



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/0505

Property : 3 Denholm Steading, Blackhill, Peterhead AB42 3LJ (“Property”)

Parties:

James Mewse, 23 Scylla Drive, cove Bay, Aberdeen AB12 3EG (“Applicant”)

Thorntons Law LLP, 3rd Floor, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (“Applicant’s Representative”)

Roderick O’Connor 3 Denholm Steading, Blackhill, Peterhead AB42 3LJ (“First Respondent”)

Emma O’Connor, 3 Denholm Steading, Blackhill, Peterhead AB42 3LJ (“Second Respondent”)

Shelter Scotland, 4th Floor, Scotiabank House, 6 south charlotte Street, Edinburgh EH2 4AQ (“Second Respondent’s Representative”)

Tribunal Members: Joan Devine (Legal Member), Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined not to make an order for possession of the Property.

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with an inventory of productions with productions numbered 1 - 6. The documents produced included: a Private Residential Tenancy Agreement dated 26 and 27 September 2019 (“Tenancy Agreement”); Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”) dated 9 August 2022 (“NTL”) with covering email dated 9 August 2022; notification to the Local Authority in terms of Section

11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 16 February 2023. A second inventory of productions was lodged containing an affidavit from the Applicant dated 15 February 2023 ("Affidavit").

2. The Representative for the Second Respondent lodged a written representation and a first inventory of productions containing productions 1 and 2.
3. The Tribunal had sight of the title for the property known as Denholm Farm, Blackhills, Peterhead registered under title number ABN96279.
4. A case management discussion ("CMD") took place before the Tribunal on 19 April 2023 by teleconference. Reference is made to the Note of the CMD. The outcome of the CMD was that the Tribunal determined to fix a Hearing and to issue a Direction setting out the further information that would assist the Tribunal.
5. In response to the Direction the Applicant lodged a list of witnesses and a third inventory of productions numbered 8-9. In response to the Direction the Respondent lodged a list of witnesses and a second inventory of productions containing medical records for the Respondents and their son Caelen O'Connor. Both Parties lodged a list of authorities. The Applicant sought to amend the paper apart annexed to the Form E.
6. On the morning of the Hearing the Applicant lodged a fourth inventory of productions containing production 10 and the Respondent lodged an inventory of productions containing a copy email dated 4 August 2022.

Hearing

7. A Hearing took place before the Tribunal on 9 August 2023 by video. The Applicant was in attendance and was represented by Calvin Gordon of the Applicant's Representative. The Applicant's wife, Hazel Mewse attended as a supporter. The First Respondent and Second Respondent were in attendance and the Second Respondent was represented by Sally Mair of the Second Respondent's Representative. Mr Gordon told the Tribunal that he would no longer be calling Charlotte Brown as a witness as she is on maternity leave.
8. The Tribunal noted that the Applicant sought to amend the paper apart annexed to the Form E. this was not opposed by the Respondent and the amendment was allowed.
9. Ms Mair told the Tribunal she had now had an opportunity to consider the title sheet and was content that the Applicant held title to the Property.

10. The Tribunal noted that the issues in dispute were whether or not the ground for eviction had been established and, if it had been established, whether it was reasonable to grant an order for eviction.

Evidence of James Mewse (Applicant)

11. Mr Mewse told the Tribunal that he is aged 73 and is retired. He was referred to production 9 which was the title sheet for the Property and confirmed that it indicated he is the owner of the Property. He said at the time of purchase there was a steading on the land. He waited for a year until he had the required funds and then developed 3 houses on the land. All of which were let to third parties on completion. He said he had borrowed money to carry out the development but there was now no mortgage on the land. He said that the standard security shown on the title sheet should have been removed some time ago.
12. Mr Mewse was referred to production 1 and confirmed it was the Tenancy Agreement for the Property. He said that his letting agents, Aberdein Considine dealt with the day to day management of the tenancy such as carrying out inspections. He said that the Respondent's tenancy commenced on 1 October 2019. At that time he was employed but had retired just before the covid pandemic, shortly before March 2020. He said that the houses at Denholm Steading were his retirement fund so he decided to sell. His plan was to sell one house at a time so that he would not incur a capital gains tax liability. He said that covid delayed the sales.
13. Mr Mewse was referred to production 2 which was the NTL. He noted that it is dated 9 August 2022. He said that the NTL was not issued earlier due to restrictions put in place by the Scottish Government.
14. Mr Mewse was referred to production 8 which was a list of properties owned or occupied by the Applicant. He was asked about 1 Denholm Steading where a tenancy commenced on 10 January 2020. He said that he was still working when this property was let. He said he intends to sell the property. Mr Mewse was asked about 2 Denholm Steading where a tenancy commenced on 13 June 2022. Mr Mewse said that the tenant works at Peterhead prison. He said she had relocated to the area for her job and wanted a short term tenancy. He said that he and his wife plan to move into 2 Denholm Steading as it is on one level and his wife is disabled. Mr Mewse was asked about 21 Scylla Drive and said that it is occupied by his wife's son under a long term family arrangement. He said that the son may buy the property. Mr Mewse was asked about the

Property and he said that if an order for eviction was granted he would sell the Property.

15. Mr Mewse was asked to look at the Affidavit and he confirmed that he signed it. It was noted that the Affidavit refers to the Respondent being offered and refusing alternative accommodation. Mr Mewse said he accepted that may not have been correct. He said he had been given that information by Aberdein Considine.
16. Mr Mewse was asked what influenced his decision to sell the Property. He said that he just wanted to retire. He said that he wants to release capital for his retirement. Mr Mewse said that he had health issues including blood pressure and cholesterol concerns, heart problems, arthritis and new knees. Mrs Mewse told the Tribunal she had an accident in 2016, that she had a hip replacement, that she has crohns disease, high blood pressure and osteoporosis.
17. On cross examination Mr Mewse told the Tribunal that the 3 properties at Denholm Steading were all developed to a similar size and style. He said that he did not own any properties other than those at Denholm Steading and 21 Scylla Drive. He said that before he retired he operated an ice cream parlour. He said the shop was rented from the council. He said he gave up the tenancy in July 2020.
18. Mr Mewse was referred to the first inventory of productions for the Respondent and the email exchanges dated 28 and 29 August 2019. It was suggested to him that these emails indicated that the Respondent wished a long term tenancy. Mr Mewse said that he is a private landlord and not a social landlord. He asked how long the Respondent expected to stay in the Property. He said that he needs to sell now and that the covid pandemic had prevented an earlier sale as Scottish Government would not allow sales. Ms Mair noted that restrictions on sales were lifted on 29 June 2020 although notice periods were extended and all eviction grounds became discretionary. Mr Mewse said he had not been aware of that.
19. Mr Mewse was asked about 2 Denholm Steading where a new tenant took up occupation on 13 June 2022. Mr Mewse said that it was a short lease. He said that he did not sell that property as he and his wife intend to live in it as it meets his wife's needs as it is on one level. He was asked about the property in which he currently lives and he said it is a ground floor flat.
20. Mr Mewse was asked about paragraph 5 of the Affidavit. He said that the Property is dirty. He said the windows have not been cleaned and there is mould on the drains. He was referred to an email dated 4 August 2022 which included

a request for the Respondent to clear gutters. He said he visited the Property around 4 August 2022 and spoke to Mr O'Connor and asked him to clean the gutters. He then instructed the letting agents to issue the email. Mr Mewse confirmed that he instructed service of the NTL on 8 August 2022.

21. Mr Mewse was again asked about 2 Denholm Steading. He said that he was not 100% yet but was 99% sure that he and his wife would move into that property. Mr Mewse confirmed that there are no rent arrears for the Property and that the Respondent allows access for inspections. He said he had not discussed with the Respondent the possibility of selling the Property with the Respondent in place as tenant.
22. On re-examination Mr Mewse said that in January 2020 he was still working although the shop was closed for the winter. In response to a question from the Tribunal Mr Mewse said that the 3 properties at Denholm Steading are all on one floor. He said that aside from a state pension, his only income in retirement would be from the properties at Denholm Steading.

Evidence of Emma O'Connor (Second Respondent)

23. Mrs O'Connor told the Tribunal that she is aged 46. She said that she lives in the Property with her husband and her sons, Ethan and Caelan. She agreed that the NTL was served on 9 August 2022. She said that there had been no discussions with the Applicant regarding service of the NTL in advance. She said she would have been open to any suggestions about marketing the Property with the Respondent as sitting tenant.
24. Mrs O'Connor said that the Applicant attended the Property and spoke to her husband about clearing the gutters. She said an email was received from Aberdein Considine about it. She said the Respondent did not have tall ladders that would allow them to clear the gutter. She said that the Tuesday after the discussion about the gutters the NTL was received. She said that she did draw a connection between the two issues. When asked whether she believed the Applicant genuinely wanted to sell the Property Mrs O'Connor said she did not know. She said that if the Applicant wished to access funds it would have been easier to sell 2 Denholm Steading when the Applicant had vacant possession.
25. Mrs O'Connor said that before she moved into the Property no indication was given that the Applicant may wish to sell in the coming months. She said that she and her husband wanted a long term lease. She said that they had occupied their previous rental property for 12 years. She said that if she had known the tenancy of the Property would be short term she would not have

moved in. Mrs O'Connor was referred to the emails dated 28 and 29 August 2019.

26. Mrs O'Connor was asked how the Property met her needs. She said that in the previous property she had slept in the living room for 8 years as she could not manage the stairs. The Property is all on one level, provides an accessible bathroom and has ramps to the front door. This allows Mrs O'Connor to independently access the Property. She said that she uses an electric wheelchair. She said she has independence in the Property.
27. Mrs O'Connor was asked about her health conditions. She said that she has fibromyalgia, osteoarthritis and type 2 diabetes. She said that she has had two heart attacks, one in 2018 and another in February 2023. These have left her with angina and chronic fatigue. She said the osteoarthritis affects her joints which is why she needs a wheelchair. She said that her husband does the housework, cooks meals and assists her with personal care. She said she has had a heart murmur since she was a child. Mrs O'Connor said that her health has deteriorated significantly since the start of 2020. She said that she has lost muscle mass and that sitting upright is uncomfortable. She said that she spends a lot of time in bed. She said that her medical records which had been lodged were an accurate reflection of her health issues. She said that she is in recovery from her last heart attack. She had additional stents put in. She said that she has an ongoing blood pressure issue and is on a high dose of medication to keep it under control. She said that her heart valves would need to be replaced. She said that stress affects her blood pressure and blood sugar levels. She said that she cannot drive as she has sleep apnoea. She said it is difficult to do basic social family things such as seeing her parents which has only happened 3 times this year. She said that she is to be assessed for having personal care provided and was applying for self directed funding. Mrs O'Connor said that she could not assist with the practical side of moving house. She said it took the family a month to move from their previous home into the Property. Since moving her health has become much worse.
28. Mrs O'Connor said that it was very difficult to find alternative accommodation that is on one level and takes pets. She said that since receipt of the NTL she has had her name down for housing with the local authority and housing associations within a 30 minute drive from her parent's home. She said she is obtaining assistance from Houseability. She said she had looked in the private rented sector but the rents were high and more than the maximum housing benefit of £751 and nothing met her requirements. Mrs O'Connor was asked to look at the letter lodged from Aberdeenshire Council dated 20 March 2023 and confirmed it properly described her housing needs. She said that she checks every Tuesday when new properties are released and Houseability check the

position every Thursday. She said that the family are at the highest possible banding for housing. She said priority had been given because of her and Caelan's needs. She said that she did not expect Caelan to live independently for quite some time.

29. Mrs O'Connor was asked about Caelan's health and she said that the letter lodged from NHS Grampian dated 8 April 2016 contained his diagnosis of autism spectrum condition. She said that while this was a diagnosis it did not contain a prognosis. She said that as Caelan gets older she can see certain behaviours relate to his autism. She said that Caelan is now 18 and has left school. She said he is working at college in Aberdeen from August to January with the supported learning team to get used to the campus and in January he will start college.

30. Mrs O'Connor was asked what would be the impact on Caelan of losing the Property. She said that last year he missed 75% of time at college due to anxiety. She said he had lost weight and has problems with eating and keeping food down. She said that losing his home would impact Caelan's transition into college. She said that he needs structure. She said that unexpected things are a disaster for Caelan.

31. Mrs O'Connor was referred to the Affidavit where it states that the Property is not well maintained. She said she disagreed with that. She said the Property is a family home and she had not had negative feedback from the letting agent. She said the rent is paid on time and access is always provided for inspections. She said she would be happy to have the Property marketed with the Respondent as sitting tenant.

32. Mrs O'Connor was asked what impact an eviction would have on her. She said that it would be devastating. She said that the family were struggling as it is. She said she has life limiting health conditions that have taken so much away from her including her independence and her pride. She said that the family could not move to just any 3 bedroom property, they needed a property on one level that would take pets.

33. On cross examination Mrs O'Connor said she did not expect to stay in the Property for the rest of her life but she would not have let the Property had she not been told it would be a long term let. She said she understood the Applicant wished to retire but the Property could be sold with the Respondent as sitting tenant although she accepted that a lower price would be achieved. She noted that the Applicant has other properties that have been vacant but not sold. She agreed that the available housing stock changed and it was impossible to say what would be available in 6 months but she noted that she had been on the

housing list for a year and nothing had come up. Mrs O'Connor was asked if she had completed a homeless application. She said that she completed an application on the basis she would be homeless imminently.

Evidence of Roderick O'Connor (First Respondent)

34. Mr O'Connor accepted that the NTL was served on 9 August 2022. He said that the week before service of the NTL the Applicant spoke to him about the gutters. He said he discussed the matter with his wife and she said she did not think the Respondent was responsible for the gutters in terms of the tenancy agreement. He said an email was received from Aberdeen Considine about the gutters to which his wife replied saying the gutters were the responsibility of the Applicant. Mr O'Connor said he was surprised to receive the NTL. When asked if he thought the discussion about the gutters and the service of the NTL were connected he said it seemed to be a coincidence.
35. Mr O'Connor was referred to the medical records lodged and confirmed that the first two pages related to him and were an accurate record of his health conditions. He said he had been diagnosed with bipolar condition in 2015 and was now on medication for the rest of his life. He said he also has a deformity of his right elbow and back problems which made lifting things difficult.
36. Mr O'Connor was asked if being made homeless would impact his health. He said he thought that it would as it would be stressful but he could increase his medication or refer back to the mental health ward. He said that the physical aspects of moving would fall to him. He said he is the only driver in the family so would drive any removal van. He said he would rely on his older son but could not overload Caelan with information.
37. Mr O'Connor said that he agreed with the evidence given by Mrs O'Connor regarding Caelan's condition. As regards alternative accommodation he said they had been looking since service of the NTL but nothing had come up so far.
38. On cross examination Mr O'Connor said that his sons are aged 20 and 18. He agreed that for Ethan he is at a stage in life where things are changing. He said he is taking steps towards independence and may leave home in the next few years. He said that Caelan would not be leaving home any time soon. He said he accepted that if an eviction order was granted the local authority would have to act regarding their situation.

Submission for the Applicant

39. Mr Gordon noted that the Applicant is 73, retired and does have some health issues. He noted that the NTL was served on 9 August 2022 which was a year ago. Although a year had passed the Respondent had not identified any alternative accommodation. He said that the issues raised regarding gutters were ancillary and should not detract from the application being about the Applicant wishing to sell the Property. He said that the Applicant had a genuine intention to sell. He said it is unviable for the Applicant to continue as a landlord given his stage in life.
40. Mr Gordon submitted that a private residential tenancy ("PRT") is different to a short assured and assured tenancy. He said it provides security of tenure as it has no end date but it gives broader grounds for eviction such as intention to sell which was not a ground for eviction under the 1988 Act. He said that there is no guaranteed length for a PRT as the landlord could give notice 28 days after the PRT commenced.
41. Mr Gordon said that the Applicant does not dispute that the Respondent has health issues but that is only one factor to be considered. He referred to paragraph 1 of schedule 3 to the 2016 Act. Mr Gordon submitted that it was established that the Applicant is entitled to sell the Property. He said that it had been proven that the Applicant intends to sell for market value. He referred to the Affidavit and the evidence of the Applicant. He said that an affidavit is strong evidence as sanctions exist if it is not truthful.
42. Mr Gordon referred to the Cost of Living (Tenant Protection) (Scotland) Act 2022 and noted that schedule 2 applies in this case. He said that whilst the application of the 2022 Act had not yet been extended the Applicant would be content for execution of any order to be delayed for 6 months.
43. Mr Gordon referred to section 26 of the Housing (Scotland) Act 1987. He said there was no suggestion that the Respondent would be intentionally homeless. He said he sympathised with the Respondent who had no option other than to defend the application otherwise they would be intentionally homeless.
44. Mr Gordon referred the Tribunal to Adrain Stalker's book on Evictions in Scotland at page 153 and to Bristol City Council v Mousah 1998 30 HLR 32. He referred to page 18 of Boyle v Ford 2023 UT 04, UTS/AP/22/0007. He submitted that the Tribunal can inquire into the effect of an order. He said that if the council comply with their obligations the Respondent should be housed in temporary accommodation until permanent accommodation is available.

45. As regards the question of intention Mr Gordon referred the Tribunal to *Stalker* at page 338 and to *Cunliffe v Goodman* 1950 2KB 237, *Fisher v Taylor Furnishing Stores* 1956 2QB 78 and *S Frances Ltd v The Cavendish Hotel (London) Ltd* 2018 UKSC 62.
46. As regards the reasonableness of granting an order Mr Gordon referred to *Stalker* at page 151 and to *Cresswell v Hodgson* 1951 2KB 92. He submitted that Applicant's age tipped the balance in favour of the Applicant and in all the circumstances the Tribunal should grant an order for eviction.

Submission for the Respondent

47. Ms Mair submitted that the ground for eviction had not been established and invited the Tribunal to dismiss the application. She said that the Applicant had not shown a genuine, firm and settled intention. She adopted the meaning given to "intends" in *S Frances Ltd v The Cavendish Hotel (London) Ltd*. Ms Mair submitted that if the ground for eviction was established it was not reasonable to grant an order for eviction.
48. As regards intention Ms Mair referred to *Stalker* at page 336 and the requirement for a genuine, firm settled intention. She said the Tribunal was not being asked to look at motivation but can look at such matters when considering intention. Ms Mair said that the oral evidence of the Applicant was inconsistent which pointed to there being no genuine settled intention. She said that the Applicant gave various dates for the date of his retirement. She said that the retirement was key to intention. She said that the Applicant claimed to have an intention to sell from 2020 but had possession of 2 Denholm Steading in June 2022 and did not sell that property. She said that the Applicant's evidence initially was that he intended to sell all three properties at Denholm Steading and then went back on that evidence saying he intended to live in 2 Denholm Steading. She questioned why the Applicant did not move into 2 Denholm Steading when he had possession. She submitted that the Applicant had two opportunities to sell a property at Denholm Steading to raise capital but did not do so. Ms Mair referred to the "dispute" between the Parties regarding the gutters at the Property and submitted this was relevant to the question of genuine intention. She said that service of the NTL was a reaction to a dispute.
49. Ms Mair referred to paragraph 16 of *S Frances Ltd v The Cavendish Hotel (London) Ltd*. She said that motive is material for testing whether intention exists. She said that intention was undermined in this case by the following : the Applicant had indicated he wished a long term let in October 2019; the

dispute about gutters in August 2022 and the opportunity to sell a property at Denholm Steading in January 2020 and in June 2022. She noted that the Applicant's evidence of intention to live in 2 Denholm Steading provided at the Hearing was the first reference to such an intention. Ms Mair referred to the lack of evidence of intention to sell other than the Affidavit and oral evidence of the Applicant. In response to a question from the Tribunal Ms Mair said that *Duffy v Mirza 2021 FTS/HPC/EV/19/3712* related to intention. She referred to paragraphs 96 and 97.

50. As regards reasonableness Ms Mair referred to paragraphs 43 – 66 of *Boyle v Ford*. She submitted that the Tribunal must take account of all relevant facts and considerations. She emphasised paragraphs 49 and 50, 52, 57-60 and 63-69. She noted that health issues were to be considered as part of the balancing exercise.

51. Ms Mair submitted that the facts made out in evidence indicated that it would not be reasonable to grant an order for eviction. She referred to the complex health issues of Mrs O'Connor and her son Caelan. She referred to the evidence about the impact of an eviction. She noted that the Property meets the needs of the family. She noted that the Applicant could sell the Property with the Respondent as sitting tenant.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 27 September 2019 ("Tenancy Agreement").
2. A Notice to Leave was served on the Respondent by email on 9 August 2022. It stated that an application for an eviction order would not be submitted to the Tribunal before 4 November 2022.
3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 16 February 2023.
4. The Applicant is retired and is aged 73.
5. The Applicant holds title to three properties at Denholm Steading.
6. The Applicant developed three properties at Denholm Steading to provide a pension fund.

7. The Applicant owns the property at 21 Scylla Drive, Cove Bay, Aberdeen jointly with his wife.
8. The Applicant holds title to the Property and is entitled to sell the Property.
9. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.
10. Caelan O'Connor has been diagnosed with autism spectrum condition.
11. Emma O'Connor has a number of health issues including fibromyalgia, osteoarthritis, type 2 diabetes, angina and chronic fatigue.
12. Emma O'Connor suffered a heart attack in 2018 and another in February 2023.
13. Roderick O'Connor has been diagnosed with mixed bipolar affective disorder.
14. The Respondent and their family have particular housing needs which are met by the Property.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. It is not reasonable to grant an order for eviction.

Reasons for the Decision

52. In terms of section 51 of the 2016 Act, the Tribunal is to issue an eviction order against the tenant under a PRT if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. The Applicant sought recovery of possession of the Property on the basis set out in Ground 1 of schedule 3. Ground 1 states that the Tribunal may find the ground 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.

Subsection 3 of ground 1 sets out examples of evidence “tending to show” the landlord’s intention as being a letter of engagement from a solicitor or estate agent concerning the sale of the property and a recently prepared document that anyone responsible for marketing the property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

53. The Applicant holds title to the Property and is therefore entitled to sell. That is not in dispute. The Applicant’s intention and the question of reasonableness are in dispute.

Intention

54. As regards intention, a number of authorities were referred to including *Cunliffe v Goodman* 1950 2KB 237, *Fisher v Taylor Furnishing Stores* 1956 2QB 78 and *S Frances Ltd v The Cavendish Hotel (London) Ltd* 2018 UKSC 62. What can be taken from these cases is that intention is something more than contemplation. The intention has to be genuine, firm and settled. The intention does not have to be the landlord’s only intention or even its primary one provided that it is a firm and settled intention. Motive is irrelevant save as material for testing whether a firm and settled intention exists.

55. The evidence of intention to sell was the Affidavit and the Applicant’s evidence at the Hearing. Ms Mair noted that no documentation was lodged regarding intention and that the Tribunal was being asked to rely on the Affidavit and oral evidence alone. The documentation noted in subsection 3 of ground 1 is stated to be “examples” of evidence “tending to show” intention. This wording makes clear that intention can be established in other ways. The Tribunal does not regard the lack of documentation of the sort noted in subsection 3 as being material.

56. The Applicant was asked why he did not sell 1 Denholm Steading when he had vacant possession in January 2020. His response was that he was still working at that point in time. The Applicant was asked why he did not sell 2 Denholm Steading when he had vacant possession in June 2022. His response was that the tenancy granted was “ a short term lease”. He also said that he and his wife planned to live in that property as it is on one level and therefore met his wife’s needs. The only form of residential tenancy that can currently be granted in Scotland is a PRT which has a commencement date but no end date. There is no “short term lease”. There had been no prior reference in the proceedings to the Applicant intending to live in 2 Denholm Steading. When pressed on the issue the Applicant said that he was “99%” that he and his wife would live in 2 Denholm Steading. He also gave evidence that his current home and the other

two properties at Denholm Steading are all on one level which indicates that each of those properties would meet the needs of his wife. Had the question before the Tribunal been whether the Applicant intended to live in 2 Denholm Steading the finding may well have been that there was no genuine and settled intention to do so but that is not the question which requires to be determined by Tribunal in this case.

57. In the Affidavit the Applicant said that the Respondents “have never looked after the subjects. I understand that the subjects are not in good condition....This is the first time I have had difficulties with tenants”. The evidence does not support these statements.

58. The Applicant is 73 years old and has retired. Whilst Ms Mair noted the inconsistency in the Applicant’s evidence regarding the precise date on which he retired, the fundamental question of whether or not he had retired was not disputed. The Applicant’s evidence was that the properties at Denholm Steading had been developed by him as his retirement fund. His evidence was that, other than a state pension, he would have no other source of income in his retirement. This was not disputed. It is understandable that the Respondent should question why the Applicant has determined to sell the Property at this point rather than one of the other properties at Denholm Steading but that does not support the suggestion that the intention to sell the Property is not genuine, firm and settled. The Applicant is 73 years old. He has retired. The properties at Denholm Steading are his pension fund. On the basis of these undisputed facts, the Tribunal determines that the ground for eviction has been established.

Reasonableness

59. A number of authorities were referred to including passages in *Stalker on Evictions in Scotland*, *Barclay v Hannah* 1947 SC 245 and *Boyle v Ford* 2023 UT04 UTS/AP/22/0007. From these it is clear that the Tribunal has a judicial duty to consider the whole circumstances in which the application is made. Some factors may have little or no weight, others may be decisive but it is wrong for a judge to exclude from consideration matters which they ought to take into account.

60. Mr Gordon submitted that the Applicant’s age “tipped the balance” in his favour as regards reasonableness. The Tribunal considered the Applicant’s age and that he is retired. It was not disputed that the properties at Denholm Steading are his pension fund and would be his only income aside from his state pension. All 3 properties at Denholm Steading are let and therefore currently providing

an income for the Applicant. He had referred to the possibility of the occupant of 21 Scylla Drive buying that property. He had referred to the tenant at 2 Denholm Steading wanting to stay "short term". He had said that he and his wife wish to move into 2 Denholm Steading. At that stage 23 Scylla Drive would become vacant and presumably could be sold although it is noted that title to that property is held by the Applicant's wife. Production 8 for the Applicant indicated that all of the properties (Denholm Steading and Scylla Drive) are owned "outright" other than 21 Scylla Drive where no comment was made regarding whether or not it is the subject of a standard security.

61. Ms Mair had asked the Tribunal to consider the complex health needs of Mrs O'Connor and her son Caelan. She had submitted that the evidence regarding the impact on the family of an eviction order should be considered. She submitted that it would not be reasonable to grant an order for eviction.
62. The evidence before the Tribunal indicated that the Respondent have been good tenants of the Property who complied with their obligations as tenants. The suggestion that they were problematic tenants was not supported by the evidence. Evidence was given by Mr and Mrs O'Connor regarding their own health and that of their son, Caelan O'Connor. This was supported by medical records and was not disputed by the Applicant. Mrs O'Connor has specific housing needs as set out in the letter from Aberdeenshire Council dated 20 March 2023. These needs are currently being met by the Property. The evidence given by Mrs O'Connor indicated she is making significant efforts to identify alternative accommodation and has enlisted the support of Houseability.
63. Mr Gordon referred the Tribunal to the duty of the local authority to provide accommodation for the Respondent if they become homeless. The Tribunal has taken that into account. The Tribunal noted the unsuccessful endeavours of the Respondent in identifying suitable accessible or adaptable alternative accommodation over the past year, the scarcity and the demand for such accommodation in the social and private sector and the likelihood of the specific and complex needs of this family being met, at this time. While the Local Authority would provide temporary accommodation in the first instance, it is likely there would be significant accessibility problems and additional stress for this family, in such a transition.
64. Having considered all of the circumstances, the Tribunal determined that it is not reasonable to issue an eviction order on account of the Applicant being entitled to sell the Property and intending to sell it for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it. The Tribunal considered all of the issues outlined at paragraphs 60, 61, 62 and 63

above. In reaching its decision the Tribunal attached particular weight to the complex health needs of the Respondents and their son Caelan and to the particular housing requirements of the family which are currently being met by the Property.

Decision

The Tribunal determined not to grant an order for possession of the Property.

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

Date: 14 August 2023