

**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**

Chamber Ref: FTS/HPC/EV/21/2160

**Re: Property at 104 Broomfield Crescent, Edinburgh, EH12 7LX (“the
Property”)**

Parties:

**Mrs Ursula Farrier, Mr Robert Farrier, c/o DJ Alexander Lettings Ltd, 1 Wemyss
Place, Edinburgh, EH3 6DH (“the Applicants”)**

**Ms Natasha McGourt, 104 Broomfield Crescent, Edinburgh, EH12 7LX (“the
Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

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

Background

1. This is an application lodged by the Applicant with the Tribunal on 7 September 2021 under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”), seeking eviction under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act)
2. Ground 1 is that the landlord intends to sell the Property.
3. The Applicant lodged with the application the following;-
 - The Tenancy Agreement showing a start date of 19 September 2018

- Notices to Leave dated 1 March 2021 providing that the application will not be submitted to the Tribunal for an eviction order before 4 September 2021.
 - Intimation of Notice to Leave, to the Respondent sent by e-mail and confirmation of receipt e-mail by the Respondent dated 1 March 2021.
 - Section 11 Notice to Edinburgh City Council dated 7 September 2021 together with confirmation of delivery.
 - Instructions to sell to DJ Alexander by the Applicants dated 6 March 2021
4. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer dated 1 October 2021. Both parties were informed that a Case Management Discussion (CMD) would take place by telephone conference on 2 November 2021 at 11.30am and that they were required to participate.
 5. The Respondent lodged written representations on 4 October 2021 being 10 pages of representations accompanied by several emails, letters and ancillary information.
 6. On 27 October 2021 the Applicant's Representative lodged further written submissions (2 pages) answering the Respondent's representations to the Tribunal.
 7. On 28 October the Respondent lodged a further 3 pages of submissions along with an email to the Tribunal dated 27 October 2021 containing further emails to the Applicant's Representative dated 27 October 2021 .
 8. On 29 October 2021 4 pages of submissions were received from the Applicant's Representative
 9. On 30 October 2021 the Respondent lodged another 3 pages of submissions together with supporting documentation.
 10. On 1 November 2021 further productions were received from the Applicant's Representative , including photographs of windows and a check-in Inventory for the Property, an e-mail from the Applicants dated 1 November 2021, and various earlier e-mails from the Applicants to their Representatives .
 11. On 1 November 2021 the Tribunal received an e-mail from the Respondent with more representations for the Tribunal to consider.

The Case Management Discussion (CMD) 2 November 2021

12. The application called for a CMD at 11.30am on 2 November 2021 by teleconference. Both Landlord Applicants were present and were represented by Mr Kevin Farmer from D J Alexander. Ms Dayna Greeney was also present from D J Alexander. The Respondent attended at the conference call and was supported by Ms Elvira Vila.
13. The Tribunal explained the purpose of a CMD in terms of Rule 17 of the Rules.

14. The Tribunal explained to parties that the Tribunal President had issued a Practice Direction on 27 May 2021 in relation to documents being lodged with the Tribunal in terms of Rule 22 of the Rules. This Practice Direction states that where a party wishes to rely on documents that they must be lodged in a hard copy format. They must be paginated and indexed. At the same time as lodging the productions and Inventory in this format with the Tribunal a copy must be sent to the opposing party or to their representatives where appointed. This Direction had not been followed in this case and a great deal of the representations and productions were not lodged timeously.

15. Both parties were in agreement that in view of the disputed facts between the parties that the case would require to be continued to a full Hearing.

16. The Tribunal said that it expected each party to lodge an Inventory to include all representations and documents lodged by them to date in a manner which complies with the Practice Direction. A separate Direction was issued by the Tribunal to parties confirming this.

17. Parties were able to agree the following facts;-

- The terms of the PRT are not in dispute
- The Notice to Leave, service of the same and the lawfulness and accuracy of the same are not in dispute.
- The Respondent accepts that the Applicant intends to sell the Property

18. No further facts could be agreed at this time

19. The Applicant and the Respondent both stated in terms that they did not require to lodge any further documentation or representations to the Tribunal.

20. The Tribunal suggested that on the question of reasonableness that the Respondent had raised several points dealing with the reasonableness of an order for eviction being granted which could be summarised as follows;-

- She contests that the Property could be sold with her as a sitting tenant.
- She suggests that her mother has offered to purchase the Property.
- She takes issue with the fact that for 2 months of the period after the Notice to Leave having been served that she had been labouring under the impression that the Property would be sold with her as a sitting tenant
- She suggests that she is being discriminated against by virtue of her employment as a Housing and Money Advisor
- She suggests that she has been a good tenant and has saved the Applicants a great deal of money in having various repairs carried out
- She is a single mother with a young child who is being assessed for autism
- She has her own medical issues for which she is prescribed medication and receives therapy
- She has found it difficult to obtain a new tenancy
- She suggests that the Applicants have resented the repairs which she has required at the Property and that she has been intimidated by them

21. The only further documentation that the Tribunal suggested be lodged was in relation to the medical issues raised by the Respondent. The Respondent undertook to lodge evidence of the same.

22. Directions were made separately by the Tribunal which were in the following terms;-

The Respondent requires to lodge within the following 14 days

(i) A list of proposed witnesses

(ii) A detailed Inventory in accordance with the Tribunal Practice Direction containing all of the representations and productions made by the Respondent to date. This must be in paper format, be paginated and indexed. This should include any new documentation dealing with the medical difficulties experienced by the Respondent and her young child.

(iii) At the same time as lodging this with the Tribunal a copy shall be forwarded to the Applicant's Representative by the Respondent.

The Applicant requires to lodge within the following 14 days

(i) A list of proposed witnesses

(ii) A detailed Inventory in accordance with the Tribunal Practice Direction containing all of the representations and productions made by the Applicant to date. This must be in paper format, be paginated and indexed.

(iii) At the same time as lodging this with the Tribunal a copy shall be forwarded to the Respondent by the Applicant's Representative.

23. The Tribunal canvassed the issue of witnesses. Mr Farmer said that he anticipated calling the Applicant Landlords and also Ms Dayna Greeney from D J Alexander. Ms McGourt said that she would be calling her mother Dr Mandy Winterton.

The Hearing 22 December 2021

24. The Hearing took place on 22 December 2021. Due to complications caused by the COVID-19 pandemic the case took place by teleconference with all parties, the representative for the Applicants and the witness for the Respondent, and Tribunal Members dialling in to the teleconference Hearing separately.

25. The Applicants were present represented by Mr Kevin Frazer, D J Alexander Lettings Ltd. The Respondent was present along with her supporter Mr Ben Patterson.

26. Initially the Respondent's witness Dr Mandy Winterton had also dialled into the Hearing. The Tribunal explained that she would be contacted by the

Tribunal Clerk at a later stage in the proceedings when she should re-join to provide her witness evidence.

27. Prior to the Hearing each party had complied with the Tribunal's Direction and had lodged their Inventories in the correct manner including their representations and productions lodged to date.
28. In addition to the documents provided at the CMD the Respondent had added a letter from her Mental Health Nurse dated 4 November 2021 along with CPM (Child Plan Meeting) documentation relating to her son's current emotional and behavioural difficulties.
29. The Tribunal explained the procedure that the Hearing would follow and went over all the paperwork received to date. It noted that the Respondent had made a preliminary point when she lodged her comprehensive Inventory in terms of the Tribunal's Direction. She stated that she agreed with what had been summarised by the Tribunal at the CMD in respect of her position on the reasonableness of granting the Order for Eviction (at point 20 above) but wanted it to be noted that she did not only feel that the Applicants have resented repairs which she required at the Property but also the fact that she failed to move out when it suited them the previous year. She also stated that she had not only experienced intimidation from the Applicants but also their representatives. She indicated that she had made a separate application to the Tribunal in relation to the letting Agents Code of Conduct. She acknowledged that case had been dealt with by the Tribunal who had found there to be no breaches of the Code. She stated that notwithstanding the result that the Tribunal had commented that the actions of the Letting Agents were unhelpful, unnecessary and had caused her stress.
30. The Applicants' Representative made opening remarks to the Tribunal. He stated that the Applicants hoped that matters could be concluded today. These proceedings and the situation with the Respondent remaining in the Property was causing them significant distress and anxiety. They were keen to draw a line under matters and to be able to sell the Property. They intended to sell the Property to achieve the best return on the open market which is currently in a good shape involving closed bids. He stated that both Applicants would be giving evidence but did not intend to call any other witness. He referred to his written pleadings which set out the Applicants position entirely. Their decision to sell is based on financial, emotional and physical factors.
31. The Respondent said that she also would like to be able to draw a line under matters and to be able to move on remaining in the Property. She did not take issue with the fact the Applicants intend to sell the Property. She said that it was not essential, fair or reasonable to evict her and her son to do so. She said that the Applicants were prepared to sell the Property at an earlier stage with her remaining "in situ" but this had fallen through when the ban on evictions had ended in June 2021. They were now unwilling to sell the Property on this basis despite her having passed on details of special agencies who could assist. She felt this was due to the Applicants' resentment

towards her in relation to repairs she required along with her failure to vacate the property when it suited them.

32. She agreed with the Tribunal that in giving her evidence she would address each of the summarised points regarding the reasonableness or otherwise of granting the eviction order.

Evidence for the Applicants

Mrs Ursula Farrier

33. Mrs Farrier explained that the Property had been purchased as a personal investment. It is the only property that the Applicants rent out. She referred to the fact that the Applicants are now 66 and 65 years of age respectively. In getting older, the Applicants have found dealing with the tenancy stressful.
34. She stated that over a year ago that her late son had separated from his wife and two children. He was in financial difficulties through the divorce settlement and wished to purchase the Property to live in it. At that time the Applicant wanted her son to be able to move into the Property but the Respondent had refused to move out and said that she would never move out. Mrs Farrier said that at that time she became very stressed. Her son agreed to move into another property that DJ Alexander had offered to the Respondent and which she had refused to move into.
35. She said that the Letting Agents had offered this alternative accommodation to the Respondent to reach a mutually agreeable resolution. Mrs Farrier had found DJ Alexander to be very professional. They had informed the Applicants that their role, as Letting Agents, was not only to deal with the tenancy but to try and find a solution agreeable to both parties.
36. The property that was offered to the Respondent by DJ Alexander was at 65 Broomfield Crescent. It is on the same road as the Property and has been let long term. This accommodation was a lower floor property exactly the same as the Property they owned. It had been upgraded by DJ Alexander with a new kitchen and bathroom added as well as the accommodation being repainted and works carried out to the garden including a double driveway. Her son had moved into this accommodation in September 2021.
37. Unfortunately they had subsequently lost their son. He died on 14 December 2021 at the age of 40 from a heart attack. They have not had a proper chance to grieve due to the ongoing situation with these proceedings. She said that three weeks before she lost her son that his father had died. Her daughter carries the same gene that gave rise to their deaths and her grandchildren may also carry this gene.
38. The Applicants now have care of their late son's children and they are struggling financially. The children are 8 and 12 years of age. Purely from a financial point of view they need to sell the Property and they are currently trying to keep their heads above water. She herself is in remission for cancer

and will be unable to work again. . She would like as normal a life as possible moving forward in the future.

39. She stated that there is no reluctance or resentment over the repairs carried out and that this has not influenced their decision to sell. She has nothing personal against the Respondent. She added that she too had been a single parent with 2 young children in the past and would not resent the connotations of being a single parent.

40. No oral evidence was led at the Hearing from Mr Robert Farrier.

Evidence for the Respondent

Ms Natasha McGourt

41. Ms McGourt said that it was unreasonable to evict her in order for the Applicants to sell the Property for the following reasons

- She contests that the Property could be sold with her as a sitting tenant.

42. The Respondent stated that the default position adopted by the Applicants was to issue her with a Notice to Leave without exploring other avenues first in relation to selling the Property. She referred to the fact that an Investor was found to buy the Property with her as a sitting tenant in April 2021 and that for 2 months she was of the view that this would be going ahead until June 2021. When the eviction ban ended in June 2021 the sale fell through. That 2 month period she said had not been taken into account at all. She accordingly believed for over 2 months that her notice was to be retracted.

43. She had passed on the details of "Portolio" who are an Edinburgh based company who specialise in selling rented property with tenants still resident in them to DJ Alexander in the hope that these details would be passed onto the owners. She has been provided with no information as to why this option has not been explored.

44. She stated that she sympathises with the position that the Applicants are in. She had also offered to help their son when he was looking for accommodation. She said that she is not heartless. She wants a solution that would be acceptable to all parties.

45. She does not dispute that she did not look at the 3-4 alternative properties offered by the Letting Agents to her. She said that this was on the basis of cost and disruption and that on principal she did not wish to have an institutional landlord. She said that DJ Alexander have treated her appallingly.

- She suggests that her mother has offered to purchase the Property.

46. Her mother is in a position to purchase the Property but has been given no figure by DJ Alexander or the Applicants to work with. Her mother wishes to

provide a home for the Respondent and the Respondent's son who is awaiting assessment for autism and for whom routine is extremely important.

47. The Respondent referred to the chain of emails that she had lodged between her mother and DJ Alexander when her mother specifically asked for an indicative price for the Property and if the figure of £165, 000 was still within expectation. Her mother had made it clear that she would require to consult with her Wealth Management Team.
48. The only response that her mother had received from DJ Alexander was that they had been in contact with the owners of the Property .The owners had confirmed that it is their intention to put the Property on the open market for sale and that the Respondent's mother would be welcome to submit an offer at that time.
49. The Respondent said that her mother was not 100 % sure she would be able to purchase the Property and would require to have discussions with her Wealth Management Team.
50. The Respondent went on to state that she intended to make a further referral to the Tribunal on the basis that DJ Alexander had again failed to comply with the Letting Agents Code of Practice. This was on the basis that they had intentionally tried to mislead her mother on the legislation when they suggested that the COVID legislation banning evictions would be lifted in March or April 2022.
- She takes issue with the fact that for 2 months of the period after the Notice to Leave having been served that she had been labouring under the impression that the Property would be sold with her as a sitting tenant
51. Ms McGourt said that she found this extremely unfair. She asked the Tribunal to have regard to this particular set of background and circumstances. She wanted to highlight the inconsideration of the impact on her of this position. She said that the Letting Agents had regarded the landlords as the clients, and her, as a tenant, as a nuisance. This, she said, had been the position regarding the situation when she required repairs at the Property to be undertaken and in relation to the eviction process.
52. She was unaware why the previous sale of the Property with her as a sitting tenant had fallen through. She had been told that it was during the conveyancing process.
53. She said that she had been hopeful when the Applicants' son moved into 65 Broomfield Crescent last year that relations between herself and the Applicants and DJ Alexander would improve. She referred to the terms of an e-mail sent to the Applicant Mrs Farrier on 19 July 2020 when she stated that although she couldn't provide advice to Mrs Farrier's son on a professional basis, but would be prepared to give general advice on a personal basis to him if she could.

54. She said that it was unlikely that she had become aggressive as suggested by the Applicants and yet offer help at the same time. She said that this e-mail demonstrated that she had a positive relationship with the Applicants and that she was trying to have a more positive relationship with DJ Alexander.

- She suggests that she is being discriminated against by virtue of her employment.

55. She is employed as a part-time Housing and Money Advisor with Granton Information Centre. She has been in this post since October 2019. Part of her role involves advising tenants on their rights. Landlords, she said, don't like it when she points out tenants rights.

56. Prior to taking on this role she had taken a career break when her son was younger for 6 years. During that time she had educated herself on Benefits and Housing Law. She was passionate about her role. She wanted to stand up for tenants rights. She was not in this employment when she was selected as a tenant.

57. She said that when the Applicants asked by e-mail on 1 March 2021, where she was employed and for information pertaining to her employment details that this was intimidating towards her.

58. She said that her e-mail communication with the Applicants had not been threatening and was simply pointing out to the private landlords what her rights were as a tenant and that she was exercising those rights. She said that she responded with the information about her employers directly and that she had copied in her senior manager as she had nothing to hide at all. She referred to the fact that once again it was being pointed out by the Applicants in their emails to her that she had been offered another property. She said that she had her reasons for not accepting this offer.

59. She maintained that the Applicants had discriminated against her when they suggested that she was not in a position to buy the Property from them when Mr Bob Farrier commented in an email to her on 1 March 2021,

"We don't want a quick sale. We have paid thousands for new windows and a boiler. There are no 2 bedroom properties for sale just now in Carricknowe. The average selling price in Carricknowe was £165000. I very much doubt if u will give us anywhere near this."

60. The Respondent said that she works part-time and also claims Universal Credit. She found this comment to be degrading and inappropriate. She said that this did upset her at the time.

- She suggests that she has been a good tenant and has saved the Applicants a great deal of money in having various repairs carried out

61. She drew the Tribunal's attention to the Applicants' submissions that they accepted flooring had been put in place in the bathroom by her at no cost to the Applicants. In addition she had carried out repairs to the living room lights. Had she enforced these rights through the repairing standards section of the PRT this would inevitably have cost the Applicants a lot of money.

62. In addition when repairs were carried out at the Property she had involved her personal friend David Love who had carried out works at "at mates rates" again saving the Applicants a great deal of money. This related to the boiler replacement and the labour involved in guttering repair works. Furthermore a door divider had been installed between the hallway and the kitchen which had previously been a tripping hazard. She had pointed this out to Mr Love and he had repaired the same with wood and silicone gel at a cost of £14 which she accepted was posted to her by Mrs Ursula Farrier. She said that the exchange of text messages between Mrs Farrier and herself showed that Mrs Farrier had asked the Respondent if she knew anyone who was willing to carry out the repairs she had identified. She said that these showed that at times Mrs Farrier had been very grateful to her for asking Mr David Love to attend to these matters.

- She is a single mother with a young child who is being assessed for autism

63. The Respondent said that the Child Plan Meeting documents from her son's school would be used as part of his overall assessment for autism along with an initial GP assessment. They are also awaiting referral to "Community Child Help" and CHAMS. Her son is able to interact socially but does not cope well with change and uncertainty. He has some obsessive repetitive behaviour. Routine is very important to him. Her main worry is how an eviction order would affect her son. She said that her mother works alongside child psychologists and it was her mother who had spotted the early signs of autism and would be able to give evidence about this point.

- She has her own medical issues for which she is prescribed medication and receives therapy

64. The Respondent takes anti-depressant and anti-anxiety medication. These proceedings have made her extremely worried and have had a negative impact on her health. She has found the process humiliating and highly embarrassing and is not coping well. She has been referred for "Talking Therapy". This was initially in person and has more recently been delivered over the telephone by her nurse. She has undertaken this on 3 occasions. She referred to the letter produced in her Inventory from her medical practice Mental Health Nurse in which it is stated that she suffered from post partum psychosis. She said that one major symptom of this condition is lack of sleep and trauma. Her mental health is deteriorating even more. She is determined to continue working as she is good at what she does. She is worried that if her mental health continues to deteriorate that she will not be strong enough to continue working

- She has found it difficult to obtain a new tenancy

65. The Respondent said that she had not said that she has looked at alternative accommodation. She has not been actively looking. This is because she wanted the Tribunal to hear her case. She has been in contact with the local Private Rented Sector Team at her local authority. She said that she has been in close contact with them on a personal and professional basis. They will help her. Primarily she has sought their assistance to help her staying in the Property and if needed in future, to help look at alternatives. She said that she will face discrimination in obtaining a new tenancy due to her job and due to the fact she has brought this case before the Tribunal along with an earlier repair standard case which she had withdrawn and the Letting Agent's Code of Practice case. Due to this, she said that landlords will not want to let a property to her.

66. She is reluctant to go down the route of social housing. She sees the difficulties they face every day. She knows the Private side much better. She is not prepared to bring her son up in a typical anti-social council environment. In Edinburgh there is one form to complete for Housing Associations which encompasses 18-19 associations. She will complete this as a last resort.

67. Owner occupation is not an option available to her without assistance. Her mother wants her to keep her current accommodation.

- She suggests that the Applicants have resented the repairs which she has required at the Property and that she has been intimidated by them.

68. She states that the Notice to Leave was issued on 1 March 2021. Despite the Applicants stating that there is no reluctance or resentment from them over the repairs that were carried out the Respondent maintains that this has influenced their decision to sell. She referred to an e-mail received by her from the Applicants on 1 March 2021 where they state,

"We installed new windows, we also put in a new boiler, we replaced smoke alarms."

69. The Respondent said that this was their legal duty as landlords and that it had been held against her.

70. The Respondent said that she wished to draw the Tribunal's attention to various other points. In an email received from Mrs Farrier on 10 July 2020, Mrs Farrier had stated to her,

"Could you please liaise directly with DJ Alexander as they are our agents?"

71. She pointed out that she had made DJ Alexander aware that work was required to the windows of the Property when she moved in.

72. She also wished to point out that she had a conversation with Mrs Farrier in the street directly outside the Property in July 2020, which she had believed

was quite a positive conversation. She believed that the owners' eyes had been opened as regards DJ Alexander. She had gone out to talk to them and to bring with her all her paperwork and pictures. She said that she had sent some documents over by e-mail and she thought she would be able to point out some inaccuracies that were being made by DJ Alexander. She had been shocked that it was suggested by Mrs Farrier that she was threatening towards Mrs Farrier at that time.

73. In answering questions from Mr Frazer the Respondent said that she was, of course, aware that when she entered the PRT that the owners may look to sell. She said that this was before the COVID legislation had been introduced. She said that it has now been announced that some of this COVID legislation will be made permanent and that there was new cross party co-operation between the Green Party and the SNP.
74. She said that matters had been made more difficult in that the Applicants were unfamiliar in housing law.
75. Mr Frazer asked the Respondent to put herself into the Applicants' shoes and asked if she needed to release an investment as had been outlined by them whether it would be reasonable to maximise their return on that investment. She said that obviously there is no argument that the Applicants are entitled to sell. She said that they were prepared to sell previously with her "in situ" and she was shocked that other options had not been explored and that her mother had not been given a figure to work with. She said that no one knows what the best return would be. She had asked the Applicants to get in touch with "Portfolio" to, "comment on the sale and to increase the return side of things". Other options could have been explored she said. Aside from her mother she said that there are plenty of other investors looking for a buy-to-let investment.
76. She said that she has the support of Shelter (Scotland) who are aware of her case and her circumstances. She said that this is a, "test case" and a genuine case that Shelter (Scotland) are interested in.
77. This is her first PRT. Prior to this lease she had a Short Assured Tenancy on another property. She was not evicted from that property. She had successfully taken her previous landlords to the Tribunal regarding her deposit not being properly protected and had been successful with that claim.

Dr Mandy Winterton

78. Dr Winterton said that she was aware of the ongoing situation regarding the home of her daughter and grandson. She wondered if she could buy the Property to avoid them being evicted. She had sent an e-mail on 22 September 2021 when things had escalated to DJ Alexander who had forwarded it to the owners to ascertain, without commitment, if she could be given a, "ball park figure". She could then see if she could possibly be in a position to buy the Property. She did not know if she would be able to or not.

79. She had received a reply from Kevin Frazer at DJ Alexander on 29 September 2021 stating that the landlords wanted the Property to go on the open market for sale and that she was more than welcome to bid at that time. She said that she did not want to buy after her daughter had been evicted. She had wanted to see if she could possibly give the owners a decent price to avoid eviction.
80. She received a further e-mail from Kevin Frazer on 29 September 2021 stating that he had offered her daughter alternative accommodation. She said that this was none of her business. However she had already been made aware of that fact by her daughter and she appreciated her daughter's position in not accepting. She said that from what she had seen there was a fraught relationship between parties. She said that the way that DJ Alexander liaised with her daughter was quite difficult. There would be additional difficulties in a move to another property and she had seen her daughter struggle to get a new boiler and windows, things one would have expected to have been easier. She could see why her daughter did not accept the offer of alternative accommodation.
81. She said that Mr Frazer had said that he was quite disappointed in the stance that her daughter had taken. She said that the tone of his communication was, "awful and quite threatening". After taking some time to calm down, she replied stating that this was a legal stance and not an obstructive stance that her daughter was taking and that she was entitled to do so.
82. She had again stated in her e-mail reply to DJ Alexander that she was not looking for any concessions regarding an indicative price for the Property. She said to the Tribunal, in evidence, "Quite frankly I don't know if it's possible." And, "I'm not even sure I can buy it."
83. She said that if she had a figure she could look at this and that if she could help the owners sell and realise a profit that she would do that. She said in her email that she would not be in touch again and asked the owners to reflect on her option. She did not hear anything further.
84. She said that she was aware that an earlier offer to purchase the Property at a figure of £165,000 had fallen through. She did not know what the figure was that the Applicants were looking for now. She said that prices had gone up during Covid. It might therefore have been a different figure contemplated. She just wanted to know the, "ball park figure". She had explicitly requested this. If it had been an unrealistic figure she said that there was no point speaking to her own Advisor. She had therefore not done so.
85. She said that she had not expressed an interest in buying the Property at the time the Notice to Leave was served as her understanding was that it was not automatic that her daughter would be evicted. Her daughter wanted other things to happen in the meantime. Her suggestion to buy the Property was a last-minute solution at a moment of desperation. She said that she did not

have immediate capital resources and it would have taken quite a lot of financial juggling to see if she could buy the Property. She has equity in the house that she lives in so she is, “pretty sure” that she would be able to purchase the Property.

86. Dr Winterton said that she had noticed some traits that her grandson exhibited characteristic of autism. She is a University Lecturer on Social Inclusion. Her best friend is an academic and Chair of Leeds and Yorkshire Reference Group for Inclusion of Autism. Her friend is part of this Steering Group and publishes in this area. She therefore feels very well informed. Dr Winterton has also worked in child and adolescent development and sees herself as sensitively involved regarding autism. She has noted quite a few traits in her grandson’s behaviour indicative of autism. He has an extreme reaction to change. Routine and stability are very important aspects for him to feel secure. His condition is not entirely negative. He has a particular kind of communication. She has been involved in the Planning meetings for her grandson at his school when strategies were discussed focussing on routine and stability. She is concerned about her grandson’s home being taken away and is therefore prepared to step in if there is an alternative.
87. She was aware of a discussion between her daughter and the Applicants some time between 11th July – 20 July 2020. She said that she was present that date at her daughter’s request. She had been quite surprised that her daughter had been described as aggressive. She said that there was to be some discussion regarding the windows at the Property and her daughter asked her to be present for moral support. The person coming to look at the windows had not shown up and her daughter said that it may be a good opportunity to clear up any misunderstanding. She said that her daughter had a sense that some things had been lost in translation between her daughter and DJ Alexander and the owners.
88. What Dr Winterton had observed from her vantage point was a friendly conversation and when her daughter returned she told Dr Winterton the conversation was useful and that she was pleased she had the conversation. She said to Dr Winterton that she thought that the owners understood her position. Dr Winterton witnessed nothing to suggest any hostility. Her daughter’s demeanour had re-enforced that.

Applicants’ Submissions

89. The Applicants wish to sell the Property due to their own personal finances and believe that the best return can be achieved on the open market.
90. At the time the tenancy agreement was signed and agreed the parties on each side knew that there may be a change in either side’s circumstances. When the Applicants had wanted the Respondent to move out and served the first Notice to Leave in July 2020 this was met with some resistance by the Respondent. Due to the fact that their son required alternative accommodation he moved into the property that had been offered to the

Respondent. Unfortunately with his untimely death in December 2020 this resulted in bereavement and the Applicants having financial responsibilities for their grandchildren. They had bought the Property as a pension investment and currently have a mortgage over the Property as well as the property they live in. Mr Farrier was made redundant and was unable to get a permanent job. He had to take minimum wage temporary jobs the last of which finished just before the Covid pandemic. They have the care commitments of their grandchildren in addition.

91. Mrs Farrier has had cancer and has undergone 10 operations. Mr Farrier has diabetes. It is unlikely in view of their age, health and personal circumstances that either of them will work again. They want to be able to go forward in retirement with a reduced financial burden which the sale of this Property would provide, as this was the original purpose for buying the Property.
92. They bear the Respondent no personal animosity but state that this whole process has caused them undue stress which could trigger adverse health consequences to either or both of them. They found the tenancy more stressful as the Respondent wanted to manage the Property herself and not go through DJ Alexander. They have not yet completely been able to process the untimely death of their eldest son.
93. They carried out repairs and replacements when these were brought to their attention, including replacing all windows and the boiler.
94. The Letting Agents DJ Alexander have now offered the Respondent several properties and have tried to give her the option of long-term rental accommodation in the same street
95. They point out that it is only recently that the Respondent's mother was interested in buying the Property and that they were concerned that this was without commitment. Having already gone through the stress and anxiety with an investor who was interested in purchasing the Property which had fallen through due to insufficient funding they did not wish to go through a similar process again. They have researched similar properties in the area sold over the last 12 months and prices have increased considerably over the £165,000 which was the average price in 2019.
96. They consider that it is reasonable for them to be able to evict the Respondent in order to sell the Property.

Respondent's Submissions.

97. The Respondent relied on her evidence regarding the factors she had raised stating that the sale of the Property was not reasonable and that it would be unfair for her and her son to lose their home when the Applicants had not explored all available options open to them

Findings in Fact

98. The parties entered into a Private Tenancy Agreement which commenced on 19 September 2018.
99. The Applicants are the heritable proprietors of the Property.
100. The Applicants have served a Notice to Leave on the Respondent on the basis of Ground 1 of Schedule 3 to the 2016 Act.
101. The Applicants have provided a letter of engagement regarding the marketing of the Property
102. It is reasonable to grant the Order for Eviction.

Reasons for Decision

103. Section 51 of the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows: “51 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies. (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order. (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.”
104. Ground 1 of Schedule 3 to the 2016 Act (as amended by the Coronavirus (Scotland) Act 2020) states as follows: “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, (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.”

105. The Tribunal are satisfied that the terms of Ground 1 of Schedule 3 to the 2016 Act had been met. This was not opposed by the Respondent. The Tribunal are satisfied that a Notice to Leave has been served on the Respondent and which specified that ground, in accordance with the requirements of section 52 of the 2016 Act.

106. The Tribunal requires to take into account the reasonableness of granting the order, in terms of the relevant provisions of the Coronavirus (Scotland) Act 2020. The Tribunal is satisfied that it is reasonable to grant the order sought. The Tribunal takes the view that it is reasonable to allow the Applicants to sell the Property. It would be unreasonable to force the Applicants in the circumstances to carry on being landlords with the obligations and liabilities that flow therefrom.

107. The Tribunal weighed up the competing interests of both parties in coming to this decision. The Tribunal accepts that the Applicants want to sell the Property. This fact is accepted by the Respondent. Given their personal circumstances it is reasonable to allow them to do so. They are now retired. Mrs Farrier in particular has major health issues. Their son has recently died and they have caring and financial commitments for their grandchildren. They had initially purchased the Property as an investment for their retirement. None of this was disputed by the Respondent.

108. The Respondent has given various reasons why she considers it unreasonable for the Applicants to be entitled to sell. Having looked at each of these in turn, and on a cumulative basis, the Tribunal does not accept that these should prevent the Applicants from being able to sell the Property.

109. Whilst the Property may be able to be sold with the Respondent as a sitting tenant the Applicants have considered that position and had in fact already attempted this with the sale falling through. They wish the best market price and the Tribunal accept that this would be best achieved by the Property being sold on the open market. Given the

Property was purchased as an investment this is an appropriate course of action for them to take.

110. Although Dr Winterton has suggested she may be interested in making an offer for the Property her motivation has not been adequately borne out. She has not approached her financial advisers to ascertain what funds may be available to her. She does not appear to have carried out any research in the sale prices that properties in that area are currently reaching. She has not come to the Tribunal with an offer from a lender to make available funds to her to purchase the Property. She has no immediate capital resources available. She has simply stated that she asked for a figure to work with and as she was not given a figure she has done nothing further.
111. If she is serious in her intention to purchase the Property, Dr Winterton can put in an offer for the Property when it is placed on the market for sale.
112. In her own written submissions the Respondent stated regarding the repairs that these have been carried out and the Property is of a good standard. She said that she did not see the benefit of delving into past repairs too much. She had merely wanted to point out the time and extreme difficulties she had experienced to bring the Property up to standard.
113. It is accepted that the Respondent believed that the Notice period had been interrupted for approximately 2 months. This is dealt with separately below. For the avoidance of doubt, this neither in and of itself, nor with the added reasons relied on by the Respondent, mean that it is unreasonable to grant the order for eviction.
114. There is nothing before the Tribunal that has persuaded the Tribunal that it would not be reasonable to grant the Order due to a suggestion the Respondent has in any way been discriminated against by virtue of her employment. This has not been evidenced.
115. Similarly the Respondent states that she has been a good tenant and has saved the Applicants a great deal of money in having repairs carried out. These repairs are repairs that she had brought to the Applicants attention. They were approved by both parties and were to

their mutual advantage. It does not appear to the Tribunal that it has been evidenced that a great deal of money has been saved by the Respondent's actions. This would not be a basis to prevent the eviction taking place.

116. The Tribunal accepts the Respondent's personal circumstances. She is a single mother. She has underlying health issues as does her young son. He attends school locally. The Tribunal accepts that a move will be difficult for them. It will however, not be insurmountable. The Tribunal has properly weighed this factor against the reasons the sale are required does not consider that the Applicant's personal circumstances make the eviction order unreasonable.
117. The Tribunal has also taken account of the fact that the Respondent despite her knowledge in this area has done nothing to source alternative accommodation at all and has rejected offers of properties with institutional landlords in the locality.
118. For the avoidance of doubt the Tribunal does not consider that the Applicants have intimidated the Respondent in any way regarding required repairs.
119. The Tribunal does not accept that the Applicants have resented the fact that the Respondent would not move out during 2020 when her first Notice to Leave was served. The Tribunal does not accept this is a reason to find the current order sought unreasonable.
120. The Tribunal did not consider the grounds relied upon by the Respondent to be reasonable grounds to refuse the granting of an order. On balance it was reasonable to grant an order for eviction.
121. The Tribunal noted that the Respondent had been initially told by DJ Alexander that an investor had agreed to purchase the Property with her "in situ". Between 1 April 2021 and 6 June 2021 she believed that to be the case. Her Notice to Leave had been served on 1 March 2021 and expired on 4 September 2021. The Tribunal considered whether it would be appropriate in the circumstances to suspend the decree for a two month period to take account of this fact. The fact of the matter is that the notice period expired on 4 September 2021 and the Hearing did not take place until 22 December 2021. The Tribunal took the view that the

Respondent had already, in exercising her right to defend the proceedings, albeit unsuccessfully, still been afforded an additional 3 months to remain in the Property setting aside any appeal period. The Tribunal accordingly determined not to suspend the decree in all the circumstances.

Decision

122. The Tribunal found that the application was competent and that Ground 1 has been established. It is reasonable for the Tribunal to grant an order in favour of the Applicants. The Applicants are entitled to an Order of for recovery of possession. The decision was unanimous.
123. The Tribunal after some deliberation issued their oral decision to parties on the date of the Hearing.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

22 December 2021

Date