



**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 (Act)**

**Chamber Ref: FTS/HPC/EV/23/0461**

**Re: Property at 8 Hamiltonhill Gardens, Glasgow, G22 5PR (“the Property”)**

**Parties:**

**Mr Mohammed Bukhsh, 214 Broomhill Drive, Glasgow, G2 1HY (“the Applicant”)**

**Samira Saeid, 8 Hamiltonhill Gardens, Glasgow, G22 5PR (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Janine Green (Ordinary Member)**

**Decision**

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

**Background**

This is an application under Rule 109 and section 51(1) of the Act in respect of the Applicants’ intention to live in the Property and for eviction and recovery of possession on Ground 4 of Schedule 3 to the Act.

The Tribunal had regard to the following documents:

1. Application received 13 February 2023;
2. PRTA commencing 8 March 2019;
3. Notice to Leave dated 3 November 2022;
4. Royal Mail Track and Trace Receipt dated 5 November 2022;
5. Section 11 Notice and email serving on 1 February 2023;
6. Affidavit of Applicant dated 7 February 2023;
7. Email from Local Authority regarding Applicant dated 6 February 2023;
8. Written Representations from the Applicant and Respondent dated various dates and enclosing documentation to address considerations of reasonableness.

## **Hearing**

The case called for an in person Hearing on 28 July 2023. The Applicant participated and represented himself. The Respondent participated and was represented by Ms Mohammed and accompanied by a supporter (Ms M. Abdullah).

The Tribunal had arranged for the attendance of an interpreter to assist the Respondent.

### *Preliminary Matters*

The Tribunal explained the purpose and procedure that would be followed at the Hearing.

The Tribunal explained that the documentation and written representations that had been submitted in advance would be accepted as read. The Tribunal recognised that sensitive personal information was contained in the submissions and do not repeat that information in detail in this Decision.

### *Witness Evidence*

The Tribunal heard from the Applicant, his wife (Ms Zara Ali) and the Respondent.

The Tribunal accepted all of the witnesses as credible and reliable.

### *Applicant's case*

So far as material, the evidence from the Applicant and Ms Ali was that they required the Property to live in. Ms Ali is pregnant and they need a home for their family. Ms Ali is currently residing with her parents and the Applicant with his. This position is unsustainable and causes considerable inconvenience to them.

Further to that the Applicant's mortgage repayments have increased and now exceed the rental income. In addition to the mortgage there are normal insurance and factoring costs which meant that the Applicant was under financial strain trying to cover the deficit between his rental income and the running costs of the Property. Plus, he and his wife have to live separately and the costs associated with that.

### *Respondent's case*

The Respondent's position was that she had invested considerable sums of money in the Property on the understanding that she would be offered the opportunity to purchase the Property.

Her daughter had been diagnosed with ASD and ADHD and any move would have a detrimental impact on her mental health and disrupt her education. She was in her final year at the local school and would finish in June 2024.

Her son was entering 5<sup>th</sup> year at the local school and would be sitting important exams in the coming year.

The Respondent did not seek to oppose the order for recovery of possession itself but would appreciate (due to the personal circumstances) being allowed to remain until the end of June 2024 so that her son and daughter could complete their exams and minimise disruption to their education and her daughter's health.

### *Submissions*

Both Parties made submissions at the conclusion of the case.

### **Decision and Reasons**

The Tribunal then considered the eviction application before it.

The Tribunal had regard to the terms of Ground 4 which are in the following terms:

#### *Landlord intends to live in property*

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

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

The Tribunal then considered the documentary and oral evidence it had received from the Parties and in so far as material made the following findings in fact:

1. The Parties let the subjects under a PRTA commencing 8 March 2019;
2. The Applicant is the owner of the Property and intends to occupy the let property as his only or principal home for at least 3 months;
3. Notice to Leave had been served on the Respondent on 5 November 2022;
4. Section 11 notification had been served on the local authority;
5. The grant of the eviction order would potentially occasion disruption to the Respondent's son's and daughter's schooling at an important stage in their education and potentially have a negative impact on her daughter's health;

6. The Applicant needs the Property for accommodation for himself, his wife and baby;
7. The Applicant is currently residing in his parent's house and his wife at hers;
8. The Applicant's monthly mortgage costs exceed the amount of rent (£700 versus £719) and he has other running costs such as insurance and factoring costs to meet in addition to that.

The Tribunal considered all of the evidence and submissions. The Tribunal were aware that it had to be satisfied that it was reasonable in the circumstances to grant the order sought. The Tribunal were satisfied that the Applicant clearly needed the Property to live in for himself and his family. His current living circumstances were unsustainable and he was under financial pressure due to increased mortgage repayments.

The Tribunal were also satisfied that the granting the order would occasion disruption to the Respondent and her son and daughter. Granting the order would disrupt their education at an important stage in their life and potentially have a detrimental impact on their daughter's health.

The Tribunal had to make a decision. The Tribunal sought to balance the competing interests of the Parties and determined that it would be reasonable to grant the order in all of the circumstances of the case. The **Cost of Living (Tenant Protection)(Scotland) Act 2022** would apply to any order granted and this would mean that the order would not be enforceable for 6 months. This should afford the Respondent reasonable time to find alternative accommodation and minimise the disruption and impact on herself and her family. It also meant that the Applicant had certainty as to when the Property would be returned to him and could plan accordingly.

The Tribunal was satisfied that Ground 4 had been established and accordingly granted the application for eviction and recovery of possession.

### **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.**

# A. Strain

28 July 2023

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Legal Member/Chair

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Date