

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/25/0991

Re: Property at 33 Marketgate, Arbroath, DD11 1AU (“the Property”)

Parties:

Naseem Mahmood, 62 New Wynd, Montrose, DD10 8RF (“the Applicant”)

Ms Laura Mitchell and Mr Darren Mitchell, both 33 Marketgate, Arbroath, DD11 1AU (“the Respondents”)

Tribunal Members:

George Clark (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and that the application should be refused.

Background

1. By application, dated 5 March 2025, the Applicant sought an Order for Possession of the Property under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Ground relied on was Ground 3 of Schedule 3 to the 2016 Act, namely that the landlord intends to carry out significantly disruptive works to the Property.
2. The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 1 April 2021 at a monthly rent of £850 per month, a Notice to Leave, dated 25 September 2024, advising the Respondents that the Applicant was seeking an Eviction Order under Ground 3 of Schedule 3 to the 2016 Act and that an application to the Tribunal would not be made before 24 December 2024, and a report dated 4 June 2024 by Martin Property Care Limited, which recommended the installation of a more powerful extractor fan in the second floor shower room, repairs to rainwater damage at cement skewers or harling which had resulted in

high damp readings in the front left bedroom on the first floor, and works to deal with a combination of rising damp, penetrating damp and a build-up of rubble behind the wall linings in the ground floor lounge.

3. On 28 April 2025, the Applicant's solicitors advised the Tribunal that the Property was to be comprehensively rewired, as the entire electrical installation required to be replaced. This would result in a power shutdown during the works. Complete replumbing would also be carried out, as well as the extensive damp treatment. As the Property is laid out over three floors, the works could not be executed on a room-by-room basis. The nature of the renovation requires simultaneous access to all areas, to ensure the integrity and safety of the installations. They also provided a copy of an email of 15 February 2025 from the Respondent, Mr Darren Mitchell, to the Applicant, in which the Mr Mitchell accepted that it is impossible for him and his family to stay in the Property with the amount of work needing done. He said that he was just worried about where his family would be left, but after a meeting on the previous day, he fully understood it would be ok and the Applicant had reassured him and had even offered to help him with the Council, which had put his mind at ease.
4. On 24 September 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 15 October 2025. The Respondents did not make any written representations to the Tribunal.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 5 November 2025. The Applicant was represented by Mr Ritchie McNeil of MML Law, solicitors, Dundee. The Respondent, Mr Darren Mitchell, was present.
6. Mr Mitchell told the Tribunal that he lives in the Property with his wife and four of their seven children, who are aged 3, 9, 17 and 18. One of his children has been diagnosed with ADHD and his youngest child is currently non-verbal and is undergoing assessment. The upheaval of having to move house, perhaps to a different part of Angus would be very disruptive to both of these children. Mr Mitchell is in full-time employment and, if an Order were to be granted, they would look at the private sector as well as seeking to be rehoused by the local authority, in order to be able to stay in Arbroath and minimise the upheaval for the family. They presently receive Universal Credit to assist with rent payments. If an Order was to be granted, the Respondents would not wish it to be enforceable until after the Festive period, again to avoid upset to the family.
7. Mr Mitchell's view was that the Property did not need to be vacant to allow the damp treatment works to be carried out. The Property has three floors and the Respondents and their family could, if necessary, avoid specific areas while those works were taking place. The damp only affected one side of the house. He accepted that the wiring might be old, but it had passed all necessary safety

tests and there had been no issue regarding the annual Gas Safety inspections of the central heating boiler.

8. Mr McNeil told the Tribunal that the Applicant's position was that the work needs to be done and that it cannot be done without vacant possession. He contended that the Respondents had altered their position, as they had initially accepted that the works could not be carried out while they were living in the Property, but now seemed to be of the opposite view. If the Tribunal decided to make an Order, the Applicant would not have an objection to its earliest enforcement date being up to three months ahead, to give the Respondents more time to find alternative accommodation.

Reasons for Decision

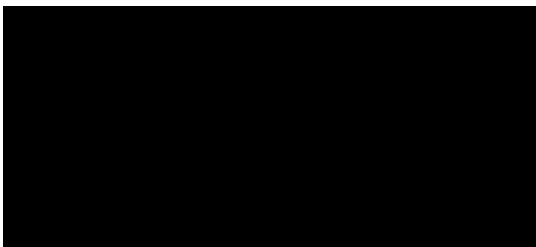
9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
10. Section 51 of the 2016 Act states that the Tribunal is to issue an Eviction Order against the tenant under a Private Residential Tenancy if, on an application by the landlord, it finds that one of the Eviction Grounds named in Schedule 3 applies.
11. Ground 3 of Schedule 3 to the Act states that it is an Eviction Ground that the landlord intends to carry out significantly disruptive works to, or in relation to the Property, and that the Tribunal must find that Ground 3 applies if the landlord intends to refurbish the let property, the landlord is entitled to do so, and it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and the Tribunal is satisfied that it is reasonable on account of that fact to issue an Eviction Order. Evidence tending to show that the landlord has the intention to refurbish includes (for example) any planning permission which the intended refurbishment would require and any contract between the landlord and an architect or builder which concerns the intended refurbishment.
12. The Tribunal was satisfied from the evidence before it, including the report from Martin Property Care Limited, that the Applicant intends to refurbish the Property and that he is entitled to do so, but the view of the Tribunal was that the damp treatment work, being largely external, would not require the Respondents to move out and that, however desirable it might be to take the opportunity to rewire and replumb the Property, no evidence had been presented to indicate that such work was essential at the present time.
13. The Tribunal noted that the Respondents accepted that the planned refurbishment works cannot be carried out whilst they are living in the Property, but this would have included rewiring and replumbing. They were of the view, which the Tribunal accepted, that it was not necessary for them to vacate the

Property in order for the damp works to be carried out. The Tribunal also noted that eviction would be hugely disruptive to a family of six and, in particular, that it could be detrimental to the mental health of two of the Respondents' children.

14. In arriving at a Decision on whether or not it would be reasonable to issue an Eviction Order, the Tribunal has to take into consideration the impact on both Parties. In the present case, the Tribunal accepted that the Applicant requires to carry out damp treatment work and that it would not be unreasonable to take the opportunity of upgrading the Property at the same time, but the Tribunal was not satisfied that such upgrading was essential and was of the view that the benefit to the Applicant was significantly outweighed by the likely detrimental effect that the upheaval of eviction would have on a large family, and on two of their children in particular, as they would, in all probability, have to move to temporary accommodation for an uncertain period before being permanently rehoused. Accordingly, having considered all the evidence before it, the Tribunal decided that it would not be reasonable to issue an Eviction Order.

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.



5 November 2025
Date