



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/24/5643

Re: Property at 23 Concraig Gardens, Kingswells, Aberdeen, AB15 8LG (“the Property”)

Parties:

Mr. George Soman, 14 Kingswood Road, Kingswells, Aberdeen, AB15 8TD (“the Applicant”)

Mr. Howard McDonald, 23 Concraig Gardens, Kingswells, Aberdeen, AB15 8LG (“the Respondent”) per his representative, his wife, Mrs. McDonald of the same address.

Tribunal Members:

Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory process and the Ground for recovery of possession having been established, it is reasonable to grant the Order sought.

Background

1. By application received on 9 December 2024 (“the Application”) the Applicant’s then agents applied on his behalf to the Tribunal for an Order for eviction and

possession of the Property based on Grounds 1 and 12 of Schedule 3 to the 2016 Act.

2. The Application comprised the following:
 - i) copy Notice to Leave in terms of Ground 1 of Schedule 3 to the Act with proof of issue to the Respondent;
 - ii) copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act with proof of issue to the Respondent
 - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeen City Council being the relevant local authority;
 - iv) evidence of intention to sell as required by the Act.
3. The Application was conjoined with another application, CV 25 5644, by the Applicant against the Respondent seeking an order for payment of rent due and owing.
4. A Case Management Discussion (the "CMD") was held on 27 June 2025 at 14.00 by telephone conference. Prior to the CMD, the Applicant's then agents lodged documentary productions.
5. At the CMD, the Tribunal explained that it had to be satisfied that the statutory procedure had been carried out properly, that the ground for the Order was evidenced and that it was reasonable on those facts to grant the Order. The Tribunal advised that, on the face of it, the Tribunal was satisfied in respect of the statutory procedure and Ground 1 but required further information in respect of the circumstances of the Parties to determine if it was reasonable to grant the Order.
6. The Respondent, Mr. McDonald, advised that he did not dispute the Ground 1 but opposed an Order in respect of his personal circumstances. The Tribunal advised that as both the statutory procedure and Ground 1 had been satisfied, a Hearing of evidence on the facts of the reasonableness aspect of the Application would be required. With regard to Ground 12 and the application, CV 25 5644, the Tribunal noted that this Ground and application were opposed and so a Hearing of evidence would be required for those matters.
7. The CMD was adjourned to a Hearing of evidence and the following Direction was issued to both Parties:

"The Applicant is required to submit any documentary evidence on which he intends to rely in respect of:

His requirement to sell the Property to mitigate or relieve his financial circumstances;

The prospect of the Applicant selling the Property with the Respondent remaining as a sitting tenant and

Any other matters to which the Applicant considers the Tribunal should have regard in reaching a decision on whether or not it is reasonable to grant the Order in respect of the facts of Ground 1.

The Respondent is required to submit any documentary evidence on which he intends to rely in respect of:

His personal circumstances and those of the members of his family who reside with him at the Property;

The impact which granting the Order will have on him and those of the members of his family who reside with him at the Property;

The likelihood of alternative accommodation being available to him and his family;

Any other matters to which the Respondent considers the Tribunal should have regard in reaching a decision on whether or not it is reasonable to grant the Order in respect of the facts of Ground 1.”

8. The Applicant, Mr. Soman, complied with the Direction and submitted the documentary evidence as required. The Respondent, Mr. McDonald, submitted a personal statement but did not submit supporting documentary evidence in a format which was acceptable to the tribunal administration. Although this issue had been raised with the Respondent, and further highlighted by the Applicant's solicitor, no attempt was made to re-lodge the material. The Tribunal Members were apprised of this only at the commencement of the hearing.

Hearing.

9. A Hearing was fixed for 3 December 2025 and postponed as a tribunal member was unavailable. The postponed Hearing took place by video conference on 27 March 2026 at 10.00 am. The Applicant, Mr. Soman, was present and was unrepresented. The Respondent, Mr. McDonald, was present and, after discussion on his health, it was agreed that his wife would represent him, rather than give evidence as a witness.
10. Mrs. McDonald explained that the documents submitted in response to the Direction were mainly photographs of the Property and related to the rent arrears aspect of the proceedings. In the circumstances, the Tribunal considered that the

photographs would be of limited relevance to the Ground 1 evidence and determined that the hearing should proceed.

11. The Application proceeds on two Grounds: Ground 1, the landlord intends to sell the let property and Ground 12, the tenant has been in rent arrears for three or more consecutive months. As Ground 1 is not opposed on the fact of that Ground, the Tribunal advised the Parties that it would deal with this Ground first and deal with Ground 12, if thereafter required. Therefore, the Tribunal heard evidence in respect of Ground 1 and the reasonableness issue.

Evidence of the Applicant.

12. With reference to the various documents lodged by him, Mr. Soman's evidence covered the criteria set out in the Direction. He stated that he had not intended to rent out the Property but did so as he had been unable to sell it in or around 2021. He stated that there is a buy to let mortgage on the Property, the fixed interest rate of which will expire in May 2026 and so the costs associated with the Property will rise significantly. Mr. Soman explained that advice from local solicitors is that it is not financially viable to market the Property with the Respondent and his family in place, particularly as there is a history of rent arrears. With regard to his own financial position, Mr. Soman explained that his own home is mortgaged and that interest on that mortgage will also increase soon. He explained that his daughter is studying at Aberdeen University and has had to take out loans to cover her living costs as Mr. Soman cannot financially support her fully. Mr. Soman stated further that his son is due to attend university later this year and will require financial support. He stated that, in addition to his immediate family, he supports his elderly parents in India. Mr. Soman stressed that the Respondent's failure to pay rent means that he is struggling financially, albeit that the Respondent's rent and an amount towards the arrears are now paid direct by Universal Credit. Mr. Soman stated that the current rent due is £13,473.00, the Respondent having stopped paying rent when the Notice to Leave for Ground 1 was issued. He pointed out that the rent had not been increased during the tenancy. His firm evidence was that he no longer wishes to act as a landlord and wishes to sell the Property as soon as possible. Mr. Soman referred the Tribunal to a similar eviction case in which the Respondent was evicted having accrued considerable rent arrears.
13. In answer to Mrs. McDonald's questions in cross-examination, Mr. Soman was steadfast that his financial position was as set out in his evidence in chief. He refuted that he had landlord's insurance to cover rent arrears. He refuted that his intention to sell was based on the Respondent's rent arrears and inability to pay an increased rent and refuted that he had property in India. His strong position was that he no longer wished to be a landlord.

Evidence of the Respondent.

14. Mrs. McDonald gave evidence on behalf of her husband. The Tribunal reminded her that the Ground for the eviction, Ground 1, had been established and that her evidence should focus on reasonableness and referred her to the Direction which set out the scope of the evidence required.
15. Mrs. McDonald was reluctant to detail the medical needs of her husband and her fourteen-year-old son but stressed that these were challenging and significant. She stated that Mr. McDonald has planned surgery on 27 April 2026 and that her daughter has Higher Grade exams from the end of April until May 2026. Mrs. McDonald stated that she has been in constant contact with Aberdeen City Council and These Homes and that the family's application for housing was being treated at a higher grade. She stated there was little availability of the type of housing suitable for the family's needs. Mrs. McDonald stated that she works part-time as she cares for her husband and son. Mrs. McDonald questioned the truthfulness of Mr. Soman. She pointed out that the rent of £850.00 and a contribution of £62.00 towards arrears have been paid to Mr. Soman for at least the last six months.
16. In answer to Mr. Soman's questions in cross-examination, Mrs. McDonald confirmed that she had been making enquiries for alternative accommodation, mainly by phone or online and so there was nothing in writing. She said that there had been limited progress with the application since the CMD but the application had been ungraded on the housing list. Mrs. McDonald refuted that her husband owns a property in London. She did not want to comment on the other tribunal case referred to by Mr. Soman. With regard to the rent due, Mrs. McDonald stated that there are rent arrears but not to the extent sought by Mr. Soman. She confirmed that rent was not being withheld or retained.
17. Mrs. McDonald stated that her husband would agree to the Order being granted if the family could be given extra time to find suitable accommodation and suggested the end of June. Mr. Soman did not wish to accept this offer and so the Hearing continued.

Findings in Fact

18. The Tribunal made the following findings in fact: -
- i) There is a private residential tenancy of the Property between the Parties;
 - ii) The correct statutory procedures have been carried out;
 - iii) The Applicant is under financial strain which will worsen in the near future;
 - iv) The Applicant has financial responsibility for his immediate family and his extended family;
 - v) The sale of the Property will ease the Applicant's financial burden;
 - vi) The Respondent has accrued rent arrears during the tenancy;

- vii) The Respondent stopped paying rent on receipt of the Notice to Leave on or around 17 June 2024;
- viii) The Respondent's failure to pay rent has impacted adversely on the Applicant's financial position;
- ix) The Applicant is entitled to sell the Property and intends to sell the Property as soon as he has vacant possession;
- x) The Respondent's family comprises himself, his wife and his teenage son and teenage daughter;
- xi) The Respondent and his teenage son have health issues;
- xii) The Respondent's daughter is studying for Higher Grade exams to be taken in April and May 2026;
- xiii) The Respondent is in receipt of benefits and his wife works part-time;
- xiv) Rent and a contribution to arrears have been paid for the last six months.

Issue for the Tribunal

19. The issue for the Tribunal was to determine whether or not to grant the Order sought in respect of Ground 1 which states *"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"*
20. As the Tribunal was satisfied that the Ground was met and the statutory ground and procedure followed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

Decision and Reasons for Decision

21. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
22. The Tribunal had regard to the fact that the Applicant, Mr. Soman has significant financial burdens exacerbated by the Respondent, Mr. McDonald's failure to pay rent during the tenancy and, in particular, Mr. McDonald's decision to stop paying rent when the Notice to Leave was issued. The Tribunal accepted that Mr. Soman requires to sell the Property to alleviate his financial position and that he no longer wishes to act as a landlord.

23. The Tribunal noted that the current rent and a contribution towards the arrears is now being paid direct by the DWP. The Tribunal's view is that the level of arrears, albeit disputed to a certain extent, is unlikely to be reduced significantly and within a reasonable timescale and so placed little weight on the fact that Mr. Soman is now receiving rental income from the Property.
24. The Tribunal recognised the health issues of Mr. McDonald and his son and took account of the importance of Mr. McDonald's daughter's education with regard to the impact that an eviction Order would have on them. The Tribunal had regard to the fact that Mr. McDonald is actively pursuing alternative accommodation and that, whilst this might take some time, accommodation is likely to be forthcoming.
25. The Tribunal also noted that the Notice to Leave was served in June 2024, and that the Respondent has therefore had a considerable period in which to plan for alternative accommodation. The Tribunal accepted, however, that local authorities often require a formal eviction order before homelessness assistance can be fully progressed, which may have limited the Respondent's ability to secure alternative housing at an earlier stage
26. In balancing the interests of the Parties, the Tribunal placed greater weight on Mr. Soman's firm assertion that he does not wish to continue as a landlord and saw no reason to obstruct this. The Tribunal also attached significant weight to the fact that the sale of the Property will improve Mr Soman's financial position and, again, saw no reason to obstruct this. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction Order.
27. The Tribunal then had regard to Mrs. McDonald's request that, if an Order is to be granted, it should be suspended until later in the summer and after the end of the school terms, and, had regard to Mr. Soman's opposition to this. On balance, the Tribunal took the view that, having regard to the whole circumstances, it is fair and just that the Order be suspended until 5 June 2026 to allow Mr. McDonald to recover from his planned surgery and to allow Miss McDonald to take her exams.
28. For the avoidance of doubt, as the Tribunal was able to reach a Decision and grant an Order in respect of Ground 1, there was no need to deal with Ground 12 and the Tribunal heard no evidence in respect of Ground 12.
29. This Decision is unanimous.

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.

K. Moore

Legal Member/Chair

27 March 2026

Date