



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”) and Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/24/1579

Re: Property at 4J Milton Wynd, Turnberry, Girvan, KA26 9LG (“the Property”)

Parties:

Mr Anthony Banks, 1 Vernonholme, Riverside Drive, Dundee, DD2 1QJ (“the Applicant”)

Mr Frazer Brown, 4J Milton Wynd, Turnberry, Girvan, KA26 9LG (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. The application submitted on 8 April 2024 sought an eviction order against the Respondent on the grounds of the landlord’s intention to sell (Ground 1), three months’ consecutive rent arrears (Ground 12) and substantial rent arrears (Ground 12A) in terms of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). Supporting documentation was submitted in respect of the application.
- 2 Following initial procedure, and the lodging of further supporting documentation, on 3 July 2024, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance

of Application in terms of Rule 9 of the Regulations. However, the Applicant was notified that, although the application had been accepted, the Tribunal may require to be addressed in further detail on two issues at the Case Management Discussion (“CMD”) stage, namely the validity of the service of the Notice to Leave on the Respondent by email to an email address other than that contained in the tenancy agreement and the validity of the application proceeding on additional grounds to Ground 1 (the only ground specified in the Notice to Leave).

- 3 Notification of the application and details of the CMD fixed for 19 November 2024 was served on the Respondent by way of Sheriff Officer on 15 October 2024. In terms of said notification, the Respondent was requested to lodge any written representations by 1 November 2024.
- 4 On 29 October 2024, the Respondent’s representative emailed the Tribunal confirming that he was instructed to act for the Respondent, attaching a mandate and confirming that detailed written representations would follow. Written representations were subsequently lodged on behalf of the Respondent by email on 6 November 2024. Both emails and attachments were circulated to the Applicant’s representative prior to the CMD.

Case Management Discussion

1. The Case Management Discussion (“CMD”) took place by telephone conference call on 19 November 2024 at 2pm and was attended by the Applicant’s representative, Miss Louise Byars, Director of Ruby Capital, who was acting by virtue of a Power of Attorney by the Applicant in her favour. Also in attendance were the Respondent, Mr Frazer Brown and his representative, Mr David Anderson of Ayr Housing Aid Centre SCIO. The same Legal Member was involved but a different Ordinary Member.
2. After introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained and there was discussion regarding the eviction application and the written representations lodged on behalf of the Respondent. Mr Anderson confirmed that there was no change or update in the Respondent’s position and that it would still be their intention to contest the eviction application and to obtain medical evidence in support of the health issues of the Respondent.
3. Miss Byars expressed sympathy for the Respondent, given his health issues, but explained that an eviction order is still sought. She confirmed that the Applicant intends to sell the Property and that this has been his long-term intention and was the ground stated in the Notice to Leave served in November 2023. She confirmed that the Applicant wished also to proceed on the rent arrears grounds, given that there is a default situation with the rent payments. Although there have been payments coming in from the Respondent’s Universal Credit, these are not sufficient to cover the monthly rent of £555. Miss Byars confirmed that they would be in a position to lodge

an updated rent statement as it had been noted by the Tribunal that the most recent rent statement is the one from April 2024 when the application was lodged, showing arrears of £2,866.26. Ms Byers did not know the current balance of the arrears as she would require to obtain that information from the property management company, but estimated that the arrears may amount to in excess of £10,000 (the Respondent's position was that the level of current arrears was around £4,500). The Legal Member explained that the level of current arrears would be a relevant consideration for the Tribunal in their overall assessment of the reasonableness of granting an eviction order. The Legal Member also referred to the fact that the Notice to Leave did not mention rent arrears grounds, although the Tribunal can exercise discretion to allow an application to proceed on the basis of additional grounds if this is considered appropriate. Mr Anderson confirmed that the Respondent was opposed to the adding of the additional rent arrears grounds. The Legal Member stated that the Tribunal would have to be satisfied that grounds 12 and 12A were met when Notice to Leave was served and that it did not appear that 12A was met at the relevant time, given the requirement for there to be at least the equivalent of 6 months' rent owing. It appeared from the rent statement lodged that arrears on 21 November 2023 only amounted to £1,420. As to ground 12, it was explained that the requirement for there to be three months' consecutive rent arrears at the date notice was served may be satisfied but that the Tribunal would require to be addressed further on this matter on behalf of both parties in due course.

4. As to the intention to sell ground, Miss Byars explained that the Applicant was 63 and had his own health issues. He was currently resident abroad and required to sell the property due to his own circumstances and due to it no longer being financially viable for him to let it out. She explained that, due to the Applicant's circumstances, they required to pay off the mortgage in relation to this Property as the Applicant could not get more mortgage finance due to his age. The mortgage was paid off from another income stream. Miss Byars explained that the Applicant previously let out a number of properties, four on his own and others jointly with his partner. However, the other properties have already been sold and all that remains is this Property and one other property, in Glasgow. The other remaining property is to be sold but they are awaiting cladding works being carried out on it first, which it is expected will be carried out in Spring 2025. Miss Byars confirmed that all of the properties were loss-making and this is why the Applicant was selling up. This Property also has high factoring fees which affect its financial viability. She confirmed that this Property was one of several to be sold and was not selected on its own to be sold. Nor had the rent arrears had any bearing on the decision to sell.
5. Mr Anderson explained that he had not been aware of the full circumstances until now. The Tribunal noted that the Respondent's representations referred to the Applicant being wealthy and having had an interest in several care homes. Miss Byars stated that the Applicant's commercial interest in care homes had been sold and also that she does not see the relevance of this.

6. Another issue raised in the Respondent's written representations regarded the applicable tenancy here. Mr Anderson had stated that the Respondent had resided in the Property since early 2017 and that this should therefore have been a short-assured tenancy, meaning that the Notice to Leave and application itself may be invalid. Miss Byars confirmed that she only had a copy of the Private Residential Tenancy from 2021 and that the eviction application was based on that. She confirmed that the Respondent had resided in the Property before then but had signed up to the further PRT agreement. The Legal Member confirmed that this agreement appeared to have been signed by both parties and Mr Brown confirmed that this was the case and also that he had resided there since February 2017. Mr Anderson stated that he has not come across this situation before and does not understand why the Respondent would have been asked to sign up to a new tenancy agreement. He would wish to know that any previous Short Assured Tenancy had properly been set up as such and had also been validly brought to an end. The Legal Member stated that she did not think that the original tenancy background needed to be explored in detail, where there is a subsequent PRT agreement that has been voluntarily and validly entered into between the parties, as had been accepted by Mr Brown, and on which the application had been based. However, the Legal Member stated that it would be open to Mr Anderson to argue this point further in due course, if he thought that was merited.
7. It was noted that the Respondent's written representations also referred to the Applicant's agents having failed to properly comply with the pre-action protocol in respect of a rent arrears eviction, as set out in the legislation.
8. As to the validity of the service of the Notice to Leave having been made to an email address of the Respondent other than the email address stated in the tenancy agreement, the Tribunal had noted from the supporting documentation lodged on behalf of the Applicant prior to the CMD that this was, in fact, in accordance with the Respondent's own prior request that the alternative email address be used. Accordingly, the Tribunal did not consider it necessary to be further addressed on this point.
9. Given that there were issues in dispute, the Tribunal decided at the CMD to adjourn the application to an Evidential Hearing in order that the Tribunal could be presented with further evidence and submissions in support of the parties' respective positions and to enable the Tribunal to determine the reasonableness or otherwise of granting an eviction order.
10. The Tribunal continued the application to an Evidential Hearing, on 24 February 2025, to take place by telephone conference call. Following the CMD, parties were issued with a CMD Note outlining the discussions at the CMD and a Direction to parties to lodge certain documentation at least 14 days prior to the Evidential Hearing, which was as follows:-

*"1. The **Applicant** and **Respondent** are required to lodge any documentation to substantiate their position in relation to the application, including the*

*grounds for eviction sought to be relied upon by the Applicant (Grounds 1 and 12) and on the issue of the reasonableness (or otherwise) of an eviction order being granted; in particular, the documentation lodged by the **Applicant** should include an up-to-date Rent Statement and any other documentation supporting his wish to recover possession of the Property and the documentation lodged by the **Respondent** should include supporting documentation in respect of his health issues and other vulnerabilities and any other documentation supporting his position that it would be unreasonable for an eviction order to be granted or in respect of any other matters raised in his written representations lodged prior to the CMD which are still being relied upon.*

*2. The **Applicant** and **Respondent** are required to provide a list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing in respect of this application, and to make arrangements for the attendance at the Hearing of any such witnesses.”*

11. The parties were notified of the date of the Evidential Hearing on 16 January 2025.
12. On 20 November 2024 and 21 November 2024, further representations and documentation were received on behalf of the Applicant by email. These included a copy of an AT5, signed by the Respondent in acknowledgement of same of 20 February 2017; a Short Assured Tenancy Agreement between the parties signed on 20 February 2017 and commencing on the same date; Special Conditions of Tenancy from 2017; a further copy of the Private Residential Tenancy between the parties signed on 11 November 2021 and commencing on 20 November 2021; an updated Rent Statement showing a balance of arrears owing as at 19 November 2024 of £4,292.64; a covering communication from the Applicant's property management company to his representative summarising the documents described above in respect of the two tenancies; and further copy emails between those parties dated May, June and September 2024 stated to show the difficulties the property management company were experiencing maintaining the Property and contacting the Respondent, who claimed not to have a telephone, despite having joined the CMD by telephone. This documentation was circulated to the other party and the Tribunal Members at that time.
13. No further representations were lodged on behalf of the Applicant in response to the Tribunal's Direction prior to the CMD.
14. On 18 February 2025, the Respondent's representative emailed the Tribunal with late representations/documentation in respect of the Direction, namely an Inventory of Productions for the Respondent containing extracts from the Respondent's medical records dated 28 November 2024. These representations had been copied to the Applicant's representative by the Respondent's representative on 18 February 2025 but were not circulated to the Tribunal Members until the morning of the Evidential Hearing.

Evidential Hearing

1. The Evidential Hearing took place by telephone conference call on 24 February 2025. In attendance were the Applicant's representative, Miss Louise Byars, Director of Ruby Capital, who was acting by virtue of a Power of Attorney by the Applicant in her favour, the Respondent, Mr Frazer Brown, and his representative, Mr David Anderson of Ayr Housing Aid Centre SCIO. Also in attendance were the Tribunal Members, the Clerk and an observer who did not participate in the proceedings.
2. After introductions and introductory remarks by the Legal Member, Mr Anderson explained the reason for the late documentation having been lodged on behalf of the Respondent was due to a personal issue concerning Mr Anderson and the fact that he is the only person in the office dealing with the matter. It was checked that Miss Byars had been copied the documentation direct from Mr Anderson on 18 February 2025 and that she was not opposed to it being lodged late, which she confirmed. The Tribunal indicated that, on that basis, they would exercise their discretion and allow the late documentation. Mr Anderson confirmed that the eviction application was still opposed by Mr Brown. He indicated that he had been in contact with Miss Byars recently to suggest a resolution to the matter, essentially that Mr Brown would be given more time to vacate the Property until April/May 2025, but that this had not been agreed by the Applicant who wished to obtain an order from the Tribunal.
3. The Tribunal thereafter proceeded to hear evidence and submissions from both parties. Reference was made throughout to the documentary evidence lodged and the Tribunal Members asked questions of Miss Byars, Mr Brown and his representative. Mr Brown was disconnected from the telephone conference call at one point and proceedings were paused and delayed until he was re-connected. The Evidential Hearing resumed and was concluded.

Evidence for Applicant - Miss Louise Byars

4. Miss Louise Byars is a Director of Ruby Capital and was acting for the Applicant in terms of a Power of Attorney dated 19 December 2023. She stated that the Applicant wished to proceed on both grounds 1 and 12 and was asking the Tribunal to exercise their discretion to allow this. The Applicant's position has always been that he wishes to sell due to his ill health. She made reference to the supporting documents which have been lodged on behalf of the Applicant. After Notice to Leave was served on Ground 1, thousands of pounds of rent arrears have accrued. The Applicant's property management company, One Stop Properties, have also had difficulties getting access to the Property to investigate water leaks and she thinks they have been extremely patient with the Respondent. Miss Byars referred to a number of emails having been sent to the Respondent regarding the rent arrears since they began in late summer 2023. She stated that the

arrears amounted to £865 when Notice to Leave was served but that this was nothing to do with the Applicant's wish to sell the Property or with the Notice being served which was due to the Applicant being unwell. However, the rent arrears are now very high and the Applicant is making a huge loss on the Property. Only a proportion of the monthly rent is being paid by the Respondent's Universal Credit amounting to £414.75 against a rent of £555 per month and the arrears are continuing to increase. Miss Byars confirmed that she did not know the exact level of the current arrears, although could get that information from One Stop Properties if necessary. She confirmed, however, that the arrears will still be rising and that she understands the Universal Credit payments mentioned are continuing to be made regularly every month. In addition, a monthly commission is paid to the property management company and there are high factors' fees for this Property which vary from month to month. It is also a long time since the property agents have been inside the Property which is distressing because there was a water leak affecting the Property and the condition of the Property is unknown. Miss Byars stated that the agents previously had a good relationship with the Respondent but communication via telephone stopped when the rent arrears began and communication has since been difficult. Miss Byars notes what the Respondent is saying about his health and having to give up work and understands that his medical evidence is sensitive. However, she notes from it that after the rent arrears started the Respondent had only had one appointment with his GP which he had failed to attend (October 2023) and then one appointment around a year later (October 2024) which was for a stress-related issue. Rent had not been paid fully for some time and Miss Byars stated that this was unfair on the Applicant who is an older person and not in great health either. For a long time, the Applicant's children have been managing things for him and this led to the decision in late 2023 that all properties, including this one, were to be sold. Of the 6 or 7 properties, only this and one other remain. The other property has cladding issues which has held things up but that property will be sold once the cladding works are carried out, which is estimated to be Spring 2025. Miss Byars explained that the Applicant has multiple physical health issues. He is living abroad currently but is looking to return to the UK. He is 63 years old. She confirmed that he was forced to pay off the mortgage over this Property as his mortgage came to an end and he could not get any more mortgage finance. Even so, he is still losing a lot every month because of the outgoings on the Property. Miss Byars confirmed that they have a local agent instructed to act in the sale of the Property. She thinks there will have to be some decoration done to the Property before it is marketed but confirmed that they would be aiming to get it ready and sold as soon as possible and within the three month period mentioned in the legislation.

5. Miss Byars reiterated that One Stop Shop used to have a good relationship with the Respondent. They tried to contact him with reminders about the rent and included in their emails information sign-posting the Respondent to support options which were available to him as required by the Scottish Government, including applying for benefits. When the Respondent stopped paying rent, he had stopped communicating with One Stop Properties and

any contact more recently has been through his representative, Mr Anderson. The Respondent's initial position was that he was not leaving the Property. However, Mr Anderson contacted Miss Byars recently and wanted to reach an agreement for a date for the Respondent to move out in April/May. Her understanding is that Mr Anderson is supporting the Respondent in applying to the local authority for alternative housing and that, although that would be a resolution, the Applicant still wished the Tribunal to grant an eviction order to ensure that the property is recovered for sale. She confirmed that there have been no proposals for ongoing payment of rent or the rent arrears.

6. Miss Byars was asked for some detail regarding the two tenancies with the Respondent and she confirmed her understanding, from the paperwork produced from One Stop Properties, that the Private Residential Tenancy had been in place since 2021 and had superseded the previous Short Assured Tenancy. She considers that the PRT gives more rights to the tenant. Miss Byars confirmed that her company is based in Dundee and that, although they have been involved with the Applicant for a number of years, and have a continuing Power of Attorney, this is a business arrangement and there is no family connection with the Applicant.
7. Mr Anderson was asked if he wished to ask any questions of Miss Byars. He asked about the Short Assured Tenancy and for clarification of the ish date as the tenancy agreement itself referred to a 6 month period, whereas the Special Conditions refer to an 8 month period. He asked for proof that the SAT had been brought to an end. Miss Byars reiterated that it was her understanding from the property management company that the new tenancy applied from 2021. She was asked why the 2021 tenancy had been entered into, to which she responded that she thought it was good practice, after Covid, because the PRT tenancy gave more rights to tenants. She said she did not know about the ish date as it was One Stop Properties who handled it all. Mr Anderson also asked why Miss Byars repeatedly said "we" when referring to decisions regarding the tenancy. She clarified that Mr Banks is the sole Applicant and that she said "we" simply because she was acting for Mr Banks under a Power of Attorney and was managing his affairs.

Evidence of Respondent - Mr Frazer Brown

8. Following a brief adjournment requested by Mr Anderson, he then led Mr Brown through his evidence. Mr Brown confirmed that when he first had this tenancy, he was employed but that he lost his job in summer 2023 due to his health, having been diagnosed with diabetes in 2017. He has a specific type of diabetes, called type 3C which involves him having to inject himself with insulin 3 or 4 times per day. He also has to monitor his blood sugars on a daily basis and this is quite time-consuming. He still has episodes of hypoglycaemia. His condition and treatment meant he could not continue in his employment. Mr Brown confirmed that he is 40 years old and was employed as a support worker, specifically as a caregiver in someone's home. He is currently in receipt of £740 per month in benefits. His Universal Credit

pays just over £400 towards his monthly rent which he confirmed is £555. He confirmed the payments are £375 towards rent and £36.87 towards arrears. He concedes there is a shortfall every month in the rent and that he cannot afford to make any additional top-up payments himself from his benefits income. He confirmed that he has other debts, including Council Tax. He does not know why he was asked to sign the new tenancy agreement in 2021. He just signed it. He confirmed that the rent payable in relation to the original tenancy had been £500 per month and the rent under the PRT was £555.

9. The Respondent was asked to clarify if he was opposing the eviction order being granted, or whether he was agreeable to it being granted but asking the Tribunal for an extension of the usual timescale for the eviction taking place. Mr Anderson confirmed that he has been working with the Housing Options Team at South Ayrshire Council on behalf of the Respondent but that they are essentially 'gate-keeping'. They are saying that once he gets an eviction date, he will be eligible for housing but until then, they will not award him additional points in relation to his housing application. Mr Anderson is taking this up with the local authority but also confirmed that they are well aware of these Tribunal proceedings and have arranged a meeting with the Respondent to discuss the outcome of the Tribunal. Mr Anderson confirmed that an extended eviction date into April/May 2025 was being sought, as this was the time period he had tried to get agreement on with Miss Byars.
10. In response to some further questions from the Tribunal Members, Mr Brown confirmed that he was not in receipt of Adult Disability Payment or due any backdated benefits sums towards the arrears. He also confirmed that there was nothing specifically tying him to this particular Property in respect of his health conditions and treatment for them. Mr Brown denies that he has prevented access to the Property to the property management agents. He confirmed that a plumber did attend his Property at one point to do with investigation of a water leak and he let him in. He confirmed that his gas supply is still cut-off, due to financial difficulties, and that he uses storage heaters for heating the Property.
11. Miss Byars did not wish to ask Mr Brown or Mr Anderson any questions, stating that she thought everything had been covered.

Summing-up

12. Miss Byars stated that due process had been followed in this application. On a personal and financial level, she asked the Tribunal to grant the Applicant the eviction order sought today. She stated that Mr Brown has support from Mr Anderson in relation to his housing situation. She submitted that it is undeniable that the PRT agreement is live and that it gives enhanced protections to the Respondent, than he would have had under the previous SAT. The Applicant requires to sell the Property and should now be allowed to move on with this process. As to the possibility of the Tribunal granting an order but with an extension on the eviction date, Miss Byars stated that a further delay would be disappointing, given the delays already experienced in

this process. The Applicant wishes to recover the Property as quickly as possible for the reasons stated.

13. Mr Anderson stated that, in the circumstances, he would request that any order granted should be extended to the end of May 2025 as a minimum. However, he reiterated his objection to the rent arrears eviction ground being added. He also submitted that it had not been shown by the Applicant that the pre-action protocol for a rent arrears eviction had been followed. He is also still of the view that the SAT had not been properly ended and that this is an important point because, if this is still a SAT, then the Notice to Leave and the Tribunal process which has followed is incompetent.
14. At the end of the Evidential Hearing, the Tribunal Members conferred briefly and confirmed that they would deliberate on the evidence led and the submissions made, determine the application and thereafter issue their detailed decision in writing. Parties were thanked for their attendance and the hearing concluded.

Findings in Fact

1. The Applicant is the owner and the landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 20 November 2021.
3. The Respondent has occupied the Property since 20 February 2017, by virtue of a previous Short Assured Tenancy.
4. The Short Assured Tenancy was superseded by the creation of the Private Residential Tenancy on 20 November 2021 and no longer subsists.
5. A Notice to Leave in proper form and giving the requisite period of notice was emailed to the Respondent on 21 November 2023.
6. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 16 February 2024.
7. The Tribunal Application was submitted on 8 April 2024.
8. The Respondent remains in occupation of the Property.
9. The Applicant intends to sell, or market the Property for sale within three months of recovering vacant possession.

10. The Applicant is 63 years old, has health issues, is resident abroad and wishes to sell the Property as it is no longer financially viable for him to let it out.
11. The Applicant no longer wishes, or is unable due to health issues, to be a landlord and has already divested himself of other let properties.
12. The rent due in respect of the tenancy is currently £555 per calendar month.
13. From in or around August 2023, rent arrears began to accrue on the rent account, with monthly payments being missed altogether until in or around February 2024, when partial payments towards the monthly rent started to be made.
14. The partial payments initially amounted to £350 per calendar month towards rent and £36.87 towards the arrears, which increased to £375 towards rent and £39.75 towards arrears from in or around June 2024.
15. The rent arrears began to arise as a consequence of the Respondent losing his employment during the summer of 2023.
16. The partial payments towards rent and arrears are paid by the Respondent's Universal Credit.
17. The Respondent is 40 years old, unemployed and is reliant on state benefits.
18. The rent arrears amounted to £4,292.64 as at 19 November 2024 and are continuing to increase every month due to the ongoing shortfall in the rental payments being received.
19. The Respondent has been called upon to make payment or enter into a payment arrangement in respect of the rent arrears but has failed to do so.
20. The Respondent does not have the financial means to enable him to pay additional sums towards the rent and arrears.
21. The Respondent has diabetes and requires to regularly inject with insulin on a daily basis and to monitor his blood sugar levels.
22. The Respondent has had one GP appointment on 31 October 2024 in relation to a 'stress-related problem', stated in his medical records to include stress linked to the eviction proceedings, affecting his ability to sleep.
23. The Respondent lives at the Property alone.
24. The Respondent has made application to the local authority for social housing but has not been allocated a property as yet.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and initial supporting documentation, the written submissions lodged on behalf of the Respondent prior to the CMD, the further representations and documentary evidence produced in response to the Direction by the Applicant and Respondent in advance of the Evidential Hearing and the oral evidence given and submissions made at the Evidential Hearing.
2. The Tribunal first considered the competency point raised by Mr Anderson in respect of the applicable tenancy here. His argument was that the Respondent had been occupying the Property in terms of a Short Assured Tenancy which had commenced on 20 February 2017 and that this tenancy had not been formally ended and was therefore still subsisting. If that was the case, then the Notice to Leave was flawed and the following process under the 2016 Act was incompetent. It was conceded by and on behalf of the Respondent that he had voluntarily entered into a subsequent Private Residential Tenancy, commencing on 20 November 2021. He stated that he did not know why he was asked to sign a new tenancy agreement and does not appear to have questioned it at the time. Miss Byars was not involved in the creation of the new tenancy but has obtained information from the Applicant's property management agents who dealt with the matter. The Applicant's position is that the PRS superseded the SAT and that it was good practice to switch tenants on SATs to PRTs, following the strengthening of tenants' rights during the Covid pandemic, given that the PRT gives tenants more rights, including in relation to security of tenure. The Tribunal also noted that the rental in terms of the SAT had been £500 per calendar month, whereas there was an increased rent due in terms of the PRT of £555 per calendar month.
3. The Tribunal considered the terms of the relevant legislation in this regard, namely the 2016 Act and the Housing (Scotland) Act 1988, as amended ("the 1988 Act"). In general terms, it is the position that any new contractual tenancy entered into after 1 December 2017, when the 2016 Act commenced, would be a PRT and that an eviction action under Section 33 of the 1988 Act would therefore be incompetent. Reference is made to Schedule 5 (*Transition from regimes under earlier enactments*), Part 1 (*No new assured tenancies*) and Part 2 (*Conversion of tenancies under previous regimes*) of the 2016 Act, particularly paragraph 3 of Part 2 which is as follows:-

"Change of tenancy status by agreement

3(1)The Housing (Scotland) Act 1988 is amended as follows.

(2)After section 12(2) there is inserted—

"(3)Subsection (1) is subject to section 46A."

(3)After section 46 there is inserted—

"Phasing out of assured tenancies

46A Change to private residential tenancy by agreement

(1) The landlord and the tenant under an assured tenancy may agree that on a day specified by them, the tenancy will cease to be an assured tenancy.

(2) On the day specified by the landlord and the tenant under subsection (1), the tenancy—

(a) ceases to be an assured tenancy, and

(b) becomes a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

(3) But an agreement under subsection (1) is of no effect if, for a reason other than the tenancy being an assured tenancy, it is one which schedule 1 of the 2016 Act states cannot be a private residential tenancy.”

However, in respect of short assured tenancies, a saving provision was also introduced as at 1 December 2017 in terms of Regulation 6 of The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Savings Provision and Revocation) Regulations 2017 to counter the changes made to the terms of Section 32 of the 1988 Act by the 2016 Act, as there was concern that these changes would prevent an existing short assured tenancy continuing by tacit relocation or express agreement between the parties after 1 December 2017. The terms of the saving provision is as follows:-

“Saving provision

6. *Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—*

(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;

(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and

(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the ish of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).”

Having had regard to the terms of both the SAT and the PRT produced, the Tribunal is not satisfied that the terms of the above saving provision are met in this particular case. Although both parties (landlord and tenant) and subject premises are the same, the Tribunal is not satisfied that the PRT had “come into being” at the ish date of the SAT. The commencement date of the PRT was 20 November 2021 but this was not an ish date in terms of the SAT. The initial tenancy term stated in the PRT was 6 months from 20 February 2017 until 20 August 2017, so the first ish date was 20 August 2017 and six-monthly thereafter on the twentieth of the month. There was no provision for the tenancy to renew monthly following the first ish date, so the tribunal considered that the only ish dates were 20 February and 20 August each

year. Accordingly, the Tribunal determined that the 2021 tenancy was a new PRT rather than a new SAT. The Tribunal also determined that the previous SAT was not continuing as tacit relocation could not operate where the parties had expressly agreed to enter into a new PRT. In terms of the provisions of the 2016 Act above, the tenancy was therefore 'converted' or superseded by the PRT and this did not, in the Tribunal's view, require the serving of the formal notices which are otherwise required in terms of the 1988 Act to end the contractual SAT. The Tribunal accordingly determined that the tenancy was a PRT and that the competent procedure to terminate same was under the 2016 Act.

4. The Tribunal next considered the other preliminary issue as to whether or not they were prepared to exercise their discretion in terms of the legislation to allow the Applicant to add Ground 12 as an additional ground for eviction, although it had not been specified in the Notice to Leave, which had only specified Ground 1. The relevant provisions in the legislation are Sections 52 (4) and (5) of the 2016 Act which are shown below:-

"52 Applications for eviction orders and consideration of them

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought."

The Tribunal considered the position of both parties in respect of this particular matter. The Respondent was opposed to the addition of the additional ground. Miss Byars had explained the reason Ground 12 had not been included which was essentially that the reason for the decision of the Applicant to seek recovery of the Property was that he wished to sell and that the existence of rent arrears was not relevant to that decision at the time the Notice to Leave was served. Although the rent had been in arrears for at least three consecutive months when notice was served, the arrears at that time were not particularly high. The Tribunal understood the Applicant's position

that, as the rent arrears had increased, they had become a much more significant factor in the application but, on balance, the Tribunal determined that it was not reasonable to exercise their discretion in this regard to allow the addition of Ground 12. The Tribunal considered that Ground 12 could validly have been included in the Notice to Leave at the relevant time and that this would also have put an additional burden on the Applicant to demonstrate that they had complied with the pre-action protocol applying in evictions based on rent arrears grounds. Accordingly, the Tribunal proceeded to determine the application only on the basis of Ground 1.

5. The Tribunal found that the application was in order, that a Notice to Leave in proper form, specifying eviction Ground 1, and giving the requisite period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
6. The Tribunal found Miss Byars to have presented the evidence from the Applicant in a straightforward and detailed manner and to have answered questions posed to her by Mr Anderson and the Tribunal Members. The Tribunal found her to be credible and reliable and the Applicant's case to be fully supported by the documentary evidence lodged on his behalf. The Tribunal accepted that the Applicant had a genuine intention to sell the Property as soon as possible and that this was for the reasons stated. The Tribunal was satisfied that the Applicant is no longer able to manage his affairs himself, hence Miss Byars acting for him in terms of a Power of Attorney. The Tribunal was also satisfied that this is one of several properties that the Applicant originally let out and that steps have already been taken to recover and sell all of these properties, with only this and one other property remaining. Evidence had been produced showing that the Power of Attorney had been entered into appointing Miss Byars to act for the Applicant on 19 December 2023 and that there was a selling agreement already in place with Bruach Property dated 6 June 2024. The Tribunal was satisfied from the submissions by Miss Byars in this regard that the intention is that the Property will be sold as soon as possible as the Applicant wishes to avoid any further delays in what has already been a fairly long process,
7. The Tribunal considered the terms of eviction Ground 1 of Schedule 3 to the 2016 Act, as amended) which are as follows:-

“Landlord intends to sell

1(1)It is an eviction ground that the landlord intends to sell the let property.

(2)The First-tier Tribunal may find that the ground named by subparagraph (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.”

The Tribunal was satisfied that all elements of Ground 1 above were met in respect of this application.

8. The Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal considered that the background personal and financial circumstances affecting the Applicant explained and justified his wish to recover possession of the Property and to thereafter sell it. The Tribunal was satisfied that the Applicant's agents had dealt with the Respondent in a reasonable manner and tried to communicate with him and urge him to obtain the necessary support in order to resolve the rent arrears situation, and also in respect of the Applicant's wish to terminate the tenancy and his reasons for wishing to do so. Although, as explained above, the Tribunal decided not to allow the rent arrears ground to be added as a ground of eviction, the Tribunal did consider the rent arrears to be a significant factor weighing in favour of the Applicant in respect of reasonableness in this application. The rent arrears have accrued over a lengthy period and now amount to over £4,000. The rent arrears are continuing to accrue. The Tribunal was satisfied that this was having a detrimental impact on the finances of the Applicant, both given the high level of arrears and the ongoing shortfall in rent every month which, when combined with the other ongoing monthly expenditure incurred by the Applicant in respect of the Property, made it unviable for the tenancy to continue. The Tribunal noted the position of the Applicant in respect of alleged failings of the Respondent to allow access to the Property. The Tribunal considered the evidence produced by the Applicant in this regard, namely email communications from the Applicant's agents. The Tribunal considered that, although this supported the existence of a previous water leak emanating from or affecting the Property and the fact that the agents were experiencing difficulties communicating with the Respondent after rent arrears had started to accrue, it was not sufficient evidence that access had been refused by the Respondent, which he himself denied.
9. The Tribunal also found the Respondent to have given his evidence, although fairly brief, in a credible and straightforward manner and to have answered the questions put to him by the Tribunal Members. The Respondent had explained his health issues; his loss of employment as a consequence of his health and the impact on his ability to pay rent; and his current personal and financial circumstances. The Respondent did not appear to take issue with the Applicant's ground for eviction or the stated reasons for that at the Evidential Hearing and accepted the arrears history and amount of arrears shown in the updated Rent Statement and claimed by the Applicant. He was quite candid in

his evidence in terms of the shortfall in payments towards his rent every month and also that he had no proposals to address this situation by way of making additional payments himself, nor any ongoing claims for additional/backdated benefits, nor any expected changes in his current personal or employment circumstances. The Tribunal was satisfied that, in these circumstances, this tenancy was unsustainable on an ongoing basis and that it was therefore reasonable to grant an eviction order to the Applicant to bring the tenancy to an end. The Tribunal was satisfied, as explained above, that the Respondent had stopped communicating for a period with the Applicant's agents. However, given the facts that prior to his loss of employment and default in respect of rent payments, relations had been fine and that he had ultimately sought advice and support from Mr Anderson, the Tribunal did not consider this matter to be a significant factor in respect of reasonableness.

10. Although Mr Anderson had maintained his position in respect of the preliminary/technical aspects of the eviction dealt with in paragraphs 2 and 3 of the Reasons for Decision above, the Tribunal noted that the Respondent did not appear to be strenuously opposing the eviction. Mr Anderson conceded this and had confirmed that the settlement proposal that he had made to Miss Byars recently on behalf of the Respondent was that the Respondent would vacate the Property but was looking for an extended period of time to allow him to secure alternative housing through the local authority. Mr Anderson stated that he was continuing to support the Respondent in relation to his housing application with the local authority and it was noted by the Tribunal that the local authority are aware of the Tribunal proceedings and appeared to have advised the Respondent that his housing application will be given more priority if an eviction order is granted by the Tribunal.
11. The Tribunal considered the matter of an extension, together with parties' comments in this regard. While the Tribunal understood the Applicant's position in not wishing any extension on the normal timescales for eviction or further delays, it decided, notwithstanding the time this application has taken and the Applicant's circumstances, that it was appropriate to exercise its discretion and extend the usual timescale for eviction by a period of one month, due to the Respondent's health conditions. The date to be stated in the Eviction Order as the earliest date on which eviction can take place will therefore be 27 April 2025, given the appeal period of 30 days plus the further one-month extension. The Tribunal considered that this provided both parties with a definite eviction date to work towards, as well as a slightly longer period for alternative social housing to be secured by the Respondent, with the continuing support of Mr Anderson. In the event that the Respondent secures alternative accommodation earlier, it is hoped by the Tribunal that the Respondent will vacate the Property earlier and that there will be ongoing communication between parties in this regard.
12. The Tribunal, having carefully considered the matter and having weighed all of the factors referred to above, determined that an order for recovery of

possession of the Property should be granted on the basis of Ground 1, subject to an extension of one month on the eviction date.

13. The Tribunal's decision in these matters was 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.

Nicola Weir

Legal Member/Chair

Date 24 February 2025