



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

Chamber Ref: FTS/HPC/EV/24/3968

Re: Property at 61 Wellington Street, Wishaw, ML2 7EU (“the Property”)

Parties:

Miss Fiona Newman, C/O 133B Glasgow Road, Bathgate, EH48 2QN (“the Applicant”)

Mr Kevin O'Donnell, 61 Wellington Street, Wishaw, ML2 7EU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (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 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) are met and it would be reasonable to make an eviction order, with execution of the order suspended until 5 January 2026.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

Background

- 1 The Applicant applied to the Tribunal 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 that the Applicant intended on selling the property.
- 2 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 13 May 2025. The Tribunal gave both parties notification of the CMD in terms of Rule 17(2) of the Rules. Said notification

was served upon the Respondent by sheriff officers on 11 March 2025. Both parties were invited to make written representations. No written representations were received from either party in advance of the CMD.

The CMD

- 3 The CMD took place on 13 May 2025 at 2pm by teleconference. Mr Perviz Ahmed of Almond Lettings represented the Applicant. The Respondent also joined the call.
- 4 The Tribunal heard submissions from the parties on the application. Mr Ahmed confirmed that the Applicant wished to sell the property due to her age and the costs involved which had increased in the current climate. The Respondent had been the tenant of the property for a number of years and had been a great tenant. However, it had come to the point where the Applicant required to sell the property. In response to questions from the Tribunal Mr Ahmed advised that he did not know the Applicant's age. He believed she could possibly be retired. He only managed the one rental property for her. He did not think she had any other rental properties. Mr Ahmed confirmed that there was a mortgage over the property but he did not know the monthly payments.
- 5 The Respondent confirmed that he had resided in the property for 6 years. He had always paid his rent on time. There had been no issues with the tenancy. It had been a shock to receive the notice to leave. He had been making efforts to obtain alternative accommodation. He had made an application to the local authority, and had been placed on the housing list. The local authority had told him that it was unlikely the council would allocate him a property in the near future, albeit if an order was granted he may be put in hostel accommodation or some other alternative, which would be more expensive than his current accommodation. The Respondent explained that he had also been looking at private rents but would be paying a much higher rent in the current climate, approximately £300 per month more than he was paying for the let property. He was due to view some private rental properties towards the end of the week.
- 6 The Respondent confirmed that he was a full time student at the local college and in part-time employment. His wage from his employment was his sole income. He did not receive any benefits. He resided in the property alone and was aged 49. The Respondent explained that he had been in a road traffic accident in February 2024 and still had some difficulties with his injuries. He also had high blood pressure, which had been exacerbated by the situation with his tenancy. The Respondent stated that he had been told by the council that he did not have any legal right to object to the application. He had also spoken to the Citizens Advice Bureau ("CAB") who had told him something similar.
- 7 The Tribunal held a short adjournment of the CMD to deliberate before concluding that it did not have sufficient information to fully assess the reasonableness of making an eviction order in order to reach a decision. The Tribunal therefore determined that the application must proceed to a full evidential hearing.

- 8 A note of the CMD and a Direction was issued to parties following the CMD. The Direction required parties to produce further documentary evidence together with details of witnesses no later than fourteen days prior to the hearing date.
- 9 The hearing was scheduled for 28 October 2025 at 10am. The Tribunal gave notice of the hearing to the parties under Rule 24(1) of the Rules.
- 10 On 23 May 2025 the Tribunal received a response to the Direction from the Applicant. No response was received from the Respondent.

The hearing

- 11 The hearing took place by videoconference on 28 October 2025 at 10am. The Applicant joined the call and was again represented by Mr Ahmed. The Respondent was also in attendance.
- 12 As a preliminary matter the Tribunal noted that the Respondent had not submitted any response to the Direction. The Respondent conceded this was the case. He advised that he had lost the paperwork. He confirmed that he was content to proceed with the hearing.
- 13 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 28 August 2024;
 - (ii) Title sheet LAN204225;
 - (iii) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (iv) Private residential tenancy agreement between the parties dated 20 June 2019;
 - (v) Section 11 notice to North Lanarkshire Council together with proof of delivery by email and acknowledgement;
 - (vi) Notice to leave dated 16 May 2024 together with proof of delivery by email to the Respondent;
 - (vii) Written mandate from the Applicant authorising Almond Lettings to represent her in the Tribunal proceedings;
 - (viii) Signed terms of engagement between Almond Lettings and the Applicant regarding the sale of the property.
 - (ix) The Applicant's Direction response which includes a written statement of the Applicant's circumstances, mortgage statements, factoring invoice, annual profit/loss statement, pension statements and information on the purchase price and market value of the property.
- 14 The Tribunal heard evidence from the parties. The following is a summary of the key elements of the evidence and is not a verbatim account.
- 15 The Applicant bought the property following her divorce as a retirement investment. It has always been her intention to sell. She is now retired, aged

66. The property has been a poor investment. She paid £90,000 for it but only expects to make around £70,000 due to a decrease in value. The mortgage is approximately £60,000. The Applicant has not been making any profit from the rental income in recent years. She bears, in addition to her mortgage payments, the factoring costs together with management fees and the cost of repairs to the property. The property will soon require external work due to the condition of the soffits. The Applicant's mortgage term is due to expire in July 2026. She has looked into remortgaging however due to her age she would have to pay off the balance in around 5 years. This would mean her mortgage payments would increase to around £1000 per month. There is no way to make the tenancy financially viable. The Applicant is desperate to sell the property. It is causing her significant stress. She is simply not in a position financially to continue with the tenancy. The Applicant confirmed that she had purchased another property in Elderslie as a retirement investment. These were her only rental properties. The property in Elderslie had been sold last year. It too had not been a good investment. The Applicant wants to get out of the rental market.

- 16 In response to questions, the Applicant confirmed that she has received advice that selling the property with a sitting tenant is not an option. She would be unable to realise the maximum sale price in order to repay the mortgage. She appreciates the position the Respondent is in but she feels her situation is dire and she can no longer subsidise a tenant in the property. She has no other income other than her state and company pensions.
- 17 The Tribunal heard evidence from the Respondent. He has been in touch with the local authority but they are not willing to provide assistance until he is considered homeless. He is on the housing list and has some points, but there are other applicants ahead of him. The local authority has told him it may take a few years for them to source a property. The Respondent has approached other letting agencies however due to his low salary he does not meet the criteria to secure a property. The Respondent was involved in a road traffic accident last year. He still has some injuries. The Respondent suffers from high blood pressure and asthma. His housing situation is causing him significant stress. The Respondent has received advice from the local authority and the CAB that he is legally entitled to stay in the property. He pays his rent and does not cause any disturbance to neighbours. The Respondent is in a dire situation. He appreciates the Applicant wishes to sell the property and is entitled to do so.
- 18 In response to questions, the Respondent stated that he has been told by the local authority that they may put him into temporary accommodation which he will require to pay for, at a cost of around £100 per night. The local authority can't provide him with a house at this time, despite his risk of homelessness. They may look again if an eviction order is granted. The Respondent is on every social housing list. He has one cousin who lives in the local area but he would not be able to stay with her. His friends are all married with their own families. His parents are deceased. The Respondent will just have to see what happens in terms of rehousing.

- 19 The Tribunal gave both parties the opportunity to make closing submissions before adjourning the hearing to deliberate. The Tribunal then resumed the hearing and confirmed its decision.

Findings in fact

- 20 The Applicant is the owner and landlord, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement, which commenced on 23 June 2019.
- 21 The Applicant has given the Respondent a notice to leave which includes ground 1 of schedule 3 of the 2016 Act.
- 22 The Applicant has given the local authority a notice under section 11 of the Homelessness etc (Scotland) Act 2003 as at the date of making this application to the Tribunal.
- 23 The Applicant is entitled to sell the property. The Applicant intends to sell the property, or market the property for sale, within three months of the Respondent vacating. The Applicant has instructed Almond Letting to act on her behalf in the sale of the property.
- 24 The Applicant is aged 66. The Applicant is retired.
- 25 The property is subject to a mortgage, the term of which is due to expire in July 2026. The Applicant will struggle to remortgage given her age. The Applicant will require to repay the mortgage over a five year period. There is currently a balance of £60,214.37 outstanding. The Applicant's mortgage payments are likely to increase from £127.93 to approximately £1000 per month.
- 26 The Applicant requires to pay property costs in addition to the mortgage payments, including factoring and management charges. The Applicant's factoring charge was recently increased to £107 per month.
- 27 The property will soon require repairs to the soffits, at a cost to the Applicant.
- 28 The Respondent is aged 49. The Respondent resides in the property alone.
- 29 The Respondent is a full time student. The Respondent is in part-time employment. The Respondent does not receive any benefit payments.
- 30 The Respondent was in a road traffic accident last year. The Respondent has high blood pressure and asthma.
- 31 The Respondent has applied to the local authority for housing and is on the common housing register. The local authority has advised the Respondent that they will not provide him with assistance until the Tribunal makes an eviction order. The Respondent may have to be rehoused in temporary accommodation. The Respondent is unable to secure housing in the private

sector due to his income and has no family or friends in the area that he could stay with.

Reasons for decision

- 32 The Tribunal was satisfied that it could reach a decision based on the documentary evidence before it, the submissions at the CMD and the oral evidence at the hearing. The documents are referred to for their terms and incorporated into the Tribunal's findings in fact. Neither party had sought to challenge the relevant evidence presented by the other and the substantive facts of this case were not in dispute.
- 33 Section 52 of the 2016 Act states that "*an application for an eviction order against a tenant 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 documentary evidence before it that the Applicant has given the Respondent a notice to leave that complies with the requirements of the 2016 Act. The Tribunal was further satisfied that the Applicant has given the local authority a section 11 notice in accordance with the requirements of section 56 of the 2016 Act.
- 34 The Tribunal went on to consider 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, ...
(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."*
- 35 The Tribunal accepted that the Applicant is entitled to sell the property, and intends to do so, or at least market the property for sale, within three months of the Respondent ceasing to occupy, as evidenced by the correspondence from Almond Letting and her oral evidence during the hearing. The Tribunal found her to be clear and consistent on this point, and the Respondent had not sought to challenge her intention to sell. He accepted that she was entitled to do so. The Tribunal therefore considered whether it was reasonable to make an eviction order on account of those facts, which requires the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to them.

- 36 The Tribunal took into account the Applicant's property rights, which entitle her to dispose of the property if that is her wish. The Tribunal also took into account her reasons for selling the property. Having purchased it as a retirement investment, she is now retired and wishes to follow through with her plan to sell, as she had done with her other rental property. The Tribunal accepted that the Applicant is presently in a serious and precarious financial position due to the imminent expiry of her mortgage term. It was clear that the property is no longer financially viable, and the Applicant will face unmanageable costs if the tenancy were to continue beyond the existing mortgage term. The pension statements produced disclosed her reduced income in support of this. The Tribunal also accepted that the Applicant is entitled to sell the property with vacant possession in order to achieve the maximum sale price. These were all factors to which the Tribunal gave significant weight.
- 37 The Tribunal carefully considered the Respondent's circumstances as narrated in the Tribunal's findings in fact. The Tribunal noted his financial position which had prevented him from securing another private let. The Tribunal also took into account his physical health which had been compounded by injuries suffered in a road traffic accident last year, as well as the fact that he did not have any family or friends in the local area who could accommodate him. However, whilst the risk of homelessness to the Respondent was a cause for concern, he had been proactive in making an application for housing to the local authority. He would be entitled to, as a minimum, emergency accommodation pending an offer of a permanent home. The Tribunal noted that he had received the benefit of advice from both the local authority and the CAB. The Tribunal therefore gave more weight to the Applicant's circumstances and property rights as narrated above as factors relevant to reasonableness.
- 38 That said, in light of the Respondent's health conditions the Tribunal did consider that it would be reasonable to allow some additional time for the local authority to hopefully secure permanent accommodation for him and mitigate against the risk of him having to stay in temporary accommodation. Accordingly, having weighed those factors relevant to reasonableness the Tribunal concluded that the balance weighs in favour of making an eviction order in this case, provided that execution of the order is suspended until 5 January 2026.
- 39 The Tribunal therefore determined that ground 1 had been met and determined to make an eviction order. 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 28th October 2025