

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 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 (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/0418

Re: Property at 41 Banff Road, Keith, Moray, AB55 5ET (“the Property”)

Parties:

Ms Joyce Fergusson, Old Managers House, Glentachers, Mulben, Morayshire, AB55 6YL (“the Applicant”)

Mrs Alicia Massie, 41 Banff Road, Keith, Moray, AB55 5ET (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 31 January 2025, the Applicant applied to the Tribunal for an order for recovery of possession of the Property in terms of Section 51 of the 2016 Act against the Respondent. The application sought recovery in terms of Ground 1 of Schedule 3 to the 2016 Act (landlord intends to sell). Supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement, the Notice to Leave/proof of service of same, the Section 11 Notice to the local authority in terms of the Homelessness (Scotland) Act 2003 and evidence in support of the ground.
2. Following initial procedure, and the submission of further supporting documentation, on 10 March 2025, a Legal Member of the Tribunal with

delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 20 August 2025 was served on the Respondent by way of Sheriff Officer on 9 July 2025. In terms of said notification, the Respondent was given until 28 July 2025 to lodge written representations. No written representations were lodged by or on behalf of the Respondent prior to the CMD.
4. On several occasions between the date of application and the date of the CMD, the Applicant had provided updates to the Tribunal and requested that her application be expedited, given that she advised that was at risk of losing her sale. This request was considered on behalf of the Chamber President, but refused and the reasons for the refusal explained to the Applicant.

Case Management Discussion

5. The Case Management Discussion ("CMD") took place by telephone conference call on 20 August 2025 at 10am. Only the Applicant, Ms Joyce Fergusson, attended. The Respondent did not attend the CMD. The Tribunal delayed the commencement of the CMD for 5 minutes to allow the Respondent an opportunity to join late but she did not do so.
6. Ms Fergusson presented her application to the Tribunal and answered a number of questions from the Tribunal Members. Ms Fergusson confirmed that she was still looking for an eviction order. She put a reminder through the Respondent's door on Monday regarding the Tribunal proceedings and spoke to her briefly yesterday. The Respondent indicated to her that she would be exiting the Property but gave no timescale for this and Ms Fergusson said she had been told the same thing many times before, so was not convinced the Respondent would vacate.
7. Ms Fergusson explained that she had been trying to recover the tenancy for around two and a half years. Reference was made to her emails with the Tribunal regarding the delays in the process and confirmed that she did unfortunately end up losing the private sale that was proposed. The purchaser could not wait any longer and eventually ended up buying elsewhere. Ms Fergusson confirmed that she has to sell the Property as soon as possible as her mortgage term ends in September. She is 65 years old and this is the only property she lets out. She is still working but does not have the means otherwise to pay off the mortgage. The Property has been let to the Respondent for over 6 years and prior to that it was her family home. The Property has also become financially unviable to keep on, due to rising mortgage interest rates. The rent is currently £560 per month and her mortgage payment is £600 per month, but has been over £700 in recent times. In addition, since April 2025, there has been a shortfall in the rent of £80.88 which she understands to be the difference between the housing benefit the Respondent receives and the rent. There was always a shortfall

but the Respondent used to apply for Discretionary Housing Payment to cover that. However, she no longer does so and has basically said to Ms Fergusson that there is no point doing this as she is being evicted anyway. Initially, Ms Fergusson agreed that the first month's advance rent that she received at the beginning of the tenancy could be put towards the shortfall but that has now been used up and Ms Fergusson is now owed £830.24 in arrears which is making things even more difficult for her. If she gets an eviction order today, Ms Fergusson is going to speak to her mortgage lender to see if she can get some sort of extension on the mortgage term to allow her to sell the Property.

8. Ms Fergusson explained that she has experienced a lot of difficulties with the Respondent. It took five attempts to get the gas safety checks done the last time they were due because the Respondent was difficult about allowing access. Ms Fergusson also has concerns regarding the electrics and lighting as she did not think the Respondent was adequately lighting the house but has not been able to arrange with the Respondent to get the electrical checks done. Ms Fergusson stated that she did manage to get into the Property herself a few months ago, in March or May, to see the condition of the Property and is concerned that the Respondent is unable to keep the Property properly. She considers it will need a 'deep-clean'. She is also concerned that the Respondent leaves the Property for periods of time and has not always left it secure.
9. Ms Fergusson has been in contact with the local authority to update them on the Tribunal process but they were not able to confirm to her if the Respondent had made a housing/homeless application to them. Ms Fergusson stated that she has been genuinely concerned that the Respondent would end up homeless as she has had contact with the Respondent's adult daughter, who lives nearby, and she indicated that the Respondent has not completed the necessary forms, including a 'functional housing assessment'. Ms Fergusson is fairly sure that the Respondent would have been able to secure local authority housing as she does not keep very well and Ms Fergusson thinks she would be allocated high points if she were to apply. Ms Fergusson stated that the Property is too big for the Respondent, who lives alone. She does not think that she can manage the stairs well or is able to manage the Property properly and keep it clean. She thinks the Respondent is in her mid-50s and has never worked in the period she has known her. Ms Fergusson confirmed that she was originally a joint tenant with her mother, who sadly passed away a few years into the tenancy. Ms Fergusson does not know exactly what health conditions the Respondent has. She is aware that she was in hospital for some type of procedure in April 2025 and had a discussion with the Respondent's Consultant, at the request of the Respondent's daughter, regarding the Respondent's current housing situation. She understood that this was to do with her being discharged from hospital, which happened shortly after the discussion. She is also aware that the Respondent has her daughter's support, that she lives nearby and that the Respondent initially stayed with her daughter following her discharge from hospital. The Respondent had indicated to Ms Fergusson that she was at 'end-of life' but Ms Fergusson now understands this not to be the case.

10. In summing-up, Ms Fergusson reiterated that she has an urgent need to recover the Property and that she had tried to thoroughly prepare for the CMD and to be open and honest about the circumstances.
11. The Tribunal adjourned to consider the application in private and, on re-convening, advised Ms Fergusson that the eviction order was being granted. There was brief discussion regarding the procedures to follow. Ms Fergusson was thanked for her attendance and participation and the CMD concluded.

Findings in Fact

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the sole remaining tenant of the Property by virtue of a Private Residential Tenancy which commenced on 17 February 2025.
3. The Respondent was initially in a joint tenancy with her late mother, who had passed away in or around 2021.
4. The Applicant intends to sell the Property and to market it for sale as soon as possible and within 3 months of obtaining vacant possession, having already instructed a solicitor in the matter.
5. The Applicant had previously secured a private sale of the Property but this did not proceed due to delays in the Applicant securing vacant possession.
6. A Notice to Leave in proper form and giving the requisite period of notice (84 days) was served on the Respondent by recorded delivery/'signed for' post, posted on 5 August 2024, in accordance with the terms of the tenancy agreement.
7. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 31 October 2024.
8. The Tribunal Application was submitted on 31 January 2025.
9. The Respondent has indicated to the Applicant an intention to vacate the Property but currently remains in occupation.
10. The Applicant wishes to sell the Property for financial reasons, namely her mortgage term expiring in or around September 2025 and the Property no longer being financially viable due to her monthly mortgage payment exceeding the monthly rental she receives in terms of the tenancy.
11. The Applicant is 65 years old and does not have the financial means to pay off the mortgage capital owing without selling the Property.

12. The Applicant does not own any other properties that she lets out.
13. There are some rent arrears now owing by the Respondent, due to a monthly shortfall between the rent payments due and the rent payments currently being made.
14. The Applicant has some concerns regarding the condition of the Property and has experienced difficulties obtaining access from the Respondent.
15. The Respondent is understood by the Applicant to be in receipt of state benefits and to have some health issues.
16. The Applicant has sought to keep in contact with the Respondent, her daughter and the local authority to update them in respect of these Tribunal proceedings.
17. The Respondent did not lodge any written representations nor attend the CMD.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation and the additional oral information provided at the CMD by the Applicant. The Tribunal found the Applicant to be credible, co-operative and thorough in answering questions from the Tribunal Members.
2. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice (84 days) had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
3. The Tribunal considered that the ground of eviction, that the landlord intends to sell (Ground 1 of Schedule 3 to the 2016 Act, as amended) was satisfied in that all elements of Ground 1 were met and that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought.
4. The Tribunal had noted that there was supporting documentation with the application from the Applicant and her solicitor who had been instructed to act in the sale of the Property with a view to it being sold once vacant possession has been obtained. The Tribunal noted the Applicant's personal and financial circumstances, and her reasons for requiring to sell the Property, all as narrated above. The Tribunal was satisfied in this regard and also as to the urgency of the matter from the Applicant's point of view.

5. The Tribunal also noted the information that the Applicant had provided regarding the Respondent's circumstances and also the Applicant's attempts to engage with the Respondent regarding the Tribunal proceedings and other related issues, and to encourage the Respondent to take the necessary steps with regard to her housing situation. The Tribunal was satisfied that the Applicant had notified the local authority at the outset of these proceedings, in accordance with the requirements in the legislation and had provided them with further updates as the proceedings progressed. The Tribunal was satisfied that the Respondent was aware of the Tribunal proceedings and had chosen not to make written representations on her own behalf nor attend the CMD. In all the circumstances, the Tribunal considered it reasonable to grant the eviction order sought.
6. The Tribunal did not have any material before it to contradict the Applicant's position, nor to indicate that the Respondent was opposing the eviction or wished to advance any arguments on her own behalf. The Tribunal accordingly determined that an order for eviction could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

20 August 2025
Date