



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/22/1553**

**Re: Property at 143D Brownside Road, Cambuslang, Glasgow, G72 8AH (“the  
Property”)**

**Parties:**

**Ms Josephine (also known as Marie Josephine) Main (also known as Lynas), 15  
Abbey Park Place, Dunfermline, KY12 7PT (“the Applicant”)**

**Ms Theresa Craig, 143D Brownside Road, Cambuslang, Glasgow, G72 8AH  
 (“the Respondent”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an eviction order should be granted under Ground 1  
of Schedule 5 to the Housing (Scotland) Act 1988.**

**FINDINGS IN FACT**

1. The Applicant is the landlord, and the Respondent the tenant, of the Property under and in terms of an Assured Tenancy Agreement.
2. Prior to commencement of the tenancy, the Applicant gave notice to the Respondent that the Property was formerly her only or principal home and that recovery of possession may be sought in the future under Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988.
3. By Notice in Form AT6 dated 27 January 2022, the Applicant gave notice to the Respondent that she was seeking possession of the Property under Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 and that proceedings would not be raised before 1 May 2022.

4. By Notice to Quit dated 27 January 2022, the Applicant gave notice to the Respondent that the tenancy would terminate on 1 May 2022.
5. The Respondent did not remove from the Property prior to 1 May 2022.
6. The Applicant is in the process of divorcing her estranged husband.
7. The Applicant's youngest son is fourteen years old and has complex support needs.
8. The Applicant's current home is to be sold and the proceeds thereof divided between her and her husband, subject to the outcome of the divorce proceedings.
9. The Applicant intends to live in the Property.
10. The Applicant is motivated, in part, by a desire to reduce her living expenses.
11. The Applicant is motivated, in part, by a desire to live closer to her place of work.
12. The Applicant is motivated, in part, by a desire to be closer to her youngest son during the working day due to his complex support needs.
13. The Applicant is motivated, in part, by a desire to be closer to her father.
14. The Applicant is motivated, in part, by a desire to be closer to her friends.
15. The Property has three bedrooms.
16. The Property is on the ground floor.
17. The Property has one internal step, but is otherwise level.
18. The Property has not been adapted for the Respondent's use.
19. The Respondent suffers from several medical conditions, including diabetes, sciatica, irritable bladder, Carpal tunnel syndrome and depression.
20. As a consequence of her diabetes, the Respondent has had one of her big toes amputated, causing her mobility issues.
21. Following a bad fall, the Respondent has for the most part stayed within the Property.
22. The Respondent lives at the Property with her two adult children, both of whom are in employment.
23. The Respondent's daughter has looked for alternative accommodation for the family but has been unable to find suitable alternative accommodation.
24. The Respondent has not sought advice in relation to her housing issues.

## **FINDINGS IN FACT AND LAW**

1. Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 is engaged in this case.
2. In all of the circumstances, it is reasonable to grant the eviction order.

## **STATEMENT OF REASONS**

1. This Application called for a Hearing by teleconference on 30 November 2022. The Applicant was represented by Miss Agyako, solicitor. The Respondent was personally present on the call.
2. In this Application, the Applicant seeks an eviction order under Ground 1 of Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"). She says that she let the Property to the Respondent under an assured tenancy agreement. She says that she used to live in the Property. She subsequently let it to the Respondent after having given notice to the Respondent that she

formerly resided there and may require possession in the future to do so again. She now intends to live in the Property, and seeks to evict the Respondent to allow her to do so.

3. No issue is taken by the Respondent with regards to the notices said to have been served on her, or that the Applicant used to live in the Property. The Respondent's position amounts to two propositions:-
  - i. The Applicant does not intend to live in the Property; and
  - ii. It is not reasonable to grant an eviction order in all of the circumstances.
4. At the Case Management Discussion on 5 October 2022, the Tribunal directed the Parties to lodge written representations setting out their respective positions regarding (i) whether the Applicant intended to live in the Property, and (ii) whether it is reasonable in all of the circumstances to grant an eviction order. The Applicant complied with the Tribunal's direction. The Respondent did not comply with the Tribunal's direction.

### The Evidence

#### *Josephine Main*

5. Ms Main is an accountant. She spoke to being employed at a firm based in Burnside, but living with her 14 year old son, Logan, at a house in Dunfermline. The Applicant has two other sons. Her eldest son lives in America. Her middle son, Oran, is living in rented accommodation in Glasgow, and is attending college.
6. Ms Main spoke largely to her change in personal circumstances in recent years. She is estranged from her husband, from whom she is seeking a divorce. She receives no support from her husband. She is living in the former matrimonial home in Dunfermline, which is a five bedroom house. She spoke of the house being too big for just her and Logan. It was expensive to run the house. The commute to work was at least an hour.
7. Ms Main spoke of her primary concern being Logan's welfare. She spoke of Logan having significant health issues at present. Logan suffers from autism, sever anxiety and trauma. She spoke of him being over six feet in height but weighing less than eight stone. Ms Main spoke of her personal anxiety in being so far away from Logan on a daily basis. She is unable to work flexibly or from home. Whilst she has some social work support for Logan's care, he is generally home alone. He has been signed off as unfit to attend school since December 2021, and she thinks it is unlikely that he will go back to school.
8. Ms Main spoke of her desire to live in the Property again. The Property is located near to her place of work, which would allow her to be much closer to Logan. In particular, it would allow her to go home to check on him and give him lunch. Ms Main spoke to her 80 year old father living in Burnside, which is

also close to the Property. By moving to the Property it would allow Ms Main to see her father more frequently, as well as for Logan to see him more frequently. Ms Main spoke to her friends and family generally living near to the Property. Her only connection to Dunfermline now is her brother and his family.

9. Ms Main spoke to her estranged husband wishing to liquidate all of the assets of the marriage as part of the divorce. The Property is owned by both Ms Main and her husband. Ms Main spoke of her intention to acquire sole title to the Property and to live there with Logan, and perhaps Oran. Ms Main provided further confidential information regarding the properties, which, in light of ongoing divorce proceedings, the Tribunal has noted but will not repeat here.
10. Ms Main spoke of the crippling financial pressures of maintaining the Dunfermline house and the Property. Ms Main wishes to sell the Dunfermline house as soon as possible, but requires a property to move to. Her stated intention is that the Property will be that property. Separately, she spoke briefly to the Respondent not having paid rent in approximately three years.
11. Under cross examination, Ms Main advised that her new partner, referred to as "Hugh", had previously offered to purchase the Property to alleviate financial pressure. This, she said, was around 24-36 months ago. At that time, Hugh had contacted the Respondent to try to procure her removal from the Property. The Respondent had not been paying rent, and Hugh had an American family who was interested in becoming tenants. In the end, the prospective tenants purchased a property instead, and the interactions between Hugh and the Respondent came to nothing. Ms Main said things had moved on.
12. The Respondent asked Ms Main whether she would reconsider this action if a payment towards the outstanding rent was made today. Ms Main said she would not; her motivations go beyond purely financial considerations.

### *Theresa Craig*

13. Ms Craig essentially adopted the positions that she previously set out to the Tribunal at the CMD. Ms Craig spoke to the Applicant's new boyfriend having contacted her by telephone and sought to mislead her, including by saying (i) that an American family was ready to move into the Property and she had to get out, and (ii) that the Police and a locksmith were going to attend to evict her. Her view is that the Applicant has been untruthful in her recent dealings, and that this Application represents a further deception.
14. Ms Craig spoke to suffering from a multitude of medical problems. She has in recent years been diagnosed with diabetes, which has led to the amputation of one of her large toes. She suffers from significant mobility issues as a result, including due to loss of balance. She spoke to being largely confined to her home now following a bad fall. She also suffers from sciatica, irritable bladder, Carpal tunnel syndrome and depression. She is unfit for work and

does not anticipate returning to work. She has had problems with obtaining benefits in the past, but she was able to resolve those with assistance from her son. The Property is effectively a ground floor flat. It has one step inside it, and is otherwise level. This is important for her mobility. The Property has not been adapted for her use, but its layout is beneficial for her mobility. She lives at the Property with two of her adult children (her son, aged 28, and her daughter, aged 21), both of whom are in employment at present. Her son is in further education, and works part-time. Her daughter works full-time. Ms Craig spoke of her daughter having looked for alternative accommodation for them but having been unsuccessful. Notwithstanding the Tribunal having previously asked whether Ms Craig had consulted with the local authority about housing, Ms Craig had still not consulted with the local authority about housing.

15. Under cross examination, Ms Craig confirmed that she was not bothered by the prospect of isolation. She said that she is generally alone anyway. She spoke of rarely seeing her children, even though they live with her. Her one fear, she said, is if she had to live in a “scheme”, as she would be worried about being broken into. When pressed on whether her children could live separately, Ms Craig was adamant that they needed to live with her in order to cook for her and help her to wash.
16. Ms Craig spoke of rarely leaving the house. She spoke of having been left a share of a property by her late mother, and to her brother living in that property. She spoke of the intention being to sell that property and share in the proceeds, but that her brother was violent and difficult to approach. Her sister is currently dealing with that dispute.
17. Ms Craig was asked about whether she had taken legal advice. She said that she had tried to contact Shelter on multiple occasions, but that she had not been able to get through to anyone. It was put to her that she had been able to resolve her benefits issues with assistance from her son, but that she had not sought her son’s assistance to obtain legal advice or discuss housing matters with the local authority. Ms Craig appeared to accept that had not been done, and offered no explanation for that.

### Submissions

18. For the Applicant, Miss Agyako submitted that the requirements of Ground 1 of Schedule 5 to the 1988 Act were satisfied, and that it was reasonable to grant the eviction order. She submitted that Ms Craig’s evidence lacked credibility; for example, she said that she did not see her children often, but went on to say that she relied on her children for her cooking and washing. In all of the circumstances, Miss Agyako invited the Tribunal to grant the eviction order.
19. The Respondent submitted that she did not believe that the Applicant intended to live in the Property. The Respondent believes, based on unspecific “wee things”, and things that she has heard from others, that the Applicant does not intend to live in the Property. Having regard to the

Respondent's personal circumstances, she submitted that it would not be reasonable to evict her.

## Discussion

20. In terms of the Housing (Scotland) Act 1988:-

*“18.— Orders for possession.*

(1) The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

[...]

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4ZA) In deciding under subsection (4) whether Ground 1A in schedule 5 is established, evidence tending to show that the landlord has the intention mentioned in the Ground includes (for example)—

- (a) a letter of advice from an approved money advisor or a local authority debt advice service,
- (b) a letter of advice from an independent financial advisor,
- (c) a letter of advice from a chartered accountant,
- (d) an affidavit stating that the landlord has that intention.

(4ZB) In deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider—

- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
- (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers under subsection (4A)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4ZC) For the purpose of subsection (4ZB)—

- (a) references to a relevant benefit are to—
  - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I. 2006/213),
  - (ii) a payment on account awarded under regulation 93 of those Regulations,
  - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
  - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
- (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to [—]

- (a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and
  - (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.
- (5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.
- (6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—
- (a) the ground for possession is Ground 2 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 15 or Ground 17; and

- (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.
- (6A) Nothing in subsection (6) above affects the First-tier Tribunal's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.
- (7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.
- (8) In subsection (4A) above—
  - (a) “*relevant housing benefit*” means—
    - (i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or
    - (ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;
  - (aa) “*relevant universal credit*” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;
  - (b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.
- (9) Regulations under subsection (4A)(b) may make provision about—
  - (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
  - (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,



- (c) such other matters as the Scottish Ministers consider appropriate.
- (10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

...

*Schedule 5, Ground 1*

Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the First-tier Tribunal is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

- (a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or
  - (b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's or civil partner's only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value."
21. There is no dispute between the Parties that the Property used to be occupied by the Applicant as her only or principal home, or that notice of that fact was given to the Respondent prior to the commencement of the tenancy that possession of the Property may be sought under Ground 1 of the 1988 Act. Ground 1, as set out above, has two alternative basis for possession. The first is that the Property was previously occupied by the landlord as his/her only or principal home. The second is that the landlord (or one of the specified other parties) requires the house to be their only or principal home.
22. In this Application, the Form AT6 served by the Applicant is based on the first part of Ground 1 only. No reference is made to the Applicant requiring the Property to be her only or principal home. Given that the Respondent does not dispute the Applicant's prior occupancy, it is clear that paragraph (a) of Ground 1 is established. The Tribunal does not, for the purposes of determining whether Ground 1 is established, require to reach a view on whether the Applicant requires the Property as her only or principal home.
23. However, in terms of section 18(4) of the 1988 Act, the Tribunal may only grant the order for eviction if satisfied that it is reasonable to do so. For the purposes of determining the reasonableness of the Application, the

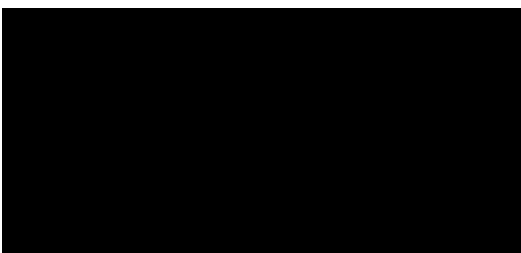
Applicant's intentions and motivations for seeking possession of the Property are relevant.

24. The Tribunal found the Applicant to be a credible and reliable witness. It accepted her evidence in full. In particular, the Tribunal was satisfied that:-
- a. The Applicant is in the process of divorcing her estranged husband;
  - b. The Applicant's current home is to be sold and the proceeds thereof divided between her and her husband, subject to the outcome of the divorce proceedings;
  - c. The Applicant intends to live in the Property;
  - d. The Applicant is motivated, in part, by a desire to reduce her living expenses;
  - e. The Applicant is motivated, in part, by a desire to live closer to her place of work;
  - f. The Applicant is motivated, in part, by a desire to be closer to her youngest son during the working day due to his complex support needs;
  - g. The Applicant is motivated, in part, by a desire to be closer to her father; and
  - h. The Applicant is motivated, in part, by a desire to be closer to her friends.
25. As regards the Respondent, the Tribunal did not find her to be credible or reliable. Her responses to questions presented by the Tribunal and Miss Agyako were generally vague and unconvincing, such as her inability to elaborate on what she meant by "wee things" which made her think the Applicant was lying. At times, the Respondent's evidence was contradictory, such as when she spoke of not really seeing her children, but then suggesting that she was dependent on them on a daily basis; or how she was able, with assistance from her son, to resolve an issue with her benefits but was unable to either obtain legal advice from Shelter or seek housing assistance from the local authority. Accordingly, whilst the Tribunal was prepared to accept the Respondent's evidence where it was not contradicted, such as regards her medical conditions, the Tribunal preferred the Applicant's evidence in circumstances where the Respondent's evidence was in conflict with it, such as regards the Applicant's intentions.
26. The Tribunal's function, where satisfied that Ground 1 applies, is to determine whether it is reasonable to grant the order for eviction. In doing so, the Tribunal requires to have regard to all of the relevant evidence (*Cumming v Danson*, [1942] All ER 653, per Lord Greene MR: "[I]n considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the 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.").

27. Having regard to all of the evidence that we have heard, the Tribunal determined that it is reasonable to grant the eviction order in this case. In particular, and notwithstanding the evidence as regards the Respondent's medical conditions and the suitability of the Property for her, the Tribunal's determination reflected the following matters:-
- a. The Applicant's change of circumstances;
  - b. The Applicant's desire to live in the Property to allow the liquidation of other matrimonial assets;
  - c. The suitability in terms of size, layout and geography of the Property for the Applicant's current circumstances and the needs of her youngest son;
  - d. The potential benefits for the Applicant's youngest son of living in the Property, as regards the proximity of his family and his mother's place of work;
  - e. The Respondent's likelihood to receive assistance in finding alternative suitable housing;
  - f. The ability of the Respondent's adult children to find alternative accommodation;
  - g. The lack of any meaningful steps having been taken by the Respondent to seek assistance with housing following service by the Applicant of notice under section 19 of the 1988 Act;
  - h. The lack of any specific adaptations having been made to the Property for the Respondent's benefit;
  - i. The lack of any special requirements of the Respondent for housing, beyond such housing being single storey on the ground floor; and
  - j. The lack of any specialist local services being required or accessed by the Respondent near to the Property.
28. Accordingly, the Tribunal granted the eviction order.

### **Right of Appeal**

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



**Legal Member/Chair**

30 November 2022

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**Date**