



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/26/1545

Re: Property at 6 Elm Place, Aberdeen, AB25 3SU (“the Property”)

Parties:

Mrs Viviane Bernardin, Spyglass, Loxbury Rise, Torquay, TQ2 6RT (“the Applicant”)

Mrs Nelly Nayanasaikeran, 6 Elm Place, Aberdeen, AB25 3SU (“the Respondent”)

Tribunal Members:

Serena Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted such order not to be enforced before 12noon on 15 January 2027.

Background

1. By application dated 07 April 2026 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 (“**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 quotations from three agents regarding their costs for marketing the Property for sale.
2. On 04 May 2026 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 17 September 2026 and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

4. The CMD took place on 17 September 2026 via telephone case conference. The Applicant and Respondent both took 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 Applicant 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 landlord and tenant of a tenancy of the Property which was a Private Residential Tenancy under and in terms of the Act. The Respondent acknowledged having entered into the Private Residential Tenancy produced alongside the application.
9. A Notice to Leave had been served on the Respondent indicating that the Applicant intended to seek an eviction order based on ground 1. The Respondent acknowledged having received this.
10. The Applicant explained that she was selling the Property as a result of a personal situation which impacted on her finances. The Applicant had first raised the sale of the Property with the Respondent in February 2025. This was discussed again at a meeting in person with the Respondent in August 2025. The Respondent was not in a position to purchase the Property at that stage. The Respondent had asked for a period of two years in order that she could raise the deposit needed to purchase the Property. This length of time was not acceptable to the Applicant. As a result, the Applicant took steps to have her agent serve Notice to Leave on the Respondent.
11. The Applicant also produced a rent statement. Whilst the application was not based on arrears of rent, the Applicant's position was that the rent had not been paid in full and on time since May 2026. The Respondent explained that whilst she had made a payment on 02 June 2026, it was correct that there were four

months' of missed payments totalling £5,000. The Respondent explained that there had been serious disrepair issues affecting the Property which had not been resolved and so she had taken the decision to withhold rent. Shortly before the start of the CMD, the Respondent had sent to the Tribunal a document outlining what those disrepair issues were.

12. The Applicant is entitled to sell the Property and genuinely intends to do so. The Applicant produced quotations from three agents regarding their costs for marketing the Property for sale. The Applicant intends to sell the Property, at market value, within 3 months of the Respondent ceasing to occupy the Property.
13. The Property is occupied by the Respondent, her husband and their two children aged 9 and 15. Both the Respondent and her husband work full time.
14. The Respondent has suffered from health problems over the past two years.
15. The Respondent's two children have specific additional support needs. Both have had challenges with their mental health. The Respondent confirmed that she did not consider that it was in the best interests of the children for them to make representations to the Tribunal about this application.
16. The Respondent's priority is to ensure that any move from the Property minimises the disruption caused to her children. Moving out from the catchment area of the school that her children attend would be very disruptive for them.
17. Temporary emergency accommodation such as a hotel or bed and breakfast would also cause disruption to her children. It would be an unfamiliar surrounding for her children. She is concerned that she would not be able to make any such temporary emergency accommodation safe for her children in the manner in which she has done at the Property already.
18. The Respondent has investigated moving to a new private rented property but this is unaffordable.
19. The Respondent has also investigated new accommodation with her local authority. She has been advised by the local authority not to leave the Property so as to not be considered voluntarily homeless. She has been advised by the local authority that if an eviction order is made by the Tribunal, she would be given priority for permanent re-housing.
20. The Respondent has an agreement in principle in relation to the purchase of a new property which she has identified. She is also speaking with her local authority about moving to a new property.
21. The Respondent explained that she does not have an objection in principle to the eviction order sought by the Applicant: she is just looking for more time. The Respondent expects that a further extension until the end of 2026 would allow her sufficient time to either purchase her own property or find new accommodation through the Council. In the event that either of those things happen before the end of the year, the Respondent has no difficulty in arranging for the Property to be handed back to the Applicant sooner.
22. The Applicant confirmed that she did not have any objection to an eviction order being delayed until the middle of January 2027 to allow the Respondent an opportunity to purchase her own property or find new accommodation through the Council.
23. 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, that it was reasonable for the order sought to be

granted today but that the circumstances justified the date on which the order came into force being delayed until 15 January 2027.

Findings in fact

24. The Applicant is the registered joint owner of the Property.
25. The Applicant and the Respondent are respectively the landlord and tenant of the Property by virtue of a Private Residential Tenancy in terms of the Act which commenced on 04 March 2022.
26. The agreed monthly rental was initially £1,150. The monthly rent was currently £1,250.
27. A Notice to Leave in proper form and giving the requisite period of notice was served on and received by the Respondent.
28. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 05 April 2026.
29. The application was submitted to the Tribunal on 07 April 2026.
30. The Applicant is entitled to sell the Property and genuinely intends to do so. The Applicant intends to sell the Property, at market value, within 3 months of the Respondent ceasing to occupy the Property.
31. The Property is occupied by the Respondent, her husband and two children aged 9 and 15.
32. Both the Respondent and her husband work full time.
33. The Respondent has suffered from health problems over the past two years.
34. The Respondent's two children have specific additional support needs. Both have had challenges with their mental health.
35. The Respondent's priority is to ensure that any move from the Property minimises the disruption caused to her children. Moving out from the catchment area of the school that her children attend would be very disruptive for them.
36. Living in temporary emergency accommodation such as a hotel or bed and breakfast would also cause disruption to the Respondent's children.
37. The Respondent has investigated moving to a new private rented property but this is unaffordable.
38. The Respondent has also investigated new accommodation with her local authority. She has been advised by the local authority not to leave the Property so as to not be considered voluntarily homeless. She has been advised by the local authority that if an eviction order is made by the Tribunal, that she would be given priority for permanent re-housing.
39. The Respondent has an agreement in principle in relation to the purchase of a new property which she has identified. She is also speaking with her local authority about moving to a new property.
40. The Respondent does not object to the order sought by the Applicant but wants an extension to the period of time before it comes into force.
41. The Applicant does not object to a delay in the date on which the order comes into force.

Discussion and reasons for decision

42. The Tribunal gave careful consideration to the application and supporting documentation, the procedural background to the application and the written and oral representations at the CMD by both parties.
43. 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.

44. 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 landlord 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.
45. 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.
46. The only matter to be determined in this application is whether it is reasonable to grant the order.
47. The order for possession was sought by the Applicant on a ground specified in the Act and properly narrated in the notice served upon the Respondent.
48. The Tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the Applicant was entitled to seek recovery of possession of the Property based upon that ground.
49. The Tribunal accepted the unchallenged evidence that the Applicant intends to sell the Property once the Respondent has ceased to occupy the Property.
50. The ground for eviction was accordingly established.
51. 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”.

52. Having regard to the application and supporting papers, the Tribunal finds that it is reasonable to grant the eviction order. In light of the unchallenged evidence provided by the Respondent about the conditions which both of her children have and the impact that a move to living in emergency or temporary accommodation would have on them and their education, we are persuaded that it is reasonable that enforcement of the eviction order be delayed. The period of time requested by the Respondent was until the end of 2026. We consider that it is reasonable to delay enforcement of the eviction order until 15 January 2027. That was not opposed by either party.
53. 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.

Serena Weir

Legal Member/Chair

17 September 2026

Date