



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/25/3783

Re: Property at 8 Elmwood Park, Livingston, West Lothian, EH54 8SP (“the Property”)

Parties:

Mrs Wendy White and Mr David White, 13 Duncan Green, Livingston, West Lothian, EH54 8PR (“the Applicants”)

Ms Dina Gutmane (formally Austrupa), 8 Elmwood Park, Livingston, West Lothian, EH54 8SP (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 03 September 2025 the Applicants sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“**the Act**”) and in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“**the procedure rules**”). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003/proof of service of same and copy correspondence between the parties.
2. After some requests for further documentation from the Applicants, on 27 October 2025 the application was accepted by the Tribunal and referred for determination by the Tribunal.
3. A Case Management Discussion (“**CMD**”) was set to take place on 07 April 2026 and appropriate intimation of that hearing was given to all parties. The application, supporting papers and details of the CMD were served on the

Respondent by Sheriff Officer on 17 February 2026. In terms of said notification, the Respondent was given an opportunity to lodge written representations. None were lodged prior to the CMD.

The Case Management Discussion

4. The CMD took place on 07 April 2026 via telephone case conference. The Tribunal delayed commencement of the CMD for 5 minutes to give the Respondent an opportunity to join late but she did not do so. The Applicants attended. The Respondent did not take part.
5. Following introductions and introductory remarks by the Legal Member, the Tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
6. The Tribunal asked various questions of the Applicants with regard to the application.
7. The Tribunal noted that the eviction was sought under and in terms of ground 1 of schedule 3 of the Act. That ground is currently in the following terms.

1. Landlord intends to sell

(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.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market

8. The parties were the landlords and tenant of a tenancy of the Property which was a Private Residential Tenancy under and in terms of the Act.
9. The Applicants produced copy correspondence to demonstrate that they have kept the Respondent up to date with their plan to sell the Property since November 2023. In that correspondence, the Applicants discussed with the Respondent whether she or her son or both wished to purchase the Property. Ultimately, it was not possible for the Respondent and / or her son to purchase the Property.
10. A Notice to Leave had been served on the Respondent indicating that the Applicants intended to seek an eviction order based on ground 1.
11. The Applicants explained that they were retired and the sale of the Property was to fund their retirement. The Applicants had one other property to sell.

12. The Applicants are entitled to sell the Property and genuinely intend to do so. The Applicants signed an agreement with EwartPark Sales and Letting on 03 September 2025 to sell the Property. The Applicants intends to sell the Property at market value, within 3 months of the Respondent ceasing to occupy the Property.
13. The Applicants explained that the Property is occupied by the Respondent and her 28 year old son. The Respondent was in employment. The rent was up to date. The Applicants had no knowledge of the existence of any health issues on the part of the Respondent or her adult son.
14. The Applicants had, with the Respondent's permission, put the Respondent in contact with an agent the Applicants have previously used to find tenants. There is a two bedroomed property which was due to be available soon that the Respondent was hoping to move into. The Applicants would be giving the Respondent a good reference for the purpose of applying for that property.
15. The Applicants have had a good relationship with the Respondent. The Applicants sent the Respondent a text message the previous week to remind her about today's hearing.
16. The Tribunal Members adjourned to consider the application and, on re convening, confirmed that the Tribunal was satisfied that the eviction application was in order and that it was reasonable for the order sought to be granted today.

Findings in fact

17. The Applicants are the registered owners of the Property.
18. The Applicants and the Respondent are respectively the landlords and tenant of the Property by virtue of a Private Residential Tenancy in terms of the Act which commenced on 01 October 2018.
19. The agreed monthly rental was £575.
20. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent.
21. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 19 August 2025.
22. The Tribunal Application was submitted on 03 September 2025.
23. The Applicants are entitled to sell the Property and genuinely intend to do so. The Applicants signed an agreement with EwartPark Sales and Letting on 03 September 2025 to sell the Property. The Applicants intends to sell the Property at market value, within 3 months of the Respondent ceasing to occupy the Property.
24. The Property is occupied by the Respondent and her 28 year old son.
25. The Applicants have kept the Respondent up to date with their plan to sell the Property since November 2023. The Applicants discussed with the Respondent whether she or her son or both wished to purchase the Property. Ultimately, it was not possible for the Respondent and / or her son to purchase the Property.
26. The Applicants had, with the Respondent's permission, put the Respondent in contact with an agent the Applicants have previously used to find tenants. There is a two bedroomed property which was due to be available soon that the Respondent was hoping to move into. The Applicants would be giving the Respondent a good reference for the purpose of applying for that property.

Discussion and reasons for decision

27. The Tribunal gave careful consideration to the application and supporting documentation, the procedural background to the application and the oral representations at the CMD by the Applicants.
28. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the correct period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the relevant provisions of the Act.
29. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the Act. The ground is that the landlords intends to sell the let Property. When the Act was originally passed, that ground of eviction was mandatory. The Tribunal was required by law to grant the eviction order if satisfied that the ground was established.
30. Since 07 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
31. The only matter to be determined in this application is whether it is reasonable to grant the order.
32. The order for possession was sought by the Applicants on a ground specified in the Act and properly narrated in the notice served upon the Respondent.
33. The Tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the Applicants were entitled to seek recovery of possession of the Property based upon that ground.
34. The Tribunal accepted the unchallenged evidence that the Applicants intend to sell the Property at market value, within 3 months of the Respondent ceasing to occupy the Property.
35. The ground for eviction was accordingly established.
36. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in a frequently quoted passage:

"[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".

37. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicants' position nor to advance any reasonableness arguments on behalf of the Respondent.
38. The Tribunal accepts the unchallenged evidence of the Applicants that they are entitled to sell the Property, wish to do so and have instructed an agent for that purpose. There is no presumption, as a matter of law, in favour of giving

primacy to the property rights of a landlord over the occupancy rights of the tenant, or vice versa.

39. The Tribunal finds that it is reasonable to grant the order.

40. The Tribunal also exercised the power within rule 17 of the procedure rules and determined that the final order should be made at the CMD.

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.

S Weir

Legal Member/Chair

07 April 2026

Date