



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/26/0541

Re: Property at 23 Burnbrae Road, Bonnyrigg, EH19 3EY ("the Property")

Parties:

Miss Patricia Murray, 8 Bankfoot Park, Scotlandwell, KY13 9JP ("the Applicant")

Mr Paul Kirkwood, 23 Burnbrae Road, Bonnyrigg, EH19 3EY ("the Respondent")

Tribunal Members:

Gillian Buchanan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

At the Case Management Discussion ("CMD") which took place by telephone conference on 8 September 2026, the Applicant and Respondent were both present.

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

Background

The Tribunal noted the following background -

- i. The Applicant is the heritable proprietor of the Property.
- ii. The application concerns a Private Residential Tenancy ("the PRT") entered into between the Applicant and the Respondent relative to the Property that commenced on 1 July 2023.
- iii. On 20 June 2025, the Applicant served on the Respondent by "Signed For" post a Notice to Leave dated 19 June 2025 requiring the Respondent remove from the Property by 13 September 2025 failing which eviction proceedings would be raised. The Notice to Leave proceeds on the basis of Ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave was signed for by the Respondent on 21 June 2025 and acknowledged by him in a text message to the Applicant on 23 June 2025.
- iv. Evidence of the Applicant's intention to sell the property is a letter of Ninety Properties dated 21 March 2025.
- v. The Applicant has served on Midlothian Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

The CMD

At the CMD and in response to questions from the Tribunal the Applicant stated:-

- i. She still seeks an eviction order.
- ii. When the PRT was entered into the Applicant was moving in with her partner. She advised the Respondent at that time that her mortgage deal relative to the Property would end in 18 – 20 months time and if all went well she would then likely sell the Property.
- iii. The mortgage deal in respect of the Property expired in February 2025. Since then she has required to apply and pay for a consent to let from her mortgage provider, Virgin Money. These applications are required annually with the most recent application being in March 2026.
- iv. The Applicant has no other rental properties and no longer wishes to be a landlord.
- v. The Applicant has not tried to sell the Property with the Respondent in occupation. The Applicant and her partner jointly own the property in which they live. The Applicant's partner paid the deposit. When this process started the Applicant required to release the equity from the Property to pay off the mortgage on the property owned with her partner. In the interim that mortgage deal has also ended and her partner has required to clear the mortgage. The Applicant will therefore use the equity in the Property to pay him back as agreed.
- vi. There is equity in the Property after repayment of the mortgage from any proceeds of sale.

At the CMD and in response to questions from the Tribunal the Respondent stated:-

- i. He has no objection to an eviction order being granted.
- ii. He lives in the Property with his 23 year old son who is self-employed.
- iii. The Respondent is on dialysis and is awaiting a transplant. He had to stop work a couple of years ago.
- iv. He has applied to the Council for housing. The Council is aware of these proceedings but will not take any action until the eviction order is granted, he will then be put into homeless accommodation. The Council will not presently discuss his needs for longer term housing.
- v. His son is making his own housing arrangements but will continue to help the Respondent at home.
- vi. The Respondent has also had recent issues affecting his heart.
- vii. He needs to progress his housing application and to be settled in Council accommodation.

Reasons for Decision

The Respondent consents to an eviction order being granted in favour of the Applicant. Indeed the granting of an order will help facilitate progress of his housing application with the Council.

Midlothian Council will not even consider any homelessness application by the Respondent or his longer term housing needs until an eviction order is granted.

The application proceeds upon Ground 1 of Schedule 3 of the 2016 Act.

Ground 1 of Schedule 3 of the 2016 Act 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.*
- (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.”*

The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof.

Sub-paragraph 2(b) requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon a letter of Ninety Property dated 21 March 2025. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). In that the Respondent consents to an eviction order being granted in favour of the Applicant to help facilitate progress of his housing application with the Midlothian Council the Tribunal considered it reasonable to grant an eviction order.

On that basis the Tribunal granted an eviction order in terms of Ground 1 of Schedule 3 of the 2016 Act.

Decision

The Tribunal grants an eviction order against the Respondent in favour of the Applicant in terms of Ground 1 of Schedule 3 of the 2016 Act.

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.

Gillian Buchanan

Legal Member/Chair

Date: 8 September 2026