

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 (1) of the Private Housing (Scotland) (Tenancies) (Scotland) Act 2016 ("The Act")**

**Chamber Ref: FTS/HPC/EV/24/4312 and FTS/HPC/CV/25/0450**

**Re: Property at 3/2 404 Victoria Road, Glasgow, G42 8YS ("the Property")**

**Parties:**

**Ms Susan O'Connor, 12 Jedburgh Avenue, Glasgow, G73 3EW ("the Applicant")**

**Ms Marianne Kelly, Ms Una O'Sullivan, 3/2 404 Victoria Road, Glasgow, G42 8YS; 3/2 404 Victoria Road, Glasgow, G42 8YS ("the Respondents")**

**Tribunal Members:**

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

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") [1] granted the Application with reference FTS/HPC/CV/25/0450 and made a Payment Order against the Respondents in the sum of £4,724.72 with interest on that sum at the rate of 5 per cent per year until payment and [2] refuses the Application with reference FTS/HPC/EV/24/4312 and does not make an Eviction Order.**

**Background**

[2] In Application with reference FTS/HPC/EV/24/4312, the Applicant seeks an Eviction Order under ground 4-"*landlord intends to live in let Property*" of Schedule 3 of the Act. In Application with reference FTS/HPC/CV/25/0450, the Applicant seeks a Payment Order in the amended sum of £4,724.72 plus interest for rent arrears alleged to have been accrued by the Respondents under the tenancy agreement between the parties. The Application had previously called for a Case Management Discussion and the Tribunal

made certain case management orders in the form of a Direction dated 15 April 2025 and continued the Application for evidence to be heard at a Hearing. The Application was opposed by the Respondents.

### **The Hearing**

[3] The Application called for a Hearing by conference call at 10 am on 17 July 2025. The Applicant was personally present. The Respondents were both personally present. The Applicant confirmed that she would be giving evidence in support of her Application for an Eviction Order and that she would also want the Tribunal to hear evidence from her daughter. The Respondents both wished to give evidence and had no other witnesses. The Tribunal began by noting that the Respondents appeared to have done nothing to comply with the terms of the Direction made by the Tribunal dated 15 April 2025 by which they were ordered as follows:

*“The Respondent is (sic) required to provide:-*

- 1. Evidence of the information given to them when the property was sold to the Applicant;*
- 2. Evidence of their employment in the local area, and any other local connections;*
- 3. Evidence of what impact eviction may have upon them, for example, loss of local connections, disruption to employment, etc;*
- 4. Evidence of any health conditions or vulnerabilities that may be exacerbated by the granting of an eviction order; and*
- 5. Evidence of their prospects of obtaining alternative accommodation, e.g. outcomes of applications for tenancies, costs of private rents in the local area, etc “*

[4] The Tribunal noted that nothing at all had been produced by the Respondents. Their reason for taking no action seemed less than convincing. They made reference to health issues but the Tribunal pointed out that in part, the purpose of the Direction was to allow the Tribunal to identify and understand what these health issues actually were. The Tribunal explained that ultimately the failure to provide such information might put the Respondents at a disadvantage but that no further chances would be given given the stage proceedings had reached.

[5] The Applicant had complied with the terms of a similar requirement to provide further information made in the same Direction on her. Neither party had any other preliminary matters to raise and both were content that the Tribunal start hearing evidence. Each party had the opportunity to cross examine the other and at the conclusion of evidence, each party had the opportunity to make closing submissions. The Tribunal comments on the evidence heard as follows.

### **The Applicant- Ms Susan O'Connor**

[6] The Applicant is 47 years of age and is employed as the head of grants at Historic Environments Scotland. Ms O'Connor explained that she is Irish and has been living in Scotland for 21 years. She explained that she got divorced last year and currently resides in temporary accommodation with a friend. Her 16 year-old daughter lives with her father who is Ms O'Connor's estranged husband. The Applicant also has an 18 year-old daughter. Due to her current domestic arrangements, Ms O'Connor does not currently have residential contact with her daughter but instead sees her in cafes and parks.

[7] Ms O'Connor moved out of the former family home in August 2023. She initially explained that she bought this Property in March 2024 (although this was explored further by the Tribunal as detailed below). She bought it because she has a love of architectural history and loved the Property. She knew the Property was tenanted and initially believed that the tenants were shortly going to be moving out. Ms O'Connor accepted that it had however been confirmed that they were not moving out before she fully committed to the purchase and completed the transaction.

[8] Ms O'Connor owns three other buy to let properties which are successfully let out to tenants. Ms O'Connor explained that originally these properties had been owned jointly with her estranged husband. As part of the terms of their financial settlement, the three buy to let properties were transferred into the sole name of the Applicant with the former family home then being transferred into the sole name of the Applicant's estranged husband.

[9] The other properties include a two bedroom flat on Dumbarton Road, Glasgow which is currently let to a lady with what the Applicant described as "*access issues*". This Property was purchased in 2008 and has been let to the same tenant continuously.

[10] There is also a three bedroom flat in the Toryglen area of Glasgow which is let out and there is also a two bedroom property in Springfield Road in the Parkhead area of Glasgow which has been occupied by the same tenants for 8 years.

[11] The Tribunal discussed with the Applicant the timings and circumstances of her purchase of the Property in further detail. The Applicant clearly required somewhere to live as she had moved out of the former family home in August 2023. The Applicant explained that she had bought the Property in February 2024 (although March 2024 was also mentioned). In subsequent analysis, the Tribunal notes that the relevant Land Certificate entry records the "*date of entry*" of the Applicant's acquisition as being 14 June 2024. The Applicant clearly intended to live in the Property from the moment of first purchase. While the Applicant therefore referred to "*buying*" the Property in February/March 2024, the Tribunal suspects the Applicant is referring to making an offer and thereafter concluding missives for the purchase of the Property. Ultimately the relevant Land Certificate confirms when ownership transferred. The Tribunal considers that this is of more than academic importance when one considers when the Notice to Leave was actually then served. The Applicant served a Notice to Leave dated 17 June

2024 on the Respondents under ground 4- "*landlord intends to live in let Property*". This was three days after she became proprietor of the Property.

[12] The Respondents continued to pay the rent in full until December 2024 when they paid a partial sum of their rent and thereafter began fully withholding payments. There was no dispute that at the date of the Hearing, the sum due as rent arrears but unpaid by the Respondents was £4,724.72.

[13] The Applicant also explained how she had previously increased the Respondents' rent from £650.00 a month to £780.00 a month. Again a proper analysis of the timings of the Applicant's purchase suggests that this rent increase must have been implemented shortly after the purchase and after the service of the Notice to Leave itself. The Applicant explained that she was desperate to move into the Property so that she could have sufficient space for her children to live with her. The Applicant was clearly emotional about the matter and was clearly going through a tough time. Nevertheless, the Tribunal could not help but observe that certain aspects of the Applicant's position were most unusual. Ms O'Connor had wanted a place to stay, so she had bought the Property in the full knowledge that it had tenants in it who did not want to leave. Once she bought it, she almost immediately served a Notice to Leave on the basis that she wanted to live in the Property herself.

[14] The Tribunal also noted that the Applicant's reasons for choosing this Property to live in rather than one of her other properties seemed less than scientific. She clearly was very fond of the Property and had bought it for the specific purposes of living in it. The Applicant seemed what casual about the Respondents' interests in continuing to occupy the Property. The Respondent also spoke somewhat fondly of her other tenants and had clearly had no desire to inconvenience them by seeking to recover possession of their properties. Their personal and family situations were known to the Applicant. The Applicant however appeared to have no such regard for the Respondents. The Applicant had never even met the Respondents before serving the Notice to Leave. The Applicant explained that she thought the Respondents might prefer it if the Applicant left them alone. Again the Tribunal notes that it was perhaps not surprising the Applicant hadn't met the Respondents before issuing the Notice to Leave given she only became the proprietor of the Property three days earlier. In retrospect, this aspect of matters appeared somewhat to have been under emphasised by the Applicant in her evidence. Perhaps that is understandable as it would directly have contradicted her position that she made a conscious choice not to meet them before issuing the Notice to Leave. The real reason seemed perhaps much more obviously to do with the fact that there would have been almost no time to meet them given how quickly the Notice to Leave was issued after settling the purchase.

[15] Indeed it appears the first time the Applicant spoke to the Respondents was in August 2024. The Applicant pitched her evidence as being that it was necessary for her to leave temporary accommodation and rebuild a home with her children in the

Property. It was put to her that she could rent an appropriate house. The Applicant explained that she felt financially unable to do so. The Tribunal couldn't help but think that the Applicant had made something of a spontaneous decision to purchase the Property which was tenanted rather than perhaps take the more obvious, conventional step of buying a property which did not have others living in it as their home. The Applicant appeared to accept her decision making on the matter was somewhat hard to explain.

[16] The Applicant explained that the reason she suspected that the Respondents had stopped paying rent was because they had a suspicion that the Applicant had purchased the Property with a buy to let mortgage but then was now attempting to live in the Property as her own primary residence. She considered that the Respondents wrongly suspected impropriety and stopped paying their rent accordingly. The Tribunal did not feel it necessary to delve too deeply into the Applicant's mortgage affairs but simply noted the issues.

[17] The Tribunal did not think that the Applicant was being untruthful in her evidence. Her evidence was credible and reliable but the Tribunal's difficulty was in accepting the validity of the conclusions expressed despite those conclusions clearly being honestly held.

[18] Ms O'Connor wanted the Tribunal to hear evidence from her 18 year old daughter, Ms Niamh McGhee.

### **Ms Niamh McGhee**

[19] Ms McGhee explained that she was the Applicant's daughter. She is 18 years of age. She explained that when her mum got the flat that she (Niamh) was so happy. She said she felt an immense sense of relief and that her mum would have found her own secure home for them. She described how her mum and lost a year to the shadow of uncertainty.

[20] Ms McGhee spoke confidently and the Tribunal was impressed with her composure in talking about such difficult matters. The Tribunal accepted her evidence as credible and reliable. Again though, it did emphasise that the Property was clearly bought by the Applicant as a home to live in. What discussions might have been had about the fact that there were other people living in that Property as their home was perhaps understandably not mentioned in Ms McGhee's evidence.

### **The Respondent- Ms Una O'Sullivan**

[21] The Tribunal heard first from Ms Una O'Sullivan. Ms O'Sullivan is 27 years of age and lives in the Property with Ms Kelly. She explained that she first moved into the

Property in June 2021 (for completeness the Tribunal notes that the commencement date of the relevant tenancy agreement was 8 June 2021). She is very attached to the Property which is her home and she doesn't want to leave.

[22] She explained that when she received the Notice to Leave in June 2024, the Respondents were shocked as they had been reassured that the Property was being sold as a buy to let. Ms O'Sullivan explained that at the time she was earning £680.00 per month on a month to month rolling contract. In July 2024, she was assaulted and suffered a concussion. Since then she had post injury dizziness which has outlasted the usual length of time for such symptoms and suffered panic attacks and depression. Ms O'Sullivan advised that this contributed to her being unable to get "*sorted and submit stuff to the Tribunal on time*". The Tribunal noted that this was the explanation provided for failing to provide any vouching at all of the health conditions discussed at the CMD and as ordered by the Tribunal in its direction dated 15 April 2025.

[23] Ms O'Sullivan is now earning £850.00 a month and works in Govanhill Library which is close to the Property. She has good relationships with her neighbours and is attached to the area. All her friends live there. Ms O'Sullivan also wanted to make the point that as an experienced landlord, the Applicant would have known that buying the property as a buy to let property with a buy to let mortgage and then trying to move into the Property was wrong. Ms O'Sullivan accepted that the Respondents had been withholding rent and the sum claimed of £4,724.72 was outstanding. Her explanation for withholding the rent amounted to little more than expressing a feeling of illwill to the Applicant. This was because the Applicant bought the Property as a buy to let and with a buy to let mortgage and is now trying to move into the Property. The Tribunal had no reason not to accept Ms O'Sullivan's evidence as credible and reliable albeit her reason for withholding rent appeared born out of spite and a desire to hit back rather than any for any genuinely held lawful reason.

### **Ms Marianne Kelly**

[24] Ms Kelly explained that she is 29 years of age and had a strong attachment to the neighbourhood. She has been living in the Property for four years and in the area for longer. In June of 2024, Ms Kelly was working on a temporary contract as a mental health support worker for children. She is now employed as an assistant well being support worker for children in an art group. Ms Kelly is also very attached to the Property and the local area. Ms Kelly described having caring responsibilities for a hospitalised friend in Leverndale Hospital which is closeby. She explained that she was confused about the transfer in ownership of the Property and shared Ms O'Sullivan's concerns about the Applicant's actions.

[25] Her position was effectively that she was withholding rent until the Tribunal process was concluded. Ms Kelly also explained that she had chronic gut problems and

a diagnosis of cholangitis. The Applicant clearly wanted to challenge this in her questioning of Ms Kelly and was setting herself up to ask Ms Kelly about her alcohol use and whether that was appropriate for management of her medical condition but the Tribunal did not allow this question. The Tribunal did not consider the issue of Ms Kelly's alcohol use to be relevant and did not want parties to be subjected to unnecessary and intrusive questions.

### **Analysis of the evidence**

[26] The Tribunal noted that the Respondents accepted that they had stopped paying rent. Their motives for doing so seemed little more than to mark their indignation at having received the Notice to Leave in the circumstances in which they did. Their position about awaiting the outcome of these proceedings to decide if they were going to pay rent seemed illogical and unreasonable. Nevertheless, it was clear that the Respondents were very fond of the Property and were annoyed that the Applicant had bought the Property to live in it in the full knowledge that they were already happily living in the Property. The Tribunal in that regard were sympathetic to the Respondents' position.

[27] The Applicant's position was also one which was clearly deserving of sympathy. She had gone through a divorce and was living in temporary accommodation. She was clearly going through a rough time and it was difficult for all to hear the Applicant's daughter's evidence which was very sad.

[28] Nevertheless the Tribunal could not help but think it very odd that the Applicant would buy the Property to live in knowing full well that there were tenants living in the Property. The rationale for that was never really explained. It seemed like somewhat of a chaotic decision. The Tribunal also was not impressed with the logic of why she did not consider attempting to recover possession of any of her three other properties. The Applicant pitched it as if she had decided that their circumstances were such that it would have been unreasonable to expect them to move out. The Applicant appeared affectionate and sympathetic to the needs of those tenants. It was odd therefore that the Applicant appeared to display no such feelings to the Respondents. She knew very little about them and have never even met them before she decided to serve the Notice to Leave. The truth of the matter seemed to the Tribunal that the Applicant simply preferred the Property as a prospective home for herself. That would account for why she bought it at the time that she did.

[29] Having heard from parties, the Tribunal made the following findings in fact.

### **Findings in Fact**

- 1) *The Applicant acquired the landlord's interest in a Private Residential Tenancy Agreement which let the Property to the Respondents. The Applicant had*

*commenced the process of acquiring ownership of the Property in February/March 2024 with a date of entry of 14 June 2024 recorded in the relevant Land Certificate.*

- 2) The Respondents have resided in the Property since June 2021.*
- 3) The Applicant separated from her husband and moved out of her former family home in August 2023. As part of the divorce settlement, the Applicant's former family home was transferred to her estranged husband and in turn the Respondent became sole owner of three buy to let properties which had been previously jointly owned with her estranged husband.*
- 4) The Applicant currently lives in temporary accommodation with a friend. She currently does not have adequate space to accommodate any form of shared care with her daughters, currently aged 16 and 18. Her daughters currently reside with the Applicant's estranged husband in the former family home.*
- 5) The Applicant is anxious to secure a permanent home with sufficient space for her daughters to reside.*
- 6) The Applicant purchased the Property in the full knowledge that it was subject to a tenancy in favour of the Respondents. Whilst she was initially hopeful the tenants might be leaving when she first expressed interest in owning the Property, it had been made clear to her that the Respondents did not intend to leave the Property by the time she completed the purchase and became owner of the Property. The Applicant bought the Property with the express intention of living in it despite the fact it was let out to the Respondents.*
- 7) Three days after becoming legal owner of the Property, the Applicant served a Notice to Leave on the Respondents in terms of Ground 4 of Schedule 3 of the Act on the Respondents. The Applicant has also served the requisite notice in terms of Section 11 of the Homelessness (etc) (Scotland) Act 2003 on the relevant local authority. The Respondents have remained in occupation of the Property beyond the expiry of the notice period set out in that Notice to Leave.*
- 8) The Applicant had never met the Respondents prior to issuing the Notice to Leave. She knew little about their circumstances. In contrast, the Respondent is affectionate and sympathetic to the circumstances of the tenants in her other three buy to let properties. The Applicant has considered their individual circumstances and considered that she would not feel it reasonable to seek to recover possession of their properties for her to live in. The Applicant does not appear to have conducted any similar exercise in respect of the Respondents. The Applicant*



*bought the Property intending to evict the Respondents no matter the circumstances.*

- 9) *The Respondents are affronted by the manner in which the Applicant has gone about her business. Their resentment has manifested itself in them stopping rental payments.*
- 10) *The sum of £4,724.72 is resting owed as arrears of rent by the Respondents to the Applicant.*

#### **Analysis of Ground 4**

[30] Having made the above findings in fact, the Tribunal considered that ground 4 of Schedule 3 of the Act was established. The Tribunal had no basis on the evidence presented to legitimately conclude otherwise. The Tribunal accepted that the Applicant genuinely wishes to move into the Property as her permanent home. The Tribunal then went on to consider whether it was reasonable to make an Eviction Order.

#### **Analysis of the Reasonableness**

[31] The Tribunal noted that there is no presumption that the proprietorial rights of an owner are to be preferred to the occupancy rights of a tenant. The Tribunal noted and accepted that granting the Eviction Order would cause disruption to the Respondents. Whilst the Tribunal had no formal medical verification of the extent of the Respondents' medical conditions, the Tribunal accepted that were the order to be granted, these conditions which included panic attacks and depression in the case of Ms O'Sullivan could result in increased levels of stress and suffering which naturally anyone would want to avoid. For balance though, the lack of any medical evidence did make it hard for the Tribunal to conclude that the effects of any such increased stress might be unusually acute or pronounced beyond those of someone without those conditions. The Tribunal also noted that the Respondents were in employment locally and that their friends lived in the area. They were clearly well settled in the Property.

[32] The Tribunal however did not consider that it was reasonable for the Respondents to stop paying rent simply because they were aggrieved at the manner in which the Applicant went about her business. They had accrued arrears in the sum of £4,724.72 which had clearly made a difficult situation for the Applicant worse. This gave the Tribunal serious pause for thought.

[33] Similarly, the Tribunal considered the Applicant's own circumstances in assessing the reasonableness. The Applicant's desire to secure her own home with sufficient room for her daughters to reside with her was clearly a natural and legitimate ambition. The Tribunal accepted that the Applicant had been going through a difficult time following on from her separation from her husband and the Applicant was clearly desperate to

recover (or perhaps more accurately “*obtain*” as she bought it with sitting tenants) possession of the Property and move in. She clearly was very fond of the Property which was in a very convenient location for her and which would be highly suitable for her needs.

[34] These issues were all in competition and were assessed by the Tribunal as balancing evenly against each other in the scales of reasonableness. However, there was a further factor that the Tribunal felt tipped the scales clearly in favour of the Application being refused.

[35] The Tribunal could not accept that it was reasonable for the Applicant to serve the Notice to Leave in the circumstances that she did. The Applicant required to purchase a home with space for her and her daughters. Instead of buying a property that had no one living in it, the Applicant appeared to have bought the Property in the full knowledge that it had tenants living happily in it who did not want to leave. This seemed an incredibly risky move. It was never made clear why the Applicant took on such a risk. What made this harder to justify is that the Applicant appeared to have no qualms about attempting to remove the Respondents whilst at the same time displaying clear affection to her other tenants.

[36] One feature of the Hearing which the Tribunal wishes to note relates to certain comments made by the Respondents in their closing submissions. They made reference to the occasion when they met the Applicant in August 2024. They implied that the Applicant had lied to them about her occupation by claiming to be a carer when she was not. There was also mention of her having previously claimed to have been a letting agent. The Tribunal noted that this had not been addressed in either of the Respondents’ evidence and neither had either of the Respondents challenged the Applicant about this in cross examination. The Tribunal therefore considered that it was unable to make any finding about this and did not factor this into its decision making process.

## **Decision**

[37] The Tribunal considered that the scales tipped decisively in favour of it not being reasonable to grant the Application. What the Applicant did in buying the Property in the hope she might easily remove the tenants did not make sense.

[38] The Tribunal therefore refused the Application for an Eviction Order. The Tribunal however had no reason not to grant the Application for the Payment Order sought. Accordingly, the Tribunal granted the Application for a Payment Order against the Respondents in the sum of £4,724.72 with interest on that sum at the rate of 5 per cent per year until payment.

## **Post-Script**

[39] Sometime after conclusion of the Hearing and shortly before the issuing of this decision, the Applicant emailed the Tribunal with an updated rent statement and invited the Tribunal to update any sum to be awarded accordingly to a higher sum. The Tribunal did not do so. The evidence had been heard. The time for submitting documentation had clearly past. The Respondents would have been afforded no opportunity to contradict the Applicant's position. It would have been procedurally improper to have any regard to the updated rent statement.

### **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.**

**Andrew McLaughlin**

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**Legal Member/Chair**

**2 September 2025**  
**Date**