



**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/22/2069**

**Re: Property at 46 Parkdyke, Stirling, FK7 9LS (“the Property”)**

**Parties:**

**Mr. Adam Kindreich, 3 rua Nossa Senhora do Carmo, Almoester AVZ, Bemposta, 3250-024, Portugal (“the Applicant”)**

**Mr. Craig Haire, Mrs. Nicole Haire, 46 Parkdyke, Stirling, FK7 9LS (“the Respondents”)**

**Tribunal Member:**

**Ms H Forbes (Legal Member) and Mrs S Brydon (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application dated 28<sup>th</sup> June 2022 and made under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant is the owner of the Property and the Respondents are the tenants in terms of a tenancy agreement that commenced on 6<sup>th</sup> March 2020. The Applicant is seeking an eviction order in respect of the Property under ground 1, namely that he intends to sell the Property. Notice to Leave dated 2<sup>nd</sup> April 2022 was served by email on the same date, requiring the Respondents to leave the Property by 28<sup>th</sup> June 2022.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 3<sup>rd</sup> October 2022. All parties were in attendance.
3. The Applicant said he was seeking an eviction order, setting out his reasons, as follows:
  - (i) It has been difficult to get suitable tradespeople since the Covid-19 pandemic. He lives abroad and that adds to the difficulties. He has no

support in this country and does not want to use an estate agent, other than to find tenants, as he does not think they give a good service. He is concerned that he can no longer comply with the repairing standard due to these difficulties.

- (ii) He does not have a good relationship with the Respondents. They do not cooperate or follow through in respect of repairing matters. They could phone the Applicant at no cost on WhatsApp, but they do not do so. They expect to be waited on hand and foot. They have told lies about a new boiler being required. This is causing stress to the Applicant and weighing him down. He should be liberated from the situation and should be allowed to evict the Respondents. He is not getting anything out of the situation.
  - (iii) The Scottish Government interference in the rental market in terms of rents increases and evictions – he is expected to pay the full market price for property and a surcharge on additional properties, but he cannot expect full market rent, and there is to be a moratorium on winter evictions. These policies affect landlords. He does not just want any level of profit. He wants the right rate of profit but the Government expect him to act like a charity. Property rights are human rights, and he should not be expected to remain in a club if he does agree with its rules. He had intended to keep the properties for another couple of decades but the government interference is the last straw.
  - (iv) Property prices are currently good, so this is a good time to sell. At some stage, he will sell all his properties.
  - (v) There is a currency mismatch. All his spending is in Euros and he does not want to be earning in Pound Sterling. He would rather sell the Property and not have to worry about the exchange rate.
  - (vi) Living at a distance has caused issues. He will probably sell other properties but wants to start with this one, as the tenancy is not working out and it is weighing on him. This is the highest value property and it makes sense to start with this one.
4. The Respondents are opposed to the order. They do not challenge the Notice to Leave. They accept that the ground is met. Their argument is one of reasonableness. They have been in contact with the local authority and are on the homeless priority list. They have been seeking other private rented property but have had no success. There are a large number of people for every available property. The Respondents have two cats and many landlords refuse to allow pets. The local authority has said they are moving up the homeless list but there is no property available, and they have been advised to stay where they are as long as possible. They have been offered bed and breakfast accommodation. They would not be able to take the cats and would have to rehome them.

5. The Respondents have three children aged 3, 11 and 13. Mr Haire has chronic asthma and this restricts where he could live. He could not, for instance, live near farmland. Mr Haire said his mother has spare rooms, but she has a dog, to which he is allergic. His mother's home is also half an hour's drive from the children's school. The Respondents said they would not be in a position to purchase a property for another year. Their savings had been wiped out during the Covid-19 pandemic and they are now saving again.
6. The Property has three bedrooms, and that is the size of property required by the family, but there is no choice as to size of homeless accommodation.
7. The Tribunal considered the ground was met. The Tribunal decided to continue matters to a hearing on reasonableness.
8. By submissions dated 24<sup>th</sup> December 2022, the Applicant made further written submissions and lodged productions.
9. By email dated 9<sup>th</sup> January 2023, the Respondents made written representations and lodged productions.

## **The Hearing**

10. A hearing took place by telephone conference on 9<sup>th</sup> January 2023. All parties were in attendance.

### **Preliminary Matters**

11.

#### **(i) Late lodging of documents by Respondents**

The Respondents' written representations and productions were circulated to the Tribunal and the Applicant an hour before the hearing. Responding to questions from the Tribunal as to why these items were lodged late, when the CMD note made it clear they must be lodged no later than 14 days before the hearing, the Respondents said they had both had flu and Covid over the past month and could not lodge them any sooner. The Respondents said the productions were not lengthy and supported the statements made in their covering email which contained their representations.

The Applicant objected strongly to the acceptance of the late documents, stating that rules are rules and he had complied with the rules. It was his position that the Respondents ought to have produced medical evidence to substantiate their claim that ill-health had delayed the lodging of the documents.

#### **(ii) Scope of the hearing**

The Tribunal asked the Respondents, given the wording of their written representations, whether it was their position that it would not be reasonable

to grant the order or that it would be reasonable to grant the order and to give them additional time before the order could be executed. The Respondents said they thought it had already been decided that it would be reasonable to grant the order, and that the only matter for discussion was whether it was reasonable to allow them additional time. The Tribunal explained that the CMD note clearly set out that the hearing was on the reasonableness of granting the order, and that they had been advised to take legal or housing advice on this matter.

The Respondents indicated that they were opposing the order on reasonableness, with a secondary position that, if the Tribunal found it was reasonable to grant the order, they should be given additional time before the order can be executed.

### **(iii) Onus on the Respondents**

The Tribunal considered the preliminary point made by the Applicant in his written submissions where he referred to the case of ***City of Glasgow District Council v Erhaiganoma 1993 SCLR 592***, where the Inner House of the Court of Session stated at page 594 that “Where *prima facie* reasonableness has been made out, we think that it is then for the tenant to put circumstances before the court to show otherwise.” It was the Applicant’s position that the onus is on the respondent to demonstrate that it would not be reasonable to grant the order.

The Respondents indicated that they were content to lead their case first.

### **(iv) Non-disclosure of the Applicant’s address**

The Applicant made a motion to have his address withheld from the decision made public on the Housing and Property Chamber website. The Applicant is advised to make a written submission in this regard which will be considered in due course.

12. The Tribunal adjourned to consider whether to accept the late documents, asking the Applicant to look over the Respondents’ documents during the adjournment.
13. The Tribunal considered it extremely remiss of the Respondents not to lodge the productions timeously. While it would not expect to see medical evidence to support the position that they were unwell and unable to make representations and lodge productions, the Tribunal felt that they could have emailed the Housing and Property Chamber to inform the Tribunal of the situation and to ask for an extension to make submissions. Emailing the documents in the early hours of the morning of the hearing was not acceptable.
14. The Tribunal took into account the fact that the documents were relatively short. They appeared to support the position set out in the written

representations of the Respondents. The Tribunal took the view that it would be helpful to have the documents available to them for reference at the hearing.

15. The Tribunal informed parties on reconvening that the late documents were to be accepted. The Tribunal afforded a further opportunity for adjournment to the Applicant to read the productions further. The Applicant declined the opportunity.
16. The Tribunal informed parties that it was not minded to hear any further arguments on the behaviour of the tenants or the related matter of repairs to the Property as these did not appear to be relevant issues. The Tribunal explained that the legislation regarding eviction provides grounds of eviction covering the behaviour of tenants which might include failures in relation to repairing matters, and the Applicant had not proceeded on these grounds. While it was not the case that these issues might never be relevant to reasonableness, it seemed to the Tribunal that they were not relevant in this case. The Tribunal pointed out that it has extensive written submissions from parties on these matters, and it would consider those submissions, but no further oral submissions were required.

### **The Respondents position**

1. The Respondents' position was that the current moratorium on evictions is affecting the private sector housing market, and there are fewer properties available. They have had difficulties securing viewings for private sector housing. They had heard earlier on the day of the Hearing that they were unsuccessful in getting a viewing for a property. It is their experience that some tenants are accepting properties without viewing, and this is making it difficult. Later, during the hearing, they got notice that they were not to be considered for a three-bedroom property in the private sector, due to the size of their family.
2. The Respondents said they have been in contact with social housing providers since April 2022, when the Notice to Leave was served. This position was reflected in the documents they had lodged. They have applied to both Stirling Council and Forth Housing. They are now on the homeless list, which has expedited the process. They checked their position on the list on the morning of the hearing and were fourth on the homeless list with Stirling Council. They were fourth on this list in August 2022, so they have not moved since then.
3. The Respondents are currently in a three-bedroom property. Due to the ages of their children, Stirling Council will only offer a four-bedroom property on the general housing list, and a three-bedroom property on the homeless list. The Respondents would be happy with a three-bedroom property. Three- and four-bedroom properties are in short supply, with a slower turnover for the latter. They have been informed that they may have to go into temporary bed

and breakfast accommodation if an eviction order is granted and no other housing is available.

4. The Respondents are interested in buying a property but they have been told that due to the impact on their earnings during the pandemic they require a further year's tax return for 2022/2023, which will be available by April, before securing a mortgage.
5. The Respondent, Mr Haire, said he has chronic asthma. He has had Covid three times despite being fully vaccinated, and he has had flu. He is unable to spend time at his mother's property because of his allergy to her dog. There is no other family member with sufficient room to house the Respondents.
6. The Respondents said they have continued to pay rent on time, with the exception of one occasion when they were late. They refuted the previously raised concerns of the Applicant regarding the condition of the Property and said they would have expected an inspection by a third party if this was a real concern. They said they doubted that the Applicant was exiting the rental market completely, as he has re-let one of his properties. They had not applied for that property due to the timing of the advertisement, at which time they were still hoping to secure a mortgage. Responding to questions from the Tribunal, the Respondents said this pointed to the fact that it was the relationship between the parties that was the reason for selling the Property.
7. The Respondents are seeking a property in any urban area within a ten-mile radius of Stirling. The Respondents live and work in Stirling. Their two older children are in Gaelic Medium Education, and have been since nursery. Outwith the area, such education would only be available in North Lanarkshire, Glasgow or Edinburgh. They wish to stay within a reasonable distance for commuting to the school. They feel the ten-mile limitation is reasonable. Responding to questions from the Tribunal as to whether it would be easier to secure housing in a non-urban area, or whether they were significantly limiting their options with their choices, the Respondents said they did not think so. Stirling has very limited rural housing.
8. The Respondents said they have viewed some of the properties which were included in the Applicant's submission. Some of the properties were gone within days. Some were let without tenants viewing. Sometimes the letting agent did not respond to enquiries. The Respondents are viewing one of the properties later this week. The list of five properties they provided in their own submission is not exhaustive. The Respondents said they were now seeing an improvement in the private rented sector and were starting to get viewings.
9. Responding to questions from the Tribunal as to their preference for future housing, the Respondents said they would prefer to secure a council house for a period of six to nine months, which would give them more time to save for a deposit to purchase a property. The rent is lower in the social housing sector. The Respondents quoted rents of £329 to £360 for a three-bedroom house, stating that this information was on the local authority website.

10. It was the Respondents' position that the Applicant had not tried to sell the Property with the Respondents as sitting tenants. He had not provided any evidence that this would reduce the purchase price.
11. The Respondents said they had been informed by Stirling Council that they could not apply to multiple local authorities. The ten-mile radius includes most of Falkirk and all of Clackmannanshire. They have looked at private rented housing in those areas.
12. Responding to questions from the Tribunal as to the further time they would require to secure housing, the Respondents said they understood the Scottish Government moratorium would end at the end of March 2023 and the housing market would improve then. Asked what changes they expected in the social housing market in that time, they said it was more likely they would get social housing if they were given additional time.

### **The Applicant's position**

13. The Applicant referred to the lack of evidence by the Respondents to substantiate Mr Haire's medical conditions, stating that the Respondents cannot just state this and expect the Tribunal to accept it without any medical documentation. He thought it strange that Mr Haire would be allergic to dogs, yet have two cats. The Respondents had not provided any evidence of looking for private rented accommodation. The Applicant referred to his productions, which included details of 12 three-bedroom properties in Stirling for let with similar rent to that of the Property. It was his position that the fact that the Respondents had only mentioned having attempted to secure five private rented properties in nine months fell well short of the required effort. The Applicant said the Respondents expect to be served housing on a platter by Stirling Council, leaving the local authority to do the required work, and that they were not serious about the matter.
14. It was the Applicant's position that the Respondents could afford to buy a property, as set out in his written representations, where he had made various calculations of the amount they could save and borrow. He said they could easily buy an ex-council house and described their evidence concerning efforts to seek a mortgage as 'crummy'.
15. The Applicant outlined his position in regard to what he described as extreme government interference in private sector housing. Although he is passionate about property, he has had to think carefully and has decided he cannot continue as a landlord. He is concerned that future policy decisions may affect the sector further, and he does not want to take the risk of facing more restrictions. He has decided to sell all his properties. He chose to sell the Property first as it is his highest value property, and the Respondents are his worst tenants. The property that he had decided to re-let is not at the best standard for marketing, so he decided to spend money on improving it and re-

letting it. He does not want to sell all his properties at the same time, and he does not want to risk having multiple Tribunal applications ongoing at the same time if tenants do not leave. It is his prerogative to choose in what order to sell the properties. He will serve the next Notice to Leave in the Spring. He is an investor first and a landlord second. He has professional qualifications in finance. He is not a greedy landlord and does not raise the rents indiscriminately. He is concerned because his insurance company has refused to insure some of his properties as he does not carry out inspections.

16. The Applicant said he requires vacant possession to sell the Property. He is certain that the Property would be worth less if sold without vacant possession. The current financial and political circumstances are less likely to attract buy to let investors. It was his position that any prospective buyer would probably suspect there was a problem with the Respondents as tenants.
17. The Applicant said the Respondents' position of limiting their search to a ten-mile radius was not acceptable. They could apply to other local authority areas including Falkirk. They could send their children to a new school. This might be a little bit disruptive. It was his position that they were being very fussy, and they should be more flexible when facing eviction. It was his position that Mr Haire's mother should consider giving her dog away for a few weeks and having the house fumigated so the Respondents could stay there. It would not be reasonable to expect him to wait until the Respondents are in a position to buy. The Respondents have not made enough effort to find alternative accommodation. The evidence is clear that they do not want to move out of the Property. This was clear from previous email correspondence which suggested they were awaiting an eviction order. He said he thought the Respondents were unorganised and chaotic.
18. The Applicant said it was not credible that letting agents were telling prospective tenants that, due to high numbers of applicants, they would not be considered. He said he would not tell a letting agent to take that approach. He accepted there might be some level of filtering required, but he would usually have a list of prospective tenants. He has had as many as five prospective tenants for a property, with whom he would have video calls. One tenant told him she was amazed to get to speak to the landlord, as properties were usually gone when she tried to secure a viewing. The property he had recently re-let had taken four weeks to re-let. Although he would have turned the Respondents down had they applied to let the Property, they had not done so, which suggested they were not making enough effort.
19. The Applicant said the application must be granted. He understood there was a ban on making an identical application and felt he would be enslaved to the Respondents forever if he could not get an eviction order. The Respondents could have a home anywhere. He could only sell this property.



20. The Applicant said the Respondents were dithering in their responses to questions from the Tribunal. He doubted their evidence that rents were as low as the Respondents had stated in the social housing sector. He doubted that the Respondents were correct in saying they were precluded from applying to another local authority area.

### **Findings in Fact and Law**

21.

- (i) The parties entered into a private residential tenancy agreement in respect of the Property commencing on 6<sup>th</sup> March 2020.
- (ii) Notice to Leave was served upon the Respondents on 2<sup>nd</sup> April 2022. The Notice became effective on 28<sup>th</sup> June 2022.
- (iii) The Notice to Leave was correctly drafted and gave the correct period of notice.
- (iv) The Applicant is entitled to sell the Property.
- (v) The Applicant intends to sell the Property for market value or at least put it up for sale within three months of the Respondents ceasing to occupy the Property.
- (vi) It is reasonable to grant an eviction order.
- (vii) The Respondent, Mr Haire, has chronic asthma which has limited the areas in which he can live.
- (viii) The Respondents' two older children attend Gaelic Medium Education, which has limited the areas in which the family would seek to reside.
- (ix) It is reasonable to grant an extended period to allow the Respondents to secure alternative, suitable accommodation.

### **Reasons for Decision**

22. Ground 1 of Schedule 3 of the Act provides that it is an eviction ground if the Landlord intends to sell the let property. The Tribunal may find the ground met if the landlord is entitled to sell the Property and intends to do so for market value, or at least put it up for sale within three months of the tenants ceasing to occupy it.

23. The Tribunal accepted the evidence of the Applicant that he intends to sell the Property as required by the legislation. The Tribunal was satisfied that Ground 1 had been established.

24. In considering whether it was reasonable to grant the eviction order, the Tribunal took into account the written and oral evidence of the parties. The Tribunal found all parties to be credible and reliable in their evidence. The position put forward by the Applicant that the Tribunal could not accept certain parts of the Respondents' submissions, such as the existence of medical conditions or attempts made to find alternative accommodation, without documentary evidence, was not correct. The Tribunal noted that, although the Applicant had prepared his case thoroughly, and had submitted a significant amount of evidence, he also made submissions without documentary evidence, such as the matter of whether or not it was easier to sell the Property without a sitting tenant. It is for the Tribunal to decide what evidence, including oral evidence, to accept, and what weight to give to the evidence.
25. Although the Respondents stated at the start of the hearing that they were opposed to the order on the basis of reasonableness, they put little evidence forward to support this stance. In their written submissions, the focus was on whether they should be granted additional time to find alternative accommodation. They claimed to have understood that the Tribunal had already found that it would be reasonable to grant the order. This was not the case, and it was not the position set out in the Tribunal's note of the CMD of 3<sup>rd</sup> October 2022, which clearly stated that the hearing was to be on reasonableness generally, rather than being narrowed down to the reasonableness of granting additional time to the Respondents. The Respondents had also been encouraged by the Tribunal to seek legal or housing advice to enable them to put forward their arguments on reasonableness, which they did not seem to have done.
26. The Tribunal noted that the Respondents had been seeking alternative accommodation for some time, and appeared to have accepted that they would be leaving the Property. The Tribunal noted that the preference of the Respondents was to secure social housing at a lower rent that would allow them to save funds to put towards purchasing a property. Mr Haire's asthma, the existence of which was accepted by the Tribunal on the evidence before it, was not cited as a reason not to grant the order, rather to show that he was limited to urban areas and could not live with his mother, due to her having a dog, to which he was allergic. Equally, the children's Gaelic Medium Education, and the limited nature of this provision, was put forward as a further reason for limitations on the areas in which they could live.
27. In all the circumstances, the Tribunal considered that a *prima facie* case in respect of reasonableness had been made out on behalf of the Applicant. Given the limited nature of the Respondents' arguments on the reasonableness of granting the order, and the lack of any compelling reasons why the order should not be granted, the Tribunal found that it was reasonable to grant the order.
28. The Tribunal then considered whether it was reasonable to grant additional time to the Respondents before which the eviction order could be executed.

29. The Tribunal took into account the attempts that had been made by the Respondents to find alternative accommodation since the Notice to Leave was served. The Tribunal accepted that significant attempts had been made. The Tribunal accepted the Respondents' evidence that they had been unable to secure viewings of private rented housing for the reasons put forward. The Tribunal noted that, despite his derision of the Respondents' evidence in this regard, the Applicant actually corroborated the situation with his account of a prospective tenant telling him of her surprise at getting an opportunity to speak to the landlord, as properties were usually gone when she tried to get a viewing.
30. The Tribunal accepted the Respondents' evidence in regard to their efforts made and the difficulties in obtaining social housing, particularly with regard to the size of housing required.
31. The Tribunal considered that there were justifiable reasons for the Respondents limiting their search to certain areas, particularly in relation to Mr Haire's medical condition and the children's schooling. The Tribunal did not find the Applicant's suggestions that Mr Haire's mother should re-home her dog for a period, or that the children should move school, to be reasonable.
32. The Tribunal was not persuaded that there would be any merit in delaying matters to the end of March 2023 in the hope that an end to the moratorium on evictions would make a difference to the position. It is not yet clear that the moratorium will end at that time, and the Respondents have said they are now seeing a change in the private rented market that may allow them to secure alternative housing.
33. In all the circumstances, and particularly given the difficulties in obtaining social housing, the Tribunal decided that it would be reasonable to extend the period before which the order could be executed to 8<sup>th</sup> March 2023.
34. The Tribunal considered the matters relating to the behaviour of the Respondents in relation to repairs, and the position of the Applicant in this regard. The Tribunal did not find these matters to be relevant, but observed that, on the evidence before it, it did not seem that the Respondents were being difficult in this regard, or that they were, generally, difficult tenants.
35. Indeed, the Applicant appeared to expect more from the Respondents in regard to the organisation of repairs and liaison with contractors than would normally be the case, and this clearly did not help the relationship between the parties. The responsibility for ensuring that a property meets the repairing standard lies squarely with the landlord under the relevant legislation, and the tenancy agreement in place between the parties. It would have been open to the Applicant to have amended the tenancy agreement to include the type of arrangement he wished to have in place in regard to repairs and liaison with contractors. Had he done so, and had parties known exactly what was

expected of them before entering into a tenancy agreement, matters may have proceeded more smoothly between them.

36. The Tribunal gave no weight to the representations of the Applicant concerning the use of bad language by one of the Respondents in a social media profile. It was not entirely clear what the Applicant sought to gain by including this matter in his submissions. The Tribunal found it to be of no relevance whatsoever.

### **Decision**

37. An eviction order in respect of the Property is granted. The order is not to be executed prior to 12 noon on 8<sup>th</sup> March 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.**

**Legal Member/Chair**

**11<sup>th</sup> January 2023  
Date**