



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

**Chamber Ref: FTS/HPC/EV/19/2209**

**Re: Property at 47 Hawick Street, Yoker, Glasgow, G13 4EQ (“the Property”)**

**Parties:**

**Mrs Margaret Koc, Hatiprima Mah 171 Sok No 3B, 31 Imperial Lodge Apartments, Mugla, Marmaris, 48700, Turkey, Mr Robert Reid Hawthorn House, 20 Ashfield Street, Glasgow (“the Applicants”)**

**Mr Mansoor Kazmi, Mrs Faiza Kazmi, 47 Hawick Street, Yoker, Glasgow, G13 4EQ; 47 Hawick Street, Yoker, Glasgow, G13 4EQ (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Elizabeth Currie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents.**

**Background**

- 1. By application dated 16 July 2019 the Applicants seek an eviction order in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). Documents lodged in support of the application include a copy tenancy agreement, copy notice to leave with post office receipt, a letter and report from Social Work Services and a copy notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003.**
- 2. A copy of the application and supporting documents were served on the Respondents by Sheriff Officer on 9 September 2019. Both parties were notified that a case management discussion (“CMD”) would take place on 11**

October 2019 at 11.30 am at Glasgow Tribunal Centre, 20 York Street, Glasgow.

3. The case called before the Legal Member of the Tribunal for a CMD on 11 October 2019. The First Applicant was represented by Mr Carswell of JLC Property Lettings. The Applicant was not present. The first named Respondent attended on behalf of himself and the second named Respondent. The Second Applicant was not a party to the application at the date of the CMD.
4. The Legal Member noted that the application is based on Paragraph 5 of Schedule 3 of the 2016 Act, namely that a member of the landlord's family intends to live in the property. A notice to leave on this ground had been served giving the requisite period of notice. The family member in question is the Applicant's father, Mr Robert Reid, a qualifying relative in terms of Section 5(5)(b) of Schedule 3. The Legal Member also noted that Mr Reid is an owner of a one half pro indiviso share of the property and is therefore arguably also one of the landlords of the property, although he is not listed on the tenancy agreement.
5. Mr Carswell confirmed that Mr Reid formerly lived in the property until he moved into a care home. The property was then let to the Respondents. It was intended to be a long term let but Mr Reid has not settled in the care home and wishes to return to the property to live there. The First Applicant, although concerned that he is better off in the care home, has agreed that he is able to make his own decisions.
6. The First Respondent advised the Legal Member that he disputed both the ground for eviction, namely that the Applicant intends for the family member to reside in the property, and whether it is reasonable to grant the order. He advised that he was told that the tenancy would be a long term arrangement. His family are settled and don't want to move. Furthermore, he stated that Mr Reid is not fit to live independently in the property. He does not believe that it is an arrangement which will work and understands that the first Applicant shares this view. He wants to remain in the property until he is able to buy a suitable property nearby, to avoid disruption to his family.
7. The Legal Member noted that the Applicant had submitted independent evidence, in the form of a letter and a report from Social Work, which confirm that Mr Reid intends to move back to the property, with a care package, and that the Applicant has agreed to this taking place. The Legal Member advised parties that the application will proceed to a hearing before a full Tribunal.
8. The Legal Member noted the issues for the hearing to be: -
  - a. Is it established that a member of the landlord's family intends to occupy the let property?
  - b. Is the Tribunal satisfied that it is reasonable to issue an eviction order?

9. The Legal Member determined that the application should be continued to a hearing in relation to both issues. Parties were advised that any further documents and lists of witnesses should be lodged no later than 7 days before the hearing.
10. Both parties were advised that a hearing would take place on 22 November 2019 at 2pm at Glasgow Tribunal Centre, 20 York Street, Glasgow. Prior to the hearing the Respondents advised the Tribunal that they intended to bring two witnesses. The first Applicant notified the Tribunal that they wished to add Mr Robert Reid to the application, as joint applicant. Mr Reid submitted a letter advising that he wished his social worker, Russell Young to represent him at the hearing.

### **The Hearing**

11. The application called before the Tribunal for a hearing on 22 November 2019 at 2pm. The first Applicant was again represented by Mr Carswell and was not present. Mr Young attended on behalf of Mr Reid, who was also not present. Mr Kasmi attended on his own behalf and on behalf of the second Respondent. Also present was Mr John Longmore, the Respondents next door neighbour, who attended as a witness for the Respondents.
12. The Tribunal first considered the request from the first Applicant to add Mr Reid to the application as joint applicant. This request had been received by a Tribunal a few days before the hearing and although a copy had been sent to the respondents, no comments from them regarding same had been received. Mr Kasmi confirmed that he had no objection to the request. The Tribunal confirmed that the request was granted and allowed the application to be amended to reflect the addition.
13. Mr Carswell advised the Tribunal that he had nothing to add to the information lodged with the application. The first applicant still seeks an eviction order. The reason for the application is that her father, Mr Reid, who is also the joint owner, intends to move back into the property and to live there permanently. In response to questions from the Tribunal he confirmed that Mr Reid had moved to the care home in 2017. He also confirmed that his instructions to let the property came from the first Applicant. Mr Carswell had been aware of the Respondents desire to live there on a long term basis and it had been anticipated that it would be for at least a year. The tenancy started in November 2018. However, circumstances had changed. Mr Reid wants to move back to the house and is entitled to do so, as he is the joint owner.
14. Mr Young referred the Tribunal to Mr Reid's letter of 8 November 2019.. This authorises Mr Young to represent him at the hearing and confirms his intention to return to live at the property. It also states that Mr Reid objects to the Tribunal accepting evidence regarding his ability to live at home from the tenant, who he hasn't met, and a neighbour who hasn't seen him for over 2 years. The Legal Member of the Tribunal advised parties that Mr Kasmi was entitled to give evidence in relation to the application and to bring any

witnesses he considered relevant. Having heard that evidence, the Tribunal would assess that evidence when making a decision on the application. Mr Young advised the Tribunal that he has been working with Mr Reid for about 18 months. It is his understanding that he moved to the care home from hospital. He had been persuaded at the time that it would be for the best. Since that time Mr Reid's health has improved and he is more willing to accept the help he needs. Throughout the 18 month period, Mr Reid has stated that he wants to move home. He has not settled in the care home, despite having stayed there for some time. He has full capacity and is able to make decisions for himself. A care package of 30 hours per week has been set up to assist Mr Reid in living at home. There may be adaptations required but the property has not yet been assessed by an OT because access is not currently available. Mr Young confirmed that he is of the view that Mr Reid can live at home, with a care package in place, and should be allowed to do so since this is what he wants.

15. Mr Kasmi advised the Tribunal that he does not accept either that the eviction ground is established or that it is reasonable for the order to be issued. He confirmed that he remains of the view that Mr Reid cannot return to reside at the property. Although he has never met Mr Reid, he is aware that he is elderly, infirm and is visually impaired. He had falls when he lived at the property previously and had to be rescued when this occurred. He would be at risk of further accidents. He stated that he believes that the first Applicant does not want Mr Reid to move back to the house. There have been disagreements among the family. Mr Reid's other daughters are motivated by money concerns, and (in particular) concern about the amount of money being spent on the care home. Mr Kasmi confirmed that he has never met Mr Reid and his evidence is based on his knowledge of his age, the social work report lodged with the application, and information provided to him by neighbours.
16. Mr Kasmi also advised the Tribunal that his family are settled in the property, which is a semi detached bungalow. The school attended by his children is nearby. He has a disabled child and to uproot the family would be disruptive. He further advised that he does not expect to live at the property indefinitely and hopes to buy a suitable house, once he has secured a mortgage. He would not have accepted the property for his family had he been aware that a notice to leave would be served so quickly.
17. Mr Longmore advised the Tribunal that he lives next door to Mr Kasmi. He has known Mr Reid for approximately 40 years, and they were neighbours, before Mr Reid moved into the care home. He confirmed that he formerly lived at his property with his wife. She has dementia and is currently in hospital. Mr Longmore advised the Tribunal that Mr Reid was not able to look after himself properly before going to the care home. He remembers him going for his shopping in a taxi. He had no help at home and appeared to be developing dementia. He explained that he has concerns about Mr Reid moving back. He assumes that Mr Reid's health will have deteriorated over the last couple of years as he is older. He believes there would be a risk of fire, which could

impact on neighbouring properties, such as his own. He confirmed that he has not seen or spoken to Mr Reid since he moved to the care home in 2017.

### **Findings in Fact**

18. The Applicants are the owners of the property.
19. The Respondents have resided at the property in terms of a private residential tenancy agreement since 15 November 2018. They reside there with their three children.
20. The Second Applicant has resided at Hawthorn House since date October 2017.
21. The Second Applicant intends to occupy the property as his only or principal home.
22. Social Services have identified a care package to facilitate the Second Applicant's return to the property.
23. The first Applicant is agreeable to the Second Applicant returning to reside at the property.
24. The Respondents wish to continue to reside at the property which is located close to their children's school

### **Reasons for Decision**

25. Section 51(1) of the 2016 Act states "The First-tier Tribunal is to issue an eviction order against the tenant if, on an application by the landlord, it finds one of the eviction grounds named in schedule 3 applies." Paragraph 5 of Schedule 3 states "(1) It is an eviction ground that a member of the landlord's family intends to live in the let property. (2) The First-tier Tribunal may find that the ground named in sub-paragraph (1) applies if—(a) a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact." Paragraph 4 and 5 define a member of the landlord's family as including a parent. Paragraph 6 of the schedule states "In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord are to any one of them."
26. The Tribunal notes that the Applicants could have sought an eviction order in terms of Paragraph 4 of the Schedule 3, namely that the landlord intends to live in the property. This would only have required 28 days notice as opposed to the 84 days required for a notice to leave issued in connection with ground 5. Furthermore, the Tribunal would not have required to consider the issue of

reasonableness. However, the Tribunal is satisfied that, having regard to the terms of Paragraph 5, that Mr Reid is both one of the landlords and a member of the other landlord's family, and therefore is a qualifying relative in terms of the Section. The Tribunal notes that a notice to leave in the correct format was issued prior to submitting the application, giving the required period of notice, and that a notice in terms of Section 11 of the Homelessness etc Scotland Act was issued to the local authority. The application has been defended on two grounds. Firstly, it is stated that the Applicants have not established that Mr Reid intends to occupy the property as his only or principal home for at least three months, Secondly, it is disputed that it is reasonable for the Tribunal to issue an eviction order.

27. The Tribunal proceeded to consider the first issue. The Tribunal noted that although Mr Kasmi disputes that the Applicants have established that Mr Reid intends to move back to the property, he did not provide any evidence which specifically addressed this issue. He has never met Mr Reid or discussed the matter with him. The basis of his argument is that he (and indeed Mr Reid's neighbours) do not think Mr Reid is fit to live at the property on his own and he understands that the First Applicant shares this view. The evidence presented by the Applicants contradict this argument and it to be preferred. The First Applicant has made the application and lodged documents, including a social work report, in support of it. Her agent confirmed that she seeks an eviction order to allow Mr Reid to move back to the property. The social work report from August 2019 confirms that Mr Reid wants to move back to the property and that a comprehensive care package has been identified to allow this to take place. The report describes Mr Reid as an "independent man who likes to do as much as he can for himself". The report confirms that "Robert is clear that he wishes to move home". At the hearing is representative advised the Tribunal that Mr Reid has capacity and can make his own decisions. He is unhappy in the care home and wants to move back to the house that he owns. This is not a new position. He has wanted this throughout the time that Mr Young has been working with him, a period of 18 months.
28. The Tribunal is satisfied that there is sufficient evidence to establish that Mr Reid intends to live in the property as his only or principal home for at least three months and that the ground for the eviction order has therefore been established.
29. The Tribunal proceeded to consider whether it would be reasonable to issue the eviction order "on account of that fact". The Tribunal notes that the Respondents are settled at the property and were told that they would be able to live there for a long period of time. This does not appear to have been an attempt by the first Applicant to mislead the Respondent's. It appears that she anticipated it to be a long-term arrangement. It seems that Mr Reid's views or input were not obtained, which is surprising. However, the Respondents have only lived at the property for a year and were in fact given notice to leave in April 2019. They intend to buy a house of their own in due course. The Tribunal was not persuaded by the argument that Mr Reid is too infirm to move back to the house. Mr Kasmi has never met him, and Mr Longmore's knowledge is two years out of date. Furthermore, the social work report and

the submission made by his social worker clearly establish that he can be supported to live at the property. However, even if this had not been clearly established, the Tribunal is of the view that as joint owner of the property, a house he lived in for many years, and with no alternative accommodation available to him other than the care home, it appears entirely reasonable that the eviction order should be granted. It may be that the arrangement is only sustainable with an appropriate care package, but the Tribunal is not satisfied that the care package and social work support are essential to make the order reasonable.

30. The Tribunal is therefore satisfied that the ground is established and that it is reasonable to issue the eviction order.

### **Decision**

31. The Tribunal determines that an order for eviction should be issued against the Respondents.

32. The decision of the Tribunal is unanimous

### **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.**

Josephine Bonnar

**22 November 2019**

**Josephine Bonnar, Legal Member/Chair**