

Housing and Property Chamber
First-tier Tribunal for Scotland



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/24/5375

Re: Property at 8 Old Dalmore Drive, Auchendinny, EH26 0NG (“the Property”)

Parties:

Mr Michael O'Donnell, 13 Waulkmill View, Penicuik, EH26 8LD (“the Applicant”)

Ms Carra Booth, 8 Old Dalmore Drive, Auchendinny, EH26 0NG (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Angus Lamont (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 suspended for a period of two months from the date of the decision.

Background

1. By application dated 27 October 2024 the Applicant applied to the Tribunal for an order for the eviction of the Respondent from the property in terms of Ground 1 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Leave with confirmation of service, Section 11 Notice and email correspondence with solicitors together with other documents in support of the application.
2. By Notice of Acceptance dated 3 February 2025 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 17 April 2025.

The Case Management Discussion

4. A CMD was held by teleconference on 23 July 2025. Both the Applicant and the Respondent attended in person.
5. After explaining to the parties the purpose of a CMD the Tribunal noted from the Respondent that she did not take any issue with the application or the documents that had been served on her. The Tribunal noted that the parties commenced a Private Residential tenancy of the property on 13 June 2021 at a rent of £800.00 per calendar month. The Tribunal also noted that the Respondent had been served with a Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act on 27 July 2024 and that a Section 11 Notice had been sent to Midlothian Council by email on 22 October 2024.
6. Ms Booth advised the Tribunal that she had explored every option to obtain alternative housing including private rental and buying but had not been successful. Ms Booth went on to say that she had applied for local authority housing and had been advised that her application under the homeless system would not proceed unless and until the Tribunal granted an order for her eviction and that she was also on the local authority waiting list for housing but did not know when any accommodation would be available. Ms Booth advised the Tribunal that she was a single mother and had two children living in the property with them, one aged 12 years and another aged 17 years. Ms Booth also advised the Tribunal that she worked full time and was in receipt of some Universal Credit and that her rent was paid up to date.
7. Mr O'Donnell advised the Tribunal that he was a retired police officer and had used part of his pension to purchase the property for his daughter to use while she was at university and had then rented it out after she had left. Mr O'Donnell went on to explain that due to a change in his personal circumstances he could no longer retain the property and needed to sell it to raise capital to reduce the mortgage on his family home as the monthly cost of his mortgage had nearly doubled. Mr O'Donnell said that after deduction of management costs and other outgoings on the property he was hardly breaking even from the rent received for the property and in order to manage his finances he needed to sell the property. Mr O'Donnell said he appreciated this would have an adverse effect on Ms Booth but that it was necessary.
8. In response to a query from the Tribunal Ms Booth confirmed that the local authority was aware of the case calling and that a meeting had been arranged to take place on 29 July to discuss the next steps. Ms Booth said she was aware that if the Tribunal granted an order for her eviction the local authority would amend her housing points score. Ms Booth

thought that if no permanent accommodation was available the local authority would place her and her family in temporary accommodation until permanent accommodation could be found. In response to a further query from the Tribunal Ms Booth confirmed that her younger child was waiting on a review for neurodivergence and that she herself was waiting to go for a major operation and that the local authority was aware of this.

9. The Tribunal queried with Mr O'Donnell if he would have any objection to enforcement of an order being suspended for a period of time to allow Ms Booth more time to find alternative accommodation. Mr O'Donnell explained that he had commenced eviction proceedings initially in February 2024 and whilst he understood Ms Booth's position, he had incurred significant cost increases to his detriment and wished an end date to the proceedings. Mr O'Donnell spoke highly of Ms Booth as a tenant and Ms Booth spoke highly of Mr O'Donnell as a landlord.

Findings in Fact

1. The Respondent commenced a Private Residential Tenancy of the property on 13 June 2021.
2. A Notice to Leave under Ground 1 of Schedule 3 of the 2016 Act was served on the Respondent on 27 July 2024.
3. A Section 11 Notice was sent to Midlothian Council on 22 October 2024.
4. The Applicant has instructed RD Legal, Solicitors, Edinburgh, to market the property for sale.
5. The Applicant's monthly mortgage payment on his family home has almost doubled and this has placed a strain on his finances.
6. The income from the property is insufficient to meet the Applicant's additional outgoings.
7. The Applicant requires to sell the property to reduce the mortgage on his family home.
8. The Respondent is a single mother living in the property with her two children aged 12 and 17.
9. The Respondent is working full time and is also in receipt of some Universal Credit.
10. The Respondent's rent is paid up to date.

11. The Respondent has been on the local authority waiting list for at least one and a half years.
12. The Respondent has also applied to the local authority for homeless accommodation.
13. The Respondent has tried to obtain alternative private rental accommodation and to buy property without success.
14. The Respondent's younger child is waiting on a review for neurodivergence.
15. The Respondent is waiting to go into hospital for a major operation.
16. The Respondent has been advised that her homeless application will not be progressed unless and until the Tribunal issues an order for her eviction.

Reasons for Decision

17. 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 13 June 2021. The Tribunal was also satisfied that a valid Notice to Leave had been served on the Respondent under Ground 1 of Schedule 3 of the 2016 Act and that proper intimation of the proceedings had been given to Midlothian Council by way of a Section 11 Notice. The Tribunal was also satisfied from the documents produced that he intends to use RD Legal to market the property for sale.
18. 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 the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicant with the needs of the Respondent in arriving at a decision. On the one hand there was the Applicant who due to a change in his personal circumstances was struggling financially and the Tribunal was satisfied that the capital released from the sale of the property would alleviate his situation. On the other hand, the Tribunal also had to take account of the needs of the Respondent who had to care for her two children with the younger having health issues and who had her own health issues although these currently did not affect her ability to work. The Tribunal also took into account the fact that the Respondent had been told that she would only be given priority for housing if an order for eviction was granted.
19. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicant in this application were

such that although there would undoubtedly be an adverse impact on the Respondent and her children it was reasonable to grant the order. However, as it may take the local authority some time to find suitable accommodation for the Respondent and her family it would be reasonable to suspend enforcement of the order for a period of two months from the date of the decision. The Tribunal would hope that having granted an order for eviction, the Respondent would receive priority for rehousing given that she has her children living with her.

Decision

20. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing finds the Applicant entitled to an order for the eviction of the Respondent from the property but that enforcement of the order should be suspended for a period of two months from the date of the decision.

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

30 July 2025
Date