



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Ref: FTS/HPC/EV/25/0490

Re: Property at 5 Newton Avenue, Arbroath, DD11 3JX (the Property)

Parties:

Mr Alan Carnegie and Mrs Gail Carnegie, Eddon House, 22a Muirdrum, Carnoustie, DD7 6LE (the Applicants)

Angus Glen Properties Limited, 18 South Tay Street, Dundee, DD1 1PD (the Applicants' Representative)

Mr James Wilton and Ms Sarah Jane McReynolds, 5 Newton Avenue, Arbroath, DD11 3JX (the Respondents)

Tribunal Members:

Ms Susanne L. M. Tanner K.C. (Legal Member)
Mr Gerard Darroch (Ordinary Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal):

- (i) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicant as registered proprietors intend to sell the let Property for market value, or at least put it up for sale within three months of the Respondents ceasing to occupy it;**
- (ii) was satisfied that it was reasonable to make an eviction order in the circumstances; and**
- (iii) made an order for eviction in terms of Section 51 of the 2016 Act.**

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants' Representative made an application to the tribunal on 5 February 2025 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules). The Applicant seeks the Respondent's eviction from the Property under Ground 1 of Schedule 3.
2. The Applicants' Representative provided the following documents with the Application:
 - 2.1. Private Residential Tenancy Agreement;
 - 2.2. Owners' instructions to serve NTL;
 - 2.3. Copy Notice to Leave dated 18 September 2024 and proof of delivery by email;
 - 2.4. Sheriff Officer invoice regarding service of Notice to Leave;
 - 2.5. Copy section 11 Notice to the Local Authority; and
 - 2.6. Letter of engagement from Yeoman relating to sale of Property.
3. On 6 February 2025, the tribunal's administration obtained a copy of the Title Sheet for the Property which shows that the Applicants have been the joint registered proprietors since 30 May 2010.
4. The tribunal's administration searched Landlord Registration Scotland which does not hold information about the registered landlord and agent for this property; and said that information might be held by the local authority.
5. The Application was accepted for determination. The tribunal sent letters of notification dated 30 May 2025 to both parties with the date, time and arrangements for joining the Case Management Discussion (CMD) teleconference in relation to the Application on 13 August 2025 at 1000h. The Application paperwork was personally served on the Respondents by Sheriff Officers on 2 July 2025. The Respondents were told that if they wished to submit written representations these should be sent to the tribunal by 21 July 2025.
6. The Respondents, Mr Wilton and Ms Sarah Jane McReynolds did not submit any written representations.

CMD: 13 August 2025, 1000h, Teleconference

7. Ms McIntosh from the Applicants' Representative attended. One of the Applicants, Mrs Carnegie, attended.

8. The First Respondent, Mr Wilson, attended the CMD. The Second Respondent, Ms McReynolds did not attend the CMD. Mr Wilton said that she was attending a medical appointment. He also explained that she had stopped living full time in the Property in summer 2024, although she retained belongings in the Property and *'comes backwards and forwards'*. He stated that she is now living with a partner in another property but that her housing benefit is still being paid to the Applicants in respect of the tenancy of this Property. He thought that the Applicants had told Ms McReynolds to keep paying the housing benefit to them. He stated that Ms McReynolds is aware of the proceedings. He stated that she had intended to come to the CMD to deal with the tribunal aspects but that she had to attend the appointment.
9. The tribunal was satisfied that Ms McReynolds was served with the Application and notification of the CMD and decided to proceed in her absence in terms of rule 29 of the 2017 Rules, on the basis of the material before it and the representations of the parties present.

Submissions by Applicants' Representative and Applicant

10. The tribunal asked Ms McIntosh if she had proof that the Section 11 notice was served on the local authority. She said that it was sent on 23 August 2024 by email and that she would lodge it with the tribunal's administration.
11. Ms McIntosh said that she was surprised to hear that the Second Respondent, Sarah Jane McReynolds, could potentially have been at the CMD today because her understanding was that Ms MsReynolds has not lived in that property for some significant time following a relationship breakdown. Ms Mcintosh said that she does not know if housing benefit is being paid by Ms McReynolds to the Applicants.
12. Mrs Carnegie stated that the housing benefit is still being paid to her by the Second Respondent and stated that she wrote to the Council on 23 August 2024 to make them aware that Ms McReynolds no longer lived in the property and that the Notice to Leave would be getting served on them. Mrs Carnegie stated that she did not ask Ms McReynolds to keep paying the benefits. Mrs Carnegie stated that she had never got any formal notification from Ms McReynolds that she has actually left the property. She stated that Mr Wilton made her aware of it. She stated that she could not get in contact with Ms McReynolds as she did not respond to calls.
13. Ms McIntosh confirmed that she is seeking an eviction order against both parties.

14. Ms McIntosh stated that it is the Applicants' intention that the Property will be marketed for sale within three months of vacant possession, with Yeoman. The Applicants have not considered selling with the tenants in situ. Ms McIntosh referred to her experience as a letting agent of landlords seeking to leave the rental market and the difficulty in selling properties to other portfolio holders with tenants in place. She stated that they have a number of landlords who are seeking to sell their properties. Ms McIntosh does not personally manage the Property or any other properties of the Applicants. She understands that the Applicants are looking to free up funds to enjoy their retirement.
15. Mrs Carnegie stated that she is 59 and that Mr Carnegie is 66 and has retired and receives his pension. They have two rental properties and this is one of them. They are intending to sell this Property to free up some money until she gets her pension at 67. There is no mortgage on the property. The reason for selling is to top up their income for retirement.
16. Ms McIntosh stated that if an eviction order was made today it will not be enforced overnight and it still gives Mr Wilton time to find something. She stated that it also means that he gets the appropriate paperwork which he can take to Angus Council. She suggested that he would be put in more suitable accommodation and stated that she believes that the eviction is the best route for him.

First Respondent's submissions

17. Mr Wilton stated that he lives primarily on his own since Ms McReynolds moved out in summer 2024. He stated that he has been trying to find another property in the area since the Notice to Leave was served. He has been viewing properties in the private rented sector. He has seen 20 or 25 different properties. He has not had any call backs. He stated that trying to get a house is difficult.
18. Mr Wilton stated that he has made a housing application to Angus Council for a property on his own. He has told the council about these proceedings and intends to give them an update.
19. Mr Wilton stated that he is disabled and has medical conditions. He has been classed by the local authority as having a disability, which gives priority in terms of re-housing. He was in a motorbike accident and broke his back, leg and ankle. It affects his mobility and on bad days he uses a stick. There are hand rails in the close and on the door. The Property has also been adapted by him for disability by fitting handrails with the consent of the Applicants. He stated that the Property is a first floor flat which is not ideal anyway. He would prefer a ground floor flat and that is what he has been trying to get, either in the private rented sector or

with the local authority. He has registered with Angus Council for a ground floor flat.

20. Mr Wilton said that he has no problem paying the rent. He would be happy to take another landlord and stay in the Property. He has been in the Property for 6 years.

21. He stated that the eviction proceedings have been stressful for him and Ms McReynolds and that being evicted would be difficult as he also has animals – three dogs, snakes and an iguana.

22. The tribunal adjourned to deliberate.

23. The tribunal makes the following findings-in-fact:

23.1. The Applicants are the registered proprietors of the Property.

23.2. The Applicants wish to sell the Property with vacant possession and realise the proceeds to fund their retirement.

23.3. There is a private residential tenancy agreement between the Applicants and the Respondents for the Property which began on 1 May 2019.

23.4. On 18 September 2024, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondents.

23.5. The Applicants have given the Respondents at least 84 days' notice that they require possession.

23.6. The Application to the tribunal was made on 5 February 2025.

23.7. The Applicants intend to sell the Property on the open market or at least market it for sale within three months of vacant possession.

23.8. The Applicants have instructed a sales agent in respect of sale of the Property with vacant possession once obtained.

23.9. The First Respondent has been residing in the property primarily on his own since in or around summer 2024.

23.10. The Respondents' relationship broke down in or around summer 2024.

- 23.11. The Second Respondent resides mostly in another property with a new partner.
- 23.12. The Second Respondent still has belongings in the Property and occasionally comes and goes from the Property.
- 23.13. The Second Respondent's housing benefit is being paid to the Applicants in respect of the Respondents' tenancy of the Property.
- 23.14. The First Respondent has medical conditions and a disability.
- 23.15. The Property is a first floor property.
- 23.16. The Property has been adapted for his disability with the fitting of handrails.
- 23.17. A ground floor property would be more suitable for the First Respondent because of his medical conditions and disability.
- 23.18. The First Respondent has taken steps to find alternative housing in a ground floor property, with the local authority and in the private rented sector.
- 23.19. The First Respondent has registered with Angus Council for a suitable property on the ground floor on his own and has been classified as disabled on his application.
- 23.20. There are no children under 16 residing in the Property.

Discussion

24. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met. The tribunal is satisfied that the Applicants intend to sell the Property or at least put it up for sale within three months of an eviction order being made.
25. In relation to reasonableness, reference is made to the tribunal's findings in fact. The Applicants require to sell the Property to realise the proceeds to fund their retirement. The Second Respondent has effectively left the Property following relationship breakdown and she has not stated any defence to the Application. The First Respondents' position is that the Property is not ideally suited to his needs and disability and that he would prefer a ground floor property but that it has been difficult to find another Property in the private rented sector both because of his

disability and his pets. He has registered with Angus Council for a ground floor property and he is classed as disabled in his application which affords him priority.

26. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

Susanne Tanner

13 August 2025

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair