

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/25/0133

Re: Property at 13 Balhousie Street, Perth, Perth and Kinross, PH1 5HJ (“the Property”)

Parties:

Forthergill Limited, 11 Turretbank Place, Crieff, Perthshire, PH7 4LS (“the Applicant”)

Mr James Carruthers, Miss Layla Kelbie, 13 Balhousie Street, Perth, Perth and Kinross, PH1 5HJ; 13 Balhousie Street, Perth, Perth and Kinross, PH1 5HJ (“the Respondents”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (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 had been met, 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 Applicant relied upon ground 1 of schedule 3 of the 2016 Act as the ground for possession, stating their intention to sell the property.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 5 August 2025 at 2pm. The Tribunal gave notice of

the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondents by sheriff officers on 17 June 2025.

- 3 Both parties were invited to make written representations to the Tribunal in advance of the CMD. On 31 July 2025 the Tribunal received written representations from the Applicant. No written representations were received from the Respondent.

The CMD

- 4 The CMD took place by teleconference on 5 August 2025 at 2pm. Miss Lynsey Burr of DJ Alexander represented the Applicant. The Respondents also joined the call.
- 5 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet confirming the Applicant's ownership of the property;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Notice to leave and proof of delivery upon the Respondents;
 - (vi) Section 11 notice and proof of delivery upon the local authority;
 - (vii) Marketing instruction from the Applicant to Aberdeen Considine Solicitor;
 - (viii) Written mandate from the Applicant authorising DJ Alexander to represent them; and
 - (ix) The Applicant's written representations dated 31 July 2025.
- 6 The Tribunal heard submissions from the parties on the application. The following is a summary of the key elements of the submissions and is not a verbatim account.
- 7 As a preliminary matter the Tribunal noted that the Respondents had not received the Applicant's written representations dated 31 July 2025. The Tribunal therefore asked Miss Burr to summarise these in her submissions.
- 8 Miss Burr confirmed that the Applicant sought an eviction order. The Applicant had between five and eight properties in their rental portfolio, which had been purchased as an investment for the Applicant's directors upon their retirement. They had disposed of all properties with the exception of this one. The Applicant's directors no longer wished to be landlords. They were both in their 60s. They wanted to dissolve the company, retire, and move back to their home country of Australia. The property was no longer financially viable. The Applicant's directors had changed jobs due to health issues and were receiving lower salaries. This was compounded by government policy and higher taxes. The situation was causing them significant stress. They wanted to move on with their retirement planning and felt this was on hold. Ms Burr confirmed that the Applicant had instructed Aberdeen Considine to sell the property. They were looking to sell as soon as possible.

- 9 The Respondents advised that they understood the Applicant's reasons for seeking an eviction order. The Respondents had not been in this position before. It was stressful. They had tried to find alternative accommodation in Perth but the rents were unaffordable. They had spoken with the local authority. The local authority had advised the Respondents that they would be provided with temporary accommodation if an eviction order was granted, pending an offer of a permanent home. The Respondents confirmed that they did not object to the eviction order. They were simply looking for more time to find suitable alternative accommodation. They had a two year old daughter. The local authority had advised them that there was a housing crisis. Mr Carruthers worked from home full time and Ms Kelbie was in part-time employment as a sales administrator. The local authority had told them not to leave the property until the Tribunal made an eviction order. The Respondents were not entitled to universal credit as their earnings were too high. Mr Carruthers was 38 years old and Ms Kelbie was 32 years old.
- 10 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

Findings in fact

- 11 The Applicant is the owner and landlord, and the Respondents are the tenants, of the property in terms of a private residential tenancy agreement, which commenced on 14 September 2022.
- 12 The Applicant intends to sell the property, or market the property for sale, within three months of the Respondents vacating.
- 13 The Applicant is in the process of selling off their rental portfolio. The Applicant's two directors wish to retire and return to their home country of Australia.
- 14 The Applicant's properties were bought as an investment for the retirement of the Applicant's directors. The Applicant has sold off all of their rental properties, with the let property the only one remaining. The Applicant's directors require the sale proceeds from the let property to fund their retirement.
- 15 The income of the Applicant's directors has reduced. The Applicant can no longer afford the property costs associated with their rental properties.
- 16 The Applicant's directors are both over 60. They both have health issues and are unable to manage their obligations as landlords.
- 17 The Applicant has sent the Respondent a notice to leave as defined by section 62 of the 2016 Act. The notice to leave was emailed to the Respondents on 15 August 2024 and stated that an application would not be made to the Tribunal any earlier than 10 November 2024. The notice to leave included ground 1 of schedule 3 of the 2016 Act.

- 18 The Respondents consented to the delivery of notices by email under clause 4 of the tenancy agreement.
- 19 The Applicant sent the local authority a notice under section 11 of the Homelessness etc (Scotland) Act 2003 at the time of making this application.
- 20 The Respondents reside in the property with their two year old daughter. The Respondents are both in employment.
- 21 The local authority has advised the Respondents that they will be provided with temporary accommodation if the Tribunal makes an eviction order.
- 22 The Respondents do not object to the eviction order, provided they have sufficient time to secure alternative permanent accommodation.

Reasons for decision

- 23 The Tribunal was satisfied that it could make relevant findings in fact to reach a decision on the application following the CMD and in the absence of a hearing under rule 18 of the Rules. The Respondents had not sought to challenge the terms of the application and there were no issues to be resolved that would require a hearing to be fixed.
- 24 Section 52(2) of the 2016 Act states that “*an application for an eviction order must be accompanied by a copy of a notice to leave which has been given to the tenant*”. The Tribunal was satisfied based on the application paperwork that the Applicant had given the Respondents a notice to leave that meets the statutory definition under section 62 of the 2016 Act.
- 25 Section 51 of the 2016 Act states “*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.*”
- 26 The Applicant relies upon ground 1 of schedule 3 of the 2016 Act in this case. The Tribunal therefore considered the wording of ground 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.”

- 27 Based on its findings in fact, the Tribunal was satisfied that paragraphs 1 and 2(1)(a) and (b) of ground 12 were met in this case. The Tribunal relied primarily on the marketing instructions produced by the Applicant, the title sheet confirming their ownership of the property, and the submissions from Miss Burr at the CMD. The Tribunal accepted the Applicant's reasons for selling the property as credible, to allow their two directors to retire and withdraw from the private rental sector.
- 28 The Tribunal therefore went on to consider whether it would be reasonable to issue an eviction order on account of those facts, which required the Tribunal to identify the factors in this case relevant to an assessment of reasonableness.
- 29 The Tribunal took into account the personal circumstances of the Applicant's directors. They had set up the company as an investment for their retirement. They were now both over 60 and could no longer manage the Applicant's rental portfolio due to both financial and health issues. The Tribunal also considered that as the owner of the property, the Applicant was entitled to dispose of it as they saw fit.
- 30 The Tribunal carefully considered the Respondents' circumstances. It noted that they were both in employment, and resided in the property with a daughter aged two. Whilst the Tribunal had concerns about the risk of homelessness to the Respondents' family, it considered that these could be mitigated by a suspension of enforcement of the eviction order to provide the local authority with sufficient time to secure a suitable home for them. It was clear that the Respondents did not object to the eviction order. They had actively sought rehousing with the local authority and were simply seeking additional time to find alternative accommodation.
- 31 Accordingly, having assessed those factors relevant to reasonableness in this case, the Tribunal considered that the balance weighed in favour of making an eviction order and that ground 1 had been met, if enforcement of the order was 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

Legal Member/Chair

Date 5 August 2025