

**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 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/2875**

**Re: Property at 21 St Murdochs Crescent, Arbroath, DD11 5BY (“the Property”)**

**Parties:**

**Mr Brian Taylor, 7 St Murdochs Crescent, Arbroath, DD11 5DA (“the Applicant”)**

**Mr Andrew Taylor, Miss Leanne Christie, 21 St Murdochs Crescent, Arbroath, DD11 5BY (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted in favour of the Applicant against the Respondents.**

**Background**

1. An application was received from the Applicant’s former solicitor on 21 June 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Grounds 1 (landlord intends to sell) and 11 (breach of tenancy agreement) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
  - (i) Copy private residential tenancy agreement between the parties, which commenced on 25 November 2019.
  - (ii) Copy Notices to Leave, one addressed to each Respondent dated 19 March 2024, citing grounds 1, 11 and 12, and stating the date before

which proceedings could not be raised to be 14 June 2024, together with proof of delivery for both notices dated 21 March 2024.

- (iii) Copy notices under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Angus Council, together with proof of sending by email on 21 June 2024.
- (iv) Copy pre-action letters, one addressed to each Respondent, dated 17 June 2024, together with proof of delivery for each dated 18 June 2024.
- (v) Copy letter dated 21 September 2023 from Thorntons Solicitors Property Services to the Applicant confirming that he had instructed them to sell the property.
- (vi) Affidavit by the Applicant signed by the Applicant dated 27 September 2023.
- (vii) Copy letter to the Applicant from Contact Electrical Services Ltd dated 13 December 2023.

3. The application was accepted on 18 July 2024.

### **The two case management discussions**

- 4. A case management discussion (CMD) was held by teleconference call on 5 November 2024. Both the Applicant and the first Respondent, Mr Taylor, were present and both parties were represented by a solicitor. The Respondents' solicitor confirmed that they did not dispute that the Applicant was entitled to sell the property, nor that it was his intention to sell the property. They wished, however, to oppose the application on the grounds of reasonableness.
- 5. The matter was adjourned to a further CMD to give both parties the opportunity to produce more evidence. The Tribunal issued a direction to the parties on 5 November 2024, setting out the information which it would be helpful to have from both parties in advance of the adjourned CMD.
- 6. A second CMD took place by teleconference call on 20 March 2025. The Applicant, who was no longer represented by a solicitor, was present on the teleconference call and represented himself. Both Respondents were present and were represented by their solicitor, Mr Nick Whelan of Whelan and Co.
- 7. It became apparent during the CMD that due to an administrative error, the Tribunal's direction had not been sent to Mr Whelan. Neither had the Applicant's response to the direction been sent to him. Mr Whelan confirmed that the Respondents still wished to oppose the application on the grounds of reasonableness. He therefore asked the Tribunal to fix an evidential hearing on the application.

8. In the circumstances, the Tribunal decided to fix a hearing on 28 May 2025. The Tribunal also issued a further direction to the parties, inviting them to make further submissions by 14 May 2025. Responses to the direction were received from Mr Whelan on 1 April 2025 and from the Applicant on 11 April 2025.

### **The hearing**

9. A hearing took place by teleconference call on 28 May 2025. The Applicant was present on the teleconference call and represented himself. His partner was with him as a supporter. Mr Whelan represented the Respondents on the teleconference call. The Respondents were not present on the call.
10. The legal member noted that the two issues to be considered at the hearing were:
- 1) Whether ground 11 (breach of tenancy agreement) was established.
  - 2) Whether it was reasonable in all the circumstances of the case for the Tribunal to grant an eviction order on ground 1 and/ or 11.
11. The Applicant confirmed that he still wished to pursue the application on both grounds 1 and 11.
12. It became apparent at the start of the hearing that Mr Whelan had sent further written representations to the Tribunal on 15 April 2025. These had not been received by the Tribunal, and had not been sent to the Applicant either. The Applicant had also not received the response which had been submitted by Mr Whelan on behalf of the Respondents on 1 April 2025.
13. Mr Whelan forwarded the further written submissions, which were one page long, to the Tribunal during the CMD. These were forwarded to the Applicant by the Tribunal clerk. Mr Whelan's submission of 1 April 2025 was also sent to the Applicant. The Tribunal noted that this was also brief, comprising one page of medical information in respect of each Respondent. The Tribunal therefore adjourned the hearing briefly to allow both the Tribunal members and the Applicant to read the relevant submissions before resuming the hearing.

### **The Applicant's submissions**

14. With regard to ground 11, the Applicant confirmed that this related to difficulties his electrical contractor had experienced in obtaining access to the property to carry out works in late 2023. As evidenced by the letter of 13 December 2023 from Contact Electrical Services Ltd, they had attempted to arrange an appointment with the first Respondent to obtain access to the property on various occasions from early July 2023 onwards. They had eventually managed to get access to complete the works on 9 November 2023. The Applicant said this had

been possible only because the Respondents had raised an issue with the smoke alarms and the contractor had been able to deal with the other issues when they obtained access to the property to deal with these.

15. The Applicant said that there had previously been another issue with obtaining access for contractors to enter the property, but they had not wished to become involved. He therefore had no written evidence of this. He confirmed that there had been no further issues with obtaining access since late 2023. He also confirmed that he had not made a right of entry application to the tribunal in order to obtain access for his contractors to carry out works at the property.
16. Regarding ground 1, the Applicant confirmed that he still intended to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it. He owns the property jointly with his daughter, who no longer wishes to continue as a registered landlord due to the stress involved. He owns 60% of the property, and his daughter owns the remaining 40%. There is no mortgage over the property.
17. The Applicant told the Tribunal that at the time when the tenancy began, he had been working offshore and was well paid. He had sold his home and moved into one of his former rental properties. The first Respondent is his nephew, and he had heard that the Respondents were having difficulty in finding somewhere to live. He had therefore used the proceeds of his house sale to buy the property in October 2019 in order to help them out by renting it to them. He said that at that time, he had expected still to be employed for another 10 years.
18. Unfortunately however, he had been made redundant in December 2020. He also suffers from both physical and mental health issues, and had provided medical evidence of these. He suffers from type 2 diabetes, and from anxiety and depression. In November 2022, he was run over by a car and suffered various serious injuries, which affected his mobility and exacerbated his existing mental health issues. He was unable to go back to work as a result, and this left him in difficult financial circumstances. He is now 68 years old and he is now fully retired. He needs to sell the property to fund his retirement and pay off his remaining debts. The Applicant also cares for his partner who suffers from rheumatoid arthritis and is unable to work.
19. The Applicant said repeatedly that he no longer feels able to continue as a landlord of the property, due to his health issues and the stress that the tenancy has caused him. The Respondents have regularly complained about various matters. They were previously in rent arrears, and these were cited in the Notice to Leave. He did not proceed on ground 12, as the Respondents had repaid the arrears by the time the eviction application was made. There have also been

various management and repairs issues with the property. The rent for the property is also very low. It was £400 at the start of the tenancy, and is currently £448 per month. The Respondents also pay the rent 2-4 weeks late every month. They have only paid the rent on time once during their tenancy.

20. The Applicant owns three other rental properties, and is the sole owner of all of these. He is only planning to sell this property at the present time. There are a number of reasons for this. Because the property was the last one he purchased, he considers that it should be the first to be sold. His former wife, who is in poor health, lives in one of the rental properties with their severely disabled adult daughter. The tenants in the other two rental properties have children and have been living in the properties since 2014 and 2015 respectively. They are also paying much higher rents than the Respondent and have also always paid their rent on time.
21. The Applicant said that he would have been happy to sell the property to the Respondents if they were in a position to buy it. He had also looked into selling the property with the Respondents as sitting tenants, but this would mean a sizeable drop in the price that he would be able to achieve. He had spent a lot of money on the property over the years and was therefore not willing to accept a lower price.
22. The Applicant confirmed that no adaptations had been made to the property during the Respondents' tenancy.

### **Submissions on behalf of the Respondents**

23. Mr Whelan again confirmed that the Respondents did not dispute that the Applicant was entitled to sell the property or that he intended to sell it within 3 months of the Respondents ceasing to occupy it. The Respondents did, however, dispute that they had failed to comply with a term of their tenancy agreement.
24. Mr Whelan submitted that it would be unreasonable for the Tribunal to grant an eviction order against the Respondents. He confirmed that no-one other than the Respondents are living in the property, which is a two bedroom ground floor flat. They are both unemployed due to ill health and are in receipt of universal credit. Their rent is paid via universal credit, which likely explains the delay in their rent being paid each month.
25. Mr Whelan pointed to the medical information he had submitted to the Tribunal. The first Respondent has spinal issues, which appear to have begun in 2022. Mr Whelan said that this affects his mobility and that he requires to use a walking aid. He was unsure, however, as to the nature of this walking aid. The second

Respondent suffers from type 2 diabetes and chronic obstructive pulmonary disease (COPD). Mr Whelan was unable to confirm whether either Respondent was in receipt of Adult Disability Payment or any other disability benefits.

26. Mr Whelan said that the Respondents had taken good care of the property and had carried out various works to improve both the flat itself and the garden. He suggested that the Applicant's main grounds for the eviction in fact appeared to be that there had been various disagreements with the Respondents and that the rent was too low. There were other avenues that he could take to address the latter issue. He also pointed out that the Applicant would receive only 60% of the sale proceeds were he to sell the property, whereas his financial gain would be greater if he was to sell one of his other rental properties, which he owned outright.
27. Mr Whelan said that the Respondents had contacted Angus Council regarding alternative accommodation after receiving the Notice to Leave. They are registered with a number of social landlords in the area, and regularly check online for private rented accommodation. Angus Council operates a bidding system for accommodation under which potential tenants must bid for any social rented accommodation which becomes available. At present, the Respondents are being treated as adequately housed by the Council and therefore, and are not therefore given high priority for rehousing.
28. Mr Whelan said that it was the Council's policy that it would not take action to re-house people until they had received an eviction order. The Respondents were not, however, actively seeking an eviction order. He submitted that there were unique housing issues in the Angus area at present following the flooding which had occurred in Brechin in 2023. This had had resulted in the displacement of over 100 council tenants from their homes, who had to be re-housed, resulting in a severe shortage of housing. It was likely that if the Respondents were evicted that at least in the short term any social housing provided to them would be temporary homelessness accommodation.
29. The Respondents would find it difficult to find another private rented property due to rent levels. Universal credit would not pay for a two bedroomed property. The Respondents would prefer another two bedroomed property as the second Respondent can suffer from sleepless nights as a result of her COPD. They would be willing to take a one bedroomed property if necessary, however. He Respondents had seen one bedroomed properties on the market locally, but that these had all been upstairs. The Respondents needed another ground floor property due to their health issues. They were prepared to move anywhere in the Angus area. Mr Whelan was unable to confirm when asked whether the Respondents had viewed any other properties.

### **Further submissions by the Applicant**

30. The Applicant said that he had never seen the first Respondent, who lives in the same street, use a walking aid. He said that he had seen the first Respondent out on a bicycle, and was aware that he had recently rented a plot of garden ground.
31. The Applicant also rejected any suggestion that there was a shortage of one or two bedroom private rented properties in Arbroath. He pointed to the advertisements which he had submitted to the Tribunal for a number of these properties in November 2024. He suggested that the reason why the Respondents did not wish to find somewhere else was that their rent was very low compared to average rents for the area, which were closer to £600 per month.
32. The Applicant said that he had increased the rent to £448, which was the maximum increase allowed at the time. He had served a rent increase notice on the Respondents fairly recently, prior to the lifting of the rent cap. They had responded to say that they wished to challenge it, but he had later discovered that they had not in fact made a referral to the Rent Officer.

### **Findings in fact**

33. The Tribunal made the following findings in fact:
  - The Applicant owns the property jointly with his daughter, Mrs Lauren Simpson. He owns 60% of the property and Mrs Simpson owns the remaining 40%. Mrs Simpson is aware of and has consented to the application, as evidenced by an email from her dated 23 June 2024.
  - The Applicant is the registered landlord for the property. Mrs Simpson is registered as a joint owner.
  - There is a private residential tenancy in place between the parties, which commenced on 25 November 2019.
  - The Notice to Leave was validly served on the Respondents by recorded delivery on 21 March 2024.
  - The Applicant intends to sell the property or put it up for sale within 3 months of the Respondents ceasing to occupy it.
  - The property is a ground floor two bedroomed flat which has not been adapted for the Respondents.
  - The Applicant suffers from type 2 diabetes, mobility issues, anxiety and depression. He also takes pain medication.

- The first Respondent has suffered from lumbar spine issues since 2022 and is prescribed pain medication for this.
- The second Respondent suffers from COPD and type 2 diabetes. She is prescribed antidepressants.
- The Applicant's partner has been diagnosed with rheumatoid arthritis.
- The Applicant owns four rental properties in total.
- The Respondents are both unemployed and their rent is paid via universal credit.
- No-one other than the Respondents lives in the property.
- The Respondents have no dependants.

## **Reasons for decision**

34. In making its decision, the Tribunal carefully considered all of the evidence before it. This included all of the written evidence which the parties had submitted, and the oral submissions of the Applicant and his former solicitor and Mr Whelan at the two CMDs and at the hearing. In doing so, the Tribunal applied the civil burden of proof, which is the balance of probabilities.

## **Ground 11**

35. The Tribunal considered whether the legal requirements of Ground 11, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 11 states:

### ***Breach of tenancy agreement***

*11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

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

*(a) the tenant has failed to comply with a term of the tenancy, and*

*(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*

*(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

36. The Tribunal considered that the Respondents breached the tenancy agreement to the extent that it appeared that they failed to allow reasonable access to the Applicant's electrical contractor for several months in 2023. Clause 19 of their



tenancy agreement states that they must allow the landlord or contractors/tradesmen hired by the landlord, reasonable access to the property for an authorised purpose where they have been given at least 48 hours' notice, or access is required urgently. The Applicant confirmed that there had been no further issues with obtaining access since late 2023. He also confirmed that he had not made a right of entry application to the tribunal in order to obtain access for his contractors to carry out works at the property.

37. The Tribunal does not therefore consider that the breach was continuing, repeated or persistent. Neither did it have major implications for the Applicant. It is not therefore a breach of sufficient gravity that this breach alone would justify making an eviction order. The Tribunal therefore determines that it would not be reasonable to issue an eviction order in respect of the breach of section 11.

### **Ground 1**

38. The Tribunal considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

#### ***Landlord intends to sell***

*1(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.*

39. The Tribunal determined that as the owner of the property, the Applicant is entitled to sell the property. His co-owner, Mrs Lauren Simpson, is aware of and has consented to the application.

40. The Tribunal then considered whether the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it. The Tribunal noted that the Applicant had produced a letter dated 21 September 2023 from Thorntons Solicitors Property Services confirming that he had instructed them to sell the property. The Applicant had also confirmed his continuing intention to sell at the hearing.
41. The Respondents did not dispute that the Applicant was entitled to, or intended to, sell the property. Having had regard to the Applicant's oral and written evidence, and the letter from Thorntons Solicitors Property Services, the Tribunal determined that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy it.

### ***Reasonableness***

42. The Tribunal then considered whether it was reasonable to make an order under ground 1 for recovery of possession. In doing so, it took into account all of the circumstances of the case.
43. The Tribunal found the decision to be very finely balanced, given the health and financial circumstances of both parties.
44. The Tribunal noted that the Applicant has experienced a significant deterioration in both his physical and mental health and his financial circumstances since he bought the rental property and entered into a tenancy agreement with the Respondents. He is now past state retirement age and requires to release the equity in the property to fund his retirement. While he could increase the rent on the property, and has in fact previously tried to do so, this would not release the necessary funds which the sale of the property would achieve.
45. The Applicant does, however, own three other rental properties. While his former wife and disabled daughter live in one of these, the others are also rented out to tenants. He owns all of these outright and could sell one of these instead, although that would mean raising an eviction action against other longstanding tenants. He has set out clear reasons, however, as to why he has selected this property to sell. These include the fact that the other tenants have been in their properties longer than the Respondents, that they have dependants and that this property was the last to be bought and should therefore be the first to be sold. The Tribunal also notes that as the owner of the property, the Applicant has a legal right to use and dispose of it as he sees

fit, within the confines of the law, including the present consideration of whether it is reasonable to grant an eviction order.

46. While it does appear that a deterioration in the relationship between the parties is a factor in the Applicant's decision to sell this particular property, other issues have arisen during this tenancy which must be considered as part of any decision on reasonableness. These include past rent arrears and difficulties with obtaining access to carry out works. While the Applicant has expressed his regret over seeking to evict the Respondents, he does not see any alternative given his changed circumstances. He bought the property to help out the Respondents in the first place, but did not foresee the changes which have since occurred in his personal situation. He has also expressed his willingness to sell the property to the Respondents, should they be in a position to buy it.
47. With regard to the Respondents, there was limited written evidence available to the Tribunal to assess their situation, and the Tribunal was unable to hear evidence directly from them. They are both unemployed and do not have any dependants living with them. It is clear from the medical information provided that they both have health issues. It is unclear, however, to what extent these impact on their mobility and day to day living, or whether they are in receipt of disability benefits. There is some doubt in particular about the extent to which the first Respondent requires a walking aid. The Tribunal notes that the first Respondent was present in Mr Whelan's office at both CMDs, but Mr Whelan was unsure about the nature of any walking aid used by him.
48. The Tribunal also notes that the Respondents have been living in the property for more than 5 years, and appear to have invested time and effort in improving the property and making it their home. If they are evicted, they may be placed in temporary homelessness accommodation. The Tribunal notes, however, that were they to receive an eviction order, they would then be given greater priority for social housing. Any accommodation into which they were placed would also have to meet their health needs. The Tribunal also notes that the [current local housing allowance rate for Dundee and Angus](#) for a two bedroomed property is £141.53 per week, having been frozen at 2024-25 levels. If the local authority were minded to consider the Respondents to be eligible for two bedroom accommodation on account of their various health issues, they may therefore be eligible to secure a private rented property at a higher rent than they are currently paying.
49. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the difficulties experienced by the Applicant as a result of the changes to his health and

financial circumstances since the start of the tenancy and to his rights as the owner of the property, subject to any legal restrictions on these. While the Tribunal recognises that the Respondents also have health issues, the extent of these was unclear based on the evidence before the Tribunal. The Tribunal also noted that granting an eviction order may give them higher priority with social landlords, which would increase their chances of securing social housing.

50. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

### **Decision**

The Tribunal grants an order in favour of the Applicant against the Respondents for recovery of possession of 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.**



**Legal Member/Chair**

6<sup>th</sup> June 2025

**Date**