



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

Chamber Ref: FTS/HPC/EV/20/2482

Re: Property at 62 Silverknowes Road, Silverknowes, Edinburgh, EH4 5LF (“the Property”)

Parties:

Mr Mark Patrizio, Mrs Ailsa Jean Patrizio, 12 Silverknowes Gardens, Edinburgh, EH4 5NB (“the Applicant”)

Miss Victoria Bowes, 62 Silverknowes Road, Silverknowes, Edinburgh, EH4 5LF (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ann Moore (Ordinary Member)

Decision

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

An Eviction Order be made at the property in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 as the Tribunal finds that the Applicants intend to occupy the property as their only or principal home for a period of at least 3 months and it is reasonable to grant the order. The Tribunal considered it appropriate to suspend execution of the order until 16 August 2021 in terms of Rule 16A(d) of the Tribunal Rules of Procedure.

The Decision of the Tribunal was unanimous.

Background

1. By application received by the Tribunal on 1 December 2020, the Applicants seek an eviction order against the Respondent under Section 51 of the Private Housing

(Tenancies) (Scotland) Act 2016. The ground on which the Applicants relied was Ground 4 of Schedule 3 to the 2016 act namely that the Respondents intend to live in the let property as their only or principal home for a period of at least 3 months.

2. The Tribunal accepted the application on 11 December 2020 and the tribunal fixed a Hearing for 12 February 2021. The Respondent requested a postponement of that Hearing in order that she could prepare to represent herself effectively at the Hearing. Before the hearing on 12th February she instructed a legal representative, Miss Meikle of the Civil Legal Assistance Office in Edinburgh and Miss Meikle confirmed the postponement request in writing adding to the reasons for the request on the basis that she had only recently been instructed and was not prepared for the Hearing. The Applicant opposed an adjournment. Having considered the circumstances the Tribunal felt it was appropriate to allow the Respondent and her newly instructed representative further time to prepare and the Hearing was postponed until 12 March 2021.

3. In advance of the hearing on 12 March 2021 the Respondent's representative Miss Meikle advised the Tribunal that due to a commitment in the morning of 12 March she required to seek a further postponement of the hearing. The Tribunal contacted the parties to see if it was possible to start the Hearing in the afternoon of 12 March, but the Respondent was not available in the afternoon of that date due to childcare issues in relation to her four children. The Applicant's representative again opposed an adjournment but in all of the circumstances the Tribunal granted an adjournment indicating that it was unlikely to do so again for these reasons. A new hearing was fixed for 1 April 2021.

4. In advance of the Hearing fixed for 1 April 2021 the Respondent's representative Miss Meikle requested that the hearing take place by WebEx videoconferencing. She intimated a concern that the hearing could not take place fairly as she wished to have productions shown to witnesses and she also wished to refer to certain productions lodged on behalf of the Applicant. She further referred to the issue of the Tribunal being able to assess credibility of witnesses when they could not see them. This request was made by email after 4:30pm on 26 March, less than one week before the scheduled Hearing date. The Applicant had no objection to the matter proceeding by way of audio teleconference. The Tribunal advised the Respondent that there was insufficient time to arrange for a WebEx videoconference at such short notice. The Tribunal indicated that the issue could be raised at the hearing on 1st April. The Respondent did not renew any motion for a WebEx videoconference at the Hearing on first April and arrangements were made to ensure that all witnesses could see production whilst giving their evidence.

5. In advance of the hearing on 1 April 2021 the Tribunal had received written representations from both representatives of both parties. On behalf of the Applicant the Tribunal had received an application form, a paper apart, a tenancy agreement, a notice in terms of section 11 of the Homelessness et cetera (Scotland) Act 2003, two affidavits, a Notice to Leave, an execution of service of a Notice to Leave and an email to the local authority intimating the section 11 notice. The Applicant's representative Miss Donnelly of TC Young Solicitors lodged a second inventory of productions in advance of the Hearing and this contained a rent statement, a sales appraisal for the Applicant's current address and a letter from the second Applicant's consultant. A third

inventory of productions for the Applicants was also lodged and this contained a letter from the second Applicant's GP, an insurer's report dated December 2020, photographs said to show the condition of the property after a fire in a commercial unit below the property and screenshot of email correspondence between the Applicants' letting agent and the Respondent dated 21 January 2021 in relation to redecoration and an amended rent statement. The Applicant's representative had also lodged a list of witnesses intended to be called and a list of authorities upon which it was intended to rely at the hearing.

6. The Respondent lodged four inventories of productions in advance of the hearing. The first inventory contained a letter from the head teacher of the primary school which the Respondent's two youngest children attend for school and preschool, and emails between the Respondent's solicitor and the head teacher. The second inventory of productions contained a letter from the Respondent's GP, a legal aid certificate and an updated rent ledger. The third inventory of productions for the Respondent contained an email in respect of discretionary housing payment and two emails from letting agents to the Respondent. The fourth inventory of productions for the Respondent contained three photographs. The Respondent had also lodged late emails from the pupil support officer at the primary school attended by the Respondent's second youngest child. The pupil support officer was not available to give evidence at the hearing on 1 April and the Applicants' representative objected to the emails being accepted as written evidence. After consideration, the Tribunal refused to allow the emails to be accepted as written evidence as these could not be subject to cross-examination by the Applicants given that the witness was not to be called at the Hearing.

Hearing

7. Prior to the commencement of the evidence Miss Donnelly for the Applicant and Miss Meikle for the Respondent indicated that the medical reports and letters lodged by either side were not in dispute and for the Respondent Miss Meikle intimated that there was no challenge to the validity of the Notice to Leave served in respect of the application nor or any challenge to the service of a notice in terms of Section 11 of the Homelessness et cetera (Scotland) Act 2003. Parties were agreed that the issues before the Tribunal were whether the Applicants had the requisite intention to live at the let property in terms of Ground 4 and if the eviction ground was established whether it was reasonable to grant an order.

8. The hearing commenced on 1 April 2021 and the Tribunal heard the evidence of both Applicants Mr and Mrs Patrizio. At the start of the Hearing and after that evidence there was a motion on behalf of the Respondent to part hear the hearing to allow the pupil support officer to attend as required to give evidence and also to allow the Respondent to collect her children shortly after 2 pm. She had no childcare for her four children were the Tribunal to continue into the afternoon. During the course of the consideration of the Respondent's motion to part hear to a later date the Respondent did make efforts by telephone to obtain childcare for that afternoon from contacts who she normally asked for assistance. She was unable to obtain childcare as she did not hear back from those she contacted. Miss Donnelly for the Applicant strongly opposed

the motion to part hear the hearing and referred to the history of the matter and said there would be prejudice to the landlords if there was further delay. Having considered all of the circumstances which included the fact that the Respondent herself intended to give evidence, the Tribunal noted that it was important she was able to take part fully and without being interrupted by having children around her during the hearing. The tribunal felt it was appropriate to part hear the Hearing to a date as soon as possible thereafter. The date for the part heard hearing was 16 April 2021.

9. The Applicant Mark Patrizio gave evidence and indicated that the property had been purchased in 1999 and that he had lived there until the property was rented out to the Respondent. He intended to go back and he still lived in the area with his wife the second Applicant. He was referred to production 9 for the Applicant, the sales appraisal document within the second inventory. He said that both he and his wife intended to sell one of the two properties which they had, either the let property or the house that he and his wife are currently living in. He said that the plan was to sell the property that would amass the highest value and that this was always going to be the house that they were living in. The second Applicant his wife had a poor pension pot and to sell the house and realise the additional value which the house had accrued was a way to deal with that. He was asked if the value of the let property had gone up more than the house but indicated that it was the house had increased in value. He was asked why he had yet to instruct the sale of the house that he and his wife lived in and indicated that he had no confidence that he would get vacant possession of the let property. He added that houses in the area sold quickly and that he and his wife were in no rush to put the house on the market until they had vacant possession of the let property. He explained that he required to stay in the area because his 84 year old mother also lives in the same street. She had been seriously ill in the previous six months but it was useful that they lived only five minutes away from her, he advised he had helped care for his father before he passed away and he intended to do this and be there for his mother. Ultimately in the long term he said he planned to move away.

10. He explained that the house had been an investment but the rental income from the let property was vital as there are mortgages on both properties. He explained that as of 1 March 2021 the rental arrears at the property were £11,371.44. As at April 2020 there had been no rent arrears. Between those dates little rent had been coming but some housing benefit had been paid directly. He described periods in the tenancy when he said that the Respondent had stopped paying the rent. He referred to these periods with reference to the rent ledger lodged. He accepted that on 15 March 2021 he and his wife had received discretionary payment of £10,854.77 to cover the outstanding. The failure to pay the rent during 2020 he said has meant that the Applicants had required to pay two mortgages which was not sustainable.

11. He referred to a fire at a commercial property underneath and along from the let property in November 2019 and said that there was no structural damage to the let property in his view and an insurance inspector had confirmed this and only decoration had been recommended. The Respondent was advised that the Applicants were happy to have the flat redecorated but needed to know when the wall areas would be clear to allow the painters in. He was shown photographs of the property which he

said showed areas where there was soot in the property after the fire. He accepted that the Respondent had cleaned before the photographs were taken.

He was referred to photograph 13/35 which was a picture of the living room which he said demonstrated that the redecoration could not be done due to the amount of property in the room. He said that Respondent had not contacted to confirm that the property was clear for painters. A second fire had occurred at a nearby property in April 2020 but this had not caused any damage to the let property.

12. He confirmed that if the property were empty he said he could move in 'tomorrow'. He said it would always give it a little paint but his position was that what was required was decorative only and no substantial work would be needed. He said that his intention if an eviction order was granted was to put the house on the market as soon as possible and move into the flat when it was vacant. Under cross-examination he was asked whether he would continue to rent out the property if the rent was being paid on an ongoing basis. He said he couldn't trust that the rent would be paid and described the situation as an investment going 'squiffy'. He said it was time to "cash in" as he put it. He described financial difficulties which he and the second Applicant had until the large sum in rent was received. He did not consider taking payment holidays in respect of the mortgage and lenders had not taken steps to repossess the property as he and his wife were just able to cover the mortgages. He said that to pay the mortgages throughout the period when rent was not been received had been a struggle and that he and his wife had been required to pay just under £2000 per month to cover both mortgages. He confirmed that the Applicants were in a state of uncertainty regarding their financial position. The home they were living in was smaller than the let property and was a semidetached house with three bedrooms, two double bedrooms and a boxroom. The let property was a unit above a commercial property and was not going to raise much in value but he confirmed that the flat had four bedrooms.

13. Mrs Patrizio the second Applicant also gave evidence and explained her current medical condition as a result of cancer of the salivary gland. Due to treatment she had suffered nerve damage to her face which she said was exacerbated by stress. She told the Tribunal that the situation with the rented property was affecting her health and the particular health issues which she has. She said that she had been anxious and very depressed. She referred to the report from her general practitioner and a letter from her consultant dated March 2021 in this regard and explained that the situation with the rental property had caused her to worry, to become stressed and this exacerbated her pain. She referred to missing deadlines at work due to the stress caused by the situation and the fact that she had required to start taking antidepressants. She explained that the type of cancer she had can recur and in most cases if it recurs occurs in the lungs. She explained that this had been going on for seven years. While this in itself was a weight to carry she said that the financial implications regarding the let property had caused stress. She required to take medication containing Morphine. She works in the NHS and explained that she was finding it difficult to work and usually finished work and went home and straight to bed. She referred to the long period when the Applicants had had to manage without any rental income and she stated that she could not safely rely on money coming in and that made her anxious. As far as the intention to return to the property was concerned

she said that it was the intention to put the house on the market where they were living. She said that she and her husband will probably stay there until her mother-in-law passed away and then they would move to the Nottingham area to be near Mr Patrizio's daughter who had just got engaged. She said that she and her husband would like to be involved in her husband's daughter's life in the future as she may have children. Under cross-examination she explained in terms of health that she felt she could not continue in the way that she had been and confirmed that she knew that the Respondent's circumstances were difficult but said that she felt the Respondent ought to move into property which she could afford. She was asked if she and the first Applicant would still be moving if the rent was up-to-date. She confirmed that the current situation with the two properties is not a good investment and they wanted to sell the house, go back to the flat and she put it they would get back to normality.

14. On the second day of the hearing the Tribunal heard evidence from the Respondent. She explained that she had last worked some five years before and had come to Edinburgh to assist her mother who was unwell at the time and had subsequently passed away. She explained she lived at the let property with her children for almost 5 years. She explained that the property had four bedrooms. She has four children three girls and a boy. Her eldest daughter is aged 14, her son is 12 and her two younger daughters are aged six and five respectively. The two oldest children attend a nearby secondary school which she named and her six-year-old daughter attended the local primary school closest to the let property and her youngest daughter has a preschool placement between the local primary school and a private nursery nearby. She explained that all four children had at various points attended the local primary school. Her personal circumstances are quite difficult and she explained with reference to the letter from her doctor her medical conditions. She described fibromyalgia, constant pain, depression that she had suffered from a number of years. She said that she could function quite well in relation to her depression and manage her circumstances but there were times that exhaustion and pain was too much for her and that her fibromyalgia diagnosis could bring her mood quite low. Her financial circumstances were quite difficult and she said that if she and her family were evicted things would be difficult. During the Covid 19 restrictions the children had been at home and there had been fires at the property all of which had been difficult to manage. She explained she was having occupational therapy and physiotherapy at a hospital in Edinburgh and attending an asthma nurse at the local medical practice. She said that she was on to permanent asthma inhalers one of which were steroid inhaler and these were long term. In January or February 2021, she accepted that she needed extra help with her health and had started on anti-depressant medication. She also explained having a link to the rheumatology department at a hospital and that she had been referred to a pain clinic for pain management. She also explained that she had a diagnosis of borderline personality disorder and one of her medications had been prescribed specifically to deal with that. She said that she generally managed her health well, but stress could bring her down and physical work was very difficult for her.

15. She said that living at the rental property she had a good support network of friends and family who offered help when she needed it. She explained that when she initially moved in she managed to pay the rent out of benefits but had had a lot of support

from her ex-partner. Her mother had been terminally ill and her mother had lived with the family a good deal. She had not required to apply for Housing benefit and had dealt with domestic abuse with her ex-partner and in 2018/2019 she had made a decision to involve the police at that stage all ties were cut with her ex-partner and all financial support was cut. She had made an application for housing benefit but she paid the rent herself between January and May 2019. By June 2019 she was no longer able to pay the rent and described errors in relation to the housing benefit application which had been made. She spent from January to September 2019/20 trying to get matters sorted out and making complaints. She described her involvement with a number of voluntary organisations and support organisations and that she was ultimately able to obtain help from a community organisation and a full nine months of housing benefit had been awarded and this had been backdated and covered the entire rent back to January 2020. That month she discovered that a benefit cap applied to her without her knowledge and this benefit issue took a great deal of time to resolve. A payment from the Discretionary Housing fund which had been awarded almost covered the full rental arrears outstanding from February 2020 to the present day. She said that she had a guarantee that the rent would be paid from the discretionary fund until August 2021. She had a plan to pay the rent going forward and she set out the options for this in she had paid the rent in full she said that she doubted the landlord's intention is that they were going to live in the let property. She described a conversation with a letting agent in October 2020 when she said that the agent had advised her that the landlords intended to sell both the house that they were living and the rental property and to downsize. She said that she did not feel that they wanted to move into the flat. She confirmed she was sorry regarding their financial situation but did not believe they wanted to live at the property. She also said that she believes substantial work would need done to the property and that they would really have to do the work in order to stay there. She was of the view that the rent arrears had caused stress to the second Applicant and it was the stress and the rent arrears that had caused them to take the action they had taken in trying to obtain an eviction order for the rental property. She felt that issues could have been resolved.

16. She discussed the fire in November 2019 and said that she had done the cleaning herself and searched for a cleaner. She said that none of the work she had understood would be carried out was carried out and substantial work was required before the Applicants could move in. She accepted that in April and May 2020 her communication had stopped. She was not coping well and instructed external agencies to deal with matters on her behalf. She explained that she was able to function in general life and was on various committees related to her children's school and that she did a lot with her children. The letting agent had not communicated well with her. She explained that if evicted she and her family have nowhere to live and had no family that they could move to stay with. She explained she may have to go down the route of declaring herself homeless and looking at social accommodation from the council. She expressed concern at being put in potentially temporary accommodation and explained that she was trying to get another private rental and had been advised that she was entitled to housing benefit at the rate of £1690 per month due to her family's requirements. She said the properties were few and far between but that she had been looking daily and weekly and had been unsuccessful. She thought that the likelihood of their circumstances being all right were slim. She said it was important that the

family stayed within the area. She explained she only moved back to Edinburgh as her mother had been dying. Her grandmother and auntie live in the same area as the rental property and are her support network. She has friends surrounding her children's school. She explained on occasions when she had been bedridden due to her Fibromyalgia she received assistance in getting the children to and from school. The let property was also near her elder two children's school, and she had good friends amongst the neighbours. She described great links with school staff and explained that after the fire in November 2019 she was provided with furniture, mattresses, and bedding. She described access to free clubs at the school and explained that she didn't think she would get that anywhere else and was concerned about the children having to change schools and the loss of support.

17. She described that the family had suffered as a result of the fires and a number of bereavements as well as the family break up. She explained that she struggled a lot with her two teenage children and felt that the children had been through enough. She wanted another private rental and had rented privately for 15 years but she had not been able to find one within the area where they currently lived. She was asked regarding the up-to-date rental position and was explained to her that the rent appears to be £1616.67 in arrears. She said that she was not aware of that and was unsure if the rent had been paid for the month. She accepted that if she took on employment then her housing benefit would be reduced but explained that she would have earnings to make that up and said she had an outstanding PIP application process regarding her disability. When pressed she accepted that she couldn't guarantee ongoing payment of the rent on a personal level. When asked regarding an assertion that the letting agent had told her in October 2020 that the applicant intended to sell both the house they were living in and the let property she repeated that the conversation had taken place on October 21 or 22nd 2020 but accepted that anything the agent had told her was hearsay and may not have come directly from the landlords or could amount to a mix-up in communication. She accepted that her good support network and access to healthcare care professionals would still exist if an eviction order was granted but she was of the view that her negative symptoms connected to her health conditions would worsen. She accepted that the children stay with their father on weekends and that this had been ongoing since March 2020. She did not suggest that this contact would be prevented if an eviction order was granted.

18. She was adamant that after the fire in November 2019 every inch of the property was smoke damaged and that it took months to get it cleaned. She described soot being embedded in the walls in nooks and crannies in the carpets and floors and she talked about eight volunteers coming to assist her. Regarding photograph 13/35 she said this was not what the house looked like when it needed redecorated. She said she had sent a text in February 2020 saying that everything would be cleared but no redecoration had taken place. The Tribunal did not have sight of this text message. Regarding her search for alternative accommodation she said in January 2021 when she had received papers for the Tribunal she had registered and obtained an online portal number with Edinburgh City Council number which allowed her to bid every week on a Friday for council properties. She put in an application in July 2020 for this and explained that she was unable to bid for anything under a four-bedroom property as a smaller property could be considered as being overcrowded given her four children. She explained that she had no points which give her any priority in bidding.

as she was a private tenant but that that would change if she was evicted. She said she would get what she described as a silver priority which would give her extra points. She confirmed that she would rather be a private tenant and that was her lifestyle and that she considered she could afford to be a private tenant and it was likely that she would have to take temporary accommodation at first if an eviction order was granted. She was asked a number of questions regarding clauses of the tenancy agreement and it was suggested to her she was keeping a cat without the consent of the landlord, putting pictures or posters on walls without permission and smoking at the property. It was also suggested that the garden was not being kept in proper order and that the landlord had made repairs which were required due to negligence on her part. She was adamant that she had permission for things to be placed on the walls and to have a cat. The garden was looked after she said and she smoked only outside the flat as did other neighbours.

19. Under cross-examination the Respondent indicated that she believed that the Covid 19 restrictions had impacted her much more than others and had affected her benefit payments. She expressed the view that the Applicants had easily been able to cover the mortgage payments and that the question of an eviction order was as she put it a huge implication to her rather than to the landlord. She could not accept a three bedroom property as her teenage children were male and female. She said she had been making positive steps to find accommodation and there hadn't really been anything for her to see since January 2021. She was asked if the children would have to move schools if she moved out of the catchment area and she said it would depend on how far away any property was from the school. She said her highest priority was to keep her children at their schools. She said she would try to get the youngest two to attend their existing primary school in a manageable way and said that the younger two were easier than the two teenagers. She said that she struggled with the unknown and it would depend on the circumstances she was concerned that she would lose her excellent links with the primary school and her family support network if she had to restart the children in a new school and in a new home.

20. The next witness to give evidence was Miss Helen Donaldson, Head teacher at the primary school attended by the Respondent's six-year-old daughter and where the younger child aged five attended preschool. She explained that she had been in education for 24 years or longer and had been head teacher at the particular primary school since 2012. She had known the Respondent and her family for many years and had known all of the four children. She was aware of the housing situation and the threat of eviction. She said she had concerns about them becoming homeless. She was aware of there being two fires before and during lockdown. She described the Respondent as a proud woman who was intelligent and articulate, part of the Parent Council and someone who had assisted in an interview panel for the Deputy Head Teacher post. She was aware of the Respondent and her family accessing help that was available to vulnerable families in terms of local community support, the local church and to charities which she named. She explained that during what she described as the second lockdown she made a place available for the Respondent's younger children to have additional support at school. She explained that the two younger children had thrived during the second lockdown at school. She expressed concern for the family's well-being in the future and that if an eviction order were granted that the impact of this was minimised as far as the children were concerned.

She described assistance that the family had obtained after the fire in November 2019 and was aware that they had been offered mattresses and bed linen. She expressed concern about the impact of the threat of eviction and the uncertainty that this caused. She referred to the Respondent's teenage son and issues which had arisen with him in primary seven and how he had received additional one-to-one counselling. In relation to the Respondent's oldest daughter she referred to some resistance coming into school and issues with leaving her mother who had supported the process of return to school by bringing her in every day. She referred to a sense of cohesion and how the family had been challenged by a family breakup, bereavements the Respondent's health issues and the fires and the lockdowns. She referred to the impact of poverty on children and the issue of housing uncertainty. She indicated if the family moved out of the area they would not need to move schools but there would be an impact on the routine and it might be challenging for the Respondent to get the children to school when the family were already vulnerable. She expressed the view that it was important that future adverse experiences were minimised in particular she talked about the impact of eviction and homelessness and expressed that it might show itself in terms of attendance and the children's ability to engage and she referred in particular to the two older children. She said that whilst all four children could stay at current schools there might be an issue with the two younger children when they finish primary school as to whether they would still be able to attend the same secondary school as their older siblings. She talked of the practicalities of transport to the primary school currently attended if they moved further away as there was only one bus service. She referred to after-school clubs offered at the school and referred to possible impact on the independence and ability to find friends of the two older children and to engage in after-school activity. She referred to this being an additional strain on the family which she hoped could be avoided. She referred to a very good relationship between the staff at her school and the Respondent but said that this does not happen overnight and although colleagues at schools across the city would do similar things to support the family it would take time to build up a relationship. She said she was concerned that things would 'implode' and she described the two older children situation as fragile and that the children might need external support. She described the "worst, worst, worst case" scenario as the children having to be supported out with the home. Under cross-examination she accepted that within her letter she had used the word "huge" in relation to a fire at the property and accepted that that word should not have featured in her letter because the Respondent had never used that word in relation to the two fires. She could not say if the level of support which she and her colleagues had offered to the family at the primary school could be replicated elsewhere and referred to specialist training that teachers have. She did confirm that children would be supported in relation to the circumstances around any move. She said that's what made the difference and that this was not a planned or desired move. She referred to the fact that the family had suffered close family bereavement it was not common to see a family had suffered the number of adverse experiences that this family had suffered. She did accept that many families have issues to face and that there can be protective factors and that not everyone does badly in this situation. She did accept that they could still thrive given that the children were sociable and that the Respondent was an excellent mother. She confirmed that her views regarding matters imploding related to the management of transport and the commute across town and the social demands particularly of the older children. She expressed concern that the children would lose the security of their living

arrangements, the security of the current friends and that this could cause additional upset and trauma to them. She said that children bank on what keeps them stable and that this was the home. Eviction she said would take that away and there was uncertainty of where they would be going next. She expressed concern that the Respondent would find it difficult to start new relationships because it took a while to build up relationships with the current school and that if the Respondent's health deteriorated it would be concerning if she could not recognise the need for assistance. She confirmed that her concern regarding the situation "imploding" related to the issue of a house move for the family and did not include a move of school.

Parties Submissions

21. Miss Donnelly for the Applicants moved the Tribunal to grant the order and said that Ground 4 in terms of Schedule 3 of the Act was established. She indicated that the Tribunal should accept that the Applicants intended to occupy the rented property as their only or principal home for at least three months and that it was reasonable to grant the order. She described the Applicant's evidence as being honest and credible and that it should be treated as such. She explained that they had referred to the reason the property had been purchased as part of a wider investment plan, the plan now was that they intended to sell the house where they are living and live at the property. She referred to their current financial situation and the evidence that was given regarding their requirement to sell the current property. She referred to the connection that both had with the area, the ongoing need to be close to Mr Patrizio's elderly mother in order to visit her and provide care. She referred to the background of rent arrears and how these had been cleared in September 2019. She referred to the large sum which the Applicants had received in a discretionary housing payment but despite the Respondent's ongoing assurances regarding the rent she pointed to the fact that the rent was in arrears for April 2021. She referred to the Applicant indicating that they had been able to afford to pay the mortgages on the property during the period when the full rental payments were not received. She described the fire in November 2019 and the effect on the property. She said that the fire caused minor damage which could be described as cosmetic and decorative at best and that the house was in a habitable condition and it simply needed to have the decoration refreshed in order for it to be lived in. She suggested that the Applicants were keen to reside in the property as soon as they were able. She referred to a number of issues between the parties during the tenancy and said these were relevant to the Tribunal's consideration of reasonableness in terms of an eviction order. With reference to the timeframe when the Applicants were required to cover both mortgages she said that they had managed but that this had been a struggle and had it not been for Covid 19 restrictions limiting their other outgoings this might have been different. She referred to the second Applicant's health condition and the detrimental impact which not been able to secure the property is having on the second Applicant's health and her ability to carry on her job. She said that both Applicants were clear that their intention was to go back and reside at the rental property and it was reasonable that the order was granted. As far as the Respondent's assertion that a letting agent had told her in October 2020 that the Applicants intended to sell both the rental property and the house where they were living, she said that the Tribunal should give little weight to this piece of evidence which had not been put to the Applicants. She said that the

Applicants accepted that the Respondent did have housing benefit issues as this had been stopped in 2019 and of course in 2020 there had been issues for an extended period and that this had had a financial impact on the Applicants. She said that the Respondent's evidence was contradictory on such matters as communication and that if the Tribunal continued to allow the Respondent to stay within the property that would prejudice the Applicants' position as it was entirely foreseeable that benefit issues could arise again. She referred to the Respondent's search for alternative accommodation and commented on what she described as quite a significant entitlement to housing benefit at the rate of £1690 per month. She talked of the evidence which suggested the children could remain at the current schools with the support networks that they were currently used to. She said that the issues around the children were one factor but these were not a factor which should determine the outcome and this was the case particularly since the children could remain at school. She talked of minor breaches of the tenancy agreement which appeared largely to be in dispute, and she said these were available for consideration by the Tribunal in relation to the overall question of whether it was reasonable to grant the order. She referred to the cases of **Cunliffe v Goodman 2 KB 237** where it was suggested that in order for intention to be satisfied tribunal must find that the parties must have made up their mind on a course of action. She referred to the Tribunal decision of **Lopez v Ortega (FTS/HPV/EV/19/00967)** which referred to the reasoning in Cunliffe. She invited the Tribunal to apply the test set out to find that the Applicant's intention to move back to the property was "genuine firm and settled" and more than a mere statement. She said that the test to satisfy the ground had been established in that the Applicants indicated they want to sell their house and live at the let property for a number of years and had given financial reasons and reasons in relation to a relative. She also indicated that it was submitted that the Applicants had been reasonable and had assisted the Respondent throughout the tenancy but that Ground 4 was established and that the order should be granted.

22. On behalf of the Respondent Miss Meikle invited the Tribunal to find that the Applicants did not intend to live at the let property but requested that if the Tribunal were to grant an eviction order that this be superseded for a period of four months in terms of Rule 16A(d) of the Tribunal Rules of procedure to allow the Respondent to make the appropriate arrangements. Miss Meikle referred to the case of **Cunliffe v Goodman** (referred to above) and the case of **Fisher v Taylors Furnishing Stores Ltd 1956 QB 78**. She referred to Lord Denning's dicta in that case where he set out that intention must be "firm" and "settled" and not thought of as "a device". She suggested that if the Applicants were to change their mind the Respondent would have no remedy. She referred to the written representations submitted by the Applicant dated 5 February 2021 and the affidavits. She said their position had not been consistent and referred to their ability to pay the mortgages. She pointed to the fact that the house was not on the market for sale and given the current Coronavirus restrictions it would not be possible to issue a charge for removing. She said there were outstanding issues regarding the condition of the property and from all of this it could be suggested that their intention was not firm and settled.

23. She described efforts made by the Respondent to look for a four-bedroom property both on the social housing platform of Edinburgh City Council and a private tenancy. She said that the Respondent had not been able to find one and would therefore be

homeless if evicted. She said that the Applicants could afford to let the property going forward. She referred to the General Practitioner's letter lodged on behalf of the Respondent which was agreed by parties. The Respondent's doctor had indicated that homelessness is likely to make her condition worse. She referred to local family support, school support and how the Respondent's physical and mental health is likely to deteriorate if she was evicted. She asked the Tribunal place significant weight on her evidence and suggested there was a concern eviction would have a negative impact on her ability to care for her family. She said although the children could continue at school it might be challenging for this to happen. As far as the Applicants were concerned, she talked of the difficulty in rent payments and said that this was one of a number of factors affecting the mood of the second Applicant. She submitted that the rent arrears had been substantially reduced and as at 1 April 2021 stood at some in excess of £500. She suggested there was unlikely to be a quick solution if an eviction order was granted. She asked the Tribunal to accept that the Respondent's evidence was credible and fed into whether the intention of the Applicants was firm and settled.

24. The Applicant's Representative Miss Donnelly obtained instructions from the Applicants to oppose any delay to the issuing of the extract order if one were to be made. She referred to the current Coronavirus restrictions which meant that the process of eviction could not be completed meantime and that this offered the Respondent a degree of protection. She referred to the period of time for extraction and the period of charge and confirmed that the Respondent had known of the possibility of eviction since July 2020 when the notice to leave was served.

Findings In Fact and Law.

25. The Applicants and the Respondent entered into a private residential tenancy at the property with effect from 24 May 2018 with a monthly rent of £1100.

26. The Respondent rented this property from the Applicants for a number of years prior to the private residential tenancy agreement referred to above and has been their only tenant at the property.

27. On 21 July 2020 the Applicants served a valid Notice to Leave on the Respondent which relied on Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

28. A notice in Section 11 of the Homelessness etc (Scotland Act) 2003 was submitted to Edinburgh City Council on 1 December 2020.

29. There have been a number of issues of dispute between the parties during the tenancy agreement and these related in the main to rent arrears, communication, and the condition of the property after a fire in November 2019.

30. The Applicants have decided to sell the property in which they currently live and intend to move back into the let property for financial reasons and reasons related to the second Applicant's health condition and in order to remain in the area near to an elderly relative.

31.The Applicants intend to move into the let property as soon as it is vacant and to stay there for a period of at least three months.

32.The Respondent has a number of health conditions and lives at the let property with her four children aged between 5 to 14 years.

33.The granting of an eviction order by the Tribunal may mean that the Respondent and her family have to move to temporary accommodation whilst seeking another place to live and whilst the children can remain at their existing schools meantime there may be practical difficulties connected to that which will depend on where they live.

34.Having taken account of all of the circumstances placed before it in line with the approach set out in ***Barclay v Hannah 1947 SC 245*** the Tribunal considers it reasonable to grant an eviction order and makes such an order.

35,Given the Respondent's circumstances as set out in evidence and the need to find new accommodation for her and her family the Tribunal finds it appropriate to delay execution of the eviction order for a period of four months from the date of this Decision.

Reasons for Decision

36.In making a decision to grant an eviction order the Tribunal required to consider the credibility and reliability of all the witnesses heard in relation to the application. Although the Tribunal could not see the witnesses during the Hearing the Tribunal was able to assess their credibility and reliability in a number of ways, including the way in which witnesses answered questions, the way they dealt with cross examination and how their evidence sat relation to other evidence being considered, both oral and documentary.

37.The Tribunal accepted the evidence of both Applicants as being reliable and credible. The Tribunal accepted that they had formed a clear intention to move back into the let property having taken advice and in the light of their financial situation and the ongoing health condition of the second Applicant Mrs Patrizio. The Tribunal accepted the Applicants' explanation as to why the property in which they currently live was not yet for sale on the open market and felt that Mrs Patrizio's evidence in relation to their future intentions to move away eventually for family reasons seemed entirely likely and highly credible.

38.The Tribunal was presented with a good deal of evidence about how the tenancy agreement had proceeded and there was evidence of disputes between the parties as to communication, rent arrears, the condition of the property after a fire in November

2019 and other suggested minor breaches of the tenancy agreement by the Respondent. The Tribunal did not find that the evidence as to difficulties between the parties in the ongoing agreement were of particular relevance in relation to the issue of whether the eviction ground was proved or indeed the question of whether it was reasonable to grant an order. The Tribunal did find that the Applicant Mr Patrizio was credible in relation to his evidence about the condition of the property after the fire in November 2019 and there was support for his position in the report lodged by the Applicant from the insurance company. The Respondent's position on that point was that substantial work required to be done before the Applicants could move into the property but the Tribunal does not accept that assertion and finds it unlikely given that she and her family have continued to live in the property since the fire some 17 months previously.

39. The Tribunal did consider that the rent arrears accrued by the Respondent did have a bearing on the Applicants' ultimate decision to move back into the property. They struggled to manage to pay both mortgages during the period when rent was not being paid and this appears to have had a bearing on their assessment of their financial position both at present and in the future and their decision to make good on the property investment in their home in order to boost the second Applicant's pension pot. We do not consider that the rent arrears which we accept were not the fault of the Respondent or any other matters related to the conduct of the tenancy operated as a device being used by the Applicants to obtain an eviction order, rather the Tribunal was satisfied based on the evidence of the Applicants that they had formed a firm and settled intention to move back into the property as soon as it was vacant, and that while some redecoration is required as Mr Patrizio said he could move back in 'tomorrow'.

40. Whilst the tribunal considered that the evidence of the Respondent was credible for the most part, it did not place much weight on her assertion that the Applicants' letting agent had told her in October 2020 that they intended to sell both properties. This matter had not been raised with the Applicants during their evidence and given the possible importance of this had such a conversation had taken place, the Tribunal might have expected to hear more evidence on that point.

41. In accordance with the case law referred to in the findings in fact and law the tribunal considered all circumstances relevant to its consideration of the matter in order to determine whether it was reasonable to grant the order.

42. The Tribunal considered the medical information which had been lodged in respect of the Second Applicant and the Respondent. There is no doubt on the basis of the medical evidence that the second Applicant and the Respondent suffer from substantial health conditions and whatever approach the Tribunal took in relation to the application might have an effect on the health of one or other of those parties.

The Tribunal considered the evidence of Mrs Donaldson who expressed concern that a move on the part of the Respondent would add to the family's existing difficulties and might cause the situation to "implode". When this was examined more closely her concern appeared to focus mainly on the two older children and the ability of the Respondent to manage to have all four children engage with and attend school, not least because of practical arrangements which might be required in relation to travel. Mrs Donaldson also explained the possible negative impact that there might be on the two older children in relation to their social activities friendships and independence but also accepted that some children thrive in this situation. She referred to protective factors which exist in relation to the Respondent and her family namely that the children are very sociable and that the respondent is an excellent mother. Whilst Mrs Donaldson did not refer to it there was of course evidence that the children reside with her father at weekends on a residential basis and there was no suggestion that this regular parental contact would cease if an eviction order were granted.

43. The Tribunal heard evidence from the respondent and from Mrs Donaldson regarding potential homelessness. While the Tribunal cannot speculate on what might happen to the family when the order is executed the question of temporary accommodation and potential homelessness cannot be ignored in the light of the evidence.

44. The Tribunal required to weigh up all the relevant circumstances in deciding whether it was reasonable to grant the order. On balance having regard to the Applicants' financial circumstances and the ongoing health condition of the second Applicant these factors in particular when weighed up against the evidence of potential effects on the Respondent and her family, just on balance inclined the Tribunal towards the making of the order. While all circumstances were considered the Tribunal did not place significant weight on the evidence in relation to the way the tenancy had been conducted nor indeed any future assertions as regards payment of rent by the Respondent were she permitted to remain at the property.

45. Although the Tribunal considered it was reasonable to grant the order it was not unaware of the practical effect of this for the Respondent and her family. Representations were made that would be appropriate to delay the date at which time the Applicants are permitted to execute the tribunal's order. Having considered the Respondent's submissions on this point and those from the Applicant's solicitor in opposition, the Tribunal found it was appropriate to delay execution of this order to give the Respondent time to make appropriate arrangements for herself and her family.

Decision

An Eviction Order was granted at the property in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 as the Tribunal finds that the Applicants intend to occupy the property as their only or principal home for a period of at least 3 months and it is reasonable to grant the order. The Tribunal considered it appropriate to suspend execution of the order until 16 August 2021 in terms of Rule 16A(d) of the Tribunal Rules of Procedure.

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.

V.B.

Legal Member/Chair

16.4.21

Date