



**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/24/1430**

**Re: Property at 26 Mayfield Grove, Dundee, DD4 7GZ (“the Property”)**

**Parties:**

**Mr Michael McKenzie, Mrs Alison McKenzie, 1 Marchfield Terrace, Dundee, DD2 1JH (“the Applicants”)**

**Mr Murray McPhee, Mrs Cecilia McPhee, 26 Mayfield Grove, Dundee, DD4 7GZ (“the Respondents”)**

**Tribunal Members:**

**James Bauld (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted**

**Background**

1. By application dated 25 March 2024 the applicants sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”). On 27 June 2024 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 9 October 2024 and appropriate intimation of that hearing was given to all parties.

## **The Case Management Discussion**

3. The Case Management Discussion (CMD) took place on 9 October 2024 via telephone case conference. The applicants and respondents all took part in the telephone case conference call.
4. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties regarding the application.
6. There was almost no dispute between the parties with regard to their respective situations.
7. The applicants are a married couple. Mr. McKenzie is a self-employed handyman/gardener. He is 64 years of age and suffers from arthritis which is impinging on his ability to continue working.
8. Mrs. McKenzie is 64 years old. She has recently been diagnosed with skin cancer and will shortly require to undergo surgery in Ninewells Hospital Dundee
9. The applicants have placed the property on the market for sale with a local estate agent and have received an offer from a potential purchaser who wishes to move into the property prior to Christmas 2024.
10. The respondents are a married couple. They occupy the property with their three children, two adult daughters aged 26 and 22 and their son aged 10.
11. Mr. McPhee is 60 years of age and is currently employed by Dundee City Council as a social care officer, a role he has held since 2013.
12. Mrs. McPhee is 64 years of age and has recently been made redundant. She is the full-time carer for their 10-year-old son who has a number of health problems including ADHD. He does not attend a mainstream school but attends a special needs facility two days per week.
13. The respondents' daughters are both in full-time employment

14. The respondents have made applications to Dundee City Council and Angus Council seeking housing assistance and have also lodged housing applications with a number of local housing associations.
15. The respondents accepted that they had been given the notice to leave by the respondents and that they had been aware since the start of the tenancy that at some point the respondents would wish to sell the property and that their tenancy would end. They had hoped that they might be able to purchase the property but that had not been possible.
16. The respondents indicated that since receiving the notice to leave they have contacted the local authority but have been advised by the local authority that they will be given no assistance in obtaining accommodation unless and until an eviction order is granted by the tribunal. They have sought no independent legal advice on their situation.
17. The respondents indicated that they did not wish the applicants to lose the potential sale of the property and were aware that Mr McKenzie had expressed a wish to retire from work
18. The applicants indicated that the property was effectively their pension fund. They wished to sell the property to enable Mr McKenzie to retire. They had initially tried to sell the property to another possible landlord with the residents as sitting tenants. That had not proved possible and they had instructed a local estate agent to place it on the market. It was clear that the respondents had cooperated in allowing potential purchasers to view the property.
19. The applicants indicated they had received an offer for the property but this had fallen through because the tribunal proceedings had not been completed. They have recently received a second offer from another potential purchaser. This offer has been made by a couple who have recently moved to Dundee from Glasgow having sold their home in Glasgow. The purchasers are currently living in a rental property and are keen to move from that into the property prior to Christmas.
20. Mrs McKenzie, in reply to a question from the legal member, was not able to indicate whether these purchasers might be willing to delay entry to the property if it was not available prior to Christmas. Mrs McKenzie was significantly worried that any delay would cause the second buyer also to withdraw from the process.

21. Mr. and Mrs McPhee accepted that the applicants were entitled to sell the property and that ultimately they would require to move from the property.
22. All parties indicated they were content that the tribunal made a decision without adjourning for a further hearing.
23. The tribunal explained the likely timescales if an order was granted at this time. Mr and Mrs McPhee indicated that they would prefer not to be placed in a situation where they are having to remove from the property shortly prior to Christmas, and requested that the tribunal considered delaying the effective date of any order until some point in early 2025.
24. The respondents were asked whether they had attempted to seek alternative accommodation in the private sector. They indicated that the rent they are currently paying to the applicants is less than they would pay for equivalent property in the private sector and that they are looking to obtain rented property in the public sector either via Dundee City Council, Angus Council or one of a number of local housing associations. They have made an application to all of these bodies indicating they wish to move as a family consisting of the respondents and their three children. They are looking to obtain a four bedroom property. They have been told that they may need to spend a period of time in temporary accommodation, no matter when they are eventually removed from the property. Ms McPhee expressed concern over the impact of a move upon her son.
25. The applicants indicated to the tribunal that they were of the opinion that any order granted should not be subject to any delay so that the potential sale was not prejudiced

### **Findings in fact**

26. The Applicants are the registered owners of the property.
27. The Applicants and the Respondents as respectively the landlord and tenant entered into a tenancy of the property which initially commenced on 28 February 2015 as a short assured tenancy under the Housing (Scotland) Act 1988.

28. A new tenancy agreement was commenced on 28 August 2018 by which the tenancy became a private residential tenancy in terms of the Act.

29. The tenancy is a private residential tenancy in terms of the Act.

30. The agreed monthly rental is £1275

31. On 11 December 2023, the applicants served upon the tenants a notice to leave as required by the Act. Service was effected by personal delivery to the respondents from the applicants. The Notice became effective on 11 March 2024. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.

32. The applicants are entitled to sell the property and they intend to do so.

### **Discussion and Decision**

33. The order for possession was sought by the landlord on a ground specified in the 2016 Act and properly narrated in the notice served upon the tenant.

34. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.

35. The tribunal accepted the evidence of the applicants that they intend to sell the property. Indeed, this position was not remotely challenged by the respondents.

36. The ground for eviction was accordingly established.

37. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 3 of the 2016 Act. The ground is that the that the landlord intends to sell the property. However, an eviction order on this

ground can only be granted if the Tribunal is also satisfied that it is reasonable to issue an eviction order on account of that fact.

38. The Tribunal also has a duty, in such cases, to 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. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

**“[I]n 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 commonsense 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”.**

39. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

40. The tribunal finds that it is reasonable to grant the order.

41. The tribunal accepts that the landlords are entitled to sell the property and they intend to do so. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. However, the tribunal accepts that the tenants appear to accept that they will require at some point to leave the property and they have taken steps to seek alternative accommodation. They did not dispute that the order should be granted. The respondents have apparently sought assistance from the local council and have been told that they will be fully assisted in obtaining alternative accommodation only when an eviction order is granted and they face actual homelessness.

42. The property is suitable in size for the respondents and their family. The tribunal noted the understandable position of the respondents that they would prefer to have any order delayed beyond the Christmas period. It was also

clear that the respondents accepted that at some point they would require to remove from this property. They accepted that the applicants would at some point wish to sell the property and this intention had never been hidden from them. They have occupied the property for almost 10 years. It seems clear that no matter when the order is made effective, the respondents are going to be faced with a period of disruption, upheaval and uncertainty.

43. The current timing of the application is no fault of the Applicants. It appears that they made attempts to sell the property to allow the respondents to remain as tenants. The respondents have known for a period of almost a year that the applicants intended to seek this order. The respondents appear to have made no attempt to obtain alternative accommodation in the private sector which would have been open to them and which would appear to be affordable to them given that they are a household with three adults in full-time employment. The respondents seem to accept that there are suitable available properties within the private sector but at a higher rate of rent than they are currently paying. They also seem to accept that the current rent has not increased in six years since the new private residential tenancy was commenced. If it had increased even in line with inflation since 2018 it would be closer to £1600 per month.
44. The tribunal noted that the respondents' 10-year-old son was not in mainstream schooling and the respondents did not suggest that living elsewhere would have a significant adverse impact on his future education
45. The applicants have long expressed a wish to retire and have never hidden from the respondents that they require to sell the property in order to fund their retirement plans. The applicants both have significant health issues and in Mr McKenzie's case, retirement may assist him in coping with those health issues.
46. The tribunal, balancing all the information which was presented to it considers that it is reasonable to grant the eviction order and further considers that the eviction order should not be delayed. The tribunal believes that delaying the order would simply be delaying the inevitable and that at some point, the respondents will require to deal with the disruption caused by the move from one property to another. A delay may also cause the applicants to lose the prospective sale of the property thus exacerbating their current concerns and health issues.

47. The tribunal has therefore determined that the balance in this application lies with granting the order on the basis of the evidence presented in the application and at the CMD.

48. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that the final order should be made at the CMD.

### **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.**

**Jim Bauld**

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**Legal Member/Chair**

\_\_\_\_\_**14<sup>th</sup> October**\_\_\_\_\_  
**Date**