

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 ("The Act")

Chamber Ref: FTS/HPC/EV/24/5764

Re: Property at 22 Meadowpark, Haddington, EH41 4DS ("the Property")

Parties:

Mr David Small, 8 Orchard Brae Gardens, Edinburgh, EH4 2HJ ("the Applicant")

Ms Dalia Gudiene, Mr Paulius Narkevicius (SBA), 22 Meadowpark, Haddington, EH41 4DS; (whereabouts unknown) ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Nicholas Allan (Ordinary Member)

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application and made an Eviction Order subject to the provision that it may not be enforced prior to 26 February 2026.

Background

[2] The Applicant seeks an Eviction Order under ground 1 of Schedule 3 of the Act. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Applicant has produced evidence setting out his financial position in support of his reasons to sell the Property. The Respondent opposes the order sought. The Application had called for a Case Management Discussion which had made case management orders and continued the Application to an Evidential Hearing.

The Hearing

[3] The Application called for a Hearing at Dunbar Town House, 126 High Street, Dunbar at 10 am on 26 November 2025. The Applicant was present together with his representative, Ms Kirsty Donnelly of TC Young. He also had a witness present on his behalf, his partner Ms Hester McQueen. The First Respondent (who the Tribunal will refer to as "The Respondent") was personally present together with a supporter who confirmed that she was there to support rather than give evidence. There was also a Lithuanian interpreter present for the benefit of The Respondent. The Interpreter interpreted everything that was said in English into Lithuanian and what the Respondent said in Lithuanian into English. The Second Respondent, Mr Paulius Narkevicius had long since left the Property after his relationship with the Respondent ended. His whereabouts could not be traced. Service of the papers had been competently effected on him by means of advertisement on the Tribunal website. He had not engaged with the process and the Tribunal proceeded with the Hearing in his absence.

Preliminary matters

[4] The Tribunal began by ensuring that all parties understood the purpose of the Hearing and how it would be conducted. The Tribunal made sure that everyone was familiar with the documentation submitted, had nothing further to add and were content to the start the Hearing. The Tribunal therefore proceeded to hear evidence from each party in turn. After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence each party also had the opportunity to make closing submissions. The Respondent confirmed that there were no issues to be taken to the competency of the relevant notice to leave or its service.

Evidence

[5] The Tribunal comments on the evidence heard as follows.

Mr David Small

[6] Mr David Small is 71 years of age and a retired psychiatric nurse. He retired three years ago. He currently resides in a house owned by his partner, Ms McQueen. He owns the Property and another investment property that is owned jointly with Ms McQueen. The Property has two bedrooms. It is currently occupied by the Respondent who lives alone. The Applicant has owned the Property for many years but always planned to sell it when he retired. This was the Applicant's preferred strategy for funding his retirement. He has various debts which the Tribunal was taken through in detail. The Tribunal examined the vouching of these debts. The Tribunal was also taken through a schedule of the Applicant's income and outgoings. It was clear to the Tribunal that the Applicant had very little free income unaccounted for each month. His evidence was that selling the Property would bring down his debt, free up his income and release funds to support his retirement. This seemed prudent to the Tribunal. Currently the

Applicant is unable to afford modest luxuries such as going on holiday. The Applicant explained that the Property in question is owned by him outright and he had always intended to sell it when he retired. It is not profitable. He wishes to sell this Property over the other property owned with Ms McQueen because they wish to continue to rent that Property out as part of their retirement strategy. It is also not McQueen's intention to sell the Property. The Applicant also is currently receiving treatment for bladder cancer. The Applicant explained that his situation was such that he was attending today despite the fact that his own mother had passed away the night before.

[7] The Tribunal found Mr Small to be entirely credible and reliable as a witness.

Ms Hester McQueen

[8] Ms McQueen's evidence was in relative short compass and more or less simply served to corroborate the evidence of her partner. Again, the Tribunal had no issue accepting that evidence as credible and reliable.

The Respondent

[9] The Respondent lives alone in the Property. She has health issues which affect her mobility. She appears to require the aid of walking sticks to move about. She had submitted certain medical documents. She spoke about how she suffers from a frozen shoulder and spoke about her other health issues. She has taken advice from the relevant local authority and they are aware of her situation and have asked the Respondent to tell them the outcome of these proceedings. The Property has not been especially adapted for the Respondent's needs. The Respondent did however report that she recently had an assessment from the local authority as to what sort of accommodation might be appropriate for her going forward. She explained that she has been reassured that she will "*not be living on the street*". The Second Respondent has not resided in the Property since 24 August 2024. The Respondent has family who live in Haddington. The second bedroom in the property is principally not used but is sometimes used by the Respondent's adult granddaughter who was said to visit three times a week.

[10] The Respondent was respectful of the Applicant's own position and acknowledged that it was a difficult situation for all. The Tribunal were left with the impression that the Respondent was understandably anxious about her future but had been informed that the local authority would offer her alternative housing should an order be granted.

[11] The Respondent appeared well versed in the local authority procedures for assisting parties in the event that an Eviction Order was granted. The Tribunal did not take the view that the Respondent was likewise being anything other than credible.

[12] Parties made closing submissions. Ms Donnelly spoke to the statutory ground of eviction being established and that it was reasonable for an eviction order to be granted. She took the Tribunal through the relevant authorities which she said ought to lead the Tribunal to consider that it is reasonable to grant the order.

[13] The Respondent maintained her position that it was not reasonable to make an Eviction Order but she was clearly respectful of the Applicant's difficulties in making her case.

[14] Having heard evidence and having considered the documentation, the Tribunal made the following findings in fact.

Findings in Fact

1. *The Applicant let the property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act which commenced on 22 July 2021.*
2. *The Applicant wishes to sell the Property as part of a long-held retirement strategy. The Applicant has debts which he wishes to pay down. He currently has very little disposable income. Selling the Property will allow him to pay down his debt and enjoy modest luxuries in his retirement and offer him an improved quality of life. The Applicant is receiving treatment for bladder cancer.*
3. *The Applicant competently served a notice to leave dated 14 July 2024 under ground 1 on the Respondent.*
4. *The Applicant has complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.*
5. *The Respondent lives alone in the Property. The Property has not been adapted for her health needs. The Respondent does however suffer from health issues which affect her mobility.*
6. *The Respondent is receiving support from the local authority who are aware of her situation.*

Reasons for Decision

[15] Having made the above findings in fact, the Tribunal considered that ground 1 of Schedule 3 of the Act was established. There was no reason at all to doubt that the Applicant wanted to sell the Property. The Respondent did not seek to challenge this at all during the Hearing. The Tribunal thereafter proceeded to consider the "reasonableness" of granting an order.

The Reasonableness

[16] In considering the reasonableness or otherwise of making an Eviction Order, the Tribunal took a common-sense approach, balancing the competing interests. The Tribunal proceeded on the basis that something could be reasonable while only being one of many other options which might also be reasonable. The Tribunal noted that there was no presumption that the Applicant's proprietary rights trumped the Respondent's occupancy rights. The Tribunal also notes that reasonableness is to be considered as at the date of the Hearing

[17] The Tribunal considered the arguments in favour of granting the order. The Tribunal concluded that it was certainly reasonable for the Applicant to wish to sell the Property as part of a reasonable and prudent retirement plan. The Applicant was not in good financial health. His monthly outgoings were high as a result of debts. This was materially impacting the quality of his life. He was not able to afford simple luxuries like going on holiday.

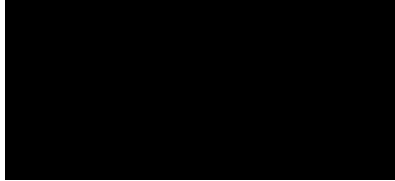
[18] The Tribunal well understood the Respondent's reasons as to why it might not be considered reasonable to grant the order. The Tribunal noted that the Respondent was worried about the future and had nowhere else to go. She had health issues and would likely be reliant on being offered accommodation by the local authority. She struggled to afford to rent another flat on her own. There was no credible evidence which suggested that granting the order would have any acutely detrimental impact on the Respondent's health conditions or medical treatment. The Tribunal accepted that there would be some obvious inconvenience to the Respondent should she require to vacate the Property.

[19] The Tribunal conducted an exercise of weighing these competing factors in the balance. But there was one factor which the Tribunal considered tipped the scales decisively in favour of granting the order. That is that the Applicant himself has pronounced health issues. These may reasonably be considered as being more pronounced than those of the Respondent. The Tribunal was grateful to hear that the Applicant's treatment for bladder cancer was going well but completely understood that this and his financial situation were having a huge impact on the Applicant's life.

[20] The Tribunal concluded that this resulted in the arguments for it being reasonable to make the order outweighing the reasons against. The Tribunal then considered whether the date by which any order could be enforced ought to be delayed. The Tribunal took the view that given the time of year, the Tribunal would have allowed an Additional extra month from the date of the Hearing, and the Tribunal considers that it remains reasonable to provide that the order may not be enforced until 26 February 2026.

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.



Legal Member/Chair

14 December 2025

Date