



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/25/0758

Re: Property at 35 Burghmuir Road, Perth, PH1 1LU (“the Property”)

Parties:

**Mr Fraser Penny, Susan Penny, The Manse, Cathedral Street, Dunkeld, PH8 0AW
 (“the Applicant”)**

**Ms Laura Hives, Fraser Scrimgeour, 35 Burghmuir Road, Perth, PH1 1LU (“the
Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an Order for Eviction is Granted in favour of the
Applicant against the Respondent.**

Background

1. By application to the Tribunal dated 21 February 2025, the Applicant sought an eviction order against the Respondent under ground 1 of Schedule 3 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”).

2. In support of the application the Applicant submitted the following:-

- (i) Copy Private Residential Tenancy Agreement (PRT) between the parties;
- (ii) Notice to Leave dated 5 November 2024, confirming that proceedings would not be raised any earlier than 1 February 2025 and email to the Respondent with said Notice to Leave, of even date;
- (iii) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Perth and Kinross Council and proof of delivery by email;
- (iv) Confirmation from Premier Properties Perth that they have been engaged by the Applicant to sell the Property.

3. The Tribunal was also in receipt of the Title Sheet which confirmed the Applicant to be the registered owner of the property.

4. By Notice of Acceptance of application dated 20 March 2025, a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application.

5. The application was therefore referred to a Case Management Discussion; to take place on 7 July 2025 by teleconference at 10am. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017 ('the Rules').

The Case Management Discussion

6. At the Case Management Discussion ("CMD"), which took place by telephone conference on 7 July 2025, the Applicant Mr Fraser Penny was present. He represented his own position and that of his wife. The Respondent was present.

7. The Respondent had not lodged any written representations.

8. At the commencement of the CMD, Ms Hives said that she had sent representations seeking an adjournment of the CMD. These had been e-mailed direct to the Applicant. The Applicant's representative had received these, and had lodged with the Tribunal notice of opposition to a postponement, and reasons why this was opposed.

9. There was a brief adjournment of the CMD, in order that the Respondent could forward to the Tribunal the request for the postponement. The Applicant said that he remained opposed to the CMD being postponed.

10. The basis of the request was that the Respondent wishes to purchase the Property, and wished further time to attempt to secure a mortgage. Having considered all of the written information and the verbal representations, the tribunal refused the application for an adjournment. The Tribunal considered that there was no good reason as to why an adjournment was necessary, as set out in Rule 28 of the Rules. The Tribunal considered that the Respondent had already been provided sufficient notice of the CMD, and there was nothing to suggest that the Respondent was going to be any further forward with a mortgage in three months time than they were today.

Position of the Applicant

11. The Applicant, Mr Fraser Penny, is currently living in tied accommodation together with his wife. He is 66 years of age and will reach retirement age on 1 November 2025. He needs somewhere else to live, as his current accommodation is linked to his employment. It has always been his intention to sell the Property, and to purchase a suitable home for himself and his wife. It will take time to sell the Property, and to buy another one. It will already be too late for him to be able to put this in place for his retiral date. Any further delay will effectively mean that he will have to work beyond his intended retiral date in order to continue to reside in the tied accommodation.

12. The Applicant recently viewed a property which they are very keen to buy and the sellers are prepared to come to a private deal when they are in a position to afford it. They, for their own reasons, cannot wait indefinitely as they want to get settled elsewhere. To delay things further would mean the Applicant may lose this opportunity. (They have already missed houses which would have suited them.)

13. The eviction process has been going on for a substantial period of time. Two years ago Mr Fraser Penny spoke to the Respondent about the possibility of them buying the Property. The Applicant was keen to do so and at the Respondent's behest they commissioned a home report (July 2023) at their own expense. They were then informed the Respondent couldn't afford it.

14. The Applicant first gave informal notice by letter in May 2024, but the Respondent refused to leave. They then gave formal notice in November 2024, by way of the Notice to Leave. Since then, the Respondent has advised that they would wish to purchase the Property. However, they have been unable to progress this. During this process, the Applicant has been led to believe on several occasions from the Respondent that they were in a position to purchase the house, none of which have become a reality. Eight months on, and the Respondent has not been able to secure a mortgage.

15. Mr Penny said that he was also concerned that if something happened to him, that this would leave his wife in a vulnerable position.

16. In relation to any required work at the Property, the Applicant said that he had forwarded quotations to his insurers. Any rectification work would need the Property to be empty and may take a week and a half to complete. He had understood that the Respondent had not required these issues to be addressed as they had wanted to renovate, so the matter had been left from around April time.

17. He said that notwithstanding any order for eviction being granted, that he intended to continue to negotiate with the Respondent, in the event that their mortgage could be secured timeously.

Position of the Respondent

18. The Respondent said that they were having continued difficulties in securing a mortgage over the Property, which the Respondent does still wish to purchase

19. Mr Scrimgeour is self employed in the building trade, which has caused problems. He had to save for a deposit which he has now done. There have been some tax complications with previous contractors not meeting his tax obligations. He said that he had heard today from his mortgage advisor, that in order to proceed with an offer of mortgage, that rectification works would be required at the Property. There had been some damp and water damage occasioned from a burst pipe a couple of years previously. The cost of the rectification amounts to £8,600. This needed to be resolved before an offer would be made. He was aware that the landlord was putting this in the hands of his insurers. If matters cannot be finalised before October, this would jeopardise an offer of mortgage, as further proof of income for the next financial tax year would be required.

20. Mr Scrimgeour and Ms Hives reside at the Property together with their six year old daughter. Their daughter attends school nearby. There are no health issues with the family. Ms Hives works part-time as a house cleaner.

21. The Respondent has been looking at alternative accommodation. They have looked at new rentals in the area and they have also been in touch with the local authority. They said that the local authority won't help unless and until an order for eviction is granted. New rentals are more than the cost of a mortgage.

22. The Respondent does not question that what the Applicant has set out in his application is indeed true. They said that the Applicant has been a good landlord. Hopefully, they said if the Applicant could bear with them for another month, they might be able to sort the mortgage out.

Findings in Fact

23. The Applicant is the heritable proprietor of the Property.

24. The Applicant leased the Property to the Respondent in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 2 December 2019.

25. The rent payable in terms of the PRT is £695 per calendar month.

26. On 6 May 2024, the Applicant wrote to the Respondent asking them to vacate the Property.

27. On 5 November 2024, the Applicant served on the Respondent by email a Notice to Leave dated 5 November 2024, requiring the Respondent remove from the Property by 1 February 2025. The Notice to Leave was served on the basis that the Applicant requires to sell the Property.

28. The Applicant has served on Perth and Kinross Council, a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.

29. The Respondent is still in occupation of the Property.

30. The Applicant has instructed Premier Properties Perth to sell the Property.

31. The Applicant intends to conclude the sale of the property within three months of the Respondent ceasing to occupy.

32. The Applicant, Mr Fraser Penny is due to reach retiral age on 1 November 2025. The Applicant is currently residing in accommodation which is tied accommodation and will not be available when the Applicant retires.

33. The Respondent, Mr Fraser Scrimgeour is self employed in the building trade. The Respondent, Ms Hives is employed as a cleaner on a part time basis. The couple reside at the Property together with their six year old daughter.

34. The Applicant has been attempting to secure a mortgage over the Property for over a year.

Reasons for Decision

35. The application before the Tribunal was accompanied by a Notice to Leave which confirmed the Applicant's intention to rely upon ground 1 of Schedule 3 of the 2016 Act. The Notice to Leave was in the prescribed form and had been competently served upon the Respondent. The Tribunal was therefore satisfied that it could entertain the application under section 52(4) of the 2016 Act.

36. The application proceeds upon ground 1 of Schedule 3 of the 2016 Act. Ground 1 states:-

(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, (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 subparagraph (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.”

37. In respect of ground 1, The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof. Sub-paragraph 2(b) requires that the Applicant intends 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. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b).

38. In this instance the Applicant relies upon written confirmation from Premier Properties Perth that they have been engaged to sell the Property. The Tribunal accepts this evidence as sufficient to meet the terms of sub-paragraph 2(b). The intention to sell for the reasons set out by the Applicant is not contested by the Respondent.

39. The Tribunal also requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c). The Tribunal accepted that in assessing whether an eviction order is reasonable it must consider and weigh all available facts relevant to that decision, and that whilst the landlord's intention may be reasonable that did not necessarily mean that it would be reasonable to make an eviction order.

The property rights of a landlord should not be given primacy over the occupancy rights of a tenant, and vice versa.

40. In this case the Respondent accepts the position that the Applicant does indeed wish to sell the Property. They have been looking for alternative rentals in the private sector, and have spoken to the local authority homeless team Whilst the Respondent does wish to purchase the Property, no compelling evidence has been placed before the Tribunal that this may be a realistic proposal, and the Respondent has been endeavouring in this regard, since at least April of 2024. In the circumstances, the Tribunal finds it reasonable that an order for eviction is granted.

41. The Tribunal determined that it is reasonable to grant an eviction order having regard to the Applicant's own circumstances. The Applicant is living in tied accommodation which will not be available to the Applicant when Mr Penny retires. It is reasonable that the Applicant is entitled to sell the Property and to buy a suitable property for the couple to spend their retirement. In the circumstances, the Tribunal granted an eviction order in favour of the Applicant. The Tribunal in reaching its decision took into account the application and written representations from the Applicant together with the submissions and evidence heard at the Case Management Discussion. The Tribunal gave careful consideration to the positions set out on both sides.

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.

Yvonne McKenna

Legal Member/Chair

7 July 2025

Date