



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/25/5546

Re: Property at 16 Batchen Lane, Elgin, IV30 1LY (“the Property”)

Parties:

Mrs Hazel McLeod, 4 Birnie Crescent, Elgin, IV30 6JG (“the Applicant”)

Mr Dean Ogley, 16 Batchen Lane, Elgin, IV30 1LY (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

1. By application dated 24 December 2025 the Applicant 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. 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 from an estate agent regarding their instruction to sell the Property.
2. On 26 February 2026 the application was accepted by the Tribunal and referred for determination by the Tribunal.

Case Management Discussion

3. A Case Management Discussion (“**CMD**”) was set to take place on 28 July 2026 and appropriate intimation of that hearing was given to all parties.

4. The CMD took place on 28 July 2026. The Applicant was represented by Caitlin Brow of Harper MacLeod solicitors. The Respondent was represented by Sonya Hayward of Moray CAB.

Summary of Discussion at CMD

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 parties' representatives with regard to the application.

Preliminary Matter – Amendment of the Application

7. The Tribunal clarified with the Applicant's representative 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)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. In written submissions sent to the Tribunal in advance of the CMD, reference was made by the Applicant's representative to the consideration by the Tribunal of ground three. It was explained that as a result of the condition of the Property and steps being taken by the local authority, substantial refurbishment works are required to be completed at the Property and these cannot be carried out whilst the Respondent remained in the Property.

9. Ground 3 of schedule 3 of the Act. That ground is currently in the following terms:-

“(1)It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2)The First-tier Tribunal may find that the eviction ground named by sub-paragraph (1) applies if—

(a)the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b)the landlord is entitled to do so,

(c)it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord

(d)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)(a) includes (for example)—

*(a) any planning permission which the intended refurbishment would require,
(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.”*

10. The Applicant's representative confirmed that the Applicant sought to amend the application to include consideration of ground 3 of schedule 3 of the Act. The Respondent's representative confirmed that this was not opposed.

Applicant

11. The Applicant's representative explained that the Applicant had come to the decision to sell the Property as a result of the ongoing situation regarding the condition of the Property. A copy of an agreement with Belvoir dated 03 February 2026 to sell the Property was produced by the Applicant.
12. Enclosed with the application were copies of inventory reports from Belvoir who manage the Property for the Applicant. These reports were dated 27 October 2022, 01 March 2023, 17 October 2023, 08 November 2023 and 23 April 2024. These reports documented the deterioration of the condition of the Property in terms of cleanliness. They also documented the accumulation of items within the Property and immediately outside the Property in the communal stairwell, to a level which was unsatisfactory.
13. This last issue was resulting in complaints from neighbours of properties accessed by the communal stairwell. In written submissions lodged with the Tribunal on behalf of the Applicant, reference was made to a complaint from a neighbour who was registered blind. They had contacted Environmental Health to complain of the items accumulated in the communal stairwell. The neighbour had noted difficulties in accessing and egressing the communal stairwell as a result of this accumulation. Copies of the email correspondence setting out these issues together with photographs had been produced by the Applicant. The submissions continued that the letting agents contacted the Respondent to give him 24 hours to remove his items from the communal stairwell, however he failed to do so. Moray Council subsequently arranged for the items to be removed.
14. These matters have also resulted in the Applicant having to deal with a number of third party agencies. A copy of an email from Scottish Fire and Rescue dated 04 November 2025 was produced by the Applicant. This noted that the condition of the Property and area immediately outside in the communal stairwell was a "significant health and hygiene problem and a major fire hazard".
15. On or around 27 March 2026, Fire Scotland re-attended the Property and advised that the current condition of the Property presents significant issues in accessing and egressing the Property. As such, Fire Scotland noted that the Property is "unhabitable" and presents "a significant fire hazard". A copy of the email from Scottish Fire and Rescue dated 27 March 2026 was produced by the Applicant.
16. The Applicant's written submissions explained that on or around 15 April 2026, the Respondent was admitted to hospital which prompted Social Services to attend the Property again. Social Services discovered that the Property was flooded with sewage. The Respondent authorised the letting agents to attend the Property to carry out an inspection. Copies of photographs from that inspection were produced by the Applicant which confirmed the reports from Social Services.

17. The Applicant's written submissions explained that on or around 20 April 2025, Environmental Health advised that they required access to the Property to receive quotations for a full clean of the Property.
18. The Applicant's written submissions explained that the Applicant's letting agents had been attempting regular contact with the Respondent to conduct their mandatory annual gas safety inspection, however the Respondent refused to engage meaningfully with them and refused access for such inspections.
19. The Applicant's written submissions explained that on or around 02 April 2026, the Applicant instructed Harper Macleod to issue a letter to the Respondent noting the breaches of the tenancy agreement and requested that the Respondent urgently contact (i) Social Services and Environmental Health to arrange that the Property is reinstated to an acceptable, liveable condition and (ii) thereafter the letting agents to arrange the annual gas safety inspection. No response was received. A copy of letter dated 02 April 2026 was produced by the Applicant.
20. The Applicant produced a copy of a letter from Environmental Health at Moray Council dated 06 July 2026. In that letter, they wrote that they undertook an inspection of the Property on 30 June 2026. The inspection determined that the Property does not meet the tolerable standard as laid down in the Housing
21. (Scotland) Act 1987 – 2006 due to (i) the floor being water damaged following toilet overflow which has resulted in it being variously bowed, damaged and compromised throughout the Property; and (ii) water damage within the lower walls throughout the Property, arising from the overflowing toilet. Both matters require assessment and remedial action. Environmental Health wrote that it was their intention to present the Property in terms of Section 114 of the Housing (Scotland) Act 1987, for it to be made subject of a closing order. The effect of the closing order is that the Property cannot be re-occupied until such time this section is satisfied it meets the tolerable standard, whereupon the closing order will be revoked. The letter closed by asking for confirmation in writing that the Property will not be re-let or reoccupied in its present condition. Photographs were produced alongside the letter. As at the date of the CMD, the Applicant's representative explained that they were not aware of a closing order having been made in relation to the Property.
22. The Applicant's position is that Clause 17 of the tenancy agreement provides that the Respondent agreed to take reasonable care of the Property and any common parts, including (i) keeping the Property adequately ventilated, (ii) avoiding danger to the Property or neighbouring properties by way of fire and flooding and (iii) ensuring the Property and its fixtures and fittings are kept clean. The Applicant's position is that the Respondent is in breach of Clause 17 of the tenancy agreement.
23. The Applicant's representative explained that the condition of the Property meant that remedial works had to be undertaken before the Property could be marketed for sale. The Property could not properly be marketed in its current condition. It was for that reason that the Applicant's representative sought permission to amend the application to include ground three (landlord intends to refurbish). The Applicant's representative explained that the nature of the work which required to be done to the Property was significantly disruptive and there was simply no question of the Respondent being able to live there during that time. The costs that would need to be incurred by the Applicant to put the

Property into a condition in which it could be marketed for sale were significant. This was relied upon by the Applicant in terms of reasonableness.

24. The Applicant's representative explained that as at the date the application was lodged, the Respondent was in arrears of rent in the sum of £2,401. The Applicant did not rely on rent arrears as a statutory ground. Rather, this was a matter which the Applicant sought to rely on in support of it being reasonable to make the order sought. Shortly before the CMD, those arrears stood at £5,500. It was accepted that the Respondent had made a payment of £5,000 on 23 July 2026 towards the rental arrears.

Respondent

25. The Respondent's representative had sent to the Tribunal in advance of the CMD a written submission together with a letter from the Respondent's social worker.
26. The Respondent's representative confirmed that the application was not opposed. The paperwork relied upon by the Applicant was not opposed.
27. Those documents outlined the issues which the Respondent has been living with over the past ten years which have resulted in the conduct complained of which has led to the condition of the Property.
28. The Respondent has not been living at the Property since May 2026. He has been paying for alternative accommodation since then. The position in relation to the Respondent's finances was not particularly clear to his representative. She was aware that he was in receipt of an armed forces pension but was not sure of any other income. The Respondent owned another property but it was in such a state of disrepair that it was uninhabitable.
29. The Respondent had been working with a social worker daily since January 2026. The social worker had supported the Respondent to make housing applications to registered social landlords albeit none have yet been accepted. The Council will not consider a homelessness application from the Respondent until such time as an eviction order is made against him.
30. The Respondent does not object to any of the evidence produced by Applicant or to the Application. The Respondent's ideal scenario would be to discuss with the Applicant contributing towards the arrears and moving back into the Property. That said, the Respondent recognises that the Applicant has a right to sell the Property. The Respondent was looking for a further delay of three weeks to allow him more time to recover his goods from the Property.

Findings in Fact

31. The Applicant is the owner and landlord of the Property.
32. The parties were the landlord and tenant of a tenancy of the Property which was a Private Residential Tenancy under and in terms of the Act.
33. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent.
34. The Applicant intends to sell the Property.
35. The Respondent does not oppose the application or any of the paperwork relied upon by the Applicant.
36. In terms of the tenancy agreement, the Respondent was under an obligation to take reasonable care of the Property. The Respondent did not do so.
37. The condition of the Property during the period in which the Respondent has occupied the Property has triggered the involvement of Environmental Health. Environmental Health have concluded that the Property does not meet the

tolerable standard as laid down in the Housing (Scotland) Act 1987 – 2006 due to (i) the floor being water damaged following toilet overflow which has resulted in it being variously bowed, damaged and compromised throughout the Property; and (ii) water damage within the lower walls throughout the Property, arising from the overflowing toilet. Both matters require assessment and remedial action. Environmental Health have confirmed that it was their intention to present the Property in terms of Section 114 of the Housing (Scotland) Act 1987, for it to be made subject of a closing order. The effect of the closing order is that the Property cannot be re-occupied until such time this section is satisfied it meets the tolerable standard.

38. The Respondent accumulated items within the Property and immediately outside the Property in the communal stairwell, to a level which was unsatisfactory. This presented significant health and hygiene problem and a major fire hazard for the Respondent and his neighbours.
39. The Applicant intends to refurbish the Property. In light of the level of work required to be undertaken in relation to the Property, it would be impracticable for the Respondent to continue to occupy the Property during that refurbishment process. The Property cannot be sold until this work is undertaken.
40. The Respondent has not lived in the Property since May 2026. Before that date, the Property was occupied by the Respondent only. The Respondent is presently living elsewhere and is paying for that privately.
41. The Respondent has had the support of a Social Worker since January 2026 to seek to find alternative accommodation.
42. 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.

Reasons for Decision

43. The Tribunal gave careful consideration to the application and supporting documentation, the paperwork submitted by parties in advance of the CMD and the oral representations at the CMD by the representatives for the Applicant and Respondent.
44. 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.
45. The grounds for eviction under which this application was made are the grounds contained in paragraph 1 and 3 of schedule 3 of the Act. The grounds are that the landlord intends to (i) sell the let Property (ground 1) and (ii) refurbish the Property (ground 3) and it would be impracticable for the Respondent to continue to occupy the Property during that refurbishment process.
46. When the Act was originally passed, those grounds of eviction were mandatory. The Tribunal was required by law to grant the eviction order if satisfied that either ground was established.
47. Since 07 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on either of these grounds can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of the facts.

48. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Applicant intends to (i) refurbish the Property and it would be impracticable for the Respondent to continue to occupy the Property during that refurbishment process and (ii) sell the Property. The Tribunal finds that ground one and ground three are established.
49. The only matter to be determined in this application is whether it is reasonable to grant the order.
50. The Respondent does not oppose the application.
51. In terms of the tenancy agreement, the Respondent was under an obligation to take reasonable care of the Property. The Respondent did not do so.
52. The condition of the Property has deteriorated to such a significant extent that it has triggered the involvement of Environmental Health and Scottish Fire and Rescue.
53. The deterioration in the condition of the Property took place during the time when the Respondent was in occupation of the Property.
54. As a result of the deterioration in the condition of the Property, the Applicant requires to undertake significant refurbishment works to the Property before any steps can be taken to sell the Property.
55. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that grounds one and three have been established. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged by the Applicant and the oral and written submissions on behalf of the Applicant and Respondent at the CMD, specifically that the request for a possession order was not opposed. Accordingly, the Tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction order.

Decision

56. 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.

Serena Weir

28-July-2026

Legal Member/Chair

Date