



**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/25/0646

Re: Property at 22 Fa'side Gardens, Wallyford, EH21 8AX (“the Property”)

Parties:

Miss Leigh Ross, 22 Old Craighall, Musselburgh, East Lothian, EH21 8SE (“the Applicant”)

Miss Simone Fitzsimmons, 22 Fa'side Gardens, Wallyford, EH21 8AX (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on ground 4 (landlord intends to live in the property) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. By application accepted on 22 April 2025 the applicant seeks an order for possession relying on ground 4 (landlord intends to live in property) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The following documents were lodged with the application:
 - Copy tenancy agreement
 - Section 11 notice with proof of intimation
 - Notice to leave and proof of service
 - Correspondence from the applicant and Paul Carnegie.

Case management discussion (“cmd”) – 23 October 2025 – teleconference

3. Both parties were in attendance. The applicant stated that she sought an order for eviction relying on ground 4 as she wished to return to the property to reside in it. The respondent stated that the application was not opposed. She explained that she had submitted an application for housing to East Lothian Council as she required a larger property. Whilst she had not yet been offered alternative accommodation she did not seek to defend the application.
4. The applicant referred to the correspondence that had previously been submitted setting out her personal circumstances. She confirmed that she had left her previous permanent accommodation which she had shared with Paul Carnegie due to relationship breakdown. She had moved into her father’s property with her teenage son in October 2024. She was unable to reside in her father’s home on a long term basis and sought assistance from the local authority as a homeless person. Since February 2025 she has resided in a temporary tenancy provided by the local authority. The applicant stated that the respondent had been a good tenant however due to the change in her personal circumstances she required to reside in the property herself.
5. The respondent stated that she resided in the property with her 3 sons. The property had 2 bedrooms and was too small. She advised that she is a carer for her eldest son. She advised that the local authority was aware of her current housing issues and the family’s circumstances and would provide assistance in the event that an order was granted.

Findings in fact and law

6. Parties entered into a private residential tenancy agreement with a commencement date of 23 May 2023.
7. The applicant is the owner of the property.
8. The applicant currently resides in temporary accommodation provided by East Lothian Council following her application as a homeless person.
9. The applicant resides with her 2 sons.
10. The applicant intends to return to reside in the property as her permanent home.

11. The respondent resides in the property with her 3 sons.
12. The property has 2 bedrooms. The property is not sufficiently large to accommodate the respondent's family.
13. The respondent has submitted an application to East Lothian Council for alternative accommodation and will receive assistance from them to find alternative accommodation.
14. It is reasonable to grant an order for eviction.

Reasons for the decision

15. Rule 17 (4) states:

The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

16. Rule 18 states:

Power to determine the proceedings without a hearing

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,

a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

17. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

18. Ground 4 states:

4(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months , and
(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

19. The Tribunal took into account the written representations and documents lodged together with oral representations at the cmd.
20. There was no dispute on the facts of the case. The Tribunal found all parties to be truthful and straightforward in the evidence provided. The Tribunal accepted the applicant's unopposed evidence that she intended to return to the live in the property as she was currently residing in temporary accommodation.
21. In relation to whether it is reasonable to grant an order the Tribunal found that it was reasonable that the applicant should seek to return to live in the property where she had previously resided. The loss of her previous permanent accommodation was not due to any fault on her part and it was reasonable that she wanted a permanent home for her family. The Tribunal gave significant weight to the fact that the respondent did not seek to oppose an order being granted. The Tribunal took into account that the respondent had sought assistance from the local authority and sought a bigger property to accommodate her family. Taking the above factors into account the Tribunal was persuaded that on balance it was reasonable to grant an order for eviction in favour of the applicant.

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.

Mary-Claire Kelly

Legal Member/Chair:

Date: 23rd October 2025