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 ("the Act")

Chamber Ref: FTS/HPC/EV/26/2256

Re: Property at 23 Burnside, Prestonpans, EH32 9DW ("the Property")

Parties:

Methodist Ministers Housing Society, 109 Baker Street, London, W1U 6RP ("the Applicant")

Mr James O'Connor, 23 Burnside, Prestonpans, EH32 9DW ("the Respondent")

Tribunal Members:

Fiona Stephen (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for eviction should be granted.

Background

1. By application dated 19 May 2026, the Applicant seeks an Eviction Order under Section 51 (1) and Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act"). The application also proceeds in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules"). The Applicant intends to sell the property. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Applicant provides a letter from FBR Seed, Land Agents and Chartered Surveyors dated 25 September 2024 confirming that they will market the property for sale.

2. The Application was accepted by the Tribunal on 5 June 2026 and referred for determination.

3. The Respondent was served with the papers in this case personally by Sheriff Officers on 18 August 2026 conform to Execution of Service of the same date.

4. A CMD was fixed for 28 October 2026 at 2pm by teleconference call and written representations were to be lodged with the Tribunal by 5 September 2026. No written representations have been lodged.

5. The Tribunal had before it:

   (i) The Application Form E;
   (ii) An unsigned Tenancy Agreement between the Applicant and the Respondent, the tenancy commencing on 21 November 2022;
   (iii) Confirmation from the Scottish Landlord Register that the Property is registered in the name of the Applicant;
   (iv) Copy Search Sheet of the Register of Sasines for the County of East Lothian (Folio number 14394) confirming that the Applicant owns the Property;
   (v) Copy Estate Agency Agreement with FBR Seed, Land Agents and Chartered Surveyors dated 25 September 2024;
   (vi) Notice to Leave dated 13 February 2026 confirming that no application would be lodged before 12 May 2026 together with an acknowledgement of receipt by the Respondent dated 13 February 2026;
   (vii) Section 11 Notice dated 19 May 2026 with proof of service; and
   (viii) Case Papers.

Case Management Discussion

6. A Case Management Discussion (CMD) took place on 28 October 2026 at 2pm by teleconference call. Ms Forrest from Mitchells' Roberton Solicitors appeared for the Applicant. Mr O'Connor represented himself and Ms Turner, his stepdaughter attended in a supporting role.

7. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions with regard to the application.

8. Ms Forrest relied on the application and papers lodged in support of it. The Applicant was seeking an order for eviction. The Applicant owns several properties, mostly held for charitable purposes. It had decided to sell the Property so that it could free up funds which would be used to provide housing to retired ministers of limited means. The Applicant cannot offer alternative accommodation to the Respondent as no suitable accommodation is available. The local authority cannot provide the Respondent with accommodation at present as he is not homeless. On questioning from the Tribunal, Ms Forrest was unable to say if the other properties owned by the Applicant are in the vicinity of the Property or elsewhere. She did confirm that

FBR Seed, Land Agents and Chartered Surveyors who were engaged to market the Property in 2024 are still instructed by the Applicant.

9. Mr O'Connor had no questions for the Applicant. He said that he was fully aware of the purpose of today. He explained that he used to live in Spain with his partner but came back to live in Scotland about 10 years ago. His partner had since died. He has been renting for around 10 years. He has been in contact with East Lothian Council and will contact them again after today's hearing. He is about to retire. The Tribunal asked if he had had a conversation with the Council about what will happen if an order for eviction is granted. Mr O'Connor said the Council has taken his details and he has been in touch with them for around 2 years as this is how long this situation has been going on. He confirmed there was a named person in the Council who he could contact. He has completed all necessary forms and the Council has accepted a homeless persons application from him. Mr O'Connor confirmed that he lives in the Property on his own and that it is a 3 bedroomed house. It has not been adapted in any way.

10. The Tribunal members adjourned for a short period to discuss matters. On reconvening, the Tribunal informed the parties that it would issue its written decision confirming as soon as possible.

Findings in Fact

11. The Applicant let the property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act which commenced on 21 November 2022.

12. The Applicant intends to sell the let property.

13. The Applicant is the owner of the property and is entitled to sell it.

14. The Applicant wishes to sell the property so that it can use the sale funds to provide housing for retired ministers of limited means as part of its charitable purposes.

15. The Applicant has competently served a notice to leave on the Respondent dated 13 February 2026 under ground 1 of Schedule 3 of the Act.

16. The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.

17. The Applicant has instructed FBR Seed, Land Agents and Chartered Surveyors to provide estate agency services in accordance with an estate agency agreement dated 25 September 2024. That agreement still stands.

18. The Property is a 3 bedroomed property and the Respondent lives in it on his own. The Respondent is approaching retirement.

19. The Respondent has been in contact with the homeless team at East Lothian Council and has completed all necessary forms required by them.

Reasons for Decision

20. In terms of section 51(1) of the Act, the Tribunal is to issue an eviction order against the tenant of a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. The Applicant relies on ground 1 of Schedule 3 of the Act in the present case.

21. Ground 1 of Schedule 3 provides:

"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."

22. Sub-paragraph 2 (c) of ground 1 was added by section 43 (3)(a)(iii) of the Coronavirus (Recovery and Reform) (Scotland) 2022. As originally enacted, ground 1 was mandatory so if the Landlord established that they were entitled to sell the property and intended to sell it, the Tribunal was required to issue an eviction order.

23. The amendment added by the 2022 Act has the effect of introducing an element of discretion into ground 1. Establishing the facts in sub paragraphs 2 (a) and (b) is sufficient to make it *prima facie* reasonable to evict. It is then for the tenant to put circumstances to the Tribunal to show otherwise (see *Manson v Turner 2023 UT 328 @ para 7*). Evidence of intention can, by way of example, include a letter of engagement from a solicitor or estate agent concerning the sale of the let property (as set out in ground 1 (3)).

24. Having made the above findings in fact, the Tribunal considered that the Applicant has established that they intend to sell the let property and that they are entitled to do so in terms of ground 1(1) (2) (a) and (b) of Schedule 3 of the Act.

25. The Tribunal considered whether it is reasonable to issue an eviction order in terms of ground 1 (2) (c). In doing so the Tribunal must consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson [1942] 2 All ER 653 at 655* (which is referred to in the Upper Tribunal case *Manson v Turner 2023 UT 328)* in which Lord Green MR said in an often-quoted passage:

> "*In considering reasonableness…it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad common-sense way as a man of the world and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."*

26. The Tribunal took into account the reasons why the Landlord wishes to sell the Property. The Tribunal gave weight to the fact that the Applicant wishes to use the sale proceeds to provide housing for retired ministers as part of its charitable purposes. The Tribunal gave weight to the fact that the Respondent lives on his own in the Property which is a 3 bedroomed house and therefore, objectively, provides more accommodation than he needs. The Tribunal noted that the Respondent has engaged with the local authority's homeless team. He did not provide any information that might cause the Tribunal to consider it would not be reasonable to grant an eviction order. The Tribunal considered that in all the circumstances, it was reasonable to grant the eviction order.

27. In addition to determining that the Applicant has satisfied the requirements of Ground 1 (1) and (2) of Schedule 3, the Tribunal considers that it is reasonable to make an eviction order in terms of Ground 1 (3) for the reasons stated above.

28. The Tribunal decided to exercise the power within rule 17 of the procedure rules and determined that a final order should be made at the CMD.

Decision

The Tribunal makes an order for eviction of the Respondent from the Property.

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.

Fiona Stephen

Fiona Stephen	**28 October 2026**
Legal Member/Chair	**Date**