Housing and Property Chamber
First-tier Tribunal for Scotland

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/25/1198

Re: Property at 36, 1/3 Main Street, Kilsyth, Glasgow, G65 0AQ ("the Property")

Parties:

Mr Norman William Innes, 5/2 Argyll Chambers, 32 Buchanan Street, Glasgow, G2 8BD ("the Applicant")

Mr Malcolm Bailey, 36, 1/3 Main Street, Kilsyth, Glasgow, G65 0AQ ("the Respondent")

Tribunal Members:

Nairn Young (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for hearing at 10am on 14 April 2026 at Glasgow Tribunals Centre. The Applicant was present and represented by Mr Jeffrey Livingstone of Landlord Agents Ltd.. The Respondent represented himself and was supported by Ms Alison Hegarty. Ms Hegarty also gave some evidence in the course of the hearing. There was no objection to this approach on the part of the Applicant. In the event, the evidence given by Ms Hegarty was uncontroversial, being mostly regarding facts that were undisputed between the parties and, otherwise, inviting the Tribunal to come to the same inferences from the agreed facts that the Respondent had also made. While her evidence therefore helped to add some detail to the picture, it was not crucial to determination of the case.

The application proceeded on Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’). The Respondent opposed the order being granted, for the reasons set out in more detail below.

- Findings in Fact

1. The Applicant lets the Property to the Respondent in terms of a private residential tenancy agreement with a start date of 5 November 2021.

2. On 21 August 2024, the Applicant’s agent sent a notice to leave to the Respondent, to the email address identified in the tenancy agreement to be used for such communication, stating that he would rely on Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (‘the Act’) in any application to the Tribunal to follow.

3. The Applicant is the owner of the Property.

4. The Applicant intends to sell the Property for market value, or at least put it up for sale, as soon as the Respondent ceases to occupy it.

5. The reason for the Applicant’s wish to sell is that he requires funds to support members of his family.

6. The Applicant does not wish to sell the Property to avoid his duties to repair it.

7. In particular, the Applicant has not attempted to avoid completing work on a communal secure entry. Rather, this work has been unable to proceed due to a lack of consent from a housing association which is co-owner of the communal entrance.

8. The Respondent will not be rehoused by the local authority until an eviction order is granted.

- Relevant Law

9. This case hinges on whether or not Ground 1 of Schedule 3 to the Act has been established by the Applicant. That ground reads:

> “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.”

- The Parties’ Cases

10. There is no controversy in this case on the question of the Applicant’s entitlement to sell the Property. It was agreed between the parties that he is the owner and is entitled to do so.

11. The Respondent rather opposes the application on the remaining two aspects of this ground set out in sub-paragraphs (2)(b) and (c). Put short, he submitted that the Applicant’s previous actions demonstrated that he did not really intend to sell the Property; and that, even if he did have that intention, it was unreasonable for the Tribunal to grant the order on that account, since his motivation to do so was simply to avoid his duties as a landlord.

12. The Applicant gave evidence on his own account, which largely covered similar ground to written submissions that had been lodged prior to the hearing. He reaffirmed that he wished to sell the Property. He stated that he had originally wished to sell this property, the flat previously occupied by Ms Hegarty, and a commercial unit forming the ground floor of the same building, altogether, to use the proceeds of sale to fund improved care for his parents. That was in April 2024. Since then, sadly, his parents have passed away; but his sisters now require private medical support and the money will be used for that purpose.

13. One of the Respondent’s points of opposition was that both Ms Hegarty’s flat and the commercial premises had been vacated, ostensibly on the ground that they were to be sold; but that no sale had been completed, and indeed they had been re-let. The Applicant accepted that this had happened. He explained it by asserting that they were marketed, but failed to sell within 6 or 7 months, due to the Respondent attempting to discourage potential buyers, and were therefore relet to mitigate costs. (The Respondent denied speaking to any prospective buyer, stating he had spoken to only one other individual

about the Property, who was buying a cake from him, as part of his baking business.) The Applicant stated that he was confident the block would sell as a whole, once the Respondent had moved elsewhere.

14. Separately, the Applicant stated that he owned one other residential property and one other commercial property, for rent. When asked why he was not choosing to sell these properties, he described the other residential tenant as a, “platinum tenant,” with whom he had never had any issue.

15. The Respondent’s evidence focused mostly on the issues he stated existed at the Property and that had not been addressed by the Applicant. These fell under two heads: damage to two doors regulating entry to the shared close, such that unauthorised persons could gain entry easily and behave there in an antisocial manner; and various issues with the internal repair of the Property.

16. It was not contested that the entry doors had been damaged and that they required to be replaced with secure entry doors. The Applicant however stated that he had attempted to take this work forwards with the co-owners of the communal close (a housing association), but that they had refused to engage with him on it. The Respondent had produced a chain of emails between himself and the letting agents for the Property, as well as some other individuals, from throughout 2024, regarding the issue. In those, he suggested at various points that he had spoken to the housing association and that they had agreed to pay 50% of the cost of the necessary work. The letting agents were consistent in saying that discussion was still taking place. There was some support for the Respondent’s position in two emails from the housing association which appeared to show willing to have the matter addressed, from 30 April 2024 and 9 December 2024. However, the earlier of these seemed to confirm that the Applicant had contacted them to propose works and forward a quotation for them; while the latter did not refer to this, but rather suggested the housing association would carry out a site inspection with a view to getting a quotation. An email from a police officer from 6 August 2025 stated that he had spoken to the letting agents and been told that, “no

one is taking ownership of who ultimately is in charge of the entry system." The Applicant, in response, had produced an email from an Asset Manager of the housing association from 21 October 2025, saying, "We appreciate your efforts to maintain the property [at 36 Main Street] and your commitment to improving security measures. However, I can confirm that [the housing association] does not have a budget allocated for these works in the current financial year."

17. In terms of the second head, the Respondent again referred to a list of emails in which he raised various complaints about repair. These appeared to culminate in an email from him to the letting agents, of 6 January 2025, in which he noted that an inspection had been carried out by them on 17 December 2024, and that he had not received a copy of that inspection report. He then listed the repairs issues that he considered should be reflected in any report. That email was replied to by the letting agent asserting that all repairs that had been reported through the repairs portal had been addressed.

18. This followed on an exchange between the Respondent and an Environmental Health Officer from North Lanarkshire Council, between 28 November 2024 and 17 December 2024, discussing the outcome of an inspection she had carried out on 23 November 2024. She stated that she had assessed that the Property met the tolerable standard, but not the repairing standard, at that time; and that she had issued an email indicating this to the letting agent and the Applicant. She gave details of how to contact the First-tier Tribunal to make an application for an enforcement order, should these issues not be addressed, "in a timely manner." The Respondent has not made a reference to the Tribunal relating to repairs. He stated that this was because it was too difficult for him to do this and deal with the ensuing process.

19. Taken together, the Respondent asserted, this gave a picture of a landlord who did not want to complete repairs and, when his tenants persisted in raising the issue, sought to pretend that he intended to sell, in order to remove them. The fact that he had successfully done this to Ms Hegarty and his

commercial tenant previously, and shortly afterwards had simply relet these properties, demonstrated this. Regarding this last point, the Respondent rejected the suggestion that the properties simply did not sell, asserting that they were placed on the market over value in order to ensure that outcome. (No evidence was presented by him to support that conclusion.)

20. The Applicant, in response, stated that he had never refused to complete work that was required at the Property. He stated that he relied on the letting agents to market the other properties previously, which he understood was done at the value set out in the home report, at least as far as the residential property was concerned. On his behalf, his representative observed that letting agents deal with day-to-day repairs without reference to a landlord, and that there is therefore no significant inconvenience caused to landlords by reports of repairs. There is a clear legal route to enforcing repairs and it has not been followed in this case. Both these observations, it was said, cast doubt on the assertion that evading repairs was the purpose for the Applicant in selling the Property.

- Discussion and Decision

21. The Tribunal first considered whether or not the Applicant genuinely intends to sell the Property, at market value. It concluded that he does. He was clear and consistent in evidence that this was his intention and submitted a letter of engagement of a selling agent and surveyor supporting that. The only evidence led in contradiction related to the previous marketing of the Applicant’s other two properties in the building, which ultimately did not lead to a sale, but rather were re-let. The Tribunal considered that the Applicant’s account of this process was believable; and that it did not suggest that he had lied about his intentions on that occasion. He did market the properties. There was no evidence to support the Respondent’s assertion that he deliberately over-priced them to depress interest. Nonetheless, they did not sell within a six month period. In such a situation, particularly in circumstances where there remained a property within the block that was occupied (i.e. by the Respondent), it is eminently believable that a landlord would wish to cut his

losses by re-letting those properties. The fact that the process had not succeeded on that occasion does not therefore undermine the Applicant's statement that it remains his intention to sell now; in particular in relation to the Property, which he sees as having been an impediment to his achieving a sale on the last attempt.

22. The remaining question for determination was therefore whether or not it is reasonable to issue an eviction order. The Tribunal considered this was a more finely balanced question, since it largely related to what the Applicant's motivation to sell might be. The Respondent attempted to evidence that the Applicant's reason for selling was to evade his responsibilities as a landlord for repairs. In principle, the Tribunal accepted that, if established, this could have rendered it unreasonable to grant the order. However, while there is some circumstantial evidence that means that this assertion is not quite a baseless one, there was not enough for the Tribunal to conclude that it was more likely than not to be true.

23. In regard to the general repair of the Property, the exchanges prior to the notice to leave were with the letting agents, who managed day-to-day repairs and instructed inspections. Insofar as he was 'creating a problem' in reporting these, that problem was principally one for the letting agents, therefore. The Respondent did not resort to the main means by which he could have forced the repairs issue: an application for a repairing standards enforcement order. Neither did he retain rent against repairs being completed. There was no requirement for him to do so, if he did not wish; but, it is difficult to see why such a minimal amount of pressure would have led to his landlord taking so extreme an action as opting to sell up. Even on the Respondent's interpretation, the Applicant would successfully have been ignoring him on repairs to the flat for a matter of years, and would not have any particular reason to think that he could not continue to do so. It was not until some months after the notice to leave had been served that the local authority environmental health service became involved and communicated with the landlord directly; meaning that intervention cannot have been relevant to his motivation. (The Tribunal should be clear that it does not consider the

Applicant did think in this way. Nonetheless, considered as a hypothetical, this demonstrates the inherent unlikeliness that the question of the Property’s general repair was linked to the decision to sell.)

24. The Applicant was more directly involved in the issue of the secure entry, however. The Respondent’s case that the continuing issue with this work, and his persistence in pursuing it, provided the motivation for selling was consequently stronger; but the Tribunal still concluded that there was not enough evidence to support it. Fundamentally, the Applicant <u>was</u> pursuing this matter, albeit perhaps without much success. This is demonstrated in the correspondence with the housing association (by both parties) and police, discussed at para.16, above. Looking at these, in particular the email from the police officer in August 2025 and the email produced by the Applicant from October 2025, it is apparent that the main obstacle to completing the work was obtaining the housing association’s consent. The Respondent might contend that that was not what they told him; but he would have to concede it is at least as likely that they did not give him the true picture, as that the letting agents did the same on behalf of the Applicant. From that starting point, the reference in the email from the housing association to the Applicant to his, “commitment to improving security measures,” before their refusing to agree to works, seems determinative of the issue. It is notable too that that email alludes to the proposal being an ‘improvement’, as opposed to a repair. Consent to carrying out improvement work on common property requires unanimity among the proprietors; and it is within the Tribunal’s knowledge that gaining such agreement is often fraught with difficulty.

25. Could, though, the Respondent’s persistence in asking for this work to be completed have been the motivation on its own, separately from whether or not the Applicant was trying to progress matters? Again, the principal forms of pressure he might have put on his landlord to advance the situation were not used by him. It is therefore difficult to see what significant pressure was being put on the Applicant himself, prior to service of the notice to leave, that might have led to a decision to sell. Again, in the hypothetical situation that he had neglected to take matters forward for so long, there is no indication why he

would have felt the need to change that position. The Respondent produced correspondence from an MSP whom he had involved in the matter and suggested this was the turning point; but this did no more than suggest that the MSP would, “take the issue forward on your behalf with the relevant organisations.” In context, this was no more than an offer to advocate with the housing association and the letting agents to resolve any impasse. Given the factual findings made regarding the housing association’s position, the Tribunal might even have concluded that the Applicant would have welcomed this intervention; but it at the very least renders unlikely a suggestion it would have motivated him to sell up.

26. The Tribunal did consider that, having concluded he required to sell property, the complications around communal repairs in this building were relevant to the decision the Applicant made to sell his interest there, rather than elsewhere. This did not however render it unreasonable for him to do so. Crucially, and contrary to the Respondent’s assertion, the Tribunal did not find that this was a retaliatory response to an attempt by tenants to assert their rights. Rather, it was, as the Applicant stated, a question of him choosing to divest himself of properties that came with complicated management issues, not directly related to the tenants’ conduct, that do not exist at his other properties. It is legitimate for a landlord to make a decision to manage his portfolio in that way.

27. Having reached these conclusions on the case presented, there was nothing else specifically advanced by the Respondent that would suggest it would be unreasonable for an order to be granted. There is no doubt that the granting of the order will lead to a major disruption for him. That would be the case for any tenant. It is true that the Respondent in this case also runs his business from home. To do so was a commercial decision for him and does not weigh heavily against the commercial decision of his landlord to sell the Property, therefore. It is also noted that the local authority will not provide support for him to be rehoused unless there is an order for his eviction. Overall, taking all the circumstances into account, the Tribunal therefore concluded that it was reasonable for an order to be granted.

<u>Eviction order granted.</u>

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.

Nairn Young

04-August-2026

Legal Member/Chair

Date