine Bonnar, Legal Member **9 April 2025**