



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

Chamber Ref: FTS/HPC/EV/24/2859

Re: Property at 29 Abbotsford Rise, Livingston, EH54 6LS (“the Property”)

Parties:

Miss Louise Boyle, 99 East Bankton Place, Livingston, EH54 9DD (“the Applicant”)

Mr Mitesh Vishani, 29 Abbotsford Rise, Livingston, EH54 6LS (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for the eviction of the Respondent from the property but that enforcement of the order should be postponed until 1 September 2025.

Background

1. By application dated 23 June 2024 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, a Notice to Leave with copy of acknowledgement of receipt, a Section 11 Notice and copy WhatsApp messages in support of the application.
2. By Notice of Acceptance dated 13 August 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 25 November 2024.
4. A CMD was held by teleconference on 8 January 2025. Both parties attended in person. After explaining the purpose of a CMD to the parties the legal member confirmed with the Respondent that he agreed that he had entered into a Private Residential Tenancy of the property that had commenced on 15 July 2023. The Respondent also agreed that he had been served with a Notice to Leave by the Applicant dated 22 March 2024 under Ground 4 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and that this provided that the Applicant would not make an application to the Tribunal for his eviction before 18 June 2024. The Respondent also accepted that a Section 11 Notice had been sent to West Lothian Council by the Applicant and that a copy of the notice had been included with the case papers provided to the Respondent.
5. After hearing from both parties, the Tribunal determined that the only issue in dispute was whether it was reasonable in the circumstances to grant an order for eviction. As there were disputed facts and the Tribunal required more information as regards both parties' financial circumstances, determination of the application was adjourned to a hearing and the Tribunal issued Directions to both parties.
6. By emails dated 10, 12, 26 February, 10 and 12 March, 9 and 12 May and 18 and 25 June 2025 the Applicant submitted written representations and documents to the Tribunal.
7. By emails dated 11 February and 3 March 2025 the Respondent submitted written representations and documents to the Tribunal administration but refused permission for these to be crossed to the Applicant and the Respondents emails were also not sent to the Tribunal.

The Hearing

8. A hearing was held by teleconference on 2 July 2025. Both parties attended in person. By way of a preliminary matter the Tribunal established with the Respondent that he had complied with its Direction of 8 January 2025 and submitted a statement of his reasons for opposing the application and had also provided documents as regards his financial affairs. The Respondent said he had not wished these to be crossed to the Applicant as they contained personal details of his bank account. The Tribunal queried why these had not been redacted and the Respondent said he had been unaware he could do this. The Respondent consented to the Tribunal having access to the documents and the Tribunal adjourned to consider them.

9. Following the adjournment the Applicant confirmed her agreement to continue with the hearing without having had sight of the Respondent's documents.
10. The Applicant referred the Tribunal to the financial information she had submitted with her emails and explained to the Tribunal that in her current situation she was paying out an additional £1200.00 per year to have the Respondent live in her property than she would if she were to live in it herself. In addition, the Applicant referred the Tribunal to the documents submitted in respect of her mother's health and explained that her mother who was 81 was suffering from cancer and if the order was granted would be able to come and live with the Applicant in her home rather than continue to live on her own. The Applicant provided the Tribunal with details of her income and expenditure and referred the Tribunal to the various bank statements submitted.
11. In response to a question from the Respondent the Applicant agreed that she had said she would consider an offer from the Respondent to purchase the property but she did not wish to sell and wished to live in the property herself.
12. The Applicant advised the Tribunal that she was still supporting her partner Mr Donnachie as he had not yet obtained employment and she believed that his property in Glasgow was still rented out and the income from that paid the mortgage on the at property.
13. The Respondent queried if it really had been the Applicant's intention to live in the property on her return from Thailand and the Applicant repeated that she wanted to return to live in the property and that she had been trying to do so for almost two years.
14. The Respondent explained to the Tribunal that he would be happy to remain in the property but if the Applicant wanted to live in the property, he would not oppose the application. The Respondent explained that he had been told by the Housing Officer at West Lothian Council that he would not get any assistance with housing unless and until the Tribunal granted an order for his eviction. The Respondent said he had an obligation to his family including his two children aged 5 and 11 not have them left on the streets. The Respondent said he understood the local authority would find accommodation for him and his family if an eviction order was granted and that it would be his preferred option to be re-housed.
15. The Tribunal discussed with the parties if suspending enforcement of an order for eviction would assist the Respondent in being rehoused by the local authority. The Respondent was unable to say and the Applicant indicated that an entry date at the end of August would be acceptable to her.

Findings in Fact

16. The Respondent commenced a Private Residential Tenancy of the property on 15 July 2023.
17. A Notice to Leave under Ground 4 of Schedule 3 of the 2016 Act was served on the Respondent on 22 March 2024.
18. A Section 11 Notice was sent to West Lothian Council on 23 June 2024.
19. The Applicant intends to live in the property as her principal home.
20. The Applicant intends that her mother will live in the property with her.
21. The Applicant's mother is suffering from metastatic neuroendocrine cancer and the Applicant wishes her mother to live with her in order that she can provide her with care and support.
22. The Applicant's finances will be improved if she can return to live in her own home.
23. The Respondent is married with two children aged 5 and 11.
24. The Respondent has limited income and has been unable to find alternative private rented accommodation at a rent he can afford.
25. The Respondent's rent is paid up to date.
26. The Respondent has applied to West Lothian Council for housing.
27. The local authority will not provide the Respondent with accommodation unless and until the Tribunal grants an order for his eviction.

Reasons for Decision

28. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Private Residential tenancy that commenced on 15 July 2023. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 4 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to West Lothian Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced and the Applicant's oral submissions that the Applicant intends to live in the property.
29. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be

made. In reaching a decision on reasonableness there were differences in the parties' evidence as to whether or not it had always been the Applicant's intention to return to live in the property on her return to Scotland but the parties were in agreement that it was now the Applicant's intention to live in the property and that being the case the Respondent was prepared to not oppose the application subject to being rehoused. The Respondent and his wife have two young children aged 5 and 11 living with them in the property. In the event of an order for eviction being granted the local authority has an obligation to find accommodation for the family. The Respondent's mother is elderly and seriously ill. It is understandable that the Applicant wishes to provide her with appropriate care and support. Having to rent a property rather than living in her own property places an additional strain on the Applicant's resources. After taking account of both parties' circumstances and the Respondent's position with regards to no longer opposing the application subject to being rehoused the Tribunal is satisfied that it is reasonable to grant an order for the eviction of the Respondent from the property. However, as the Respondent will be dependent on the local authority finding him and his family accommodation and given the difficulties facing councils at present the Tribunal considers it appropriate that enforcement of the order is suspended until 1 September 2025 to allow time for the Respondent and his family to be rehoused.

Decision

30. After carefully considering the evidence and the submissions of both parties the Tribunal finds the Applicant entitled to an order for the eviction of the Respondent from the property but that enforcement of the order be suspended until 1 September 2025

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.

Graham Harding

Graham Harding
Legal Member/Chair

2 July 2025
Date