



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 (“the Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/21/2765

Re: Property at Flat 1/2, 20 Walton Street, Glasgow, G41 3LG (“the Property”)

Parties:

Mr Martin Coles and Ms Helen Paspatas, 19 Stewarton Drive, Cambuslang, G72 8DF (“the Applicants”) per their agents Western Lettings Limited, Suite 5, Platinum House, 23, Eagle Street, Glasgow G4 9XA (“the Applicants’ Agents)

Mr Joseph Weldon and Miss Amanda Ajomale, both residing at the Property (“the Respondents”)

Tribunal Members:

Karen Moore (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that, although the Ground for eviction and recovery of possession had been established, it is not reasonable to issue the Order sought and so the Tribunal refused the Application and refused to issue the Order.

Background

1. By application received between 5 November 2021 and 24 November 2021 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that the Applicants as landlord intend to occupy the let property as the landlord’s only or principal home for at least 3 months (“the Ground”). The Application did not comprise a copy of the tenancy agreement between the Parties. The Application comprised copy Notice to Leave in terms of Ground 4 of Schedule 3 to the Act dated 30 July 2021, together with copy email showing that the Notice to Leave was sent to the Respondents on 30 July 2021, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Glasgow City Council, being the relevant local authority, copy email from the Applicants to the Applicants’ Agents dated 29 July 2021 instructing them to serve Notice to Leave and stating that the Applicants need the Property “to live in whilst we undertake renovations to our property” and copy email from the

Applicants to the Applicants' Agents dated 26 October 2021 instructing them to proceed with the Application.

2. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 18 February 2022 at 10.00 by telephone conference call. The outcome of the CMD was that a Hearing was fixed to determine the issues, being the establishment of the Ground and the reasonableness test.

First Hearing

3. The First Hearing took place on 4 April 2022 at 10.00 by telephone conference call. Ms. Paspatas took part and she and Mr. Coles, who did not take part, were represented by Ms. Emily Duff of the Applicants' Agents. The Respondents took part and were not represented. At the outset of the First Hearing and before any evidence was led, it became apparent to the Tribunal that written submissions and productions lodged on behalf of the Applicants had not been provided to the Tribunal. Accordingly, the Tribunal adjourned the First Hearing to 9 May 2022.

4. The written submissions and productions lodged on behalf of the Applicants were provided to the Tribunal and comprised:

- i) written submission in support of the Application;
- ii) medical report in respect of Mr. Coles;
- iii) building warrant for demolition and construction of a garage at 19 Stewarton Drive, Cambuslang dated 12 August 2021;
- iv) Quotation, invoice and receipts for chimney work at 19 Stewarton Drive, Cambuslang dated between 26 April and 9 July 2021;
- v) Estimate for roofing work at 19 Stewarton Drive, Cambuslang dated 10 November 2021 and
- vi) Estimate for stonework at 19 Stewarton Drive, Cambuslang dated 28 April 2016.

5. The Tribunal issued the following Direction: -

- i) The second-named Applicant is directed to provide details of her employment in respect of the type of work carried out and the weekly hours and days worked;
- ii) The Respondents are directed to produce documentary evidence of all enquiries and applications for alternative accommodation made by them to social landlords and private letting agents or landlords and the outcome of such enquiries and applications;
- iii) The Applicants and the Respondents are directed to provide evidence or information in respect of their personal and other circumstances which they wish the Tribunal to consider in reaching a decision that it is reasonable to issue an eviction order in terms of Paragraph 4 2(b) of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 and
- iv) The Tribunal directs the Parties to lodge a list of witnesses, if any, and copies of cases or precedents, if any, to be relied on at the Hearing.

The Parties complied with the Direction.

6. The Applicants lodged further written submissions and productions comprising:
 - i) Further written submission in support of the Application;
 - ii) Letter from Ms. Paspatas' employer confirming employment details.
7. The Respondents lodged written submissions and productions comprising:
 - i) Written submission in support of their opposition to the Application;
 - ii) Email and letter correspondence between the Respondents and the Applicants' agents regarding repairs to the Property;
 - iii) Copy letter from Glasgow Health and Social Care Partnership regarding the Respondents' application as homeless and
 - iv) Timeline of reports of repairs to the Property and the outcomes.

Second Hearing

Applicants' Evidence

8. The Second Hearing took place on 9 May 2022 at 10.00 by telephone conference call. Ms. Paspatas took part. She and Mr. Coles, who did not take part, were represented by Ms. Emily Duff of the Applicants' Agents. The Respondents took part and were not represented.
9. Ms. Paspatas gave evidence that the Applicants had obtained planning permission and building warrants for the construction of a new garage and were in the process of negotiating the contract with a builder but are struggling to provide the builder with a contract start date until they have possession of the Property. She explained that her husband, Mr. Coles, suffers from severe headaches and the noise of work would be intolerable for him. Further, she explained that she works from home and worries that the extent of the building work might cause damage to the utility supplies and prevent her from doing her job which also requires her to maintain confidentiality. She stated that the intention was to have the building work, the roofing work and a new kitchen fitted as a complete job and that it was unbearable not having this work, the kitchen, in particular, not completed. She explained that the work had been planned for some time ahead of the Covid pandemic, which event brought matters to a halt. Since then, her husband's headaches have worsened and she has new employment based on solely working from home. She regularly has online Teams meetings and found the work to the chimney in July last year to be disruptive. When the contractors were working overhead, she either had to reschedule meetings and or ask them to stop working. In respect of a larger building work project, this will cause delays and cost so there is an urgent need to move from their home whilst the work is being done and that the need for the work is urgent.
10. With regard to serving the Notice to Leave, she explained that the extent of the roof works became apparent when the chimney work was being done as water was getting into the neighbouring house and that she had hoped to time the work with the expiry of the Notice to Leave and the Respondents vacating the Property.

11. Mr. Weldon led the cross-examination for the Respondents. He had no questions in respect of the scope of the planned building work at 19 Stewarton Drive, Cambuslang.
12. With regard to home working, and in response to cross-examination, Ms. Paspatas advised that her employer had no office premises, and her contract was home working only.
13. With regard to the time the work was likely to take, Ms. Paspatas agreed that the contractor's estimate stated 8-12 weeks completion time and explained that as other pointing work and the kitchen fitting were to be done, she estimated that the work would take 6 months to complete.
14. With regard to reasonableness, Ms. Paspatas accepted that she had not sought alternative accommodation other than the Property explaining that she had a right to recover possession of it. She stated that she did not believe that the Respondents would be homeless as the Respondents are able to pay a market rent and that she believed that accommodation is available for rent in that market rent price range in the area of the Property. She stated that she had another rental property, that the other tenant had been there longer, that she considered that the Respondents were clearly unhappy living in the Property and so the Property is the better choice in which to reside as the Applicants can attend to any repairs.
15. With regard to the other rental property, Ms. Paspatas agreed with Mr. Weldon that it is the flat immediately above the Property at 2/2, 20 Walton Street ("Flat 2/2") and that it has the same size of accommodation as the Property. She agreed that Flat 2/2 became vacant earlier this year and agreed that she and her husband did not move into it, nor did they offer it to the Respondents for rent. She explained the reasoning behind this was that the Respondents had been reporting problems with the Property and moving into the Property was an opportunity to solve these problems. She confirmed that the decision to live in one of the Applicants' properties was made in July 2021 when both properties were tenanted, one with a tenant who was happy and one with tenants who were not happy and whose problems seemed to be getting worse. On that basis, the choice was made to live in the Property. She explained further that the Applicants had been given short notice by the tenant of Flat 2/2, that the repair issues at the Property had still to be resolved and that there was an expectation that the Respondents were making efforts to move and so the Applicants did not consider moving to Flat 2/2 whilst works were carried out at 19 Stewarton Drive, Cambuslang.
16. With regard to Flat 2/2, Ms. Paspatas agreed with Mr. Weldon that it has been managed by the Applicants' Agents but stated that she could not answer why the Applicants' Agents had not offered a let of Flat 2/2 to the Respondents.
17. With regard to the Respondents being happy at the Property, Ms. Paspatas agreed with Mr. Weldon that she had received a letter from the Respondents on 25 July 2021 reporting repairs and also stating that they were happy living in the Property and the Shawlands area. However, she did not accept that the letter reflected contentment with the Property as it complained of repair issues which had not been resolved and that was why the Property had been chosen to live in by the Applicants.

18. With regard to repairs to the Property, Ms. Paspatas did not agree with Mr. Weldon that the Applicants had refused to carry out repairs. She stated that there had been a misunderstanding regarding repairs to the two separate toilets and that she considered it reasonable to ask the Respondents as householders to carry out minor work such as tightening a loose toilet seat. She stated that she had not realised that two separate repairs had been required. With regard to the leaking shower hose, she stated that the maintenance contractor had quoted £75.00 and, as the Applicants knew that the repair was just a matter of buying a £5.00 item to carry out the repair, it was in order to ask the Respondents to do this. However, when it became apparent that it was a bigger problem, the Applicants were happy to do the work.
19. With regard to not offering Flat 2/2 to the Respondents, Ms. Paspatas stated that she was not aware of any conversations the Respondents might have had with the Applicants' Agents. She stated that she thought that the Respondents would have found another property as there were properties in their price range in Shawlands which is a high-density area with ample properties for rent. She stated that she had looked at other properties for the Respondents and had found suitable ones, although she accepted that she had not made the Respondents aware of her findings. She stated that she believed that the Applicants had acted reasonably as the Respondents were unhappy with the Applicants as landlords and unhappy with Property. She confirmed that the Applicants have an urgent need to possess the Property and maintained that the Property was chosen as the most suitable in July 2021 and that it remains the most suitable.
20. In response to questions from the Tribunal, Ms. Paspatas stated that the Property and Flat 2/2 are in the same location and both have been managed by the Applicants' Agent since 2018.
21. With regard to working from home, Ms. Paspatas explained that, if she was unable to work from home, she would have to take leave, paid or unpaid. She confirmed that a new garden building being a barbeque hut has been delivered and is in place in the garden at 19, Stewarton Drive, Cambuslang.
22. With regard to 19, Stewarton Drive, Cambuslang, Ms. Paspatas agreed that the intention is to return to live there when the building work is complete and so the move to the Property will be, in effect, a temporary one. She agreed that she would have to notify her employer of her change of address and make other arrangements such as redirecting mail.

Respondents' Evidence

23. Mr. Weldon gave evidence on behalf of the Respondents. He submitted that the Respondents had moved into the Property at the end February 2020 and were asked to submit an inventory of repairs required. They did so but did not hear further until last week when a response was received in respect of a separate tribunal case. He submitted that the Respondents are happy at the Property and but have had a lot of

issues on how repairs have been carried out and how contractors have behaved in the Property.

24. He explained that the Respondents were shocked to receive the Notice to Leave as, a few days previously, they had sorted out the issue of the toilet repair. He stated that they took advice from Shelter on the Notice.
25. He submitted that the Respondents had tried to find other accommodation, but the range of properties is limited, rents are around £900.00 to £1,000.00 per month, greater than the £695.00 paid for the Property. Further, properties are taken up quickly with letting agents asking for £300.00 deposit to view properties which is not affordable for the Respondents. He explained that they have applied to Glasgow City Council as homeless and to housing associations for mid-market rental properties but have not been offered anything to date. He stated that the Respondents are still looking for properties but it is difficult with housing associations until there is a date for eviction. He explained that he is from the Shawlands area and that the Respondents wish to remain in that area.
26. With regard to Flat 2/2, Mr. Weldon submitted that, on the day he learned that the tenant was leaving, he contacted the Applicants' Agents to ask if Flat 2/2 was available for rent as that would solve the problem of finding somewhere to live and allow the Applicants to move into the Property. He stated that he was told by the Applicants' Agents that it was not being let. Two months later Flat 2/2 was let, but the Respondents were not given the opportunity to lease it.
27. Mr. Weldon submitted that it sounds to him from the Applicants' evidence that it is the Respondents' fault that they have been given a Notice to Leave based on the reports of the repairs. He submitted that, if the Applicants had moved into Flat 2/2 when it became vacant, they could have had the work done to their house quicker. He maintained that the Applicants' reasoning is based on the multiple repairs rather than moving into the Property specifically.
28. He submitted again that the Respondents are happy in the Property, that receiving the Notice to Leave came as a surprise and that it looked like retaliation as the Applicants' covering letter of instruction to the Applicants' Agents stated that notice should be given after the rent was paid in case the Respondents did not pay. Mr. Weldon submitted that although a low-income family, the rent is always paid on time.
29. Ms. Duff of the Applicants' Agents led the cross-examination for the Applicants. In response to Ms. Duff's question "did the Respondents feel antagonised by the Applicants and feel unsafe in the Property", Mr. Weldon explained that they felt unsafe because of the nature of some repairs such as nails appearing through the floor, the wardrobe coming off its rails and the loose toilet seat which his son fell from and felt antagonised by the Applicants' refusal to do the repairs.
30. With regard to the Applicants' Agents not having a policy to contact tenants in the Respondents' position with alternative accommodation, Mr. Weldon accepted that he had not received a firm assurance in writing from the Applicants' Agents but maintained that

he had been told in a telephone conversation that he would be advised if Flat 2/2 became available for rent.

31. When asked by Ms. Duff if the Respondents could have afforded the market rent of £750.00 per month for Flat 2/2 and if it was reasonable to offer them a property at that rate in light of their tenancy references, Mr. Weldon stated that the rent would have been affordable to the Respondents.
32. In response to Ms. Duff's questions, Mr. Weldon stated that the Respondents had registered with other letting agencies and had viewed properties, some on online. They had also applied for viewings and properties through Gumtree, Rightmove and with housing associations, without success. He explained that Glasgow City Council accepted the Respondents as homeless following the CMD in January but the Respondents had not heard anything further and that Govanhill Housing Association will not accept an application on the basis of homelessness until there is an eviction order. He explained that he understood that Glasgow City Council are not offering temporary accommodation because of Covid restrictions and stated that the Respondents have not been offered any temporary or permanent accommodation
33. In response to questions from the Tribunal, Mr. Weldon stated that, in addition to applying to Glasgow City Council and Govanhill Housing Association for mid-market rental properties, the Respondents have applied to Sanctuary Housing Association. He stated that they have viewed some properties in person and some online but there has been nothing suitable in respect of size and repair condition and that all the suitable properties seem to be taken in a matter of days.

Applicants' Summing -up

34. Ms. Duff of the Applicants' Agents summed-up on behalf of the Applicants. She stated that it was never an easy decision to raise an eviction action but the circumstances in this case are that work is required to the Applicants' own home, the environment they are living in is not suitable as they are surrounded by boxes and cannot continue to work from home with no office space. She submitted that the Property was chosen over Flat 2/2 as the Property is more suitable. She submitted that Flat 2/2 had one settled tenant who reported only two repairs in four years and the Respondents were newer tenants requiring more repairs and who were unhappy that repairs were not being dealt with properly. Therefore, it was more suitable for the Applicants to move into the Property while the work to their own home was carried out. Ms. Duff submitted that Rightmove's guide shows that there are affordable properties in the southside area and that it is achievable for the Respondents to find other accommodation.

Respondents' Summing -up

35. Mr. Weldon summed-up on behalf of the Respondents. He stated that the Respondents are happy living in the Property but have not been happy at how repairs have been dealt with and how reports of repairs have been communicated to the Applicants. He stated that requests to deal directly with the Applicants were refused. He maintained that

private rents in the Shawlands have risen to £900.00 per month. He submitted that he could not see the reason why the Applicants did not move in to Flat 2/2 when it became vacant. He submitted that the Respondents' repairs reports were not relevant to the Application and, considered that, as it was illegal for the Applicants to evict on the basis of the Respondents' complaints on repairs, the Applicants are retaliating by raising the Application.

Findings in Fact.

36. The Tribunal had regard to the Application, all of the written submissions, the documents lodged by both Parties and to the oral submissions and statements made at the CMD and at the Second Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

37. The Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) There is a private rented tenancy of the Property between the Parties;
- iii) The Applicants ordinarily reside at 19 Stewarton Drive, Cambuslang, G72 8DF which is in their ownership;
- iv) The Applicants intend to carry out substantial works to 19 Stewarton Drive, Cambuslang, which, for reasons of health and working from home, require the Applicants to reside elsewhere;
- v) The Applicants own two properties other than 19 Stewarton Drive, Cambuslang, which two properties are the Property and Flat 2/2;
- vi) The Property and Flat 2/2 were both subject to tenancies in July 2021, the tenancy of the Property beginning in February 2020 and that of Flat 2/2 beginning in 2018;
- vii) In July 2021, the Applicants instructed the Applicants' Agents to send a Notice to Leave to the Respondents;
- viii) The Ground for that Notice to Leave was Ground 4 of Schedule 3 to the Act that Applicants as landlord intend to occupy the Property as their only or principal home for at least 3 months;
- ix) The reason for the Applicants' intending to occupy the Property was related to their intention to have works carried out at 19 Stewarton Drive, Cambuslang and the necessity to reside elsewhere during those works;
- x) Work to the chimney of 19 Stewarton Drive, Cambuslang was carried out in early July 2021;
- xi) An estimate for works to the roof of 19 Stewarton Drive, Cambuslang was obtained in November 2021;
- xii) The Applicants had the options to send Notices to Leave in respect of either the Property or Flat 2//2 or to seek other temporary accommodation whilst the work was being carried out at 19 Stewarton Drive, Cambuslang;
- xiii) The Applicants chose to send a Notice to Leave in respect of the Property;
- xiv) The factors on which the Applicants based their choice to send a Notice to Leave in respect of the Property were that the Respondents had been their tenants for a shorter period than that of the tenant of Flat 2/2 and the Respondents had made more reports of repairs than the tenant of Flat 2/2;
- xv) The tenant of Flat 2/2 had reported two repairs during their tenancy and the

- Respondents had raised multiple repair reports for matters relating to the toilets, the flooring, the wardrobe and the blinds;
- xvi) The Applicants refused or delayed carrying out all of the repairs reported by the Respondents and, on occasions, suggested that the Respondents carry out the repairs themselves;
 - xvii) The Respondents are unhappy at the way in which the Applicants, their agents and contractors dealt with the reports of the repairs;
 - xviii) The Respondents sent a letter detailing dissatisfaction with repairs to the Applicants on 25 July 2021;
 - xix) The Notice to Leave was sent to the Respondents on 30 July 2021;
 - xx) The Notice to Leave came into effect on 1 November 2021;
 - xxi) The Respondents failed to remove from the Property on 1 November 2021 as required by the Notice to Leave, having advised the Applicants' Agents of their failure to secure alternative accommodation;
 - xxii) The Applicants instructed the Applicants' Agents to raise the Application without delay and so the Application was raised on 2 November 2021;
 - xxiii) The Respondents have a local connection to the area in which the Property is situated and wish to remain to reside in that area;
 - xxiv) The Respondents have a son aged two years;
 - xxv) The Property is suitable for the Respondents and their son, and they wish to continue to reside in it;
 - xxvi) The Applicants are aware of the Respondents' family situation and of their wish to reside in the south side of Glasgow;
 - xxvii) The tenant of Flat 2/2 vacated that property in January or February 2022;
 - xxviii) In January or February 2022, Flat 2/2 became vacant and available for the Applicants to occupy whilst work is carried out at 19 Stewarton Drive, Cambuslang;
 - xxix) The Applicants chose not to occupy Flat 2/2 whilst work was carried out at 19 Stewarton Drive, Cambuslang;
 - xxx) At the time when Flat 2/2 was vacant and unlet, the Applicants were aware that the Respondents had not secured alternative accommodation;
 - xxxi) The Applicants are not under an obligation to lease Flat 2/2 to the Respondents;
 - xxxii) The Applicants chose not to offer to lease Flat 2/2 to the Respondents;
 - xxxiii) The Respondents would have been happy to accept a lease of Flat 2/2 to allow the Applicants to occupy the Property and attend to the repairs;
 - xxxiv) The Applicants leased Flat 2/2 to a third party;
 - xxxv) Flat 2/2 is no longer vacant and available for the Applicants to occupy whilst work is carried out at 19 Stewarton Drive, Cambuslang.

Issues for Tribunal

38. The issues for the Tribunal are the competence of the Application in terms of the Act, the sufficiency of evidence to establish the Ground narrated in the Notice to Leave and if it is reasonable to issue the Order sought. At the CMD in January 2022, the Tribunal determined that the Application was competent in terms of statutory procedure. Therefore, the issues for the Tribunal at the Second Hearing were (i) has the Ground been established and (ii) is it reasonable to issue the Order sought.

Decision of the Tribunal and reasons for the Decision

39. Ground 4 of Schedule 3 to the Act states:

“4(1)It is an eviction ground that the landlord intends to live in the let property.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a)the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and (b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact..... (4)Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

40. On the evidence before it and on its Findings in Fact, the Tribunal was satisfied that the Ground 4(1) is established.

41. The Tribunal accepted that the work planned for the Applicants' home at 19 Stewarton Drive, Cambuslang is significant. The Tribunal accepted that the nature of the work will make it difficult for the Applicants to continue to live and work satisfactorily whilst the work is ongoing. The Tribunal accepted that the Applicants intend to occupy the Property for the duration of the works and so found Ground 4(1) satisfied.

42. The Tribunal then had regard to Ground 4(2)(a). The Tribunal noted that the Applicants' intend to return to 19 Stewarton Drive, Cambuslang when the building works are complete and so their occupation of the Property would be temporary. The Tribunal considered if this temporary nature of occupancy is compatible with an intention to occupy the Property as the Applicants' "only or principal home" and took the view that it is so compatible. The wording of the Ground requires an occupation of at least 3 months and so it can be argued that there was no intention on the Scottish Government to require a landlord to commit to a permanent change of "only or principal home". With regard to the quality of the evidence, the Tribunal did not have the benefit of a sworn affidavit as suggested by Ground 4(3). The Tribunal had the benefit of Ms. Paspatas' oral evidence that the Applicants intended to remove to the Property and that she intended to notify her employer of her change of address and to make other arrangements such as redirecting mail. This evidence was not challenged by the Respondents and the Tribunal had no reason not to accept it. Therefore, taking the Applicants' evidence at the highest, the Tribunal found that there was a sufficiency of evidence. In this Application, the Tribunal accept that the duration of the Applicants' intended occupation will, on the balance of probabilities, be as their only or principal home for at least 3 months and so the Tribunal found Ground 4(2)(a) satisfied.

43. The Tribunal then had regard, as it was bound to do, to Ground 4(2)(b) and considered if it was reasonable to issue an eviction order on account of the fact of Ground 4(2)(a). In carrying out this determination the Tribunal had regard to the whole circumstances of the Application and the evidence of the Parties. The Tribunal found the Parties' oral evidence to be truthful and there to be little discrepancy between them but found the evidence of the Respondents to be more reliable than that of the Applicants.

44. The Tribunal's task was to weigh up the facts of the Application and the evidence in respect reasonableness. The salient facts for the Tribunal were the way in which the Applicants made their choice that they intended to occupy the Property and the way in which the Applicants maintained this course of action when an opportunity arose to allow them to change their intention and move into another of their properties.
45. The Applicants, in their written submissions, in Ms. Paspatas' oral evidence and in Ms. Duff's summing -up, freely accept that they chose to raise eviction proceedings against the Respondents based on the Respondents' record of reporting repairs. The Tribunal acknowledges that length of tenancy played a part, but, in the view of the Tribunal, the difference in the duration of the Respondents' tenancy and that of the former tenant of Flat 2/2 is not so significant as to carry much weight in that regard. The key difference between the two tenants is that the Respondents made multiple repair requests and the other tenant made only two. The Tribunal took the view that the attitude of the Applicants to the Respondents' reporting of repairs, as evidenced in the correspondence lodged by the Respondents and not challenged by the Applicants, was dismissive and showed a disregard for the Applicants' statutory responsibilities as landlords.
46. The Tribunal found that the Applicants, and Ms. Paspatas, in particular, were aware that the Respondents are a family with a young child and that the Applicants had no regard for the Respondents' personal circumstances when making the decision to evict them from their permanent home. The Tribunal accepted that the Respondents have made attempts to secure alternative accommodation without success and accept, that if evicted, they are likely to be placed in temporary accommodation by the local authority on the basis of statutory homelessness. The Tribunal took the view that the effect of homelessness on the Respondents, through no fault of their own, will be significant and disruptive. The Tribunal did not accept Ms. Paspatas' assertion that the Respondents will not be homeless as they have the means to pay rent.
47. The Tribunal considered that the fact that the Applicants' occupancy of the Property would be a temporary occupancy is relevant in this regard: the impact of an eviction on the Respondents is permanent, whereas the Applicants' need for the Property is akin to a temporary decant for repairs to another home, which they have the full intention of returning to as their main residence. The impact on the Respondents is both greater than that on the Applicants and disproportionate to the needs of the Applicants.
48. Flat 2/2, which offers the same size of accommodation as the Property in the same building, became vacant in early 2022 and offered the Applicants an opportunity to take up temporary occupation but the Applicants chose not to do so, even though they were aware that the Respondents had not secured alternative accommodation. Ms. Paspatas stressed repeatedly the "urgency" of the work to be carried out at 19 Stewarton Drive, Cambuslang. However, the Tribunal found this evidence difficult to reconcile with the Applicants' decision not to move into Flat 2//2 and found that Ms. Paspatas had undermined her own argument by choosing not to move into Flat 2/2 which would have allowed an earlier start to the work at 19 Stewarton Drive, Cambuslang.

49. The Tribunal had regard to the timeline of events in respect of the Application and the work planned for 19 Stewarton Drive, Cambuslang. The Notice to Leave was issued on 30 July 2021, five days after the Respondents' letter notifying of general repair dissatisfaction. The Applicants were aware at the end of October 2021 that the Respondents had not secured alternative accommodation. The Applicants instructed the Applicants' Agents to proceed without delay to raise the Application, even though they did not have the estimate for the roof works at that time. The Tribunal did not accept, as suggested by Ms. Paspatas, that there was an urgency for the work required to 19 Stewarton Drive, Cambuslang, either at the date of the sending of the Notice to Leave or at the date on which the Application was raised. The manner in which the Applicants acted, although strictly correct in respect of the Act, showed no regard for the Respondents' predicament.
50. The Tribunal had regard to all of the information before it and took the view that whilst the Applicants' intended to occupy the Property in terms of Ground 4(1), the underlying motivation of that intention had been influenced more by the Respondents' conduct as tenants and their repeated reporting of repairs than by the work required to 19 Stewarton Drive, Cambuslang. The Tribunal agreed with the Respondents that the underlying reason for the Application is to evict the Respondents on an ostensible premise. For this and the foregoing reasons, the Tribunal was not satisfied that it is reasonable to issue an eviction order.
51. This Decision is unanimous.

Right of Appeal

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

Legal Member: Karen Moore

Date: 09/05/2022