



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

Chamber Ref: FTS/HPC/EV/24/4216

Re: Property at Flat 0/4, 1041 Crow Road, Glasgow, G13 1JR ("the Property")

Parties:

Mr Iain Colin Grant McPhail, Voltic Trust, 13 Larchfield Road, Bearsden, Glasgow, G61 1AP ("the Applicant")

Mr Mareks Vilkins, Flat 0/4, 1041 Crow Road, Glasgow, G12 1JR ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ann Moore (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 19 May 2025 the Applicant was not in attendance but was represented by Ms Siobhan Brown of BTO Solicitors LLP. The Respondent was present.

Prior to the CMD the Tribunal had received from the parties additional documentation as follows:-

From the Applicant 's representative–

- *Email dated 2 May 2025 with attachments; and*
- *Email dated 7 May 2025.*

From the Respondent –

- *Emails dated 18 March with attachments.*

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that:-

Background

The Tribunal noted the following background:-

- i. The Applicant is the heritable proprietor of the Property.

- ii. The application concerns a Private Residential Tenancy ("PRT") entered into between the parties relative to the Property that commenced on 1 September 2022.
- iii. The Respondent had previously occupied the Property on an informal basis from around November 2019.
- iv. On 8 June 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 1 September 2024 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- v. The Applicant has served on Glasgow Homelessness Partnership a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

On behalf of the Applicant and in addition to her detailed written submissions Ms Brown made the following additional oral submissions: –

- i. The Voltic Trust was established around 2010.
- ii. The Trust had an interest in multiple properties owned by the Applicant and Mr Thomas William Gemmill.
- iii. There were four such properties in Glasgow.
- iv. The last property was sold in around the end of 2023/early 2024.
- v. No Tribunal proceedings were required as the occupants left voluntarily.
- vi. Mr Gemmill is no longer a Trustee of the Trust.
- vii. The Applicant is the sole remaining Trustee and will resign after the Property is sold.
- viii. Whether the Trust continues thereafter with another Trustee in office is not known.
- ix. There has been no notification of damp or mould within the Property prior to these proceedings being raised and the notification of such damp and mould came as a shock to the Applicant.
- x. The last Property inspection was prior to June 2024. Since then there has been no communication and no access allowed subsequent to service of the Notice to Leave.
- xi. The Schedule of Repairs lodged with the tribunal confirms the last visit being on 1 June 2024 when there was an issue with the shower hose which was replaced and a plumber instructed.
- xii. With regard to the survey by KSN Property Management, this was in connection with the more general area of which the flat and the block within which the flat is located forms part. The owners wanted to be aware of any issues with the buildings, not just the block and therefore to that extent the survey was undertaken a matter of routine and not in response to any particular issue arising.
- xiii. As far as Ms Brown is aware event remains £300 per calendar month.
- xiv. No deposit was paid.
- xv. The Property comprises one bedroom with a kitchen, living room, hall and bathroom. The Property is quite small.
- xvi. With regard to alternative accommodation, the Applicant notified the Respondent that he had been in touch with Calvary Housing Association and told the Respondent that he needed to get in touch with Calvary directly. Reference was made to a text from the Applicant to the Respondent on 8 October 2024. The Respondent didn't do so.
- xvii. The Applicant also encouraged the Respondent to get in touch with Glasgow City Mission about alternative accommodation but again did not take that forward.
- xviii. The Applicant is 66 years of age.

- xix. No further surgery is available to him for the medical condition from which he suffers. He simply requires to manage that. This condition is exacerbated by stress and he cannot continue as a landlord
- xx. With regard to the mortgage over the Property, alternative short-term funding has been secured. The mortgage has not been fully repaid.
- xxi. Rent arrears currently stand at £1200.

With the exception of the value of the rent arrears, none of the above matters are in dispute.

The Respondent made the following submissions: –

- i. He lives in the Property alone.
- ii. He is not presently working due to injury.
- iii. He has been out of work for one month.
- iv. He works in the construction industry and is employed through agencies.
- v. When he is not working he is not paid.
- vi. He is presently in receipt of Universal Credit which includes the housing element.
- vii. With regard to any rent arrears, the Respondent thinks there are two months outstanding not including the rent due for May.
- viii. The Respondent took occupation of the Property on a temporary basis on 2 November 2019. Money was paid in cash for rent for a substantial period of time and then payments were made online.
- ix. The mould and dampness in the Property was already there in November 2019.
- x. The Applicant visited regularly including during Covid and would have seen it.
- xi. In response to a question from the Tribunal as to whether the Respondent actually pointed the mould out to the Applicant, he said no. He said the mould was visible. There were not just small patches.
- xii. The Respondent asked the Applicant to remove two sofas to make more space for the Respondent's books and later the Applicant offered to buy bookshelves which were purchased together in Ikea and installed. The Applicant would have seen the mould at that time.
- xiii. Again the Respondent said that he had not pointed the mould out to the Applicant. He had also not mentioned the mould in any text or emails.
- xiv. The Respondent thought the last access by the Applicant was taken shortly before September 2024.
- xv. With regard to alternative accommodation, the Respondent had applied to several housing associations. Nothing came through in response except from Calvary.
- xvi. Before the deadline within the Notice to Leave the Respondent spoke to Shelter online and was advised not to leave the Property as the housing associations did not have legal responsibility to provide alternative accommodation.
- xvii. The Respondent was advised to contact a solicitor.
- xviii. Before the Notice to Leave was served there were discussions with the Applicant about refurbishment of the Property. The Respondent suggested cutting out the wallpaper with mould and throwing it away. The Applicant said he would wash the mould with bleach and agreed to make repairs to the Property after the Respondent left on 1 September 2024.
- xix. The Respondent stated that if he now received an offer of accommodation from a housing association he would accept it.
- xx. The Respondent made reference to trying to get a referral to hospital for his lungs to be checked and that he has an appointment on 9 June 2025.

- xxi. The Tribunal explained that the granting of an eviction order may assist the Respondent in securing alternative accommodation. The Respondent felt he could not decide whether an eviction order should be granted or not.

The Tribunal thereafter canvassed with the applicant's solicitor the possibility of the enforcement of any eviction order granted being suspended and sought the Applicant's views on any such suspension. Ms Brown stated that his priority was to get the Property sold as soon as possible.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property along with Mr Thomas William Gemmill.
- ii. The Property comprises one bedroom with a kitchen, living room, hall and bathroom.
- iii. There is a mortgage over the Property.
- iv. The Applicant is 66 years of age.
- v. The Voltic Trust was established around 2010 for various charitable purposes including assisting homeless people find accommodation.
- vi. The application concerns a PRT entered into between the parties relative to the Property that commenced on 1 September 2022.
- vii. The Respondent had previously occupied the Property on an informal basis from around November 2019.
- viii. On 8 June 2024, the Applicant served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 1 September 2024 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- ix. The Applicant has served on Glasgow Homelessness Partnership a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- x. The Applicant took steps to assist the Respondent find alternative accommodation. In particular the Applicant secured an offer of accommodation from Calvary Housing Association which the Respondent failed to follow up despite contact details being provided by the Applicant in his text to the Respondent of 8 October 2024.
- xi. The letter from Fielding McLean & Co dated 13 September 2024 in terms of which that firm agree to market the Property for sale is sufficient to meet the terms of sub-paragraph 2(b) of Ground 1 of Schedule 3 of the 2016 Act.
- xii. All other properties in which the Trust had an interest have been sold.
- xiii. The Respondent lives in the Property alone, is not presently working due to injury and is in receipt of Universal Credit which includes the housing element.
- xiv. There are some rent arrears due by the Respondent to the Applicant.
- xv. At no time did the Respondent intimate to the Applicant any mould or dampness within the Property.
- xvi. If offered now, the Respondent would accept alternative accommodation from a housing association.
- xvii. The Applicant suffers poor health and requires to focus his energies on maintaining his own wellbeing.
- xviii. The Applicant is no longer in sufficient health to continue as a landlord and wishes to retire.

Reasons for Decision

The application proceeds upon Ground 1 of Schedule 3 of the 2016 Act.

Ground 1 of Schedule 3 of the 2016 Act states:-

- "(1) It is an eviction ground that the landlord intends to sell the let property.*
(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—
(a) is entitled to sell the let property,
(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—
(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market."

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a letter from Fielding McLean & Co dated 13 September 2024 in terms of which that firm agree to market the Property for sale. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal took into account the following:-

- i. There is no real and substantive opposition to the reasonableness of the grant of the eviction order. Whilst the Respondent's primary concern relates to the alleged existence of damp and mould within the Property by his own admission, both in his written submissions and orally at the CMD, he had made no complaint about such matters to the Applicant during the term of the PRT.

He did not suggest that the Applicant does not genuinely intend to sell the Property and he did not suggest that the Applicant's wish to sell the property is to avoid dealing with issues of damp and mould intimated to him.

It is therefore difficult to distil from the Respondent's submissions any relevant disputed issues to be resolved relative to the application that would justify a Hearing on the reasonableness of granting the order.

- ii. The Respondent has no dependents or disability and no reason was offered by him to justify his wish to remain in the Property.

- iii. The Applicant has taken steps to assist the Respondent find alternative accommodation. In particular the Applicant had secured an offer of accommodation from Calvary Housing Association which the Respondent had failed to follow up despite contact details being provided by the Applicant in his text to the Respondent of 8 October 2024.
- iv. The properties in which the charity has an interest have all been sold and the Property is the last remaining property to be disposed of.
- v. The Applicant has had significant poor health since 2023 all as detailed in his Affidavit of 29 April 2025. He wishes to retire and concentrate on maintaining his physical and mental health. He is no longer able to continue as a landlord as a result.

Have regard to the above the Tribunal decided it is reasonable to grant the eviction order and determined to do so.

Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017.

The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure alternative accommodation. Accordingly, the Tribunal determined that the enforcement of the order be suspended for a period of 60 days from the date of the CMD.

Decision

The Tribunal granted an eviction order against the Respondent in favour of the Applicant with execution of that order delayed until 12noon on 18 July 2025.

Right of Appeal

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

G Buchanan

Legal Member/Chair

— 19 May 2025
Date