



**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/24/5754

**Re: Property at Tigh a Deas, Easter Muckovie, Westhill, Inverness, IV2 5BN
("the Property")**

Parties:

**Mr Ronald MacKintosh, Ms Ema MacKintosh, Braeview, Clava, Culloden Moor,
Inverness, IV2 5EL; Ruthven, Nairnside, Inverness, IV2 5BU ("the Applicant")**

**Mr William Lobban, Ms Kelly Bickerton, Tigh a Deas, Easter Muckovie,
Westhill, Inverness, IV2 5BN ("the Respondent")**

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (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 2016 Act have been met in this case and it would be reasonable to make an eviction order.

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

Background

- 1 This is an application 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 2016 Act. The Applicants relied upon ground 1 as the ground for possession, stating that the Applicants intended to sell the property.
- 2 The application was referred to a case management discussion ("CMD") to take place by teleconference on 9 May 2025. The Tribunal gave notification of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notification

was served upon the Respondents by sheriff officers. Both parties were invited to make written representations.

- 3 On 26 March 2025 the Tribunal received written representations from the Respondents by email. As the representations contained sensitive information, the Tribunal wrote to the Respondents requesting consent to cross over their representations to the Applicants. The Tribunal received no response.

The CMD

- 4 The CMD took place on 9 May 2025 at 10am by teleconference. Mrs Alice Bruce, Solicitor, of Macleod and MacCallum Ltd represented the Applicants. The Respondents both joined the call.
- 5 The Tribunal had the following information before it:-
 - (i) Form E application form dated 13 December 2024 and paper apart;
 - (ii) Sasine Search Sheet confirming the Applicants as the registered owners of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicants' landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 1 April 2021;
 - (v) Notice to leave 4 September 2024 together with proof of service upon the Respondent by recorded delivery mail;
 - (vi) Section 11 notice to Highland Council together with proof of delivery by email dated 13 December 2024;
 - (vii) Estate agency agreement between the Applicant and MacLeod and MacCallum Solicitors and Estate Agents dated 31 July 2024;
 - (viii) Letter from Culloden Medical Practice dated 17 July 2024; and
 - (ix) The Respondents' written representations.
- 6 The Tribunal heard submissions from the parties on the application. For the avoidance of doubt the following is a summary of the key elements of the submissions and does not constitute a verbatim account of the proceedings.
- 7 As a preliminary matter, the Tribunal confirmed that the Respondents were content for their representations to be crossed over to the Applicants. The Tribunal therefore arranged to send the representations to Mrs Bruce by email.
- 8 Mrs Bruce confirmed that the Applicants owned the property as the partners and trustees of Mackintosh Highland. They were therefore entitled to sell the let property. The Applicants had engaged estate agents, as evidenced by the estate agency agreement submitted with the application. Mrs Bruce confirmed that the let property was a six bedroom house. Mr Mackintosh was suffering from various health conditions, as evidenced by the letter from Culloden Medical Practice. The Applicants wanted to sell the property and use the capital for their retirement while Mr Mackintosh was still able to do so. His health had deteriorated due to the stress of the repossession process. The Applicants had

given the Respondents the opportunity to purchase the property. The Applicants owned three other rental properties, but the let property had the highest value, hence why the decision had been taken to proceed with the sale. Mrs Bruce confirmed that the other properties were tenanted.

- 9 Mr Lobban spoke on behalf of both Respondents. He adopted his written representations. He confirmed that the Respondents did not wish to stay in the property. It was in a state of disrepair. Mr Lobban made particular reference to the carpets. The Respondents were seeking rehousing with the council. However, the council had been unable to find them a suitable property for themselves and their two children. That was the only reason they had not yet left. Mr Lobban confirmed that the Respondents had sought advice from the citizens advice bureau ("CAB"). The CAB had told them that the council would have a duty of care towards them if the Tribunal made an eviction order. Mr Lobban outlined various health conditions that he suffered from. He accepted that the Applicant was also suffering from ill health, but had some doubt about the extent of this. The Respondents were not disputing the Applicants' intentions to sell the property. They were resigned to the fact that they would have to leave. They were just looking for more time to get a council house.
- 10 The Tribunal adjourned the CMD to deliberate before resuming the discussion and confirming the outcome.

Relevant Legislation

- 11 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

- 12 The registered owner of the property is the firm of Mackintosh Highland. The Applicants are the trustees and partners of Mackintosh Highland. The Applicants are entitled to sell the property.
- 13 The Applicants are registered landlords.
- 14 The Applicants and the Respondents entered into a private residential tenancy agreement in respect of the property, which commenced on 1 April 2021.
- 15 The tenancy between the parties is a private residential tenancy as defined by section 1 of the 2016 Act.
- 16 The Applicants intend to sell the property. The Applicants wish to use the sale proceeds to fund their retirement plans before they are prevented from doing so due to ill health. The first named Applicant has various medical diagnoses, including a progressive neurological disease, which gives rise to significant disability.
- 17 The Applicants have instructed Macleod and MacCallum, Solicitors and Estate Agents, to market and sell the property on their behalf.
- 18 On 4 September 2024 the Applicants sent a notice to leave to the Respondents by recorded delivery mail.
- 19 The notice to leave cited ground 1 and stated that the Applicants would not apply to the Tribunal for an eviction order any earlier than 30 November 2024.
- 20 The notice to leave was in the form prescribed by schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.
- 21 On 13 December 2024 the Applicants sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Highland Council.
- 22 The Respondents reside in the property with two children, a daughter aged 7 and a son aged 3 months. The Respondents' daughter attends the local school.
- 23 The first named Respondent has various health conditions and was hospitalised in October 2023. The first named Respondent is unable to work due to ill health.

- 24 The Respondents have approached the local authority with a view to obtaining council housing. The CAB has advised the Respondents that the local authority will have a duty of care towards themselves and their family if the Tribunal makes an eviction order.
- 25 The Respondents wish to leave the property. The Respondents require more time so that the local authority can source a suitable house for their family.

Reasons for decision

- 26 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. It was clear that there were no substantive matters in dispute.
- 27 Based on the application paperwork the Tribunal was satisfied that the tenancy between the parties was a private residential tenancy, and that the Applicants had given the Respondents a notice to leave that complied with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicants had given the local authority notice under section 11 of the Homelessness etc (Scotland) Act 2003 of their intention to recover possession of the property. The Tribunal therefore considered whether ground 1 of schedule 3 of the 2016 Act had been met in this case.
- 28 The Tribunal was satisfied based on the documents before it, and the submissions from Mrs Bruce at the CMD, that the Applicants were entitled to sell the property as the partners and trustees of Mackintosh Highland, and that they intended to do so within three months of the tenants vacating. The Respondents did not dispute this. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of the facts in this case.
- 29 The Tribunal took into account the Applicants' property rights, which entitled them to dispose of the property as they saw fit. The Tribunal also took into account their reasons for selling the property. The Tribunal accepted based on the medical evidence provided, that the first named Applicant had a progressive neurological disease, which gave rise to significant disability. It was understandable that the Applicants would wish to use the sale proceeds to fund their retirement plans before they were prevented from doing so by the first named Applicant's ill health. These were all factors to which the Tribunal gave significant weight.
- 30 The Tribunal carefully considered the Respondents' circumstances. The Tribunal took into account the first named Applicant's ill health, and the age of the children in the household, along with the circumstances outlined in the Respondents' written representations. Whilst the impact of eviction upon the

Respondents and their family was a cause for concern, ultimately the Tribunal gave most weight to the fact that the Respondents did not wish to stay in the property. They were actively looking for council housing and simply sought more time to source a suitable home. The Tribunal therefore considered that a suspension of the execution of the eviction order would allay any concerns regarding the impact of eviction on the Respondents, by giving the local authority further time to find a suitable property for them.

31 Accordingly, having weighed the above factors as relevant to the question of reasonableness, the Tribunal concluded that the balance weighed in favour of making an eviction order in this case, with execution of the order suspended for a period of two months.

32 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

Ruth O'Hare
Legal Member/Chair

26 May 2025

Date