



**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 2026**

Chamber Ref: FTS/HPC/EV/25/1863

Re: Property at 162/2 Glasgow Road, Edinburgh, EH12 8LS ("the Property")

Parties:

Mr Ian Stewart, 79 Hillview Road, Edinburgh, EH12 8QE ("the Applicant")

**Mr Niranjan Siddegowda and Ms Suma Gowda, 162/2 Glasgow Road, Edinburgh,
EH12 8LS ("the Respondents")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Mary Lyden (Ordinary Member)

Decision

- 1.1 At the Hearing, which took place by telephone conference on 12 May 2026, the Applicant was in attendance. The Respondents were also in attendance.
- 1.2 Prior to the Hearing and by emails dated 16 April 2026 the Applicant lodged additional documents.
- 1.3 The Respondents also submitted an email dated 11 May 2026 with additional documents.

Background

- 2.1 A CMD had previously taken place on 17 November 2025. That CMD was adjourned to the Hearing to allow disputed issues identified between the parties to be determined by the Tribunal.
- 2.2 The Notes of the CMD record that the issues to be resolved between the parties at the Hearing to be:-
 - i. Having regard to the Applicant's circumstances, for what reasons does the Applicant wish to sell the Property?
 - ii. Is it reasonable for the Applicant to seek to sell the Property with vacant possession?
 - iii. Having regard to the Applicant's circumstances how would the Applicant be affected by an eviction order being refused?
 - iv. What steps have the Respondents taken to secure alternative accommodation and are there other steps that they could or ought to take?

- v. What is the extent of the portfolio of residential properties and the commercial property in which the Respondents have an interest whether directly or indirectly?
 - vi. What cash reserves have been invested by the Respondents in the commercial property in which they have an interest, when and for what purpose?
 - vii. What school fees are paid or are due to be paid by the Respondents and what other relevant debts do they have?
 - viii. Having regard to the Respondents' circumstances what effect would the granting of an eviction order have on the Respondents?
 - ix. Balancing the overall interests of the Applicant and the Respondents, is it reasonable to issue an eviction order?
- 2.3 The CMD Noted also record the Hearing arrangements as follows:-
"The Tribunal needs significantly more information for the Hearing, particularly from the Respondents whose position is entirely unvouched as matters stand and in relation to which no written submissions have been provided. A formal Direction will therefore be issued to the parties setting out the minimum details required, all to be provided with vouching as appropriate no later than 14 days prior to the Hearing."
- 2.4 A Direction was also issued dated 17 November 2025 requiring that the details specified therein be lodged with the Chamber no later than 14 days prior to the Hearing.

Preliminary Issues

- 3.1 Rule 22 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") states:-
- "22.— Lodging of documents etc.***
- (1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—*
- (a) a list of any documents and copies of the documents that the party wishes to rely upon; and*
- (b) a list of any witnesses that the party wishes to call to give evidence.*
- (2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse."*
- 3.2 The Respondents' email of 11 May 2026 timed at 12:26 was lodged late having regard to the Tribunal's requirements for the Hearing relative to the lodging of additional documents. The email was sent less than 24 hours prior to the Hearing and was not seen by the Tribunal until the morning of the Hearing.
- 3.3 At the outset of the Hearing the Tribunal therefore asked the Respondents to explain why their email was late and reminded them of the requirements of Rule 22(2) relative to a "reasonable excuse".
- 3.4 The Respondents stated that –
- i. There were rent arrears due by their former tenant of their Kirkcaldy premises. They got an eviction order against that tenant but did not know what to do next. They liaised with "other agencies" to remove the tenant who moved out on 5 March 2026. After the tenant moved out they said there were "massive issues". The property had not been left in a proper state and they required to carry out

- refurbishments and recover damages. They were liaising with their insurers relative to a claim of around £15K - £20K. Progress was very slow. There were many discussions and also property visits from loss adjusters. They also had to make sure the property was secure.
- ii. They also suffered a collapsed ceiling in their Aberdeen property. They had to deal with their Letting Agent who was withholding information.
 - iii. The First Respondent was also working for a qualification as a Letting Agent which he attained in March 2026.
 - iv. They had to start a new company and get a bank account therefor.
 - v. The Respondents said they had a lot going on. They weren't avoiding giving the Tribunal the information sought relative to the Property.
 - vi. The First Applicant accepted that it was his fault for the lateness of the submission of 11 May 2026.
- 3.5 In reply the Applicant opposed the Respondents' late submission of 11 May 2026 being allowed. He said the Respondents had not provided details of their income or the vouching sought. The Applicant had less than 24 hours to review the Respondents' submission.
- 3.6 The Tribunal, having carefully considered the position, refused to allow the Respondents' email of 11 May 2026 as no "reasonable excuse" for the lateness of the submission had been provided. The Respondents had simply not prioritised their preparations for the Hearing and focussed on other issues. Their email was sent less than 24 hours prior to the Hearing which did not give fair notice to the Applicant (or the Tribunal) of the Respondents' position. Vouching sought had not been provided. The Hearing arrangements intimated in the CMD Notes and the Direction previously issued were there for good reason and to serve the interests of both parties and the fair conduct of the Hearing. The Tribunal therefor refused the Respondents' email of 11 May 2026.
- 3.7 The First Applicant then asked the Tribunal for an adjournment of the Hearing which the Tribunal also refused.

The Hearing

4.0 At the Hearing the Tribunal heard evidence from the Applicant and the Respondents relative to each of the disputed issues.

Evidence of the Applicant

- 4.1 The Applicant stated –
- i. The Applicant recently retired. He wants his capital out the Property. He finds it very stressful being a landlord. The purpose of having properties was to see the Applicant and his wife through their retirement.
 - ii. The Applicant has a pension. His wife is also retired but has no pension.
 - iii. The Property was purchased as a short term let.
 - iv. The Applicant's plan is to sell the Property in the short term.
 - v. Two of the Applicant's other properties have already been sold.
 - vi. The other two properties owned and rented by the Applicant have had tenants in situ much longer and there are greater Capital Gains Tax issues arising relative to the disposal of these properties.
 - vii. There is no mortgage in respect of the Property.
 - viii. The Applicant has tried to sell the Property with the Respondents in occupation. The Applicant employed Let Property for that purpose. The valuation of the Property with vacant possession was £235,000. The Home Report was carried out in July 2023 by DM Hall. The Property was marketed for over a year from

August 2023 to August 2024. All offers received were £13,000 below Home Report value.

- ix. The Applicant gave the Respondents the opportunity to purchase the Property at Home Report value. The Applicant met with the First Respondent to discuss a possible sale and the First Respondent offered £220,000. The minimum price the Applicant was prepared to accept was £235,000. At that time other similar flats were selling for £245,000 to £250,000. The offers received by Let Property were £220,000 and £222,000. These offers were made by telephone. You advised that you would not be interested in any price under the Home Report value. You had been assured by Let Property that they could sell at Home Report value which is why you decided to allow them to market the Property for sale.
- x. With the capital released from the sale of the Property, firstly, the Applicant would repay the mortgage on his own home. The funds are also required to live as at present he is drawing from savings. Maintenance is needed at the Applicant's home in Edinburgh, for example, windows need replacing and there are walls that are crumbling. Cash is needed for those works.
- xi. A Notice to Leave was first served in November 2022. The Respondents have therefore known since then of the Applicant's intention to sell the Property. The Applicant delayed proceeding further due to COVID and then tried to sell the Property with the Respondents in occupation as described. He has gone out of his way to be reasonable with the Respondents.
- xii. Let Property tried to market the Property to a portfolio of investors and hoped the Applicant would settle below Home Report value. Investors were looking for a bargain. When that failed a further Notice to Leave was served.
- xiii. If an eviction order is not granted the Applicant will continue as a landlord. The rent does not cover his outgoings on the Property and he will continue to lose money. He requires the capital within the Property to live. He and his wife have a low income and they would be much worse off if a sale could not take place. The works to the crumbling walls at their house would require to be postponed and they would be stuck in a position of stress.
- xiv. With regard to the other two Edinburgh properties owned by the Applicant, it has been 3½ years since the Applicant started the process relative to the Property. His experience of the eviction process is therefore not quick. There is a large Capital Gains Tax issue relative to the other flats. The Applicant can mitigate the Capital Gains Tax liability by staggering these sales therefore the Property is the one to sell next.

Under cross examination by the First Respondent

- i. The First Respondent stated that whilst he understood the Applicant's other tenants were longstanding and the Capital Gains Tax issue, the eviction process was causing the Respondents much stress and was not reasonable. The Applicant responded asking why his other tenants should go through this anguish and distress.
- ii. The First Respondent stated that whilst he was not sure of the situation of the Applicant's other tenants, if the Applicant was intending to sell those other properties there was no reason not to sell them first. The Applicant stated that he did not know his other tenants' situations. He was inexperienced. It has taken him 3½ years to get this far with the Property. He said the Respondents have had 3 years to make alternative arrangements. He said the Respondents

- have always said they need 18-24 months to remove which timeframe has never reduced over the 3 year period.
- iii. The First Respondent said he offered to buy the Property at the Home Report value of £235,000 having initially offered £220,000. The Applicant said he had no recollection of that. Let Property knew the Property was not vacant. The Applicant was disappointed in them. They were the experts.

Evidence of Respondents

4.2 The First Respondent stated –

- i. The Respondents have been looking for alternative accommodation but their intention is to buy a house to avoid this stressful situation again. All their friends in their society have their own house.
- ii. They have also looked for rented accommodation but there is nothing in the area that is within their rent affordability.
- iii. If the Respondents were to move out of the area then getting the children to school would be an added stress. The Respondent's older child is about to start S4 and there will be more stress academically for that child. This is a crucial juncture and they do not want any pressure.
- iv. They have been looking outwith the area too but there has been no suitable accommodation.
- v. The Tribunal asked how many properties the Respondents had viewed since the CMD on 17 November 2005. The First Respondent stated that two properties had been viewed but they were not happy with them. The locations were ok but the properties were smaller and more cramped.
- vi. They have been looking on property rental sites, for example Right Move and Zoopla and looking for "To Let" boards in the area.
- vii. The Respondents' younger child is in P4 and from the Property the commute is 10 miles to school by car and 30 minutes on foot. The older child commutes by public transport. There is a bus stop right outside the Property which takes 20 minutes.
- viii. The Respondents confirmed that they still would not be eligible for local authority accommodation.
- ix. With regard to properties to buy, the Respondents have been looking since the CMD but there has been nothing suitable. It is their intention to move to their own home within the next year or year and a half but they are asking the Tribunal to allow them 24 months to move.
- x. The Respondents are doing additional work to enhance their income such as the First Respondent qualifying as a letting agent. The Second Respondent has been doing some work on a self-employed basis to add to their income carrying out property viewings on a freelance basis for other selling agents.
- xi. With regard to the Respondents own property in Edinburgh, the commute would be 30 to 45 minutes by car for their younger child and longer if traffic is busy. For their older child the commute would be longer by 20 to 30 minutes each way by car.
- xii. The Respondents have not served any notice to quit on the tenants of their Edinburgh property. The First Respondent said this would not help their situation as the property is not easier or convenient for their children's schools.
- xiii. The Tribunal asked the Respondents what the main barrier is to buying a property and the First Respondent advised that the issue is affordability and the debt they have caused by one of their other properties.

- xiv. The First Respondent explained that they purchased a commercial property – a church - in Dysart to turn into flats. The purchase was pre COVID. The Second Respondent had lost her job and was out of work and the property market had changed. There were safety issues with the property namely the spire of the church which was twisted and as a result of public safety issues that spire required to be removed. The Respondents had to invest £70,000 to make that property safe which was not anticipated and put them into financial stress.
- xv. The Tribunal asked why the Respondents had not prioritised releasing equity in their other properties to allow them to buy their own home. The First Respondent said they had tried to sell the commercial property in Dysart but failed and that they have now approved an auction company to sell on their behalf.
- xvi. The First Respondent said they need a three bedroomed flat or house. They have quotations from a mortgage advisor and confirmation that a lender will lend. They can afford a property at £180,000 to £220,000 depending upon the type of mortgage. They can afford a deposit of around 5%.
- xvii. Given the opportunity to purchase the Property the Tribunal asked why the Respondents did not proceed with that. The First Respondent said they had offered the Home Report value but the Applicant wanted more as he was incurring a loss selling at the Home Report value. The Respondents could not offer anything more. The First Respondent said he met the Applicant twice offering £220,000 on the first occasion and £235,000 on the second occasion.
- xviii. With regard to their other properties –
 - The Edinburgh property is at 23 Waterfront Gait. The property is in the name of the First Respondent only and the tenant has been in occupation for 3½ years.
 - The property in Dysart is in the name of Edinburgh Properties Limited. The property is with Future Property Auctions. It has not sold and there are no offers at present. The Respondents are now dealing with another auction company and speaking to a solicitor to get the legal work organised. The property is not on the market.
 - The property in Aberdeen is in the name of VSDN Properties Limited and is unoccupied.
 - The Kirkcaldy property remains unoccupied and is the subject of an insurance claim.
 - The other Edinburgh property is at 50/ 6 Broughton Road held in the names of the Respondents jointly. That property is a one bedroomed flat where the tenant has been in occupation for 3½ years.
- xv. With regard to school fees for their elder child these are £2100 per month for 10 months each year.
- xvi. Other debts include a credit card on which sums of £51,000 are due and a personal loan of £4,500. The credit card and personal loan were used for the repair works to the spire of the Dysart property and for living expenses when out of work during COVID. The credit card is not used for ongoing living costs and the balance due is reducing. The personal loan was also taken for the works at the Dysart church. The Respondents have no other debts.
- xvii. The First Respondent is in employment earning approximately £3,100 to £3,200 per month. The Second Respondent's income is roughly £1,500 to £2,000 per month. The Respondents also receive child benefit for their two children.

- xviii. The Respondents income from their properties is £2,271.24 per month. There is a mortgage on all the properties except the Dysart church and those payments total £1,533.64 per month.
- xix. The Respondents' intention is to repair and re-let the Aberdeen and Kirkcaldy properties but will not be able to do so for the next three to six months.
- xx. The granting of an eviction order will seriously affect their two children. The younger child needs additional support in school. They cannot find suitable accommodation in the area and moving elsewhere would impact that child. Their older child would also be impacted by moving out with the area as there would be an extra 30 minutes travel to school each way.
- xxi. The First Respondent said there would also be a societal impact in that they want to purchase their own property at Home Report value. Having qualified as a Letting Agent the First Respondent stated that if they had to move that would also impact that business and cause more stress. It would be a major blow for their family if an eviction order was granted.
- xxii. The repairs to the Kirkcaldy property will cost £15,000 to £20,000 if no insurance monies are received. The tenant of that property did not complain about any leaks and would not let the Respondents inspect.
- xxiii. The Aberdeen property is also the subject of an insurance claim for storm damage.
- xxiv. The Respondents are not holding the Applicant to ransom. They are trying to be model tenants. No rent has been missed except in April 2025 due to certain issues.
- xxv. The Tribunal asked if the Respondents intend to sell any of their properties. The Respondents said the Kirkcaldy and Aberdeen properties cannot be sold as they stand. Selling the Edinburgh properties would cover the mortgage and Capital Gains Tax but the Respondents would make no money therefrom. All their properties have liabilities.
- xxvi. Both Respondents drive and have access to a vehicle.

Under cross-examination

- xxvii. The Applicant asked the First Respondent whether his offer of £235,000 for the Property was made to Let Property. The First Respondent said that the offer was made to the Applicant in person. The Applicant asked why the First Respondent had not made the offer to Let Property. The First Respondent said that he had made the offer to the Applicant and there was no need to speak to the agent when he was speaking to him.
- xxviii. The Applicant asked what equity there is within the Respondents' five properties and the First Respondent stated £220,000.
- xxix. The Applicant asked if the Respondents had sought to remortgage their properties. The First Respondent said "yes" but they can't remortgage for 3 ½ years.
- xxx. The Applicant asked why if in financial distress the Respondents chose to send their elder child to a private school. The First Respondent stated that it was a priority for them and the elder child's schooling started before they were dealing with the issues now arising.

4.3 The Tribunal adjourned to consider its decision.

Findings in Fact

5.0 The Tribunal made the following findings in fact:-

- i. The Applicant is the heritable proprietor of the Property along with his wife, Mrs Lesley Stewart.
- ii. The Applicant leased the Property to the Respondents in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 9 July 2021.
- iii. The rent payable in terms of the PRT was initially agreed to be £950 per calendar month and has since been increased.
- iv. On 28 January 2025, the Applicant served on the Respondents by email a Notice to Leave requiring the Respondents remove from the Property by 25 April 2025 failing which an application would be submitted to the Tribunal for an eviction order. The Notice to leave was issued on the basis that the Applicant intends to sell the Property under Ground 1 of Schedule 3 of the 2016 Act.
- v. A previous Notice to Leave had also been served by the Applicant on the Respondents by email on 21 November 2022 requiring the Respondents remove from the Property by 9 March 2023 failing which an application would be submitted to the Tribunal for an eviction order. The Notice to Leave was stated to be issued on the basis that the Applicant intended to sell the Property "to alleviate financial hardship" due to the deficit between mortgage payments due and rental income received.
- vi. The Applicant has served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. The letter from Connell & Connell WS, Solicitors, Edinburgh dated 27 January 2025 relative to the sale of the Property is sufficient to meet the terms of subparagraph 2(b) of Ground 1 of Schedule 3 of the 2016 Act.
- viii. The Applicant and his wife retired in October 2023 and April 2024 respectively.
- ix. Whilst the Applicant has a pension, his wife has no pension.
- x. The Applicant and his wife are 65 and 60 years of age respectively.
- xi. The Applicant and his wife previously owned five rental properties.
- xii. They find being landlords and their responsibilities as such stressful.
- xiii. The Applicant and his wife wish to release the capital from the properties owned by them.
- xiv. Two of the five rental properties previously owned by the Applicant and his wife have already been sold.
- xv. The Property is the next of their five rental properties earmarked for sale.
- xvi. All the properties will eventually be sold in the medium term.
- xvii. The Property was purchased for short term let.
- xviii. The Property was previously owned by the Applicant's daughter and son-in-law. However, they had bought a puppy and another house had come up for sale close to the Applicant's mother-in-law which was more suitable. They wanted to buy that property but could not sell the Property. Accordingly, the Applicant and his wife took out a mortgage on their own home at 79 Hillview Road in order to purchase the Property and to allow their daughter and son-in-law to move.
- xix. The Property was purchased in 2020 and the price paid was £220,000. The Applicant and his wife used their own savings to pay the deposit on the Property. The mortgage taken over the Applicant and his wife's home was in a sum of £160,000 of which around £130,000 remains due. The mortgage is with Barclays Bank and as at the Hearing the monthly mortgage payment was £1,086.44.
- xx. There is no mortgage over the Property.
- xxi. The Applicant intends to sell the Property as soon as vacant possession is recovered.

- xxii. The Applicant wishes to release the capital in the Property to repay the mortgage on his own home (taken out to facilitate the purchase of the Property) and to fund essential repairs to his own home, for example, windows need replacing and crumbling walls require repair.
- xxiii. The Applicant has attempted to sell the Property with the Respondents in occupation and appointed agents, Let Property, to market the Property to a portfolio of investors. This process was unsuccessful as the offers received were below the Home Report value and were not therefore acceptable to the Applicant.
- xxiv. The Applicant offered the Respondents the opportunity to purchase the Property but agreement on a price could not be achieved.
- xxv. With regard to the remaining two rental properties owned by the Applicant and his wife, each of these properties have had tenants in situ much longer than relative to the Property and there are more significant Capital Gains Tax issues to be dealt with arising relative to the disposal of these properties.
- xxvi. The Respondents, both directly and through the vehicle of limited companies, are commercial landlords of five investment properties (the same number of properties previously owned by the Applicant and his wife).
- xxvii. The Respondents own or at least have an interest in a commercial property (a former Church) in Dysart, a residential property in each of Aberdeen and Kirkcaldy both of which have been previously rented out to tenants but which are currently empty, and two residential properties in Edinburgh both of which are presently rented out and one of which has three bedrooms.
- xxviii. The former Church in Dysart is not mortgaged and is to be put up for auction. As at the Hearing it was not on the market for sale.
- xxix. The residential properties in Kirkcaldy and Aberdeen have been rented to tenants recently and are the subject of insurance claims to allow necessary repairs before they can be re-let.
- xxx. The three bedroomed Property in Edinburgh owned by the First Respondent is suitable for the Respondents' needs in terms of the accommodation they require.
- xxxi. The only disadvantage to the Respondents moving to that three bedroomed property is that it would require a longer commute for their children to attend their existing schools.
- xxxii. The Respondents have done little since the CMD to find other alternative accommodation. They have viewed only two rental properties, neither of which they considered suitable. They have made no progress in purchasing a property. They have not re-engaged with the Applicant about their possible purchase of the Property. They have not served a Notice to Leave on the tenant of the three bedroomed property in Edinburgh owned by the First Respondent which would be suitable for their needs if possession could be recovered. They have not sold the former Church in Dysart.
- xxxiii. The Respondents' complain that they cannot find a rental property within their affordability. At the CMD the Respondents stated that renting a suitable property within the area would involve a monthly rent of £1500 to £1800 which is higher than they are paying the Applicant relative to the Property and would put them into financial difficulties.
- xxxiv. The Respondents' have prioritised the education of their elder son at a private school for which the Respondents pay £2,100 per month for 10 months of each year at the expense of securing a suitable rental property at a slightly increased

- rent or a higher mortgage to enable the purchase of another property as their own home.
- xxxi. The Respondents are both in employment. The First Respondent earns approximately £3,100 to £3,200 per month. The Second Respondent's income is roughly £1,500 to £2,000 per month.
 - xxxii. The Respondents also receive child benefit for their two children.
 - xxxv. The Respondents generate an income from their rental properties three of which are in one or both of their personal names.
 - xxxvi. The income from all five properties in which they have an interest is presently £2,271.24 per month. There is a mortgage on all the properties except the Dysart church and those payments total £1,533.64 per month.
 - xxxvii. The Respondents' other debts comprise a credit card debt on which sums of £51,000 are due and a personal loan of £4,500. The credit card and personal loan were used for repair works to the spire of the Dysart property and for living expenses when out of work during COVID. The Respondents have no other debts.
 - xxxviii. Both Respondents drive and have access to a vehicle.

Reasons for Decision

- 6.1 The Tribunal considered the evidence of the Applicant to be both credible and reliable. The evidence of the First Respondent (who largely spoke on behalf of both Respondents) was generally also considered to be credible and reliable.
- 6.2 The Application proceeds upon Ground 1 of Schedule 3 of the 2016 Act which 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."*
- 6.3 The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof. That matter is not in dispute.
- 6.4 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 from Connell & Connell WS, Solicitors, Edinburgh dated 27 January 2025 relative to the sale of the Property. The Tribunal accepts this document as sufficient to meet the terms of sub-paragraph 2(b).

6.5 The Tribunal then considered each of the disputed issues for determination.

i. Having regard to the Applicant's circumstances, for what reasons does the Applicant wish to sell the Property?

The Applicant and his wife previously owned five rental properties. They find being landlords and their responsibilities as such stressful and wish to reduce that stress.

The Applicant and his wife retired in October 2023 and April 2024 respectively. Whilst the Applicant has a pension, his wife has no pension. They are 65 and 60 years of age respectively.

The Applicant and his wife wish to release capital from the properties owned by them and two of such properties have already been sold with the Property being the next earmarked for sale. All the properties will eventually be sold in the medium term. The release of capital will supplement their income in retirement.

The Property was purchased as a short term let. The CMD Notes record the circumstances leading to the Applicant's purchase of the Property as he then explained. The Applicant then stated that Property was previously owned by his daughter and son-in-law. However, they had bought a puppy and another house had come up for sale close to the Applicant's mother-in-law which was more suitable. They wanted to buy that property but could not sell the Property. Accordingly, the Applicant and his wife took out a mortgage on their own home at 79 Hillview Road in order to purchase the Property and to allow their daughter and son-in-law to move. The Property was purchased in 2020 and the price paid was £220,000. The Applicant and his wife used their own savings to pay the deposit on the Property. The mortgage was in a sum of £160,000 of which around £130,000 remains due. From the evidence produced by the Applicant the mortgage is with Barclays Bank and the monthly mortgage payment as at the date of the Hearing being £1,086.44.

With the capital released from the sale of the Property the Applicant intends to repay the mortgage on his own home at 79 Hillview Road and carry out maintenance required there too. He stated that windows need replacing and there are walls that are crumbling. Cash is needed for those works and also for day to day living costs rather than using savings.

With regard to the remaining two rented properties, each of these properties have had tenants in situ much longer than the Respondents have been tenants of the Property and there are more significant Capital Gains Tax issues arising relative to the disposal of these properties which is why they have not been prioritised for disposal at this time.

None of these matters were disputed by the Respondents.

ii. Is it reasonable for the Applicant to seek to sell the Property with vacant possession?

The Applicant gave the Respondents the opportunity to purchase the Property at Home Report value. The Applicant met with the First Respondent to discuss a possible sale and the First Respondent offered £220,000. The Applicant said the minimum price he was prepared to accept was £235,000. He said that at that time other similar flats were selling for £245,000 to £250,000.

At the CMD the First Respondent acknowledged making an offer of £220,000 to the Applicant to buy the Property which the First Respondent considered "fair and competitive". In his evidence the First Respondent said he had also met with the Applicant a second time and offered £235,000. There was no such reference at the CMD and the Applicant said he could not recollect a second meeting.

In any event, there had been no further follow up between the parties or any agents on their behalves relative to a sale of the Property. In particular, even during these proceedings the Respondents could have explored with the Applicant again the possibility of purchasing the Property and sought to negotiate a price. They failed to do so.

The Applicant also attempted to sell the Property with the Respondents in occupation. The Applicant's agents, Let Property, tried to market the Property to a portfolio of investors. He said the investors were looking for a bargain and offers received by Let Property were £220,000 and £222,000. These offers were made by telephone and were beneath the Home Report value of DM Hall per their report of July 2023. The Applicant had been assured by Let Property that they could sell at Home Report value which is why he decided to allow them to market the Property for sale. Their efforts were unsuccessful.

In light of the efforts made by the Applicant as described above, it is reasonable for the Applicant to now seek vacant possession of the Property in order to secure a sale. No other option is available to him to release the capital. There is no mortgage over the Property so the capital invested is significant. At the age and stage of the Applicant and his wife it is also understandable that they wish to repay the mortgage over their own home taken out to purchase the Property to assist other family members.

With the exception of the second meeting that the First Respondent said took place with the Applicant and at which he offered £235,000 to purchase the Property, none of the other factual matters described are in dispute.

iii. Having regard to the Applicant's circumstances how would the Applicant be affected by an eviction order being refused?

The Applicant stated that if an eviction order is not granted he will have to continue as a landlord. The rent paid by the Respondents does not cover his outgoings on the Property and he will continue to lose money. He requires the release of the capital within the Property in his and his wife's retirements. He and his wife now have a low income and they would be much worse off if a sale of the Property could not take place. The works to the crumbling walls at their own house, for example, would also require to be postponed and they would be left in a stressful position.

It follows that if the capital in the Property is not released they may not be able to clear the mortgage over the own home taken out to facilitate the purchase of the Property in 2020 and they will continue to have liabilities by way of factoring costs and repairs and maintenance required from time to time.

iv. What steps have the Respondents taken to secure alternative accommodation and are there other steps that they could or ought to take?

As the CMD Notes record the Respondents circumstances are somewhat unusual in that they, both directly and through the vehicle of limited companies, are themselves commercial landlords with the same number of investment properties as the Applicant and his wife previously held, being five in number. The Respondents own or at least have an interest in a commercial property (a former Church) in Dysart, a residential property in each of Aberdeen and Kirkcaldy both of which have been previously rented out to tenants but which are currently empty, and two residential properties in Edinburgh both of which are presently rented out and one of which is a three bedroomed property.

At the CMD the Respondents indicated that they had looked for alternative accommodation within the local area but nothing had suited their requirements. They said they had looked to buy or rent an alternative property. In terms of renting a property within the area a monthly rent of £1500 to £1800 would be payable which is higher than they are paying the Applicant relative to the Property and would put them into financial difficulties. They said they were looking for a three bedroomed house and were in the process of saving money for a deposit to buy a house. They hoped to be able to purchase a property within the next 18 to 24 months. They indicated that they would not qualify for accommodation in the public sector.

At the Hearing the Tribunal sought an update on the Respondents' search for alternative accommodation. The First Respondent said they had looked for rented accommodation but there is nothing in the area that is within their rent affordability. He said they have been looking outwith the area too but there has been no suitable accommodation. Asked how many properties the Respondents had viewed since the CMD on 17 November 2005. The First Respondent stated that two properties had been viewed but they were not happy with them. The locations were ok, he said, but the properties were smaller and more cramped. They have been looking on property rental sites, for example Right Move and Zoopla and looking for "To Let" boards in the area. Given that almost 6 months had elapsed between the CMD and the Hearing the Respondents could and ought to have made more intensive efforts to find and view alternative accommodation within and outwith their preferred area.

With regard to properties to buy, the First Respondent said they have been looking since the CMD but there has been nothing suitable.

With regard to the Respondents' own three bedroomed property in Edinburgh presently rented out, they have not served any notice to quit on the tenants of that property. The First Respondent said this would not help their situation as the property is not convenient for their children's schools. The commute would be 30 to 45 minutes by car for their younger child and longer if traffic is busy,

and for their older child the commute would be longer by 20 to 30 minutes each way by car. The Respondents could and ought to have taken steps to begin the process of securing vacant possession of that property in the absence of any other suitable alternative accommodation.

Asked why the Respondents have not prioritised releasing equity in their other properties to allow them to buy their own home the First Respondent said they had tried to sell the former Church in Dysart but that failed and that they have now approved an auction company to sell on their behalf. No steps had been taken to sell any of their other properties. More urgency could and ought to have been applied to the sale of the former Church which, at the time of the Hearing, was not on the market at all.

With regard to the opportunity to purchase the Property given the Respondents' knowledge that the Applicant wants to sell, the First Respondent said they had offered the Home Report value but the Applicant wanted more as he was incurring a loss selling at the Home Report value. The Respondents could not offer anything more. The First Respondent said he met the Applicant twice offering £220,000 on the first occasion and £235,000 on the second occasion. The Tribunal noted there had been no more recent follow up or discussions between the Respondents and the Applicant to revisit those negotiations which could have been attempted even subsequent to the CMD and prior to the Hearing. The Respondents could and should have made contact with the Applicant to explore again the possibility of reaching agreement on their purchase of the Property.

The Respondents are still not be eligible for local authority accommodation.

The Respondents ability to rent a suitable property in the area and to purchase a property is restricted by the significant monthly payment made for school fees for 10 months of the year to allow the Respondents' elder child to attend private school. Whilst it is creditable that the Respondents seek to prioritise their elder child's education that is being done at the expense of being able to find alternative accommodation either by way or paying an increased rent or an increased mortgage.

The Respondents appear to expect the Applicant to bear with them notwithstanding their portfolio of properties and preferred financial arrangements. That expectation is ill-conceived.

v. *What is the extent of the portfolio of residential properties and the commercial property in which the Respondents have an interest whether directly or indirectly?*

The First Respondent confirmed the Respondents to have an interest in various properties as follows:-

- A three bedroomed residential property in Edinburgh at 23 Waterfront Gait. The property is in the name of the First Respondent only and the tenant has been in occupation for 3½ years.
- A former Church in Dysart in the name of Edinburgh Properties Limited. That property has not sold and there are no offers at present. The

Respondents are now dealing with an auction company and speaking to a solicitor to get the legal work organised. That property was not on the market as at the date of the Hearing.

- A residential property in Aberdeen in the name of VSDN Properties Limited. That property is unoccupied and is the subject of an insurance claim for storm damage.
- A residential property in Kirkcaldy which is unoccupied and is the subject of an insurance claim for damage caused.
- Another Edinburgh property is at 50/ 6 Broughton Road held in the names of the Respondents jointly. That property is a one bedroomed flat where the tenant has been in occupation for 3½ years.

The First Respondent stated the total equity across the property portfolio is £220,000.

Asked if the Respondents intend to sell any of their properties the First Respondent said the Kirkcaldy and Aberdeen properties cannot be sold as they stand. Selling the Edinburgh properties would cover the mortgages and Capital Gains Tax due but the Respondents would make no money therefrom. All their properties have liabilities.

vi. What cash reserves have been invested by the Respondents in the commercial property in which they have an interest, when and for what purpose?

The First Respondent explained that they purchased the former Church in Dysart to turn into flats. The purchase was pre COVID. The Second Respondent had lost her job and was out of work and the property market had changed. There were safety issues with the property namely the spire of the church which was twisted and as a result of public safety issues that spire required to be removed. The Respondents had to invest £70,000 to make that property safe which was not anticipated and put them into financial stress. That cost was funded partly by a credit card and partly by a personal loan. A sum of £51,000 remains due on the credit card and the personal loan is for £4,500. The credit card and personal loan were also used for living expenses when out of work during COVID. The credit card is not now used for ongoing living costs and the balance due is reducing.

vii. What school fees are paid or are due to be paid by the Respondents and what other relevant debts do they have?

School fees for the Respondents' elder child are £2100 per month for 10 months each year. The First Respondent said their elder child's education was a priority for them and the private school arrangements started before they were dealing with the issues now arising.

They have a credit card debt and personal loan as above mentioned.

All the properties in which they have an interest are mortgaged other than the Dysart Church.

viii. Having regard to the Respondents' circumstances what effect would the granting of an eviction order have on the Respondents?

The First Respondent said the granting of an eviction order will seriously affect their two children. The younger child needs additional support in school. They cannot find suitable accommodation in the area and moving elsewhere would impact that child.

Their older child would also be impacted by moving out with the area as there would be an extra 30 minutes travel to school each way.

The First Respondent said there would also be a societal impact in that they want to purchase their own property at Home Report value. Having qualified as a Letting Agent the First Respondent stated that a move would also impact that business and cause more stress. These statements were vague and lacking an evidential support.

He said it would be a major blow for their family if an eviction order was granted.

- ix. *Balancing the overall interests of the Applicant and the Respondents, is it reasonable to issue an eviction order?*

The Tribunal requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c) of Ground 1. Direction is drawn from the following caselaw on the approach to determining whether or not it is reasonable to grant an eviction order.

In *Manson & Dowie v Turner & Turner* (2003) UT 38 referring to the assessment of reasonableness in the context of a Private Residential Tenancy the Upper Tribunal stated:-

"As noted above, the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b). The intentions of the landlord are therefore clearly relevant, and the FTS is entitled if not bound to consider whether they are reasonable. Furthermore the FTS would be entitled, at least in principle, to find that the landlord's intentions outweighed the matters put in evidence by the tenant. Put another way, the FTS would be entitled in principle to conclude both that the landlord's intentions were subjectively reasonable, and that they made it objectively reasonable to issue an eviction order. The FTS' emphasis in its written reasons on the respondents' intentions is therefore not of itself sufficient to establish that the FTS has departed from the "all the circumstances" approach to which it correctly directed itself. The FTS' errors in this case were in relation to fact finding and in failing to explain why the respondents' interests and intentions outweighed those of the appellants, not its general approach to assessment of reasonableness."

In *Stainthorpe v Carruthers and Swan* (2024) UT 30 in considering the assessment of reasonableness the Upper Tribunal stated:-

"Is it Reasonable to Grant an Order for Possession?"

74. *The UTS 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.*

75. *Its decision on reasonableness is not in itself a finding in fact, but instead a concept or conclusion determined by an exercise of judgment (City of Edinburgh Council v Forbes 2002 Hous. L. R. 61, at paragraph 7-16 , per Sheriff Principal Nicholson QC). Its assessment as to whether it is reasonable for the UTS to make an order for possession must take account all relevant circumstances as they exist at the date of the hearing (Cumming v Danson [1942] All ER 653 at 655). It may take into account in assessing reasonableness whether the parties' intentions are subjectively reasonable and it must "objectively balance the rights and interests of both parties" (Manson and Downie v Turner (2003 UT 38 at paragraphs 41 and 42; see also City of Glasgow District Council v Erhaigonoma 1993 S.C.L.R 592).*

76. *The relevant circumstances on the appellant's side are his legal right to use and dispose of his property as he thinks fit within the constraints of planning and building law, and his subjectively reasonable wish to reconstruct the house for transfer to his stepson for use as a family home. Those on the respondents' side are their long period of occupancy of the house, emotional attachment to it, the age of the second respondent, the reduced state of their health, their difficulties in finding a house to rent of equivalent amenity, the loss of their supportive neighbours, and their subjectively reasonable wish to live in the house indefinitely."*

The Upper Tribunal further stated:-

"81. Ultimately, the subjectively reasonable intention of the appellant to reconstruct the house and eventually transfer ownership to his stepson to benefit his stepson and his stepson's wife, and the diminution in the standard of living of the respondents if they are required to remove from the house that they enjoy living in, deserve equal consideration. These are therefore countervailing circumstances.

82. Accordingly, I consider the deciding factor to be that the appellant exercises a right of property, whereby he can use or dispose of the house as he thinks fit. I therefore agree with the appellant's submission that those interests must take precedence over the wishes of the respondents to continue in occupation of the property indefinitely.

83. The proper balance between the parties' interests can in my opinion appropriately be struck in this case by postponing the date for possession to allow the respondents time to find alternative accommodation, and the

appellant time to complete his plans by instructing the contractor, finalising his financial arrangements and obtaining his building warrant. I have so ordered.”

The Tribunal carefully weighed and balanced all the relevant facts found by it which bear on reasonableness.

The Tribunal is satisfied that the Applicant intends to sell the Property as soon as vacant possession is recovered. The Applicant has already sold two of his five rental properties in his desire to alleviate the stress associated with being a landlord, particularly in retirement. He intends to sell the other properties he owns too in the medium term. The Tribunal accepts that the Applicant wishes to release the capital in the Property in particular to repay the mortgage on his own home (taken out to facilitate the purchase of the Property) and to fund essential and substantial repairs to his own home as well as supplement the limited income of him and his wife. The Applicants are both retired and in their 60s. The Applicant has attempted to sell the Property with the Respondents in occupation without success. He has offered the Respondents the opportunity to purchase the Property. It is difficult to see what more the Applicant can do in these circumstances. The intentions of the Applicant are reasonable in the circumstances.

The position of the Respondents is highly unusual. They also (directly and indirectly) own five investment properties with a combined equity of £220,000. The former Church in Dysart is not mortgaged and is to be put for auction. The residential properties in Kirkcaldy and Aberdeen have been rented to tenants recently and are the subject of insurance claims to allow necessary repairs. They have two other rented properties in Edinburgh one of which has three bedrooms and would therefore be suitable for their needs in terms of the accommodation they require. That property is outwith their preferred area. Whilst the First Respondent suggested moving out the area of the Property would impact his new business as a Letting Agent no substantiation of that effect was provided and the statement was vague and generic. The only tangible disadvantage articulated by the First Respondent for moving to that Edinburgh property was that it would require a longer commute for their children to attend school. The Tribunal did not consider that disadvantage to be compelling at all in the circumstances.

Indeed, the Respondents have done little since the CMD to find other alternative accommodation. They have viewed only two rental properties, neither of which were suitable. This seems a remarkably low number in a period of almost 6 months and the Tribunal doubts the effort the Respondents have made in that connection.

The Respondents have made no progress in purchasing a property. They have not re-engaged with the Applicant about their possible purchase of the Property which seems an obvious step to have taken and they ought to have done so.

They have not served a Notice to Leave on the tenant of the three bedroomed property in Edinburgh owned by the First Respondent which would be suitable for their needs if possession could be recovered. They ought to have taken steps to serve a Notice to Leave in the circumstances.

The monthly amount being spent on school fees for 10 months of each year for the Respondents' elder child to attend private school is significant. Whilst they have prioritised that child's education that approach is limiting significantly their ability to pay a higher rent for suitable alternative accommodation in their preferred area and their ability to fund an increased mortgage to purchase a suitable property. It is not reasonable for the Respondents to expect the Applicant to tolerate their ongoing occupation of the Property against that backdrop.

The Applicant's intention to sell the Property and his reasons for doing so as outlined above are subjectively reasonable and the Applicant's legal right to dispose of the Property for the legitimate purpose of repaying a mortgage and releasing capital to fund necessary property repairs at his own home as well as supplementing his and his wife's limited income outweigh and must take precedence over the Respondents' desire to continue in occupation of the Property notwithstanding (i) their substantial property interests as commercial landlords, (ii) the First Respondent's ownership of a three bedroomed property in Edinburgh that would be suitable for their needs despite a slightly longer commute for their children to attend school, (iii) their desire to prioritise their elder child's education by paying substantial school fees and (iv) their extremely limited efforts to secure alternative accommodation. It is their own preferred financial arrangements that are preventing the Respondents securing alternative and suitable accommodation. Their approach is not reasonable in the circumstances.

On the basis of the foregoing the Tribunal concludes that it is reasonable to grant an eviction order and therefore makes an order in appropriate terms.

Determination

7.0 The Tribunal determined that an eviction order should be granted against the Respondents in favour of the Applicant.

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

14 September 2026
Date