



**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/24/4121

**Re: Property at Flat 11 10 East Pilton Farm Crescent, Edinburgh, EH5 2GH
("the Property")**

Parties:

**Mr Sunil Drown, 17 Sloane Court, 28 The Grove, Isleworth Middlesex, TW7 4JU
("the Applicant")**

**Ms Leonna Sylvester, Flat 11 10 East Pilton Farm Crescent, Edinburgh, EH5
2GH ("the Respondent")**

Tribunal Members:

Ruth O'Hare (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the provisions of ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 have been met and it would be reasonable to make an eviction order with execution of the order suspended for a period of three months.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act with execution of the order suspended for a period of three months.

Background

- 1** The Applicant applied to the Tribunal for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The Applicant relied upon ground 1 of schedule 3 of the 2016 Act, stating that the Applicant intended on selling the property.
- 2** The application was referred to a Case Management Discussion ("CMD") to take place by teleconference on 14 April 2025. The Tribunal gave both parties

notification of the CMD. Said notification was served upon the Respondent by sheriff officers on 25 February 2025. Both parties were invited to make written representations.

- 3 On 7 April 2024 the Applicant emailed the Tribunal with a mortgage statement. No written representations were received from the Respondent in advance of the CMD.

The CMD

- 4 The CMD took place on 14 April 2025 at 10am by teleconference. Mr Mellis of Thorntons Solicitors represented the Applicant. The Respondent joined the call.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 5 September 2024 and paper apart;
 - (ii) Title sheet MID98863;
 - (iii) Excerpt from online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Section 11 notice to Edinburgh City Council together with proof of delivery by email;
 - (vi) Notice to leave dated 31 May 2024 together with proof of delivery by email to the Respondent; and
 - (vii) Mortgage statement dated 23 October 2024.
- 6 The Tribunal explained the purpose of the CMD and the legal test under ground 1 of schedule 3 of the 2016 Act. The Tribunal proceeded to hear submissions from the parties. For the avoidance of doubt the following is a summary of the key elements of the submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 Mr Mellis explained that the Applicant had complied with the requirements for an application under Rule 109, referring to the notice to leave and section 11 notice that had been submitted with the papers. The Applicant wished to sell the property. Mr Mellis noted that the Respondent had been given until the 15 March to lodge a response to the application but had not done so. The remaining issue for the Tribunal to consider was the reasonableness of making an eviction order. Mr Mellis referred to the title deeds that had been submitted with the application as evidence of the Applicant's ownership. He confirmed that the estate agency arm of his firm had accepted instructions to market the property for sale. Mr Mellis referred to the interim mortgage statement which demonstrated the end of the loan term for the property in November 2026. The Applicant required to sell the property in order to pay off the loan. He required to do some minor maintenance and decoration to the property prior to any sale and therefore needed vacant possession as soon as possible. Mr Mellis also noted that the Respondent had not paid rent over the past 12 months and the arrears were now £9,900.

- 8** In response to questions from the Tribunal, Mr Mellis advised that the Applicant owned five properties in a similar situation in terms of the mortgage position. The Applicant was having difficulty securing credit to the extent required and was now at the maximum of what he could borrow. There was nothing else available. The Applicant required to achieve the highest possible sale price and could not do that if he sold the property with a sitting tenant. There had been no discussions about the prospect of selling the property to the Respondent.
- 9** Ms Sylvester confirmed that she had resided at the property for approximately 8 years. Over the past five months there had been discussions in the building, in which the Applicant owned five or six properties. People who worked for the Applicant had told the tenants to stop paying rent, as the properties were being repossessed. The Respondent did not know what was going on. There had been a conversation between the Applicant and the Respondent, in which the Applicant had requested an increase in rent of £480 per month, failing which the Respondent would be evicted. The Respondent did not know therefore if the Applicant's intention to sell was genuine. The Respondent explained that the past 18 months had been difficult as there was no communication from the Applicant about what was happening. The Applicant had never asked her about the rent. The Respondent confirmed that she resided in the property with her three year old daughter.
- 10** In response to questions from the Tribunal the Respondent advised that she was proactively looking for another property but it had proved challenging given the current market conditions in Edinburgh. She did not think an eviction order would be reasonable if she was not given additional time to find accommodation. The Respondent confirmed that she had registered with letting agencies and had approached social housing providers. She required a property in a particular area that would enable her to continue her employment and her daughter's nursery provision. She had spoken with Shelter Scotland and had been approached by a representative by Edinburgh Housing who was offering support to tenants in the building. The Respondent confirmed that she would be looking for around three months in terms of any delay in the enforcement of an eviction order. Her parents were assisting with her search for a property, but they resided in Dundee.
- 11** Mr Mellis was given the opportunity to make any further comments. He highlighted that the Respondent had not given notice of her submissions and he had not had the opportunity to investigate fully. No evidence had been lodged to refute the ground for possession. He noted that the Respondent had acknowledged that she required to move and pointed out the amount of time that had passed already since the notice to leave was served. He submitted that an eviction order would not prejudice the Respondent's position. The Applicant was facing time pressures given the end of the mortgage term. He opposed any delay in the enforcement of the order on that basis.

- 12 Having heard from the parties the Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming its decision.

Relevant Legislation

- 13 The Tribunal considered the following provisions of the 2016 Act:-

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.

Schedule 3, Part 1

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, and

(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.

Findings in Fact

14 The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the property, which commenced on 6 December 2021.

15 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.

16 On 31 May 2024 the Applicant sent a notice to leave to the Respondent by email.

- 17 The Respondent had consented to the delivery of notices by email under Clause 4 of the said tenancy agreement.
- 18 The notice to leave cited ground 1 and stated that an application to the Tribunal would not be made any earlier than 26 August 2024.
- 19 On 5 September 2024 the Applicant submitted a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Edinburgh City Council by email.
- 20 The Applicant is the registered owner of the property. The Applicant has title to sell the property.
- 21 The Applicant intends on selling the property, or marketing it for sale, within three months of the Respondent vacating.
- 22 The Applicant has instructed Thorntons Solicitors and Estate Agents to market the property for sale once vacant possession is secured.
- 23 The Applicant has a mortgage over the property with approximately £192,770.39 outstanding. The mortgage term is due to expire on 29 November 2026.
- 24 The Applicant requires to sell the property prior to the end of the mortgage term in order to repay the mortgage.
- 25 The Applicant owns other properties in the same block in which the property is based. The Applicant is facing similar issues with those properties in terms of his mortgage obligations.
- 26 The Respondent resides in the property with her daughter aged three.
- 27 The Respondent is employed. The Respondent's employment is based in the city centre of Edinburgh.
- 28 The Respondent's daughter attends nursery.
- 29 The Respondent requires a property in a location that will allow her to continue her employment and her daughter's nursery provision.
- 30 The Respondent has been actively seeking alternative accommodation. The Respondent plans to move out of the property.
- 31 The Respondent has faced difficulties in sourcing a property suitable to her needs due to current market conditions in Edinburgh.

- 32** There are rent arrears outstanding. The Respondent has been approached and advised not to pay rent for the property.

Reasons for Decision

- 33** In reaching its decision, the Tribunal took into account the application paperwork, written representations from the Applicant and the submissions from the parties at the CMD.
- 34** The Tribunal carefully considered whether it could reach a decision on the application without a hearing under Rule 18 of the Rules. In terms of the substantive matters relative to the Tribunal's determination of the eviction ground in this case, the Tribunal was satisfied that it could make relevant findings in fact based on the documents before it and the submissions provided by the parties at the CMD.
- 35** Having considered the application paperwork, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act, and that the application could be entertained under section 51 of the Act. The Tribunal therefore went on to consider whether ground 1 had been met in this case.
- 36** The Tribunal accepted that the Applicant was entitled to sell the property as the registered owner under title sheet MID98863. The Tribunal also accepted that the Applicant intended on marketing the property for sale within three months of the Respondent having vacated. Whilst the Respondent had questioned whether his intention was genuine in this regard, the submissions from Mr Mellis on this point were supported by evidence in the form of the mortgage statement and the instructions to Thorntons Estate Agents regarding the sale. The Respondent had not put anything forward to counter this, other than highlighting her suspicions about the Applicant's intentions.
- 37** The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
- 38** The Tribunal took into account the Applicant's property rights, which entitled him to dispose of the property. The Tribunal also had regard to his reasons for doing so in order to pay off the mortgage at the end of the mortgage term. These were both factors to which the Tribunal gave significant weight.
- 39** The Tribunal also took into account the rent arrears that were outstanding. However, having considered the Respondent's submissions on this point, the Tribunal was unable to give much weight to this as a relevant factor. The situation regarding the rent was not entirely clear from the information provided by parties at the CMD.

- 40** The Tribunal considered the Respondent's circumstances. Whilst the Respondent had not provided any written response to the application, the Tribunal found her verbal submissions to be straightforward and credible. The Tribunal therefore accepted that she was a single mother with a 3 year old daughter, both of whom would be at risk of homelessness if an eviction order was granted. Whilst she would at the very least be entitled to emergency accommodation from the local authority, there was a risk that this would be in accommodation that would not allow her to maintain her current employment. The Tribunal accepted that she would face disruption to her employment and her daughter's nursery provision were she to relocate to a property that did not suit her needs in terms of location. The Tribunal considered that this could be partly mitigated by a delay in the execution of any eviction order granted to give the Respondent more time to find a suitable property.
- 41** The Tribunal considered the submissions made by Mr Mellis regarding the passage of time since the notice to leave was given to the Respondent. Whilst the Tribunal did have some sympathy with this argument, it was also acutely aware of the challenging environment that the Respondent was facing in trying to secure alternative accommodation in the context of a housing emergency. The Tribunal accepted that she had been proactively trying to find another property based on her submissions at the CMD. She wanted to move out of the property, she just needed more time to find somewhere suitable for herself and her daughter. The Tribunal gave significant weight to this. The Tribunal therefore considered that a delay in the execution of any order granted would be reasonable in the particular circumstances of this case. The Tribunal noted that the Applicant was keen to have vacant possession as soon as possible. However, on the basis that the mortgage term was not due to expire under 29 November 2026, the Tribunal considered that this would not be overly prejudicial to his position.
- 42** Accordingly, taking the above into account as factor relevant to the issue of reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and that ground 1 had been met if execution of the order was suspended for a period of three months from the date of this decision. The Tribunal therefore made an eviction order in those terms.
- 43** 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

14 April 2025

Legal Member/Chair

Date