



**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/22/2915**

**Re: Property at 9 Hillview Place, Dollar, Clackmannanshire, FK14 7JG (“the Property”)**

**Parties:**

**Mrs Virginie Turner, Mr Iain Turner, Apartment 9B, Sriratana Mansion 1, Sukhumvit Road, Bangkok, 10110, Thailand; 7 Rosemarkie Place, Inverkip, Greenock, PA16 0HR (“the Applicants”)**

**Miss Caroline Manson, Mr David Downie, 9 Hillview Place, Dollar, Clackmannanshire, FK14 7JG (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicants were entitled to an order for the eviction of the Respondents from the property with enforcement of the order postponed until 14 July 2023**

**Background**

1. By application dated 16 August 2022 the Applicant’s representatives, Bannatyne Kirkwood France & Co, Solicitors, Glasgow, applied to the Tribunal for an order for the eviction of the Respondents from the property under Ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant’s representatives submitted a copy of the tenancy agreement, Notice to Leave with proof of service, Section 11 Notice and email, Letter of Authority and an estate agency agreement in support of the application.

2. By Notice of Acceptance dated 13 October 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 2 November 2022.
4. The Respondents’ representative Mr Stephen Wishart from Shelter, by email dated 28 November 2022 submitted written representations to the Tribunal.
5. A CMD was held by teleconference on 7 December 2022. Having heard submissions on behalf of the parties the Tribunal adjourned the application to a hearing.
6. By emails dated 8 and 10 March the Respondents representative submitted further written representations to the Tribunal.

### **The Hearing**

7. A hearing was held by teleconference on 14 March 2023. Both parties attended in person. The Applicants were represented by Mr John Jarvie from the Applicants’ representatives. The Respondents were represented by Mr Stephen Wishart from Shelter.
8. The Tribunal ascertained by way of a preliminary matter that the Respondents did not take issue with the service of the Notice to Leave and that the issue for the Tribunal to consider was restricted to that of reasonableness. The Tribunal also confirmed with Mr Jarvie that the Applicants did not have any objection to the Respondents written representations being received late.

### **Evidence of Mr Ian Turner**

9. Mr Turner said that he and his wife had previously lived in the property but had moved with his work to Thailand 13 years ago and as they could not purchase a property in Thailand had kept the house in Dollar. He explained that his wife was French and that it had been their plan to spend the latter part of their lives in France and to retire there. He said that they had two children, a daughter who was graduating this year from Manchester University and a son who was finishing High School this year and intending to commence university in the Netherlands in September.
10. Mr Turner said that his employment in Thailand would end at the end of June and he and his family would leave Thailand on 1 July 2023. He said it was his intention for the family to be permanently established in France. He explained that it had been his intention to purchase a property there last summer but

had been unable to proceed due to the Respondents not moving out of the property. He said he had been unable to make any detailed plans and could not do so until he had obtained possession of the property. He went on to say that because of the delay his daughter had nowhere to live on leaving university and that it may take up to a year to purchase a property in France. He said he would be packing up the family's belongings in Thailand in the middle of June and these would then have to be sent into storage for up to a year.

11. Mr Turner said that although he had his parents' house to stay in when back in the UK, he could not offer that to his children and was having to have his daughter stay with other family members as would his son until he went to university.
12. Mr Turner confirmed that he did not own any other rental properties in the UK. He said he was reliant on obtaining the sale proceeds of the property to fund the purchase of a property in France and that he did not have sufficient funds to purchase another property without the sale proceeds. He explained that as he worked abroad it would not be easy to obtain a mortgage and would have to be a cash buyer.
13. Mr Turner agreed that the rental income had provided him with a profit and that this had been used to pay for his daughter's rent while she had been at university. He said the rent charged had been not particularly high as he had wanted to ensure the property was occupied and looked after. He confirmed it had always been his intention to return to Europe once his son completed high school.
14. Mr Turner advised that as the Respondents had not moved out of the property he would incur additional costs including the storage of belongings, the costs of the tribunal process and the additional costs of purchasing property in France due to the fall in the value of the pound against the euro. He said he might also have to rent a larger property in Zurich if he could not sell the property.
15. Mr Turner said that not being in control of the sale of the property had been stressful. He said he thought he had started planning the sale well in advance but not being in control of the process had affected both himself and his wife.
16. Mr Turner confirmed that following service of an earlier Notice to Leave there had been discussions through his letting agents with the Respondents who had wished to purchase the property but that this had fallen through in January 2022 and a further Notice to Leave had been served.

### **Evidence of Mrs Virginie Turner**

17. Mrs Turner said that it was her intention once she left Thailand to live with her father in France for two months but that she was then hoping to find a job in Switzerland and live there with her husband. She said that if she could not find a job in Switzerland that she thought she would be able to find one near her father in France.
18. Mrs Turner said that she had found the delay in selling the property frustrating and that she had never expected to have to go to court. She said that she had left her country 25 years ago and now wanted to return. She said that in that time she had lost her mum and that it was now important to her to go back to be close to her dad.

### **Cross-examination of Mr & Mrs Turner**

19. In response to a question from Mr Wishart, Mr Turner confirmed that as part of his pension plan, he owned three one-bedroom apartments in France that were let out. He denied that these could be sold to purchase another property in France as the property in Dollar was worth much more.
20. Mr Taylor confirmed that the move to Zurich had first been considered about four years ago and more detailed plans formed about two years ago. He went on to say that the move from Thailand had coincided with his son leaving high school and the plan had been that he would have had a home in France for the summer before starting university in September. He would have a home to come to during the university summer holidays.
21. In response to a further question from Mr Wishart, Mr Turner confirmed that he was aware of the limitations on him as a landlord in obtaining possession of the property. He also explained that he was a third-year law undergraduate.
22. Mr Turner confirmed it had never been his intention to move back into the property but only to carry out some work on it and sell it. He confirmed that the Respondents had maintained the rental payments on the property.
23. Mr Turner said that it was his intention to work in Zurich for between three and five years. He was unable to say what his intentions would be after that. He said in the short term he had arranged to rent a one-bedroom apartment. He hoped his wife would live with him there if she could find a job but it was possible that she would remain in France. He said it would also be possible for him to work from home in France for up to three months a year.

## **Evidence of Miss Caroline Manson**

24. Miss Manson confirmed she moved into the property on 19 March 2020. She said she had wanted a property that was close to her daughter's school, Dollar Academy and the property was only five minutes away. Miss Manson explained that she did not work as she was her partner, Mr Downie's full time carer. She explained that Mr Downie was bi-polar and his health was up and down. She said that they had been going through a legal battle against the NHS for the past 8 years which had been extremely frustrating and stressful.
25. Mr Wishart referred the Tribunal to the letter submitted from the Respondents' solicitors confirming the ongoing court case and Miss Manson confirmed that it had been hoped that the Respondents would have been in a position to purchase the property from the Applicants last year but that this had not been possible due to circumstances outwith their control. She said it never been the Respondents intention to mislead the Applicants.
26. Miss Manson referred the Tribunal to the various medical letters that had been submitted and explained that the application had exacerbated Mr Downie's mental health as he had been extremely stressed. She said that his moods can change very rapidly and it affects his sleep pattern and can put him into a depression not knowing if he is going to have a roof over his head.
27. Miss Manson spoke of the difficulties she had experienced trying to find alternative accommodation as a lot of landlords did not entertain tenants who were not working or who had pets. She said that demand for rental property was very high and that made it more difficult for her to find a suitable property.
28. Miss Manson said that she was scared as to what would happen if the order for eviction was granted given that she had a young child, a pet, and a partner with mental health issues. She said that the family did not have savings to fall back on they just had a certain amount of money each month and when it was gone it was gone. She thought the effect of being made homeless would be catastrophic. She said that it would have a significant impact upon her daughter who should never have to see their father having a meltdown. She went on to say that there were insufficient houses in the area but that she continued to look every day and as soon as she saw a house, she applied to view it.
29. Miss Manson said that the court case with the NHS was due to conclude in about November this year but that it may reach an out of court settlement as early as May. She said they would still like to buy the property but if they could not, they would still have funds to buy another property. She said they would be happy to be sitting tenants if the property was sold to another landlord.

### **Evidence of David Downie**

30. Mr Downie explained that he had found the application to be very upsetting and that as a father his main priority was his daughter's safety. He said he wanted a home for her that was as close as possible to her school. He said that the application was affecting his sleep and that it could be a trigger for his bi-polar disorder and he was concerned that he might end up in hospital.
31. Mr Downie did suggest that the Respondents could remain in the property and pay rent while the Applicants carried out any necessary repairs to the property in preparation for putting it on the market.

### **Cross-examination of the Respondents**

32. Mr Jarvie queried if Dollar Academy was fee paying and Miss Manson confirmed it was. She explained the fees were paid for by her parents. She said her parents also provided some other support such as paying for repairs to her car.. She said that all the rest of the family income came from the DWP by way of PIP, Carers Allowance and Child Allowance, She said that the rent was wholly paid from benefits.
33. Miss Manson said she had been looking to find another place to live since the purchase of the property had broken down which was now well over a year. She said they had been looking well outside the Dollar area but it was proving very difficult. She said she had registered with a number of different letting agents.
34. Mr Downie explained that the number of 46 families looking for a property in Dollar had been given to him by someone at the local golf club who had been told this by a local letting agent.
35. Mr Jarvie referred Miss Manson to two properties that had been or were on the market and asked her if she was aware of them. Miss Manson said that she had not seen them and later said that one of them did not allow pets. She also said that frequently the letting agents have people lined up for a property before it goes on the market. Miss Manson said that she would not be prepared to get rid of her dog which had been a present for her daughter. She confirmed that they had widened their search area to include Stirling and Falkirk as well as Kinross and Milnathort.

### **Submissions on behalf of the parties**

36. Mr Jarvie submitted that the Applicants ought to be granted an order under Section 51 of the 2016 act. He said the Applicants intended to sell the

property and were being put in a precarious position as they needed to sell the property in order to finance the purchase of another property in France. He submitted that the Respondents had not shown that it would be unreasonable to sell the property. He also said that selling the property with a sitting tenant was not a viable option as that could reduce the value by up to 50%.

37. For the Respondents Mr Wishart referred the Tribunal to his written submissions and suggested that the Tribunal had to carry out a balancing act weighing up what was reasonable and not reasonable at the current time. He said that the Tribunal had to consider the impact of losing their home would have on the health of the Respondent and the effect on the Respondents' child. He suggested that there was no real urgency with regards to the Applicants case given their current circumstances.

### **Findings in Fact**

38. The parties entered into a Private Residential Tenancy that commenced on 19 March 2020 at a rent of £895.00 per calendar month.

39. The Applicants wish to sell the property and use the funds to purchase a family home in Southwest France.

40. The parties entered into negotiations for the Respondents to purchase the property in the latter part of 2021 but these did not proceed as the respondents will only have funds on the successful outcome of a court action by Mr Downie against the NHS.

41. A Notice to Leave was served on the Respondents on 24 January 2022

42. A Section 11 Notice was sent to Clackmannanshire Council at the commencement of these proceedings.

43. The Applicants will leave Thailand by 1 July 2023

44. Mr. Turner will be working in Zurich for the next three to five years.

45. Mrs Turner may also be working there but may work in France if unable to find work in Switzerland.

46. The Applicants' long-term aim is to live in France close to Mrs Turner's father.

47. The Applicants' daughter graduates this year from Manchester University. Her future career path is unknown.

48. The Applicants' son is expected to commence university in the Netherlands in September 2022.
49. Some work requires to be carried out at the property before it is marketed for sale.
50. Clyde Property have been instructed to proceed with the marketing of the property once vacant possession has been obtained.

### **Reasons for Decision**

51. The Tribunal was satisfied from the documents submitted and it was a matter of agreement between the parties that they entered into a Private Residential Tenancy that commenced on 19 March 2020 at a rent of £895.00 per calendar month. It was also a matter of agreement that the Respondents were properly served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act and that the local authority were given notice of the proceedings by virtue of a Section 11 Notice. Therefore were it not for the terms of the Coronavirus (Scotland) Act 2020 and the Coronavirus Recovery and Reform (Scotland) Act 2022 the Tribunal would have been obliged to have granted the order sought as it was previously a mandatory ground for eviction. However that is no longer the case and the Tribunal must now consider whether it is reasonable in all the circumstances to grant the order sought. In so doing it is well settled that the Tribunal must consider the whole of the circumstances in which the application is made. It has also been said that a judge or in this case a Tribunal should "give such weight as he thinks right to the various factors in that situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account" (Lord Greene in *Cumming v Dawson* [1942] 2 All ER 653 at 655). Therefore that is what the Tribunal has done on this occasion, it has taken account of what has been said on behalf of both parties and given what it considers is appropriate weight to each set of facts and circumstances in order to reach a determination.
52. The Tribunal considers that it is reasonable that Mrs Turner who is French should wish to return in her later years to live closer to her no doubt ageing father particularly following the death of her mother. It is also not entirely unreasonable that the Applicants should wish to be able to provide some form of family home for their children even although their son is approaching adulthood and their daughter is now an adult. On the other hand, it does appear that neither of the Applicants may be living in the French property for much of the time if Mrs Turner is successful in obtaining a job in Zurich and it could be said that the French property is more for their long-term future than current needs. Nevertheless it does seem that it would be the Applicants' intention to make it their principal home where their son and daughter can also stay as and when they want.



53. The Tribunal acknowledges that Mr Downie has significant mental health issues that may well be exacerbated by stressful situations and appropriate weight requires to be given to that but there also needs to be a recognition that this would not be determinative but just part of the balancing exercise that the Tribunal has to carry out. The Tribunal also accepts that it may well be more difficult for the Respondents to find landlords who are willing to accept them as tenants given they are in receipt of benefits and have a dog. However good references and payment of an increased deposit do sometimes persuade landlords to accept tenants such as the Respondents in these situations.
54. The Tribunal also acknowledges that the Respondents' daughter is settled at her school and that it would be important to her to remain there if at all possible.
55. The Tribunal noted that even if the order was granted without delay the Applicants would not be able to complete the purchase of a property in France until next year. There would therefore be an issue this year for the Applicants' family and where they would stay over the summer. The Tribunal also noted that the Respondents would be content for some work to be done at the property in preparation for its sale while they remained in it and continued to pay rent.
56. The Tribunal is unable to say whether or not the Respondents court case will settle in May or indeed at any time before the proof assigned for November 2023. It is true that most cases settle before proof but that cannot be guaranteed. Nor indeed can the final outcome of the Respondents action be known. Nevertheless, it is possible that a settlement might be reached in a few months' time. If that were to be the case it would certainly relieve a significant amount of pressure on the Respondents.
57. Having carefully weighed up all the competing factors the Tribunal is satisfied that it is reasonable to grant the order sought. However, in all the circumstances it seems to the Tribunal that given the difficulty that the Respondents have encountered in finding suitable alternative accommodation and given that there may be some prospect of their court case settling within the next few months any order for eviction should be postponed for a period of four months. Although this may not be the decision the Applicants were hoping for it will at least give them a definite date that they can work to and at the same time give the Respondents sufficient time to find a property that will meet their needs.

## **Decision**

58. The Tribunal having carefully considered the evidence before it finds the Applicants entitled to an order for the Eviction of the Respondents from the property under Ground 1 of Schedule 3 of the 2016 Act but subject to the enforcement of the order being postponed until 14 July 2023

## **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.**

Graham Harding

**Graham Harding  
Legal Member/Chair**

**14 March 2023  
Date**