

Housing and Property Chamber
First-tier Tribunal for Scotland



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/25/3051

Re: Property at 55/5 Home Street, Edinburgh, EH3 9JP (“the Property”)

Parties:

Wah Cheong Koh, Tu Quyen Koh, 25 Clermiston Road North, Edinburgh, EH4 7BN (“the Applicants”)

Amber Day, 55/5 Home Street, Edinburgh, EH3 9JP (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for the following reasons:

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The PRT in question was said to be by the Applicants to the Respondent commencing on 1 December 2017 though it was in a “short assured” style and, as discussed further below, the material dispute was whether it was a PRT at all.
2. The application was dated 14 July 2025 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 dated 27 February 2025 and said to be served upon the Respondent by Sheriff Officer on that date. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice gave no greater detail. The Notice to Leave intimated that an application to the Tribunal would not be made before 23 May 2025.

3. The application papers included a brief letter from the Applicants' representatives, Chrissling Property, dated 7 July 2025 that they were instructed to market after vacant possession was obtained. Further, an email exchange was included regarding attempts in late May 2025 to obtain access for the Home Report.
4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon City of Edinburgh Council on 14 July 2025 was included in the application papers.

Procedural history

5. The matter first called for a case management conference ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 27 February 2026 at 10:00. We were addressed by Selina Law, Letting Agent, Chrissling Properties for the Applicants. There was no appearance for the Respondent but there had been email contact from an advice agency, Edinburgh Housing Advice Partnership, on her behalf on 18 February 2026. It sought postponement of the CMD on the basis of the representative having no one available to represent the Respondent at the hearing (which we declined for, amongst other reasons, it provided no detail why the Respondent was unable to attend or when advice had first been sought). The email further provided the following information on opposition to the application:

If the tribunal is not minded to postpone the case management discussion, the respondent respectfully opposes the application made on at least two grounds.

First, the application is brought under Rule 109 of the Chamber Rules. It seeks an order from eviction from a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016. However, the respondent submits that by virtue of regulation 6 of The Private Housing (Tenancies)(Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017, their tenancy of the let premises is a short assured tenancy under the Housing (Scotland) Act 1988. Therefore, the application is improperly made and should be rejected.

Esto, if the application is allowed to proceed, the respondent respectfully submits that it would not be reasonable to grant the order.

We specifically noted that the email did not: dispute the Applicants' intentions to sell; nor provide any details as to why the Respondent submitted it would not be reasonable to grant an order for ejection. As shall be relevant later, the email also did not provide any detail as to when the Respondent first occupied the Property.

6. We considered that application in the Respondent's absence, but with the benefit of the written submissions from her representatives. The Applicants' representative made further submissions on reasonableness, relating to the Applicants' age, that the Applicants found being landlords to be stressful, and

taking issue with the level of access afforded by the Respondent to the Property for maintenance. In the Respondent's absence, these matters were uncontradicted.

7. In regard to the Respondent's submission on the competence of the application, we noted the terms of regulation 6 of *The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017* but the Applicants' representative submitted that the Tenancy did not commence until 1 December 2017 and thus was not "created" prior to that date. She explained that no access of any sort had been provided prior to 1 December 2017, and there had been no tenancy to the Respondent of the Property prior to 1 December 2017. In the circumstances, the Applicants submitted that regulation 6 did not apply and the Tenancy, having started on 1 December 2017, could only be a PRT.
8. In regard to why the Tenancy documentation was in a "short assured" style, the Applicants' agent explained that the parties had negotiated a tenancy between them themselves, and the Applicants had no legal advice at the time. They had used a style which they understood was suitable, and had signed it up on 22 November 2017, but with a clear commencement date of 1 December 2017.
9. In the circumstances, we granted an order for eviction at the CMD but subsequently received an application for permission to appeal from the Respondent. The material evidence in the application was a copy of a purported Short Assured Tenancy between the parties commencing on 31 July 2011, and documentation regarding a deposit said to have been paid on or about 20 June and 28 July 2011. Though we did not grant permission to appeal, we instigated a review of the Decision of 27 February 2026 at our own instance and, on 15 April 2026, held that there was sufficient reason to regard that our Decision of 27 February 2026 on the 2017 Regulations required revisited and an opportunity should be provided to both parties to provide full submissions. We withdrew the order of 27 February 2026 and assigned matters to a further CMD.
10. In advance of the further CMD, the Respondent provided further documentation, including additional purported Short Assured Tenancy documentation from 2016, as well as evidence about access that she said had been recently provided by her to the Property, further to the Applicants' request.

Case management discussion of 9 July 2026

11. The matter called for a further CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 9 July 2026 at 10:00. We were again addressed by Selina Law, director, Chrissling Properties for the Applicants. The Respondent was in attendance with her representative, Andrew Wilson, Housing & Money Adviser, Edinburgh Housing Advice Partnership.
12. The Respondent and Mr Wilson confirmed that the Respondent's position was that the Respondent had pre-existing Short Assured Tenancies of the Property from 1 August 2016 until present. The Tenancy Agreement dated 22 November

2017, and commencing on 1 December 2017, was the third in a succession of such tenancies and thus, in terms of the saving provisions in *The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017* the Tenancy starting on 1 December 2017 was not a PRT.

13. The Applicants' representative stated that the submissions provided at the CMD of 27 February 2026 had been based on information provided to her by the Applicants' then solicitors. (The Applicants had since ceased to instruct the solicitors, due to concern about cost.) The Applicants' representative stated that her business had only become involved in the Property when the Applicants decided to sell. She had not known of any occupation prior to 1 December 2017. Since becoming aware of the apparent Short Assured Tenancy documentation dating back to 2011, she had sought instructions. She said that the Applicants' recollection was becoming poor, and it was only by checking bank statements that they were able to confirm that they agreed the Respondent had been paying rent (and so occupying the Property) prior to 1 December 2017.
14. The Applicants' representative candidly confirmed that, in the circumstances, she had no submissions to make to contradict that the Respondent's submissions that the Tenancy was not a PRT or that the Notice to Leave was not the correct document to be issued so as to seek eviction. We provided an opportunity to the Applicants' representative to make any motion for amendment or other procedure prior to us considering the application, but she said she had nothing further to add. She expressly confirmed that she did not seek to withdraw the application even though she understood that, in light of her concession, it would fall to be refused. (The Respondent's representative also sought a written refusal, rather than withdrawal.)
15. For completeness, we note that the Respondent also referred to a fourth set of tenancy documents in similar terms, issued to her by the Applicants in 2020. She said that the 2020 agreement included a rent increase. Neither side made any submissions to suggest that this additional document altered their legal position on this application. The Applicants' representative specifically stated that she was not aware of any 2020 documentation but posited that it may have been produced by the Applicants themselves, without knowledge of the law.
16. No motion was made for expenses by either party, though the Respondent's representative noted that this was because his service was a free one. He said that he thought expenses would have been sought if the Respondent had used a solicitor.

Findings in Fact

17. On 22 November 2017, the Applicants agreed to let the Property to the Respondent ("the Tenancy") with a commencement date of 1 December 2017.
18. The Respondent has occupied the Property since on or about 1 August 2011, under assured or short assured tenancies.

19. The Respondent's occupancy of the Property has been as her main residence since August 2011 until present.
20. As of November 2017, the Respondent occupied the Property under an assured or short assured tenancy.

Findings in Fact and Law

21. The Tenancy commencing on 1 December 2017 is an assured or short assured tenancy.

Reasons for Decision

22. The procedural history of this application is unfortunate. In respect of the Respondent's submissions prior to the original CMD, the saying "for a ha'porth of tar the ship was lost" seems appropriate. Had any part of the submissions contained the very limited submission that the Respondent had occupied the Property since 2011, then the meaning and import of the rest of the submissions would have been transformed. Instead it took a misguided attempt to appeal, which lead to a review of the Decision on our own instance, to bring the Respondent's ship back onto its keel. Now this has been achieved, however, the Respondent is stuck in the middle of finger pointing between the Applicants' representative and their former solicitor. It is clear that the Applicants have appreciated for some time that the application was destined to be refused, but have not withdrawn it so to obtain a written decision. This is not a good use of the Tribunal's time but, as both parties seek a written decision, we cannot see any route other than for us to issue this Decision so as to bring a waste of a public resource to a conclusion.
23. The reason for refusal is obvious. The Applicants themselves accept they do not have a PRT with the Respondent, and that concession is well-founded given the saving provisions in the 2017 Regulations. Thus any further reliance on a Notice to Leave is untenable. In the circumstances, we need not consider the reasonableness arguments made by the Applicants but note that the complaints made regarding limited access are disputed by the Respondent.
24. For the avoidance of doubt:
 - a. We cannot make a finding as to whether the Respondent is in an assured tenancy or a short-assured tenancy. We were shown historic AT5s but did not require to consider them further. The Applicants thus still need to consider exactly what sort of tenancy they have with the Respondent, and satisfy the Tribunal on that in any future applications for eviction based on the Housing (Scotland) Act 1988.
 - b. We do not know what instructions were sought by the former solicitors or by the Applicants' current letting agent. We do not know what documentation they viewed. Nothing in this decision should be taken as determining whether treating the Tenancy Agreement of November 2027 as a PRT is to be blamed on one adviser or another. Further, ultimate responsibility sits with the landlord who should know what sort of tenancy

they have in place so that they ensure compliance with their legal obligations.

25. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to refuse an order for eviction at this time.

Decision

26. In all the circumstances, we refuse the order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016*.

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.

Joel Conn

9 July 2026

Legal Member/Chair

Date