



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

**Chamber Ref: FTS/HPC/EV/24/1431**

**Re: Property at 7/1 High Street, Hawick, TD9 9BZ ("the Property")**

**Parties:**

**Gary Scott Thomas Cairns, Kinninghall Dell, Hawick, TD9 8LH ("the Applicant")**

**Miss Dawn Berry, 7/1 High Street, Hawick, TD9 9BZ ("the Respondent")**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application and made an Eviction Order**

**Background**

[2] The Applicant seeks an Eviction Order under ground 1 of Schedule 3 of the Act. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Application had previously called for a Case Management Discussion. The Tribunal made certain case management orders in the form of Directions and continued the Application for evidence to be heard at a Hearing.

[3] Both sides had submitted large volumes of evidence. The Respondent had sent in large unstructured, unindexed volumes of documentation spread across numerous emails sent to the Tribunal. The Respondent paid little regard to the Tribunal's efforts to discourage her from emailing documents to the Tribunal in this manner. She was opposed to the Application. The basis of her defence appeared chiefly that the Applicant should not be allowed to recover possession of his Property because he had behaved badly to her and acted inappropriately. The Tribunal construed this as meaning that both the ground relied on by the Applicant and the "*reasonableness*" of granting an order were opposed by the Respondent. However, as the evidence progressed during the Hearing, it became apparent that the Respondent did accept that the Applicant wanted to sell the Property leaving only the "*reasonableness*" to be determined. The Respondent took no objection to the competency of the notices and their service.

### **The Hearing**

[4] Evidence was heard by video call over two days on 13 June 2025 and 31 October 2025. Neither party had any preliminary matters to raise and both were content that the Tribunal get started. The Applicant gave evidence himself. He also called a Mr Graham Berry and Mr Victor Berry as witnesses on his behalf. The Respondent gave evidence herself. She also called a Ms Karen Lerpiniere, a Ms Enid Muir, a Mr Daniel Finn, A Mr Sam Cropp and a Ms Chloe Tetrault as witnesses.

[5] The Tribunal comments on the evidence heard as follows

### **The Applicant. Mr Gary Cairns**

[6] The Applicant described his financial motivations to sell the Property. He owns other properties but is in financial dire straits. The Respondent has not paid any rent for around 2 years. The Applicant had offered the Respondent the chance to purchase the Property but she had not taken the process further and had wasted his time somewhat. He owns ten properties in total with 8 of them being subject to a mortgage. He decided he needed to sell this Property in september 2023. He first purchased it in May 1994. He is employed as a forestry contractor. The notice to leave was served under Ground 1 on 13 December 2024. The notice to leave expired on 7 March 2024. The Respondent did not move out.

[7] The Applicant described how after he had offered the Respondent the chance to purchase the Property, he had identified another potential purchaser. The Respondent had however then harassed that potential purchaser of the Property, a Dr Carrington, to the point that Dr Carrington withdrew from a potential purchase of the Property which was at a relatively advanced stage. The Respondent had refused to allow the necessary surveys of the Property to be completed.

[8] The Applicant denied sexually harassing the Respondent or being inappropriate to her. The Applicant made reference to having been acquitted of such an allegation after trial in the Sheriff Court.

[9] The Applicant came across as a somewhat emotional man. It was clear he had at one time been on friendly terms with the Respondent. His style of communication may well be considered overbearing by some. There certainly seemed to be a lengthy chain of messages between the parties. The Applicant appeared a very hands on landlord in that he dealt with everything himself without the services of any letting agent. The Tribunal took the view that the Applicant had a somewhat brash manner that may not have been to everyone's taste. There was clearly bad blood between the Applicant and the Respondent who appeared now to loathe each other. It was clear that they had been friendly however for a substantial while. There was a large volume of messages between the parties in the Tribunal papers. Many of these exchanges were routine and unremarkable. It certainly seemed that both parties were happy to text each other up until their relationship appeared to break down in or around September 2023. The Tribunal accepted that the Applicant indeed wanted to sell the Property (ultimately so did the Respondent). The Tribunal therefore very much considered the Applicant's evidence through the lens of the "*reasonableness*" or otherwise of granting the order.

### **Graham and Victor Berry**

[10] The Applicant called a Mr Graham Berry and a Mr Victor Berry as witnesses. They are the Respondent's father and a paternal uncle. They interestingly had nothing to say about the actual tenancy relating to this Application. Neither did they really know the Applicant. Instead they wanted to talk about certain difficulties of their own they had experienced with the Respondent themselves. The Respondent objected to the Tribunal hearing evidence from them and said they shouldn't be allowed to be witnesses. She said her father had sexually abused her and that it was totally inappropriate for her father and uncle to be giving evidence.

[11] The Tribunal considered the matter. The Respondent acknowledged that her father and uncle had not been convicted of any such criminal offences nor were they subject to any active prosecution. The Tribunal decided that it was not appropriate for one party to decide who the other party could call as a witness. Obviously the Tribunal would not want to hear irrelevant evidence and any evidence that was irrelevant would be disregarded. The Tribunal decided it would hear the evidence and decide if it was relevant or not. If the witnesses had been convicted of the offences alleged or were subject to active criminal prosecution, then the Tribunal may have taken a different approach, but it did not seem appropriate to allow the Respondent to veto the Applicant's witnesses without objective evidence. As is commented on further, the Respondent herself led evidence from a Mr Sam Cropp who similarly knew nothing about the current Application and who simply wanted to say bad things about the Applicant. The Applicant did not object to that witness being led. Interestingly, the

Applicant had submitted another Tribunal decision in which Mr Victor Berry secured an Eviction Order against the Respondent dated 18 June 2022 in which the Respondent raised none of these issues.

[12] In any event the Tribunal did not want the Respondent to be feel unnecessarily uncomfortable and so suggested that she might want to turn her camera off when the witnesses gave evidence. The Respondent had also declined instructing a representative and was therefore representing herself. This decision somewhat limited the Respondent's options but that seemed a regrettable consequence of the Respondent not engaging a representative especially when she wished to raise such sensitive matters. The Respondent declined the Tribunal's suggestion and instead said she would remove herself from the video call entirely and rejoin when the two witnesses had concluded their evidence. The Tribunal explained to the Respondent that this would mean her completely missing the evidence and of course also missing out on the opportunity to cross-examine. The Respondent appeared to accept this and then left the call.

[13] As it happened, the evidence of the two respective witnesses was largely irrelevant and did not factor in to the Tribunal's decision making, so the Respondent's decision to remove herself entirely was not of itself a decisive factor behind the granting of the order.

[14] The evidence given by Mr Graham Berry was that he is the Respondent's father. His daughter had been previously living in a Property owned by Mr Graham Berry's brother Victor. That tenancy had ended badly with Mr Victor Berry having to obtain an Eviction Order to end the tenancy on account of the Respondent's non-payment of rent.

[15] At that point Mr Graham Berry said that the Respondent had, completely out of the blue, then made an allegation that he had sexually abused the Respondent in 1990. Mr Berry described how he was arrested and his life was turned upside down. He described in a quite emotional manner how the allegation had been completely unfounded and had come out of nowhere and that the Crown Prosecution Service ( Mr Berry resides In England) had discontinued the investigation and taken no further action. Mr Berry explained that he considered that his daughter had psychopathic tendencies and would say anything to try and advance her own interests with zero regard for the collateral damage caused to others. He suggested the current situation may be similar.

[16] The Applicant asked Mr Berry to agree whether he thought the Respondent's allegations about him might be similarly spurious. Mr Berry accepted this.

[17] Mr Victor Berry gave evidence about how he had let a Property out to the Respondent in Dunfermline. She kept borrowing money from him and failed to pay it back and then stopped making rental payments. He had to evict her which caused huge disruption in the family. Around that time, the Respondent made allegations about Mr Graham Berry. Mr Berry pointed out that the Respondent apparently had no issue

interacting with and being around himself and Mr Graham Berry until that point. He similarly disclosed now having a very low opinion of the Respondent. The Tribunal interprets the evidence as effectively being that the Tribunal should take great care in considering anything that the Respondent said as true. As discussed though, the Tribunal did not take the view that it was appropriate to decide this Application based on assessments of the relevant parties' character. While clearly some cases are resolved on findings relating to credibility and reliability, this case was more about an assessment of the "*reasonableness*" of granting the order sought. The Tribunal did not consider it appropriate to have regard to character evidence either in favour or against the parties in making that assessment.

[18] Mr Victor Berry referred to the previous Tribunal decision which granted an eviction order in his favour. As mentioned that had been submitted by the Applicant. The Respondent had participated in that process and did not raise it as an issue that she was too traumatised to be around Mr Berry.

### **Ms Dawn Berry**

[19] The Respondent Ms Dawn Berry gave evidence. She explained that she was 39 years of age. She was self employed as a director of three different companies. The Respondent's precise employment status appeared somewhat unconventional and vague. She said she was an "alchemist". The Tribunal asked what she meant and she gave an answer that suggested that it wasn't to do with attempting to turn base metals into gold but rather it was something else to do with business. The Tribunal was left very unsure about what the Respondent actually did.

[20] The Respondent said that she rejected the Applicant's sexually inappropriate advances from the moment she moved into the Property in March 2022. She explained she had a history of trauma from sexual abuse. She described how the boiler had stopped working at one point, the Applicant had turned up supposedly to address the problem but instead he sat down and started pouring drinks. He would pressure her to socialise.

[21] The Respondent described the Applicant sending her sexually explicit messages. There was an interesting feature of the Respondent's evidence on this point. She said that she had submitted copies of the explicit sexual messages to the Tribunal. The Tribunal asked the Respondent to direct the Tribunal's attention to these messages several times. The Respondent could not. The Tribunal adjourned at one point and invited the Respondent to take her time and identify when these messages were submitted to the Tribunal. The Respondent's evidence about this was odd. She kept assuring the Tribunal that copies of these messages had been submitted, but then never could actually show the Tribunal these messages.

[22] The issue was made somewhat more complicated still by the fact that one of the Respondent's witnesses would then say that she was aware that the Applicant would send inappropriate messages and then immediately delete them meaning that they could not then be retained by the Respondent. The Tribunal then wondered how the Respondent could have told the Tribunal that she had then submitted copies of these messages if the messages themselves had been deleted. This issue never was resolved. Thankfully the Tribunal did not consider that the Tribunal's decision making process regarding whether it was reasonable or not to make an Eviction Order required the Tribunal to resolve all aspects of the very many allegations in and around this Application. The Respondent spoke about how the Applicant was clearly romantically interested in her and would say things like "*come live with me.*"

[23] The Respondent described how the Applicant had offered the Respondent the chance to purchase the Property. The Respondent's evidence here was again very vague. The correspondence clearly showed the Applicant offering the Respondent the chance to buy the Property in September 2023. The Respondent was very vague about why she was unable to do that. She neither said that she didn't have the money and couldn't obtain a mortgage nor gave any other common sense explanation. It does seem though at up to this point the parties were on acceptable terms (or at least acted like they were). The Tribunal cannot help but note this somewhat undermines the allegation that the parties relationship was strained right from the commencement of the tenancy.

[24] The Respondent then spoke about an incident that took place in a local pub when her friend heard the Applicant call the Respondent a "*lesbian bitch*". The Applicant explained that she was made aware that the Applicant was also heard offering up the Property to other people for sale in the pub.

[25] The Respondent also mentioned that the Applicant had turned up and banged on her door in an attempt to gain access. However this appeared actually to be the occasion which the witness Daniel Finn would describe as happening when he was in the Property alone and the Respondent was not present. The Tribunal comments on that incident further later. She gave evidence about how on one occasion she alleged that the Applicant was "*refusing basic maintainance*" after there was an alleged issue with the heating in the Property.

[26] The Respondent put great store in an email she has sent the Applicant which she explained was sent in the hope of re-establishing proper boundaries and asking the Applicant to desist from calling her and messaging her. The Tribunal reviewed and considered this.

[27] The Respondent accepted that she had not paid any rent since September 2023. At the time of the last day of evidence this was equivalent to two years worth of rent. The Respondent's reasons for not paying rent were very vague. She said that she had

incurred expenses with “*backups for safety*” She also rented “*two garages for safety*” and spent money on “*legal advice*”.

[28] The Respondent’s explanations for not paying rent were unconvincing and fell short of presenting any legitimate basis for non payment of rent. The Applicant also asked the Respondent as to why it came to be that she hadn’t accused him of anything before he offered to sell the Property to her in September 2023. No compelling answer was forthcoming.

### **Ms Karen Lerpiniere**

[29] The Respondent called a Ms Karen Lerpiniere as a witness. She explained that she was a self employed psychotherapist, who worked from home part-time for a group called “*survivors unite*”.

[30] She explained that the Respondent had “*self referred to her services*” and has been attending therapy since June 2021. She said that the Respondent had told her about the incidents with her father, her uncle and the Applicant and she has no reason to believe the Respondent.

[31] The Tribunal had certain concerns regarding Ms Lerpiniere’s evidence. The first part of her evidence was to challenge the Tribunal about why it had allowed evidence to be heard from Mr Graham Berry and Mr Victor Berry. The witness therefore began her evidence in a somewhat unexpectedly confrontational manner by challenging the Tribunal about its own procedures. The Tribunal was unsure how or why the witness would have known about that and explained that the Tribunal wanted to hear her evidence rather than discuss the Tribunal’s procedural approach to aspects of the case.

[32] Ms Lerpiniere’s tone was somewhat aloof throughout her evidence and treated the Tribunal with a degree of disdain. The Tribunal noted that the witness’s services were not offered to the Respondent through a traditional means such as the NHS or even an NHS referral. Ms Lerpiniere’s qualifications and experience were never really explained to the Tribunal. Her evidence was not delivered in the manner typically given by expert or skilled witnesses.

[33] In any event the evidence given did not seem particularly relevant. That might have been different if the Respondent had based her case for remaining in the Property on it exacerbating any mental health conditions. But she made no such argument. It was as if the witness was expected to corroborate the Respondent’s account of the abuse she allegedly was subjected to. The witness said nothing and was asked nothing about how an Eviction Order might have impacted the Respondent which is perhaps the evidence the Tribunal might have expected to have been covered by a psychotherapist in an Application such as this.

[34] The Respondent next called Ms Enid Muir as a witness.

### **Ms Enid Muir**

[35] The Tribunal heard from Ms Enid Muir on behalf of the Respondent. She lives in Hawick and described herself as a friend of the Respondent. At the start of the tenancy there would be times when she would be with the Respondent when she would receive inappropriate text messages. They would make the Respondent uncomfortable. Ms Muir made comments about how the Respondent was trying to stand up to the Applicant even though *"he (the Applicant) holds all the power"*. She explained that it wouldn't fit *"the mould very well just to roll over when facing injustice"* Ms Muir described how her understanding of the position was that the Respondent rejected the Applicant and then *"this happened."*

[36] When asked further about the sexually inappropriate messages by the Tribunal, Ms Muir explained that the Respondent would turn her phone around and allow Ms Muir to see a *"preview of the messages"* but not the full messages. She couldn't remember them word for word. When probed further she stated that these messages would be things like *"When can I come around"* *"When can we hang out"*.

[37] She was asked again whether she saw any sexually explicit messages. She explained that:

*"There was one message, I can't rememebr exactly, it started off like when I was having sex, it was something to do with sex."*

[38] Messages were received around 2 am. Ms Muir then explained that messages would then be deleted by the sender.

[39] In cross examination, the Applicant asked Ms Muir, why, if all this was true, he offered her the Property for sale in September 2023. Ms Muir stated that this was *"not a well rounded question"*. The Tribunal did not agree with that but Ms Muir's answer was somewhat vague in any event.

[40] The Tribunal was somewhat cautious about what to make of Ms Muir's evidence. She had started off with the clear narrative that the Applicant had sent sexually inappropriate messages, but when questioned about this in detail, the facts of the situation did not seem nearly as clear cut or as straightforward as she initially suggested. Ms Muir was clearly friends with the Respondent and the Tribunal could not help but consider that Ms Muir was very much wishing to support the Respondent.

### **Mr Daniel Finn**

[41] The Respondent called Mr Daniel Finn as a witness. The Respondent kept referring to Mr Finn as "*Finn*" as if it was his first name. The witness confirmed however that his first name was Daniel and his surname was Finn.

[42] Mr Finn gave evidence about how he thought the Applicant could have handled situations better. He said he had experienced at first hand the Applicant banging on the Respondent's door. However the Tribunal was not confident that it was getting a fair picture of this as it seems that this related to one occasion when Mr Finn was in the Property by him self "*dog sitting*". The Applicant was described as "*banging*" but Mr Finn then said that he refused to open the door. The Tribunal was somewhat unsure why he would not open the door as the Applicant was supposedly attending at the Property after reports of a leak. Mr Finn replied "*Hell no, I'm not opening that door.*" The Applicant slid a letter under the door and left. This was the only example Mr Finn could provide of the Applicant supposedly "*banging on the door*". Mr Finn made reference to calling the police. He also claimed to have told him to "*calm down,*" The Tribunal imagined Mr Finn must have shouted this through the door he was not opening for the Applicant.

[43] Mr Finn also spoke about a time in a local pub when he first encountered the Applicant. He didn't know who he was at that time. He said that the Applicant offered him the flat to rent and said it was the best flat in Hawick. He described saying that the Applicant said he wanted the Respondent "*out*" and called her "*a lesbian bitch*".

[44] Mr Finn described another incident when the Applicant came back into the bar and pointed at him and said something along the lines of "*we know where we stand*". Mr Finn also described the Applicant then trying to get Mr Finn in trouble by speaking to his manager at the pub. The Respondent then called a Mr Sam Cropp as a witness.

### **Mr Sam Cropp**

[45] Mr Cropp described being a previous tenant of the Applicant at a property referred to as Belhouse, Hawick between May 2023 and June 2025. His evidence was effectively a negative character review of the Applicant as a landlord. He repeatedly said that he shouldn't be a landlord and gave examples of how he thought the Applicant was inappropriate, over bearing and did not respect boundaries and his own general privacy.

[46] The Applicant's cross examination focussed on highlighting how Mr Cropp had asked to have his tenancy extended at one point, suggesting things couldn't have been that bad and that he also failed to maintain the garden. The Applicant highlighted how Mr Cropp exited the Property with rent arrears of £1,800.00.

[47] The Respondent then called Ms Chloe Tetrault as a witness.

## **Ms Chloe Tetrault**

[48] Ms Tetrault was in a relationship with Ms Berry for around two years. She struggled to provide the exact dates of the commencement and ending of the relationship as she described the relationship as having been on and off for a while. She did explain however that she had never met the Applicant before and this was her first time seeing him on the video call. Ms Tetrault gave evidence of the Respondent receiving phonecalls in the middle of the night from the Applicant and waking up to deleted messages. She described his interactions with the Respondent as being “*totally out of professional bounds*”. Ms Tetrault quoted as an example one time when the Applicant messaged the Respondent asking if he could come over and smoke weed with the Respondent. Ms Tetrault also made reference to the Applicant sending over a picture of a woman and saying something about having a threesome. She also described him sending photos of himself on a treadmill to the Respondent.

## **Analysis of Evidence**

[49] The Applicant may very well have considered that this Hearing was akin to an examination of his character and that he was effectively on trial. He was not of course. This Tribunal was tasked with determining whether the ground set out in the notice to leave was established and whether it was reasonable or not to make an eviction order. The Respondent’s evidence appeared entirely focussed on pointing out bad things about the Applicant, both generally and with reference to the specifics of her own situation. The Respondent seemed to have no regard for the financial consequences of her decision not to pay rent for two years and in that regard appeared someone two dimensional. Her reasons for not paying rent made very little sense and she appeared to be punishing the Applicant for his alleged wrongdoings. What the Respondent’s end game was, was never adequately explained. It seemed that the Respondent would be happy for that arrangement to continue on indefinitely. The Respondent also offered almost nothing to challenge the ground relied on itself.

[50] The Applicant himself came across as being a man whose views on the world might not sit well with many. He seemed ill at ease with how one might expect a modern landlord to operate. He seemed to hold somewhat old fashioned views. For example, when he was attempting to discredit the witness Sam Cropp, he made reference to how he had advertised for a “*professional couple*” in a manner that seemed somewhat old fashioned. He also seemed to place a great emphasis on the fact that Mr Cropp was not from the borders and more or less said that Mr Cropp needed to learn how things were done in the local area. He seemed somewhat unprofessional and the Tribunal found it easy to imagine that he may well have been over bearing and unprofessional as a landlord.

[51] The Tribunal considers it appropriate to imagine the situation if everything the Respondent said was entirely true. In that scenario, the Applicant sent inappropriate messages to the Respondent, failed adequately to address repairs in the Property, called her a “lesbian bitch” in a pub to a third party, wasn’t a good landlord to other tenants, tried to hit on the Respondent and then turned on her when she rejected his advances.

[52] Balancing this was the fact that the Applicant appeared to have been tried and acquitted in the Sheriff Court for the allegation regarding calling the Respondent a lesbian bitch. The supposedly inappropriate messages had never been produced to the Tribunal and of course everything seemed to have been fine up until the Respondent had not taken up the Applicant’s offer to sell her the Property.

[53] The Tribunal also noted that it was somewhat contradictory of the Respondent to bring Mr Cropp as a witness whose sole agenda was to say how bad a landlord the Applicant was, when she had objected to the Applicant bringing witnesses to say (amongst other things) how bad a tenant the Respondent was.

[54] It seemed very clear that the parties were effectively at war and nothing was considered below the belt.

[55] The Respondent expressed an ambiguous, indeed contradictory view that the landlord should not be a landlord and so should divest himself of his rental properties. However, he should not be allowed to sell this Property. She declined to commit to paying any rent to the landlord going forward and made certain comments that she might pay rent if it was to a letting agent. Having considered the documentary evidence before the Tribunal and having heard evidence and submissions, the Tribunal made the following finding in facts.

## **Findings in Fact**

- 1) *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act, which commenced on 1 March 2022.*
- 2) *The Property was purchased by the Applicant in 1994. The Applicant owns 10 properties, 8 of which are subject to a mortgage. The Applicant has significant debt and is extremely anxious about his finances. He wishes to address his debt by selling the Property to release funds to help pay down his debts. The Applicant decided to sell the Property in September 2023.*
- 3) *The Applicant and the Respondent were friendly and at times spent time in each other’s company. Relations between the parties were such that in or around September 2023, the Applicant offered the Property to the Respondent to purchase*

*at market value. The Respondent either could not or would not take the purchase forward. The Applicant thereafter attempted to sell the Property to other individuals who might be interested.*

- 4) After being offered the chance to purchase the Property and being either unable or unwilling to do so, the Respondent stopped paying rent. The Respondent has not paid anything whatsoever to the landlord since this time. There is no legitimate basis for the non-payment of rent.*
- 5) The Respondent's non-payment of rent is deliberate and designed to cause financial harm to the Applicant. Even if the Respondent's account is to be believed in its entirety, then the Respondent appears to consider that it is legitimate to punish the Applicant by not paying rent and enjoying the benefit of free living costs at the Applicant's expense.*
- 6) The Respondent alleges that the Applicant has been inappropriate to her and used derogatory language related to her sexual orientation. The Respondent was acquitted after trial in the Sheriff Court in respect of related charges.*
- 7) The Applicant has, on the balance of probabilities, been overbearing as a landlord and unprofessional at times.*
- 8) The Respondent lives alone in the Property. The Property has not been especially adapted for the Respondent's purposes. The Respondent is unlikely to suffer any distress over and above that which the average person may experience in moving home.*
- 9) The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.*
- 10) The Applicant served a notice to leave dated 13 December 2023 in terms of ground 1 of Schedule 3 of the Act. The notice to leave expired on 7 March 2024.*
- 11) The Respondent has not removed herself from the Property and there is nothing to suggest that she will make any further payments of rent should she be allowed to remain the Property.*

## **Decision**

[55] Having made the above findings in fact, the Tribunal considered that ground 1 of Schedule 3 of the Act was established. The Applicant clearly wished to sell the Property. The Respondent could offer very little to doubt that this was the Applicant's genuinely held intention. The Respondent appeared ultimately to accept this in her closing

submissions. The Tribunal then went on to consider whether it was reasonable to make an Eviction Order.

[56] In considering the reasonableness or otherwise of making an Eviction Order, the Tribunal took a common-sense approach, balancing the competing interests. The Tribunal proceeded on the basis that something could be reasonable while only being one of many other options which might also be reasonable. The Tribunal noted that there was no presumption that the Applicant's proprietary rights trumped the Respondent's occupancy rights. The Tribunal also notes that reasonableness is to be considered as at the date of the Hearing.

[57] The reasons for considering it unreasonable to make an Eviction order appeared to be based on the Applicant's conduct. This would have involved the Tribunal considering that the Applicant had behaved badly to the Respondent and that this Application for an eviction order was motivated by anger, hurt pride and after having sexual advances rejected by the Respondent.

[58] The reasons for considering it reasonable were that the Respondent wasn't paying any rent and had not paid any rent for two years. The Respondent's non-payment of rent was vindictive and was causing significant damage to the Applicant. The Applicant wished to sell the Property to free up funds to pay down his debts. The tenancy had failed and the idea that parties should go on as landlord and tenant was perverse.

[59] The Tribunal considered that the reasons in favour of considering it reasonable to grant the order overwhelmingly outweighed the reasons against.

[60] The Tribunal considered that the fact that the Respondent hadn't paid rent for two years weighed so heavily in the balance as to make it very hard to think that it might possibly not be reasonable to grant the order. The Tribunal considered that the Respondent's actions were causing on going harm to the Applicant and that this tenancy had to end with the removal of the Respondent from the Property. The Respondent's approach to the non-payment of rent was entirely unreasonable.

[61] The Tribunal therefore concluded that it was reasonable to grant the order. The Tribunal therefore grants the Application and makes an Eviction Order.

## **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.**

Legal Member: Andrew McLaughlin

Date: 11 December 2025