



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 2016 Act”)

Chamber Ref: FTS/HPC/EV/21/2597

Re: Property at 71 Clermiston Road, Ground Floor, Edinburgh, EH12 6UY (“the Property”)

Parties:

Mr Geoffrey Bain, 71 Clermiston Road, Edinburgh, EH12 6UY (“the Applicant”)

Ms Victoria Ruthven, 71 Clermiston Road, Ground Floor, Edinburgh, EH12 6UY (“the Respondent”)

Tribunal Members:

Sarah O’Neill (Legal Member) and David Fotheringham (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the applicant against the respondent. The tribunal delayed execution of the order until 31 December 2022.

Background

1. An incomplete application to the tribunal was received from the applicant on 21 October 2021. Further to a letter from the tribunal administration asking the applicant to provide further information, an amended application was received from the applicant under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 1 and 12 as set out in Schedule 3 of the 2016 Act.
2. Attached to the amended application form were:

- (i) A separate paper headed "History of tenancy at 71 Clermiston Road"
 - (ii) Copy notice to leave from Lindsays Solicitors on behalf of the applicant to the respondent dated 30 March 2019
 - (iii) A copy of the standard statutory terms supporting notes for a private residential tenancy.
 - (iv) A rent statement showing alleged rent arrears as at 22 September 2021.
3. Following a letter dated 10 December 2021 from the tribunal administration requesting further information, the following were received from the applicant on 22 December 2021:
- (i) Confirmation that he wished the application to proceed on ground 1 only, as the Notice to Leave referred only to that ground.
 - (ii) A copy of a section 11 notice signed by the applicant and dated 19 December 2021, together with an email from the applicant of 20 December 2021, sending this notice to Edinburgh City Council
 - (iii) Copy recorded delivery letter from Lindsays solicitors dated 30 March 2021 and sent to the respondent on behalf of the applicant, enclosing the notice to leave. Attached to the letter was a copy of the Private Residential Tenancy Statutory Terms Supporting Notes.
 - (iv) A home report dated 8 March 2021 relating to the property produced by Buchanan Chartered Surveyors.
4. The application was accepted on 10 January 2022. Notice of the case management discussion (CMD) scheduled for 16 March 2022, together with the application papers and guidance notes, was served on the respondent by sheriff officers on behalf of the tribunal on 4 February 2022. The parties were invited to submit written representations by 24 February 2022.
5. The tribunal issued a direction to the applicant on 17 February 2022, requiring him to provide further evidence regarding his intention to sell the property by 9 March 2022. No response was received from the applicant prior to the case management discussion (CMD). Written representations were received from the respondent on 7 March 2022.

The Case Management Discussion

6. A case management discussion (CMD) was held by teleconference call on 16 March 2022. The applicant was present on the call and was represented by his sister, Ms Olive Bain. The respondent was present on the teleconference call and represented herself. The tribunal noted that it had not been notified in advance that Ms Bain would be representing the applicant, but that it considered in all the circumstances that this would be appropriate and would be of assistance to the tribunal.

7. The tribunal chairperson explained to the parties that, while various other issues had been raised in the original application and in the parties' written representations, the tribunal was only able to consider the applicant's application for eviction under ground 1 of Schedule 3 of the 2016 Act. That ground was that the landlord intends to sell the let property. The notice to leave which had been sent to the respondent on 30 March 2021 referred only to ground 1. The applicant had later confirmed when asked by the tribunal administration that he wished to proceed on ground 1 only.
8. Ms Bain told the tribunal that one offer had been received for the property in around August 2020, but that due to issues with the paperwork that offer had been rescinded. She said that the situation had now changed, as the applicant was now required to sell the entire house at 71 Clermiston Road. The applicant lives in the upper flat and the respondent lives in the separate ground floor flat below.
9. Ms Bain said that due to his age (77 years old), the applicant had come to the end of his mortgage term and his lenders now required him to sell the whole house. The bank had given him some leeway over the past few years, but it had now come to the point where he needed to sell the house.
10. The respondent disputed that the applicant intended to sell the property. She suggested that he did not actually want to sell it but wished to appear as though he was doing so for the benefit of his mortgage lender. She said that he had told viewers that he actually wanted a much higher price than the asking price, and that she believed he was trying to put viewers off.
11. Having considered all of the evidence before it, the tribunal concluded that it was not in a position to make a decision on the application at the CMD. Some of the facts were clearly in dispute between the parties, and in particular whether the applicant intended to sell the property. The tribunal therefore decided that the application should proceed to a hearing.
12. The tribunal issued a second direction to the parties on 16 March 2022, requiring the applicant to provide further evidence that he intended to sell the property and evidence from his mortgage lender that he was being required to sell the entire house. It also invited both parties to submit further written representations regarding whether ground 1 had been established and whether it would be reasonable for the tribunal to grant an eviction order.
13. Written representations were received from the respondent on 5 April 2022 and from the applicant on 11 April 2022.

The hearings

14. The tribunal held a hearing (“the initial hearing”) by teleconference call on 19 April 2022. The applicant was present on the call and was again represented by Ms Bain. The respondent was present on the teleconference call and represented herself. Neither party called any other witnesses.
15. The tribunal heard evidence from both parties in some detail. The tribunal concluded, however, that it needed some further information, which was relevant to whether all the requirements of ground 1 had been met, including whether it was reasonable in the circumstances to grant an eviction order. It therefore decided to adjourn the hearing to a later date and issued a third direction to the applicant on 21 April 2022, seeking further information from him in advance of the adjourned hearing.
16. The tribunal held an adjourned hearing by teleconference call on 7 June 2022. The applicant was present on the call and represented himself. The respondent was present on the teleconference call and represented herself. Neither party called any other witnesses.
17. The tribunal noted that no response had been received from the applicant to its third direction of 21 April 2022. The reason for adjourning the initial hearing had been that the tribunal needed the further information required by the direction.
18. The applicant appeared to be confused about the information which the tribunal was seeking from him and what if anything he had already sent. He appeared to have issues with his short-term memory (although the respondent suggested that this was not the case). While Ms Bain had represented him previously, she was not present at this hearing. She had told the tribunal at the initial hearing that she would be on holiday on the hearing date, and Mr Bain had confirmed that he was happy to represent himself.
19. He made numerous references during the hearing, however, to the fact that she was not there and appeared to be having difficulty in locating the necessary paperwork in her absence. He stated that he wished Ms Bain to represent him in the proceedings.
20. In the circumstances, and bearing in mind the tribunal’s overriding objective, the tribunal decided to give the applicant one further opportunity to provide the information which it had previously requested. It therefore decided to adjourn the hearing again to a later date. The tribunal made clear, however, that it intended to make a decision at the next hearing, regardless of whether the information requested had been provided, on the basis of all of the information before it at that time.
21. The tribunal issued a fourth direction to the parties on 7 June 2022, again setting out the information which it required the applicant to provide in advance of the next adjourned hearing and inviting both parties to submit any further

written representations they wished to make. Written representations were received from the respondent on 14 and 19 July 2022 and from the applicant on 16 July 2022.

22. The tribunal held a further adjourned hearing by teleconference call on 26 July 2022. The applicant was present on the call and was again represented by Ms Bain. The respondent was present on the teleconference call and represented herself. Neither party called any other witnesses. There was an observer present on the call throughout the hearing.

Preliminary issue

23. At the hearing on 26 July 2022, the respondent indicated that she wished to object to the applicant being represented by Ms Bain. She stated that she believed that the applicant should represent himself in the proceedings, as he was not as vulnerable as he appeared, and she believed he was hiding a lot of information from both Ms Bain and the tribunal. He should therefore be required to speak for himself and answer the tribunal's questions. She pointed out that the applicant had not provided written confirmation from Ms Bain that she wished to be named as his appointed representative, or confirmed her contact details, as required by the tribunal's fourth direction of 7 June 2022.
24. The tribunal chairperson agreed that the applicant had not responded to this part of the direction. She explained that Ms Bain was not currently noted on the tribunal's system as the applicant's appointed representative. Ms Bain had previously indicated that she did not wish to be added to the tribunal's system as his appointed representative. The tribunal had therefore sought clarity as to her role and wished to ensure that any relevant papers were sent to her directly if she intended to continue acting as the applicant's representative.
25. Ms Bain said that she thought it had previously been agreed that she would act as the applicant's representative, as she had represented him the applicant at the CMD and the initial hearing. She said that, if necessary, she would confirm this in writing.
26. The tribunal chair pointed to rule 10 (1) of the 2017 rules, which states that a party may be represented in any proceedings by a representative whose details must be notified to the tribunal prior to any hearing. While Ms Bain had not provided her own contact details to the tribunal, she had previously represented the applicant. The tribunal had considered it to be helpful to have her represent the applicant. The applicant had clearly stated at the hearing on 7 June 2022 that he wished Ms Bain to represent him. While Ms Bain had not confirmed in writing that she was acting as his representative, she was present today as his representative, as she had been previously.
27. The tribunal did not consider that Ms Bain was an unsuitable person to

represent the applicant or that there was any other reason why she should not do so, in terms of rule 10(5) of the 2017 rules. There was no requirement on a party to represent him/herself, and a party was free to appoint any representative they wished to appoint, subject to the provisions of rule 10(5).

28. The respondent indicated that, while she was still unhappy about this, she was content to proceed with the hearing with Ms Bain acting as the applicant's representative.

Findings in Fact

29. The tribunal made the following findings in fact:

- The applicant is the owner of both flats which formerly comprised the house known as Braehead at 71 Clermiston Road, Edinburgh EH12 6UY. The house is split into two flats: the upper flat where the applicant resides and the ground floor flat, where the respondent is currently residing. The two flats have separate title deeds. The applicant bought both flats in 2003.
- There is also an 'annexe' to the upper flat, which has a separate entrance. At the time of the initial hearing, there were other residents living in the annexe. By the time of the hearing on 7 June 2022, these residents had moved out.
- The title deed for the ground floor flat also referred to a separate 'coach house'. This house, which was separate from the rest of the property, was sold in around 2021 following repossession by the lender, Allied Irish Bank.
- The applicant did not provide the respondent with a tenancy agreement when she moved into the property.
- There is a private residential tenancy in place between the parties, which commenced on 20 July 2020.
- The notice to leave dated 30 March 2021 was valid and had been validly served on the respondent.
- The applicant has two separate mortgages over the two flats which make up the house. The mortgage over the ground floor flat is with Bank of Scotland and the mortgage over the flat where the applicant lives is with the Halifax.
- The terms of both mortgages ended on 24 December 2015.
- There were large outstanding balances and arrears on both mortgage accounts as at the date of the hearing on 26 July 2022. (Note: the sums involved are not stated here as this is the applicant's personal financial information)
- There is also a standard security over the property in favour of the Department for Work and Pensions in respect of a support for mortgage interest loan paid to the applicant.
- The applicant is entitled to sell the entire house, including the property.

The applicant's submissions

30. The main thrust of the applicant's submissions throughout was that the applicant intended to sell the property and indeed the entire house as soon as possible, as his mortgage lenders were likely to repossess it.
31. Ms Bain told the tribunal that the respondent had known that the property was up for sale when she moved in, and that her tenancy was intended to be a short-term tenancy as the property was on the market. She said that the respondent knew this and had agreed to show viewers round the property.
32. Prior to the initial hearing, the applicant had submitted letters addressed to him from two different, if related, lenders, both dated 5 April 2022. The first letter from the 'end of term team' at the Bank of Scotland stated that the mortgage term on the applicant's interest only mortgage had now expired. It went on to say: *"This means that balance is now due to be paid, this could be done by selling the property or seeking independent financial advice to see what other options are available to you."* Ms Bain confirmed that this letter related to the mortgage over the ground floor flat, where the respondent currently lives.
33. The second letter, from the 'end of term team' at Halifax, which was signed by the same person as the first letter, was in identical terms to the first letter. Ms Bain confirmed that this letter related to the upper flat, where the applicant currently resides.
34. The tribunal asked whether the applicant had considered options other than sale, as suggested by his lenders. Ms Bain said that as the applicant was 77 years old and was not in employment, the lenders would not further extend the mortgages, and he had no other options. He did not have any other properties to sell (although the respondent disputed this) and therefore his only route to paying off the mortgage debts was to sell the entire house before it was repossessed. He had initially hoped that he would be able to pay off the money owed by selling only the ground floor flat, but it had since become clear that this would not be sufficient on its own, given the sums owed.
35. The applicant had submitted a home report dated 8 March 2019 with his initial application, which related to the ground floor flat only. At the time of the initial hearing, this was over three years old. He had also submitted a photograph of an agreement with Express Estate Agency in advance of the initial hearing. This was very difficult to read, but it appeared to have been signed only by the estate agent and to be dated 18 November 2019. Ms Bain confirmed that this agreement related to the ground floor flat only.
36. Further to the tribunal's first and second directions, which sought more recent evidence of the applicant's intention to sell, the applicant had submitted a letter addressed to him from Galbraith Estate Agents dated 24 February 2022. This letter thanked the applicant for agreeing to use its services for the sale of the

property. It went on to say: *“Please let me know when your tenant has vacated the property (sic) we can get the process started for selling of the house.”* Ms Bain confirmed that the letter related to the entire house.

37. She told the tribunal that the sale process was on hold until the respondent had vacated the property. There was therefore no contract or any further documentation from the estate agent at this stage. A home report for the whole house would be commissioned once the respondent had moved out, as this needed to be up to date when the house went on the market. At the hearing on 26 July, she agreed that the brochure containing a photograph of the house, a copy of which the applicant had submitted to the tribunal on 16 July, was an old brochure, as the respondent alleged, and had not been recently prepared. She said this had been produced simply to show that the estate agent still had the photograph and property details on file from the applicant’s 2003 purchase.
38. The tribunal noted at the initial hearing that the letters from the applicant’s lenders did not give any clear indication as to when they expected him to sell the house in order to repay the outstanding mortgages. Ms Bain said that the mortgages were interest only and had come to an end around five years ago. The lenders had been very reasonable and had allowed the applicant to remain in the house during that time. She believed that this had been partly due to the coronavirus pandemic and suggested that it was unclear for how much longer they would allow the current situation to continue. The administration of the mortgages had been with the ‘end of term teams’ for some time, and they were in regular contact with the applicant seeking updates on the situation. While no specific timescale had been given for any sale to be completed, she believed that the lenders wished the house to be sold as soon as possible.
39. The applicant said that he did not want the bank to repossess the house and wanted to be in charge of selling it himself, before the matter was taken out of his hands. The estate agent and the lenders were both keen for the sale to progress soon. While he had previously intended to sell the house in separate units, there was now a shortage of houses for sale in Edinburgh and the market was very good for large houses.
40. Ms Bain said that if the eviction process was to continue for much longer, the bank would seek to repossess the house which was not in anyone’s interests, and the applicant may end up homeless. Given the length of time which had elapsed since the notice to leave was served, the respondent might have been expected to have found somewhere else to live by the time of the hearing.
41. Ms Bain admitted however at the hearing on 26 July that the applicant may have been trying to delay matters to some extent, as suggested by the respondent, as he did not want to have to move out of his home. She also said that she spoke to the bank on his behalf every month, and that they were not

suggesting that they would take it back just now. She said that the lenders were currently happy to wait until the property was put up for sale, as the applicant was still paying the mortgages every month, although this would not continue indefinitely.

42. Further to the tribunal's various directions requiring evidence from the mortgage lenders giving an indication of the likely/ expected timescale for any action being taken to repossess the properties, the applicant had provided letters dated 11 July 2022 from both lenders. The letters which were worded in identical terms both referred to a telephone conversation which had taken place on 5 July 2022. Both letters stated that the interest only term of the mortgage expired on 24 December 2015. They confirmed the balance and current arrears for each mortgage and said: *"We can look to instruct a solicitor to commence repossession proceedings for your property if your mortgage is not repaid or we are unable to agree to an alternative solution."*
43. Ms Bain confirmed that while the applicant could sell the two flats separately, the estate agent's advice was that the house would sell for a greater sum if sold as one. Given the debts owed, the applicant needed to sell the house for as much as possible, to leave him enough to buy somewhere else to live. He would need to downsize to somewhere smaller, which was why he had started selling items from the house. The DWP loan would also have to be repaid when the house was sold. The applicant did not wish to sell the house with a sitting tenant, as this would make it more difficult to sell and would likely lead to a lower sale price. She confirmed that the applicant's intention was to put the house on the market as soon as he had vacant possession.

The respondent's submissions

44. The respondent strongly denied that she had known the property was for sale when she moved in. She said that she would not have moved into it had she known this. There was no for sale sign up when she moved in, and she asked why she would have moved herself and her three children in and paid for a removal if she was only planning to stay there for a short time. She said the applicant had told her two days after she moved in that she would have to accommodate viewings. She thought that there had been more than 20 viewings from then until roughly a year ago.
45. She told the tribunal at the initial hearing that she did not believe the applicant had any intention to sell the property. She said that the letter from the estate agent did not prove that the applicant intended to sell the property, and that he had not provided an up to date home report. She believed that he owned other properties and had other ways to raise the money needed to pay off the mortgages. She alleged that the applicant had harassed her and attempted to intimidate her to encourage her to move out, which the applicant denied. She

suggested at both the initial hearing and the hearing on 7 June that he simply wished to evict her so that he could put other tenants into the property whom he could charge a higher rent.

46. By the 26 July hearing, however, she had changed her stance to argue that the applicant was not entitled to sell the house because the two flats were not legally one property because they had separate title deeds. She also stated repeatedly that she believed the applicant probably already had a date on which he would be evicted by his mortgage lenders, and that any sale was therefore no longer within his control. He had been clearing out various items from the house recently, which suggested that he was starting the process of moving out. She did not however dispute that the applicant owned the entire house.
47. She said that the applicant had been stalling and delaying the tribunal process for months by repeatedly failing to provide information which had been requested by the tribunal. She said that he wanted to keep her tenancy going for as long as possible because her rent was paying his mortgage. She also alleged on several occasions that the applicant had rewired the electrical installation within the house in such a way that she was paying for some of the electricity he used, and that he had attended a criminal court regarding this. This was disputed by the applicant.
48. The respondent also repeatedly told the tribunal that the property was in a poor state of repair. There had been a three-month period during which she had withheld the rent in respect of repairs which were allegedly required, and she said that a reduction in the rent had been offered by the applicant in recognition of this. She said that she had continued to pay the rent every month other than during that period. She indicated that she was unhappy living in the property but was unable to move out due to the difficulties of finding alternative accommodation.
49. She said that the brochure with a photograph of the property which the applicant had sent to the tribunal on 16 July 2022 was an old photograph from the time when he had bought the house in 2003. She suggested that he had tried to mislead the tribunal by suggesting that the brochure had been recently prepared by the estate agent.
50. The respondent told the tribunal that if an eviction order was granted, this would have a major impact on her and her family. She was a single parent with three children aged 14, 12 and 9. She also ran a business and had a part-time job as a supply teacher. The three children were at three different schools, and the property was within the catchment area for two of these. One of the children was [REDACTED] and was due to start at secondary school in August. She was keen to ensure that he was settled into his new school before moving house.

51. She had been looking to buy or rent another home in the schools' catchment area for some time. It was however proving very difficult to find a suitable property in the area, as there were very few properties on the market either to rent or to buy. The only available properties were either too far away for the children's schools, or outside Edinburgh altogether.

52. When asked whether she had considered any alternatives to buying or renting privately, the respondent said that staying with family or friends was not feasible, given that she has three children living with her. She said that she had not considered social housing as she thought that she would not be entitled to this given her financial situation. She said that she did not believe she would qualify for social housing given her savings.

The relevant law

53. Ground 1 as set out in Schedule 3 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states:

Landlord intends to sell

1(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, and

(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.

Reasons for decision

The tenancy between the parties and the notice to leave

54. Both parties agreed that the respondent had not been given a written tenancy agreement when she moved into the property with her children on 20 July 2020. The respondent said that there had been a verbal agreement with the applicant

that she would rent the property from him, but that there had been no discussion or agreement as to the length of her tenancy.

55. The covering letter of 30 March 2021 sent to the respondent by the applicant's former solicitors, Lindsays, with the notice to leave, stated: "*Notwithstanding our client's position that he did not intend to enter into a long-term tenancy with you, he accepts that the arrangement is a Scottish Private Residential Tenancy (SPRT) in terms of the Private Housing (Tenancies) (Scotland) Act 2016.*" Attached to the letter was a copy of the Private Residential Tenancy Statutory Terms Supporting Notes. Ms Bain confirmed to the tribunal that the applicant accepted that he had entered into a private residential tenancy with the respondent.
56. The tribunal therefore determined that there is a private residential tenancy in place between the parties, despite the lack of a written agreement, in terms of section 3 of the 2016 Act
57. The tribunal was satisfied that the notice to leave had been correctly served on the respondent. The notice was sent to the respondent by Lindsays on 30 March 2021 by email and recorded delivery post. The respondent confirmed that she had received the notice to leave.
58. The tribunal went on to consider whether Ground 1 had been established by the applicant.

Ground 1 paragraph 2 (1) (a) – the landlord is entitled to sell the let property

59. The tribunal was satisfied on the basis of all the evidence before it that the applicant was entitled to sell the property, and indeed the whole house. He is the owner of both flats and is therefore entitled to sell them, whether separately or together. While the respondent argued that she believed the applicant no longer 'had control' of the property, there was no evidence before the tribunal to show that this was the case. Ms Bain stated that the lenders had not taken over control of either property, and the wording of the letters of 11 July 2022 from both lenders to the applicant supported this view.

Ground 1 paragraph 2 (1) (b) – the landlord 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

60. The tribunal was also satisfied on the balance of probabilities that the applicant intends to sell the property within 3 months of the respondent ceasing to occupy it. While an up to date home report had not been produced, this is simply a form of evidence which is stated in Ground 1 (3) as "tending to show" that there is such an intention, and is not necessarily required. While the letter from

Galbraith Estate Agents of 24 February 2022 was not a letter of engagement as such, it did suggest that the estate agent had agreed to sell the entire house once there was vacant possession.

61. The tribunal accepted Ms Bain's evidence that the applicant did not wish to put the house on the market with a sitting tenant, and that he did not want to instruct a home report too soon as this would then have to be updated before the house was put on the market. The tribunal considered that the question of whether the brochure and photograph submitted by the applicant was produced recently was not material in deciding whether there was an intention to sell the property.
62. It was also clear that, while neither mortgage lender seemed to be seeking to repossess the house urgently, this would inevitably happen at some point. The applicant appeared to have no alternative means of paying the debt owed and would therefore have to put the house on the market. The tribunal accepted Ms Bain's evidence that he intended to do so within 3 months of the tenant ceasing to occupy the property. He clearly also wished to sell it for market value as he needed to obtain the best price possible in order to pay his debts and buy somewhere else to live.

Ground 1 paragraph 2 (1) (c) - the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

63. In considering whether it would be reasonable to grant an eviction order, the tribunal took into account all of the circumstances of the case. The tribunal found the decision on reasonableness a very difficult one to make in the circumstances of this case. It was clear from their submissions at the hearings that there was a very fraught relationship between the parties, who both found themselves in a very difficult situation.
64. On the one hand, it was clear that the applicant was in a very difficult financial position and was facing repossession of both the lower flat and his own home and was potentially facing homelessness. He is elderly and appears to suffer from memory issues. He argued that he wished to have control over the sale of the house himself before the ability to do so was taken from him by his lenders. The notice to leave had been served on the respondent in March 2021, and she had had well over a year to make alternative arrangements. The whole tribunal process had taken a long time, partly due to the difficulties experienced by the applicant at the start of the process in submitting a valid application and also because the case had been continued several times due to his failure to provide the information provided. The tribunal accepted however that as argued by Ms Bain he wished to stay in his own home as long as possible.
65. On the other hand, the respondent also found herself in very difficult circumstances. The tribunal accepted her evidence that she had not been aware that the property was on the market when she had moved in and that

she had expected to be there for some time. She was clearly very unhappy about the state of the property and had a very difficult relationship with the landlord, whom she accused of stealing her electricity and behaving in a threatening manner towards her. She clearly did not wish to remain in the property but was finding it difficult to find somewhere else to live within the catchment area for her children's schools. The housing market for both buying and selling property was currently very competitive in Edinburgh.

66. The respondent is a single parent with three school age children and is naturally concerned about the impact of any eviction on them and on their schooling, and in particular on her [REDACTED] son, who was about to start secondary school. The tribunal had considerable sympathy with the respondent given her situation.
67. Given the scale of the debt owed to his lenders, the tribunal accepted the applicant's argument that he had no choice but to sell the entire house. While there appeared to be no great urgency by the two mortgage lenders to take possession of the house, it was clear that at some point they would do so. They had already allowed the applicant to stay in the house for more than six years after the end of his mortgage terms. Should a repossession occur, this could lead to both parties being made homeless. While it may be possible to sell the house with the respondent as a sitting tenant, the tribunal accepted that this was likely to reduce buyers' interest in the property and result in a lower price being obtained in the event of any sale. It was clear that the applicant needed to secure the best price possible for the house in order to pay off the mortgage debts and to buy a more modest home to live in himself.
68. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that it was reasonable to grant an eviction order. The tribunal therefore grants an eviction order against the respondent under section 51 and ground 1 in Schedule 3 of the 2016 Act.

Delay in execution of the order

69. Having told the parties of this decision at the hearing on 26 July, the tribunal sought their views on the possibility of ordering a delay in the execution of the order in terms of rule 16A (d) of the 2017 rules, in order to give the respondent further time to find alternative accommodation.
70. The respondent asked for an extension until the Christmas holidays, to give her time to find somewhere else to live, to allow her to move over the Christmas period and to give her son time to settle into his new school over the first term. Ms Bain indicated that while she was sympathetic to the respondent's situation, the applicant needed to sell the house as soon as possible before the lenders took repossession action. The tribunal process had already been ongoing for

some considerable time. The longer the situation continued, the bigger the debt being accrued by the applicant and the more likely it was that repossession action would begin, which would be to his financial detriment. She said that the applicant would also prefer to put the house on the market in August or September as this was a better time to sell than over the Christmas period.

71. Having adjourned to consider the parties' submissions, the tribunal decided to use its discretion under rule 16A (d) to delay execution of the order until 31 December 2022. While it is aware that this is a lengthy extension, and that the process has been ongoing for some time, it considers that this is as fair as possible to both parties in the circumstances. While the respondent is not obliged to stay in the property until that date, it gives her several months to make other arrangements for her family.

72. The tribunal notes that while the process has already taken a long time since the notice to leave was served, much of this delay was due to the applicant's failure to provide information requested several times. The tribunal also had regard to the terms of the letters of 11 July 2022 from both lenders, and to Ms Bain's submissions that the lenders were currently content to wait until the house was put up for sale, as the mortgages were still being paid every month. The tribunal considers that on balance, given how long the applicant's lenders have already allowed him to stay in the house, it is unlikely that they will begin repossession action when an eviction order has been granted and while there is a sitting tenant in the house. The tribunal also considers that, given the current housing market in Edinburgh, it is unlikely that the house will take long to sell at any time of year.

Summary of decision

73. The tribunal determined that an eviction order should be granted in favour of the applicant against the respondent. It delayed execution of the order until 31 December 2022.

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.

Shank O'Neir

26 July 2022

Legal Member/Chair

Date