

**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/24/4490

Re: Property at 18 strathmore street, Kinghorn, Fife, KY3 9UX (“the Property”)

Parties:

Miss Cerry Nikiperowicz, 20 Birch Avenue Kinghorn, Fife, KY3 9YN (“the Applicant”)

Miss Eileen Castle, 18 strathmore street, Kinghorn, Fife, KY3 9UX (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) had been met and it would be reasonable to make an eviction order.

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

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 4 of schedule 3 as the 2016 Act as the ground for possession, stating that it was her intention to live in the property.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 7 May 2025. The Tribunal gave notification of the CMD to the parties under Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 10 March 2025.

- 3 The Tribunal invited parties to submit written representations in advance of the CMD. No written representations were received, albeit the Tribunal did receive an email from the Respondent on 19 March 2025 confirming her contact details.

The CMD

- 4 The CMD took place on 7 May 2025 at 2pm by teleconference. Both parties joined the call.
- 5 The Tribunal explained the purpose of the CMD and the legal test to be applied under ground 4. The Tribunal then invited parties to make submissions on the application. For the avoidance of doubt the following is a summary of the key elements of the discussion and is not a verbatim account.
- 6 The Applicant advised that she was currently living in rented accommodation. Her landlord had given her an eviction notice as he required the accommodation for his son. The Applicant did not own any other properties, other than the let property. She was unable to secure a mortgage to purchase another property, and she was unable to obtain another private sector tenancy due to having four dogs. She wished to move back into the property with her partner. She intended to reside in the property on a permanent basis.
- 7 The Respondent advised that she did not oppose the application. She had been in touch with the local authority. She had made a housing application, and was on the housing list. She had been allocated a housing officer. The local authority had advised her that she would be rehoused if the Tribunal granted an eviction order. She hoped that would be in permanent accommodation, but had been advised that it may be temporary in the worst-case scenario pending an offer of permanent housing. The Respondent confirmed that she was 67 years old and resided alone.
- 8 The Tribunal asked both parties for comments on whether the Tribunal should suspend the enforcement of the eviction order. Both parties confirmed they were content with the standard 30 day period.
- 9 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the call and confirming the outcome.

Relevant legislation

- 10 The Tribunal considered the following provisions of the 2016 Act as relevant to this application:-

Private Housing (Tenancies) (Scotland) Act 2016

1 - Meaning of private residential tenancy

1) A tenancy is a private residential tenancy where—

- (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,*
 - (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*
 - (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

51 First-tier Tribunal's power to issue an eviction order

- (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*
- (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*
- (3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*
- (4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.*

52 Applications for eviction orders and consideration of them

- (1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*
- (2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—*
 - (a) subsection (3), or*
 - (b) any of sections 54 to 56 (but see subsection (4)).*
- (3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*
- (4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*
- (5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*
 - (a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*
 - (b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

54 Restriction on applying during the notice period

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) in the case of a notice served before 3 October 2020 expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) three months after it begins if subsection (3A) applies,

(iii) six months after it begins if neither subsection (3) nor (3A) applies.

(c) in the case of a notice served on or after 3 October 2020, expires on the day falling—

(i) 28 days after it begins if subsection (3B) applies,

(ii) three months after it begins if subsection (3C) applies,

(iii) six months after it begins if neither subsection (3B) nor (3C) applies

(3) This subsection applies if the only eviction ground stated in the notice to leave is that the tenant is not occupying the let property as the tenant's home. [ground 10]

(3A) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the tenant has a relevant conviction, [ground 13]

(iv) that the tenant has engaged in relevant anti-social behaviour, [ground 14]

(v) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour, [ground 15]

(vi) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(vii) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, [ground 17] or

(b) the only eviction grounds stated in the notice to leave are—

(i) the eviction ground mentioned in subsection (3), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a)

(3B) This subsection applies if the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(a) that the tenant is not occupying the let property as the tenant's home, [ground 10]

(b) that the tenant has a relevant conviction, [ground 13]

(c) that the tenant has engaged in relevant anti-social behaviour, or [ground 14]

(d) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. [ground 15]

(3C) This subsection applies if—

(a) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

(i) that the landlord intends to live in the let property, [ground 4]

(ii) that a member of the landlord's family intends to live in the let property, [ground 5]

(iii) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004, [ground 16]

(iv) that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006, or [ground 17]

(b) the only eviction grounds stated in the notice to leave are—

(i) an eviction ground, or grounds, mentioned in subsection (3B), and

(ii) an eviction ground, or grounds, mentioned in paragraph (a).

62 Meaning of notice to leave and stated eviction ground

(1) References in this Part to a notice to leave are to a notice which—

(a) is in writing,

(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

Schedule 3 – Part 4

4 (1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Findings in Fact

- 11 The Applicant is the registered owner of the property in terms of Title Sheet FFE77343. The Applicant is a registered landlord.
- 12 The Applicant and Respondent entered into a tenancy agreement in respect of the property, which commenced in July 2016.
- 13 The Applicant and Respondent signed a second tenancy agreement in respect of the property on 26 March 2024.
- 14 The tenancy between the parties was a private residential tenancy as defined by section 1 of the 2016 Act.

- 15 On 1 July 2024 the Applicant hand delivered a notice to leave to the Respondent. The notice to leave stated that an application would not be submitted to the Tribunal any earlier than 25 September 2024. The notice to leave included ground 4 of schedule 3 of the 2016 Act.
- 16 The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 17 On 4 September 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Fife Council by email.
- 18 The Applicant intends to live in the property as her only or principal home for a period of at least three months.
- 19 The Applicant is currently in rental accommodation. The Applicant has been given a notice to leave by her current landlord.
- 20 The Applicant does not own any other properties. The Applicant is unable to secure a private let due to having four dogs.
- 21 The Applicant intends to return to the property to live with her partner on a permanent basis.
- 22 The Respondent is 67 years old. The Respondent resides alone.
- 23 The Respondent has applied for housing with the local authority. The Respondent is on the housing list and the local authority have allocated her a housing officer.
- 24 The local authority will provide the Respondent with housing if the Tribunal makes an eviction order.

Reasons for decision

- 25 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. Both parties were in agreement as to the substantive matters in this case.
- 26 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that Applicant had given the Respondent a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003

of her intention to recover possession of the property. The Tribunal therefore considered whether ground 4 of schedule 3 of the 2016 Act had been met in this case.

- 27 The Tribunal accepted that the Applicant was the registered owner of the property under Title Sheet FFE77343, and that her intention to live in the let property was genuine, having considered the reasons behind said intention which the Tribunal found to be credible. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of that fact, which required the Tribunal to identify factors relevant to reasonableness and determine what weight to give to them.
- 28 The Tribunal gave significant weight to the Applicant's property rights and her reasons for wishing to move back into the property. The Tribunal accepted that she required to leave her current rental accommodation, having been given a notice to leave by her landlord. She had no other options in terms of housing. She owned no other rental properties and was unable to secure accommodation in the private sector.
- 29 The Tribunal also carefully considered the Respondent's circumstances. Whilst the Tribunal had concerns about the impact of eviction upon the Respondent, ultimately the Tribunal gave most weight to the fact that she did not oppose the eviction order. It was clear that she had made progress in securing alternative accommodation with the local authority. She had been allocated a housing officer to support her, and she had been advised that she would be rehoused were an eviction order to be granted. The Tribunal therefore considered that the making of an eviction order would assist the Respondent in her efforts to secure alternative accommodation.
- 30 Accordingly, having weighed the above factors as relevant to reasonableness, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 31 The Tribunal therefore determined that ground 4 was met and made an eviction order. The decision of the Tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Ruth O'Hare

7 May 2025

Legal Member

Date