



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/3823

Re: Property at 1 Plover Court, Newtonhill, Stonehaven, AB39 3NW (“the Property”)

Parties:

Mrs Mary Eileen Duncan, Mr Andrew Duncan, 6 Orchard Lane, Aberdeen, AB24 3DJ (“the Applicant”)

Mr Michael Wilson, Mr John Laing otherwise know as Mr Simon Wilson, 1 Plover Court, Newtonhill, Stonehaven, AB39 3NW (“the Respondent”)

Tribunal Members: Ruth O’Hare, Legal Member and Angus Anderson, Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of paragraph 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 27 August 2026.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicants relied upon ground 1 of schedule 3 of the 2016 Act, stating their intention to sell the property.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take place on 11 March 2026 at 2pm. The Tribunal gave notice of the CMD to the

parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondents by sheriff officers on 28 January 2026.

- 3 On 3 February 2026 the Respondents wrote to the Tribunal detailing their objection to an order being granted and listing grounds why it would not be reasonable to evict them.
- 4 On 19 February 2026 the Applicants emailed the Tribunal with evidence that the Respondents preferred to be emailed together to the one email address.

The CMD

- 5 The CMD took place by teleconference on 11 March 2026 at 2pm by teleconference. The Applicant was represented by Ms Joanne Mitchell, Solicitor, Ledingham Chalmers LLP. The Respondents were both present.
- 6 Having heard submissions from the parties, the tribunal noted the Respondents' objection to the application and determined to fix an evidential hearing. The tribunal encouraged the Respondents to seek representation to assist them with participation in the hearing. The Respondents were directed to details of advice services on the Tribunal's website.
- 7 A Direction was issued to parties following the CMD. The Applicants were directed to provide a submission in terms of the reasonableness of granting an eviction order and any appropriate medical evidence. The Respondents were directed to provide a submission outlining why it would be unreasonable for an eviction order to be granted, details of all advice from the local authority regarding their rehousing evidenced by any correspondence confirming the local authority's position, details of what attempts had been made to obtain alternative accommodation, and any appropriate medical evidence. Both parties were asked to provide details of witnesses, all legal cases, statutes and submissions to be relied upon at the hearing and all documents to be relied upon at the hearing. Parties were required to comply with the Direction no later than 15 May 2026.
- 8 On 20 March 2026 the Tribunal received an email from the Respondents querying what further information was required. The Tribunal responded with a copy of the Direction and referred to the list of advice services on the Tribunal's website if the Respondents required advice and assistance.
- 9 On 15 May 2026 the Applicants' representative sent an email to the Tribunal with written submissions, a list of case law and statutes, a list of witnesses and a list of documents.
- 10 On 22 July 2026 the Applicant's representative sent an email to the Tribunal with affidavits from Siobhan Leslie and Gary Duncan.

The hearing

- 11 The hearing took place on 24 July 2026 at Aberdeen Sheriff Court. The Applicants were represented by Miss Mitchell. The Applicants themselves were not in attendance. Mrs Siobhan Leslie and Mr Scott Duncan, the Applicants' children who both hold powers of attorney for their parents, were present.
- 12 The tribunal had the following documents before it:-
 - (i) The application form and supporting documents including private residential tenancy agreement, notice to leave and proof of delivery to the Respondents, section 11 notice and proof of delivery to the local authority, letter of engagement from Ledingham Chalmers to the Applicants, and email from Mrs Duncan confirming the Applicants' intention to sell the property.
 - (ii) Land Certificate for the property confirming the Applicants' ownership and proof of the Applicants' landlord registration.
 - (iii) The Respondents' response to the application dated 3 February 2026.
 - (iv) Email from Ledingham Chalmers dated 19 February 2026 with supporting documents.
 - (v) The Tribunal's Case Management Discussion Note and Direction dated 11 March 2026.
 - (vi) Emails from Ledingham Chalmers dated 15 May 2026 with supporting documents including medical evidence.
 - (vii) Email from Ledingham Chalmers dated 22 July 2026 with affidavit evidence.
- 13 The tribunal heard oral evidence from the parties. The following is a summary of the key elements of the evidence.
- 14 Mrs Leslie and Mr Duncan adopted the affidavits as their evidence in chief. The Respondents confirmed that they had received the affidavits but did not have them to hand. The Respondents were therefore provided with a copy by Miss Mitchell for reference. Both Mrs Leslie and Mr Duncan outlined the Applicants' age and declining health, Mrs Duncan's recent diagnosis of Alzheimer's Dementia and the impact on the Applicants' ability to deal with matters. As such, Mrs Leslie had taken over management of the Applicants' finances, including those related to the tenancy between the parties. The Applicants could no longer deal with the pressures of being landlords and the situation was causing them significant stress and upset. The Applicants had made inquiries with a view to selling the property with the Respondents in situ prior to making the application but there was no interest. The property had been assessed by an occupational therapist as being unsuitable for the Respondents due to its

layout. The Respondents were invited to ask questions of Mrs Leslie and Mr Duncan by way of cross examination, with assistance from the Legal Member, but declined to do so.

- 15 The Respondents spoke to their own health issues and their attempts at finding alternative accommodation. They had viewed properties but were finding it difficult to secure a new tenancy given their benefits status and the requirement to have a guarantor. Mr Laing, otherwise known as Mr Simon Wilson, explained that he had been banned by the local authority from applying for housing for one year. He had been a victim of identity theft. Mrs Duncan had provided the Respondents with support over the term of the tenancy. She had been a good landlord. The Respondents had not known where to seek advice on the application. They had spoken to Shelter but hadn't found the service useful. They have a good relationship with their local GP and were keen to remain in the catchment area for the surgery, however they had been looking at other areas for accommodation. Miss Mitchell was invited to ask questions of the Respondents by way of cross examination but declined to do so.
- 16 Both parties were given the opportunity to make closing submissions.
- 17 Miss Mitchell submitted that ground 1 had been met and it would be reasonable for an eviction order to be granted. She referred to the Applicants' personal circumstances, their attempts to sell the property with the Respondents in situ, the impact of their declining health on their ability to manage the tenancy, and the additional stress caused by the Respondents' conduct, which had included messages to Mrs Duncan directly. Miss Mitchell pointed out the lack of evidence from the Respondents to support their position. She noted that the local authority would generally not take action in terms of rehousing until an eviction order is granted. She noted that the property appeared unsuitable for the Respondents given their mobility issues. If the Respondents were banned from applying for council housing, this was not the fault of the Applicants. The Respondents had been given ample opportunity to source alternative accommodation. There were no reasonableness grounds that would prevent an eviction order being granted.
- 18 The Respondents confirmed that they did not dispute the Applicants' entitlement to sell the property, nor their intention to do so. Their position is that it would be unreasonable to make an eviction order.

Findings in fact and law

- 19 The Applicants are the owners and landlords, and the Respondents are the tenants, of the property in terms of a private residential tenancy agreement, which commenced on 1 November 2019.
- 20 The Applicants have given the Respondents a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 1.

- 21 The Applicants have given the local authority a section 11 notice at the time of making this application.
- 22 The Applicants are entitled to sell the property as the registered owners.
- 23 The Applicants intends to sell the property, or market the property for sale, within three months of the Respondents ceasing to occupy it.
- 24 The Applicants require to sell the property due to their age and declining health. Mr Duncan is 78 years old and has multiple chronic illnesses. Mrs Duncan is 73 years old and was diagnosed with Alzheimers Dementia in April of this year. The Applicants can no longer manage the tenancy. The Applicant's daughter, Siobhan Leslie, holds a continuing power of attorney for the Applicants and has taken over management of their finances, including any matters arising from the tenancy.
- 25 The property is the Applicants' only rental property. The ongoing proceedings to recover possession are causing them stress and anxiety.
- 26 The Respondents' communications to Mrs Duncan have caused her upset and stress. On occasion, the Respondents have asked to borrow money from Mrs Duncan.
- 27 The Applicants have made attempts to sell the property with the Respondents in situ by contacting the local authority and approaching private companies. A sale with the Respondents in situ is not practical, nor financially viable, as it would likely take longer and would not achieve the most competitive price.
- 28 The Respondents are brothers who are 48 and 43 years old respectively.
- 29 Mr John Laing, otherwise known as Mr Simon Wilson, suffers with mobility issues and mental health issues. Mr Laing suffered a heart attack in 2017. Mr Michael Wilson also suffers from poor health. Mr Wilson suffered a heart attack in 2019.
- 30 An occupational therapy assessment was conducted at the property after the Respondents requested a wet room or bathroom downstairs. The property was considered unsuitable for the Respondents due to the steep stairs and lack of downstairs toilet.
- 31 The Respondents have been unable to secure alternative accommodation. Mr John Laing, otherwise known as Mr Simon Wilson, believes he is banned from applying to the local authority for rehousing for a period of one year for given false information.
- 32 Mr John Laing, otherwise known as Mr Simon Wilson, has a court appointed social worker. He has been subject to tag conditions which prohibit him from leaving the property between 7pm and 7am.

- 33 The Respondents do not want to leave the property as they have support from their local GP and wish to remain in the catchment area for the surgery.
- 34 It is reasonable to make an eviction order.

Reasons for decision

- 35 The tribunal took into account all submissions from the parties, and the documentary and oral evidence, in reaching its decision on the application. The documents are referred to for their terms and reflected in the tribunal's findings in fact.
- 36 Section 51 of the 2016 Act provides that "*The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*"
- 37 Section 52 of the 2016 Act goes on to state that "*an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*" The tribunal had before it a copy of a notice to leave in the prescribed form that had been sent to the Respondents which cites ground 1 of schedule 3 of the 2016 Act. The tribunal was also satisfied that the Applicants had sent a section 11 notice to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 38 The tribunal considered the terms of ground 1, which are contained in paragraph 1 of schedule 3 of the 2016 Act:-
- "Landlord intends to sell*
- 1(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."*
- 39 The tribunal determined based on the documentary evidence before it that the Applicants are entitled to sell the property as the registered owners and intend

to do so within three months of the Respondents vacating. The Land Certificate confirmed their entitlement to dispose of the property as the registered owners, and their intention to sell the property was clear both in terms of the correspondence produced and their reasons for taking such action. There was no contradictory evidence before the tribunal and the Respondents had not sought to dispute these facts.

- 40 The tribunal therefore determined that paragraph 1(2)(a) and (b) of schedule 3 of the 2016 Act were met.
- 41 The tribunal went on to consider the reasonableness of making an eviction order in this case in accordance with the terms of paragraphs 1(2)(c) of schedule 3 of the 2016 Act.
- 42 The tribunal considered all factors relevant to reasonableness in the circumstances of this case, as reflected in its findings in fact. Whilst the tribunal had some sympathy for the Respondents' position, the tribunal ultimately determined to give most weight to the Applicants' property rights and the decline in their health that had led to their decision to withdraw from the private rental market. The evidence from their children was compelling and clearly outlined in detail the circumstances that had led to their decision. It was a credible explanation for their decision to sell the property, supported by medical evidence confirming Mrs Duncan's recent diagnosis of Alzheimers Dementia.
- 43 The tribunal carefully considered the Respondents' circumstances but ultimately could identify no factors that would weigh against the granting of an eviction order in this case. The tribunal noted that the Respondents had provided no evidence in support of their position, such as medical evidence or evidence of their status in terms of rehousing with the local authority. As such, the tribunal gave less weight to their submissions at the CMD and their oral evidence at the hearing.
- 44 The tribunal also accepted that it may simply be the case that the property is no longer suitable for the Respondents given Mr Laing's mobility issues and that it may be to their benefit to secure alternative accommodation that is better suited to their housing needs. The tribunal further noted that there are no dependents who would be at risk of homelessness if an eviction order was granted as the Respondents are the sole occupants of the property. The tribunal accepted that both Respondents have their own health issues but noted that they would be able to access support from the local authority via social work. Furthermore, the position regarding their prospects of rehousing with the local authority is unclear. Whilst Mr Laing had referred to a one year ban on applying for housing, he had provided no evidence in support of this, nor any evidence that this would remain the position if he was to be assessed as homeless. The tribunal was therefore not persuaded that the Respondents would be left without advice and assistance from the local authority if an eviction order is granted, and at the very least they may be entitled to emergency accommodation until such time as they can secure a permanent property.

- 45 Accordingly, having considered all factors relevant to reasonableness, the tribunal determined that the balance weighs in favour of making an eviction order in this case, and that paragraph 1 of schedule 3 of the 2016 Act is met.
- 46 The tribunal therefore unanimously determined to make an eviction order under section 51 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.

Ruth O'Hare

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Legal Member/Chair

24 July 2026

Date