



**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/23/4049

Property at 60 Inverlochy Crescent, Glasgow, G33 5ES (“the Property”)

Parties:

**Mr Alex Umana, 248 Sandhill Road, Kanata, K2K 2VB Ottawa, Ontario, Canada
 (“the Applicant”)**

**Mr Joseph Oribhabor, 60 Inverlochy Crescent, Glasgow, G33 5ES (“the
 Respondent”)**

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that an eviction order should be granted against the
 Respondent. The Tribunal also ordered a delay in execution of the order until 31
 July 2025.**

Background

1. The Applicant submitted an application for an eviction order. An application for a payment order was also lodged and was allocated reference number EV/23/4182. A CMD took place by telephone conference call on 21 June 2024. Following the CMD the Tribunal issued notes in relation to both applications.
 - (a) EV/23/4049 – the application for an eviction order. The Applicant was notified that evidence would be required in relation to the eviction ground and the method of service of the Notice to Leave.
 - (b) EV/23/4182 – the application for payment. The Respondent was notified that he would require to provide evidence of costs he had incurred in relation to

repairs at the property and evidence that the Applicant agreed to reduce the rent to £750 per month.

2. The Tribunal determined that a hearing would take place in person at Glasgow Tribunal Centre. This was scheduled for 10 September 2024 and was postponed at the request of the Respondent because he was out of the country. The parties were notified that the hearing would take place on 13 January 2025 at 10am. Neither party lodged any documents in advance of the hearing.
3. The hearing took place on 13 January 2025. The Applicant did not attend. His representative Mr Odukudu was present. The Respondent also attended. Mr Odukudu brought an updated rent statement with him and said that he had emailed it to the Tribunal the previous day. Mr Oribhabor said that he had emailed some photographs. Neither email had been received.

Summary of discussion at the hearing on 13 January 2025

4. The Tribunal advised the parties that it seemed unlikely that the hearing could proceed as neither party had lodged any documentary evidence in advance of the hearing and the Applicant was not present.

Eviction application.

5. Mr Odukudu said that the Applicant was still based in Canada and had not been able to move back to the UK because the property was still occupied by the Respondent. The Tribunal noted that the Applicant had not addressed the evidential issues raised at the CMD and, in particular, had not submitted an affidavit regarding his intentions in relation to the property. The Tribunal also advised that they had expected the Applicant to attend to give evidence in relation to this and the issue of reasonableness. In addition, the Applicant had not provided evidence that the Notice to Leave had been sent by recorded delivery post rather than ordinary post, as this is not a valid method of service. Mr Odukudu said that he had not appreciated that the Applicant was required to attend. He also confirmed that an affidavit had not yet been obtained. In relation to the Notice to leave, Mr Oribhabor said that he could not recall receiving the Notice to leave so could not comment on the method of service. Mr Odukudu said that he had sent it by recorded delivery, but it was too long ago to provide evidence of this.
6. The parties were advised that the Tribunal would require to hear evidence in relation to the following
 - (a) Service of the Notice to leave.
 - (b) The eviction ground and whether the Applicant intends to reside in the let property.
 - (c) If the ground is established, whether it would be reasonable for the Tribunal to grant the eviction order.

Payment application

7. The Tribunal advised the parties that the Procedure Rules require all documents to be lodged at least 7 days before a hearing so that the other party has time to consider them. In relation to the rent statement Mr Oribhabor said that he did not accept that it was accurate as it showed missing payments which he was sure had been paid. He also said that the statement showed a shortfall every month of £50 although he had agreed a rent reduction with the Applicant. The Tribunal noted that the Respondent also required to provide vouching for the sums he says have been spent on the property. The Tribunal advised that evidence would be required in relation to the following: -

- (a) The amount of rent which is unpaid.
- (b) Whether the parties agreed to reduce the rent to £750 per month.
- (c) Whether the Respondent has carried out repairs at the property.
- (d) How much had been spent on the repairs.
- (e) Whether the Respondent is entitled to be re-imbursed for the cost of repairs.
- (f) Whether the Respondent is entitled to deduct any sums due to him from the rent payments.

Both applications

8. The Tribunal decided to adjourn the hearing. Following discussion, both Mr Odukudu and Mr Oribhabor confirmed that a hearing by video conference could be accommodated. This would allow the Applicant to participate from Canada if he is unable to be in the UK at the relevant date. Mr Odukudu asked that an afternoon hearing be arranged to take account of the time difference. The parties were also advised that they could call witnesses to give evidence at the hearing, if required. Mr Oribhabor said that he would like his wife to attend and give evidence. He also said that his child is due to return to Poland shortly for medical treatment and his wife will have to accompany him. Mr Oribhabor will also need to travel to Poland to bring them home. This could affect his availability.
9. Following the hearing, the Tribunal issued a note and a direction which required both parties to lodge further documents. The parties were notified that a hearing would take place by video conference on 15 May 2025 at 2pm. Prior to the hearing the Applicant lodged documents in response to the direction. The Respondent did not. The Applicant, his representative and witness Mr Odukudu and the Respondent all participated in the hearing.

The Hearing

10. Mr Oribhabor confirmed that both applications are still opposed. He said that he had been unable to find alternative accommodation for himself and his family.

Mr Odukudu's evidence

11. Mr Odukudu told the Tribunal that he had taken the Notice to leave to the Post Office near to his home and asked to send it recorded delivery. He was given the receipt that he lodged with the application paperwork. He thinks that it was the only receipt that he was given and kept it as evidence that the Notice had been sent. He informed the landlord that the Notice had been sent and checked with the Respondent who confirmed it had been received. When the 84 day notice period had elapsed, he sent a text to the Respondent to let him know that the Applicant would be moving into the property in October 2023. Mr Oribhabor replied saying that he was not able to move out as he had not found anywhere to go. Mr Odukudu said that after the last hearing, he went to the Post Office to see if they could provide him with evidence that recorded delivery post had been used but they said that it was not possible after all this time. He could not remember what he paid, maybe £5 or £7. In response to a question from the Tribunal Mr Odukudu said that he is a friend of the Applicant and offered to deal with the tenancy because Mr Umana was going to be in Canada. He said that it was made clear to the Respondent that if a repair was needed, he had to notify Mr Odukudu who would discuss it with the landlord. It was never agreed that he could deduct the cost of repairs from the rent. As he is a handyman, they were happy for him to do repairs, but any costs had to be agreed. He said that the Respondent had complained about having to pay Council Tax, but this is stipulated in the tenancy agreement. There was no discussion about the rent being reduced. He noticed that the Respondent had started paying £750 and not £800. He sent a text. He got a reply stating that the Council Tax issue was unresolved. There is a clause in the tenancy agreement that states that the Respondent will carry out repairs. The background to that is that Mr Umana decided to offer the property to the Respondent because he is a handyman and could maintain the property while he was in Canada. In exchange for this, the Applicant agreed to a rent that was well below the market rate. The property is a four bedroom house and could attract a significantly higher rent. The Respondent was expected to deal with minor repairs. However, he was paid for the repairs and had to get prior approval before carrying them out. For example, there was damage to flooring and a carpet following a flood. He was paid for the replacement carpet and flooring.

Mr Umana's evidence

12. Mr Umana told the Tribunal that he had come back to Glasgow in July 2023 and went to see the Respondent. He told him that he intended to move back to the property when the 3 month notice period had passed. He explained that he had been offered a job in Scotland. Mr Oribhabor did not claim that he had not received the notice and only asked if he could get a bit more time, until December 2023, to find a new home. Mr Umana refused the request. He said that he and his family are currently stranded in Canada and have been for the last year. He and his wife and three children are currently living in the basement of a friend's house. He is now working for the UK based company as a safety

engineer but only part time because he can only carry out those aspects of the job that can be carried out remotely. His children are 13, 10 and 9. He is paying rent to his friends but cannot afford to rent a whole property for his family. He needs to be able to return to his own house. He has a mortgage over the house.

13. Mr Umana said that he never agreed to reduce the rent. The rent stated in the tenancy agreement is £800. A couple of months after moving in, Mr Oribhabor called him and asked why he was having to pay Council Tax. Mr Umana explained that he had to do so because he was the occupier of the property. After that discussion, he started paying £750 and not £800. There was no discussion or agreement about it. There was also no agreement that he could carry out repairs and deduct the cost from the rent without approval. On one occasion he replaced a carpet without permission and was then told not to do this again.
14. In response to further questions from the Tribunal, Mr Umana said that his employer is based in the UK. When he returns, he will continue to work for that employer. At the moment he is desk based because he is stuck in Canada. He and his family only have two rooms in the basement of his friend's house. He lived in Glasgow for five years before going to Canada. This was a temporary move for a contract. His children were all born in Scotland.

Mr Oribhabor's evidence

15. Mr Oribhabor told the Tribunal that he does not recall getting a letter about eviction. He remembers being told that the landlord was coming to see him and that the landlord wanted the house back. He was given three months. When Mr Umana visited, he asked for more time as three months was not enough. In relation to the Council Tax, he said that this was included in the rent at his previous home. He said that the Applicant approached him to take the house, and they agreed the rent of £800. He was not aware that council tax was not included in that. He said that he contacted Mr Umana and said that the Council Tax was too much and could they reduce the rent to £750. He said that Mr Umana would ask his wife. He spoke to them both and they accepted it. He cannot recall the exact words, but it was agreed. Then Mr Odukudu contacted him to challenge it, it was his issue.
16. In relation to repairs, Mr Oribhabor said that there was a problem with the ensuite, a leak. He contacted Mr Umana, but he did not respond. He offered to modernise the ensuite, but they didn't give him the go ahead. Mr Odukudu came and said that nothing was needed. In relation to the flood from the kitchen, they only paid him for the materials, not the work. It was never agreed that he had to get permission before carrying out any repairs. He has carried out lots of work such as fixing the garden tap and flooring the loft.
17. In response to questions about the rent statement and missed payments, Mr Oribhabor said that he withheld the June 2023 payment to offset costs he had incurred repairing the ensuite. He is not sure if the other alleged missing payments were made or not, although he accepts that the payment for January 2025 was missed. Since the last hearing he has been paying £800 per month.

In response to further questions from the Tribunal Mr Oribhabor said that he accepted that the rent for the property is below market value, then said that he was not sure. He said that his children are 18, 16, 11 and 4. The oldest is now at college, the 11- and 16-year-old children are at school and the youngest is at nursery. The school and nursery are nearby. He is a sculptor but also works doing home improvements and maintenance. He has approached the Local Authority and Tollcross Housing Association and is on a list, but it will be difficult to get a property which meets his family's needs. He has not made a homeless application yet.

18. Mr Oribhabor advised the Tribunal that his son had to go to Poland for an operation to remove his tonsils but is fine now. The family does not have any health issues. They are in receipt of child benefit. He has recently started receiving universal credit. He does not know if it includes housing costs. He has to tell UC what he earns each month and then they decide what he is due to receive.

Final submissions

19. Mr Umana told the Tribunal that the process has been ongoing for two years and that he needs to move back to the property. He said that in July 2023, the Respondent asked for an extension to December 2023 but it's now 2025. Their current living conditions are not good and are having an impact on his children. They are struggling financially, and the rent arrears are making things worse. In relation to the possibility of a delay in enforcement, if eviction is granted, Mr Umana said that the Respondent has already had two years.
20. Mr Oribhabor told the Tribunal that he has tried to find somewhere else to live but it's been impossible, due to the increased cost of living. He said that if they are evicted, they will need to make a homeless application.

Findings in Fact

21. The Applicant is the owner and landlord of the property.
22. The Respondent is the tenant of the property in terms of a private residential tenancy. He resides at the property with his wife and four children. The children attend the local school and nursery.
23. The Applicant served a Notice to leave on the Respondent on 24 May 2023.
24. The Applicant currently resides in Canada with his wife and three children. They are living in the basement of a friend's house. They cannot afford to rent a property of their own.
25. The Applicant intends to return to reside in the let property.

26. The Applicant works for a UK company but cannot carry out all aspects of the job while he is in Canada. This has affected his income
27. The Respondent has incurred arrears of rent of £5950. He has missed some payments and between July 2021 and December 2024, he paid only £750 although the contractually agreed rate is £800.
28. The Respondent has been unable to secure alternative accommodation and will require to seek assistance from the Council if he evicted.

Reasons for the decision

29. The application to the Tribunal was accompanied by a Notice to leave dated 21 May 2023 and a Post office receipt dated 24 May 2023. There is no tracking number on the receipt and a track and trace report was not provided. However, the Applicant's representative gave evidence that he personally took the Notice to the Post office, requested recorded delivery postage and paid the required fee. He said that she was not given a separate certificate of posting and thought that the receipt he retained as evidence was sufficient. He also said that the Respondent acknowledged receipt of the Notice. The Respondent did not deny receiving the Notice. He stated that he did not remember receiving it. However, he was aware that he had been given 3 months to move out of the property which suggests that the Notice had been received. The Tribunal is satisfied that the Notice was issued to the Respondent on 24 May 2023. The Notice states that an application to the Tribunal is to be made on ground 4, the landlord intends to live in the let property and states that an application to the Tribunal will not be made until 19 August 2023.
30. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
31. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
32. Ground 4 of schedule 3 (as amended) states, "(1) It is an eviction ground that the landlord intends to live in the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact".
33. From the documents submitted by the Applicant, including the affidavit, and the evidence provided at the hearing, the Tribunal is satisfied that the landlord intends to live in the let property as his principal home for at least three months. This was not contested by the Respondent. The Applicant explained why he

has not yet returned to live in the UK, stating that he cannot afford to do so until the property is free for occupation by him and his family.

34. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

(a) It is likely that the Respondent and his family will have to make a homeless application to the Local Authority if they are evicted. This could be very disruptive for the children. The Respondent has been unable to obtain alternative accommodation in the private sector although he has been aware for two years that the Applicant wants to move back into the house. The Respondent is now partially dependant on benefits to supplement his income and has struggled to afford to live in the property, although the rent currently being charged by the Applicant is below market rent for similar properties. If the rent was increased to a market rate, it is unlikely that he will be able to cope with the increase. Although the tenancy agreement stipulates that the tenant is responsible for Council Tax, the Respondent assumed that it was included in his rent.

(b) The Applicant and his family are living in unsatisfactory accommodation because they cannot afford to rent or buy something more suitable. This appears to be due to a number of factors; - the rent arrears which have accrued, the below market rent being paid and the Applicant's reduced income. The latter is due to the fact that the Applicant is unable to move back to the UK while his property is not available for occupation.

35. The Tribunal is satisfied that the difficulties which will be experienced by the Respondent are outweighed by the impact that refusing the order will have on the Applicant. The Applicant wishes to return to the UK and has employment in place. He also requires suitable accommodation for his family. Furthermore, the Respondent cannot afford to stay in the property and will be entitled to assistance from the Local Authority. The Tribunal is satisfied that it would be reasonable to grant the order for eviction.

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

36. The Tribunal notes that the Applicant started the process to recover the property two years ago. The Respondent has therefore already had a considerable period of time to find somewhere else to live. However, there are two school age children in the property and the Tribunal is therefore satisfied that a short delay should be granted to minimise any disruption to their education. The order is delayed until 31 July 2025

Decision

37. The Tribunal determined that an eviction order should be granted.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Mrs Bonnar, Legal Member

Date: 7 June 2025