



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

Chamber Ref: FTS/HPC/EV/24/3353

Property at 24 Edzell Street, Broughty Ferry, DD5 3JJ (“the Property”)

Parties:

Mr David Whyte, Mr Stuart Whyte, Tircarra Lodge, 105 Monifieth Road, Broughty Ferry, Dundee, DD5 3HY; 10 Lochalsh Street, Broughty Ferry, Dundee, DD5 3HY (“the Applicants”)

Miss Magdalena Cholys, 24 Edzell Street, Broughty Ferry, DD5 3JJ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicants. The Tribunal also ordered a delay in execution of the order until 2 February 2025.

Background

- 1. The Applicant lodged an application for an eviction order in terms of Section 51 and ground 1 of schedule 3 of the 2016 Act. A copy of the application was served on the Respondent, and the parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 27 March 2025 at 10am.**
- 2. Prior to the CMD the Respondent lodged a written submission. This stated that she had been unable to obtain new accommodation and requested a three-month continuation of the CMD to allow further time for her to do this.**
- 3. The CMD took place on 27 March 2025. The First Applicant participated and was represented by Mr Myles, solicitor. The Respondent also participated and was represented by Ms Falconer, solicitor**

Summary of Discussion

4. Ms Falconer told the Tribunal that the Respondent's position was as outlined in the written submission. She had applied unsuccessfully for numerous properties. She had no option but to oppose the application in the meantime and requested a continuation of the CMD for three months.
5. Mr Myles opposed the request. He said that the Notice to leave had been served in April 2024. After it was served, he received a letter from Dundee Law Centre which said that the Local Authority would only consider the Respondent for re-housing if an application was made to the Tribunal and an eviction order obtained. He invited the Tribunal to make a decision on the application at the CMD. The Legal Member noted that the Respondent had stated that she would prefer to obtain accommodation in the private sector. She was concerned about the type of temporary accommodation that might be offered and that she might be re-housed in an area that she doesn't want. Mr Myles said that the rent charged for the property is much lower than she would have to pay for a similar property in the private sector and pointed out that she had been looking for 12 months already, without success. He suggested that the Tribunal consider granting the order but ordering a delay in execution in terms of Rule 16A of the Tribunal Procedure Rules 2017. Ms Falconer confirmed that the Respondent opposed the granting of the order, even with a delay in enforcement. She said that a hearing should be arranged if a continued CMD was not allowed.
6. Following further discussion, the Tribunal confirmed that a hearing by video conference would be arranged, restricted to the question of whether it would be reasonable to grant the order for eviction.
7. The parties were notified that a hearing by video conference would take place on 15 October 2025 at 10am. Prior to the hearing, the Applicant lodged submissions and documents. On 14 October 2025, the Applicant sent a further email to the Tribunal with a copy of an email received from the Respondent's representative. The Applicant's representative stated that there had been discussions between the parties, and they were agreed that the Tribunal should be invited to grant the order for eviction but that there should be a delay in execution of the order until 2 February 2026.
8. The Hearing took place by video conference on 14 October 2025. The Applicants were represented by Mr Myles and the Respondent by Mr Marshall. The Applicants and Respondent were also present, but off screen.

The Hearing

9. Mr Myles and Mr Marshall confirmed that they had reached an agreement. The Respondent no longer opposes the eviction order as long as the Tribunal delays enforcement until 2 February 2026.

10. Mr Myles told the Tribunal that Mr Stuart Whyte has now retired on ill health grounds and that Mr David Whyte has also retired. The property is the only one they own together, although they both own properties with other people. Their only income comes from their pensions and rental income from the various properties. The Applicants always intended to sell the property when they retired, to help fund their retirement. There is about £90000 of equity in the property, and the proceeds of sale will be much more than can be achieved if other properties are sold.
11. Mr Marshall confirmed that the Respondent resides at the property with her three teenage sons, two of whom have a medical condition. She has lived there for 14 years and works part time. She has been unable to find alternative accommodation in the private sector but has been advised that the Local Authority will re-house her, if an order is granted. Dundee Law Centre is providing her with advice and support to access suitable accommodation in the social rented sector. She has decided to consent to the order but seeks additional time to secure suitable housing.

Findings in Fact

12. The Applicants are the owners and landlords of the property.
13. The Respondent is the tenant of the property and lives there with her three children.
14. The Applicants intend to sell the property to help fund their retirement.
15. The Applicants served a Notice to leave on the Respondent on 5 April 2024.
16. The Respondent does not oppose the application. She has been unable to find alternative housing in the private sector and is receiving advice and support to secure Local Authority housing.
17. The Respondent's children have medical conditions.

Reasons for Decision

18. The application was submitted with a Notice to Leave dated 5 April 2024 together with post office certificate of posting also dated 5 April 2024 and a track and trace report. The Notice states that an application to the Tribunal is to be made on ground 1, the landlord intends to sell the let property. The Notice states that the earliest date that an application can be made to the Tribunal is 6 July 2024.
19. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicants also submitted a copy of the Section 11

Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicants have complied with Section 56 of the 2016 Act.

20. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
21. Ground 1 of schedule 3 (as amended) states, “(1) It is an eviction ground that the landlord intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) 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.”
22. From the documents submitted and the information provided at the CMD and hearing, the Tribunal is satisfied that the Applicants intend to sell the property and that part 1 of ground 1 is established.
23. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Respondent does not oppose the application. Her only concern is that she has not found alternative accommodation. She would prefer to find another private let but has been unable to do so and is now receiving advice and support in relation to the social rented sector. Her advisor has explained that the Council will provide her with alternative housing if she is evicted.
 - (b) The Respondent lives at the property with three teenage children, two of whom have a medical condition.
 - (c) Although the Applicants both own properties with third parties, the property is the only property that own together. They have decided to sell it as there is a substantial amount of equity, and they require the proceeds to fund their retirement.
24. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 1 has been established. For the reasons outlined in paragraph 23 the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.
25. The parties both invited the Tribunal to order a delay in execution of the order until 2 February 2026. Having regard to all the circumstances, the Tribunal is satisfied that it would be appropriate to do so,

Decision

26. The Tribunal determines that an eviction order should be granted against the Respondent.

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.

J Bonnar

Josephine Bonnar, Legal Member

19 October 2025