



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/EV/25/3133**

**Re: 15/2 Restalrig Drive, Edinburgh, EH7 6JX ('the Property')**

**Parties:**

**Connor Merrilees, residing at 14 Pearce Avenue, Edinburgh, EH12 8SW ('the Applicant')**

**James Merrilees, residing at 4 Prospect Bank Place, Edinburgh, EH6 7PX ('The Applicant's Representative')**

**Christina McNab and Stuart Nicholson residing at 15/2, Restalrig Drive, Edinburgh, EH7 6JX ('the First Respondent')**

**Stuart Nicholson residing at 15/2, Restalrig Drive, Edinburgh, EH7 6JX ('the Second Respondent')**

**Andrew Wilson, Housing and Money Advice, Edinburgh ('the First Respondent's Representative')**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')**

**Tribunal Members: Jacqui Taylor (Legal Member) Helen Barclay (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.**

## **1. Background**

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 21<sup>st</sup> July 2025. The application states that the ground for eviction was as follows:

‘Ground 1: The Landlord intends to sell the let Property.’

1.3 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement between the parties dated 1<sup>st</sup> March 2022.
- Notice to Leave dated 21<sup>st</sup> February 2025 advising the Tenants that an application will not be submitted to the Tribunal for an eviction before 17<sup>th</sup> July 2025 and the eviction ground is that the Landlords intend to sell the Property.
- A copy of the last page of the Notice to Leave with a handwritten note that it had been hand delivered on 21<sup>st</sup> February 2025 and the signature of ‘ J Merrilees’ and ‘Christina McNab’.
- Email from City of Edinburgh Council Homeless Support.
- A copy of the email from the Applicant to Homeless Support dated 21<sup>st</sup> July 2025.
- Section 11 Notice addressed to City of Edinburgh Council.
- Mandate by Connor Merrilees authorising James Merrilees to act on his behalf.
- A letter signed by Rachael Merrilees dated 13<sup>th</sup> August 2025 confirming that she is content for the application to be progressed by her husband Connor Merrilees.
- Email from Mov 8 dated 5<sup>th</sup> June 2025 stating that they were providing a Property valuation.
- A copy of the letter from Ralph Sayer dated 2<sup>nd</sup> June 2025 providing details of the valuation of the Property and estate agency and legal fees estimates.

2. By Notice of Acceptance by Ruth O’Hare, Convener of the Tribunal, dated 29<sup>th</sup> August 2025, she intimated that she had decided to refer the application (which application paperwork comprises documents received between 22<sup>nd</sup> July 2025 and 15<sup>th</sup> August 2025) to a Tribunal.

### **3. The Respondent’s written representations.**

The Respondent’s Representative lodged written representations dated 22<sup>nd</sup> December 2025 in the following terms:

*'The Respondent does not object to the application to the chamber for an order for eviction from the let premises but asks that the tribunal considers the following points in reaching its decision.*

### *1. The Tenancy*

*1.1. As set out in the application, the tenancy is a Private Residential Tenancy, as provided under the Private Housing (Tenancies) (Scotland) Act 2016. It commenced on 1st March 2022.*

*1.2. The respondent was served Notice to Leave on 21st February 2025. It gave a single ground for eviction, on which the application proceeds, that the landlord intends to sell the let premises.*

### *2. The Respondent & Family*

*2.1. The respondent is aged 43 and unfit for work, suffering with poor mental health including depression, anxiety and Post Traumatic Stress Disorder. She also suffers with multiple physical impairments, including osteoarthritis in both hips.*

*2.2. The respondent receives Universal Credit to meet living and housing costs as well as Adult Disability Payment to help cope with her impairments.*

*2.3. The respondent resides in the let premises with her partner, who is also unfit for work after suffering a brain injury, and is also carer for the respondent.*

### *3. Housing Options*

*3.1. The City of Edinburgh Council has declared that the city is experiencing a housing crisis. Demand far outstrips supply and private sector rents have increased far above the rate of inflation.*

*3.2. The Respondent has looked for alternative accommodation. The private sector tenancies available are almost all unaffordable to anyone requiring rental costs to be at or below the Local Housing Allowance rate. Private landlord and letting agents are also frequently dismissive of any prospective tenant who relies on welfare benefits to help meet their housing costs.*

*3.3. The respondent has approached the City of Edinburgh Council for assistance. The respondent has a current application for a social sector tenancy through the Key To Choice (or "Edindex") central allocation system.*

*3.4. The respondent has already been assessed as being homeless, and her application for housing assistance has been accorded priority points. However, due to*

*her physical impairments she is limited to tenancies of premises with ground floor or lift access.*

#### *4. Request for short delay in enforcement*

*4.1. The respondent is aware that these proceedings may have taken longer than the landlord expected. However, they ask for the applicant and the tribunal to extend some latitude and grant extra time before an eviction would be enforceable, to allow further opportunities to secure alternative accommodation in the social sector or mid-market rent.*

*4.2. The respondent asks for the applicant and the tribunal to agree to a delay in the enforcement of the order for eviction of two months beyond the usual 44 days after the date of the decision (that being the 30-day appeal period and 14-day notice for a Charge for Removing).*

*4.3. For the foregoing reasons, the Respondent respectfully requests that the tribunal delays enforcement of any order for eviction until 27th May 2026.'*

#### **4. Written Response by the Applicant.**

The Applicant lodged a written response dated 27<sup>th</sup> January 2026 in the following terms:

*'I write in relation to the above matter and the submission lodged on behalf of the Respondent seeking a further delay in the enforcement of any eviction order. I respectfully confirm that I do not agree to the extension requested. The Respondent was served with Notice to Leave on 21 February 2025, on the clear and unequivocal basis that I intended to sell the property. Accordingly, the Respondent has been aware of the need to secure alternative accommodation for a significant period of time. Almost twelve months have now passed since notice was served. During this time, the Respondent has had ample opportunity to engage with the local authority, housing providers, and other relevant agencies to make suitable housing arrangements. While I acknowledge the Respondent's personal circumstances and sympathise enormously, it is not my responsibility as a private landlord to compensate for the lack of available social housing or the wider housing pressures within the local authority area. These matters fall properly within the remit of the Council and relevant public bodies. In addition, my current mortgage product on this property is coming to an end, and I am facing a significant increase in mortgage repayments. The ongoing delay in*

*recovering possession is therefore causing me increasing financial hardship and prejudice, and directly affects my ability to manage my financial obligations. I have acted reasonably and in accordance with my legal obligations throughout this process. The ongoing delay has already caused me substantial inconvenience and financial loss, particularly in relation to my ability to proceed with the intended sale of the property. Granting a further extension would place an unfair and disproportionate burden upon me and would undermine my lawful right to recover possession of my property. For these reasons, I respectfully request that the Tribunal declines the Respondent's application for any further delay in enforcement and allows any order for eviction to proceed in accordance with the statutory timescales.'*

## **5. Case Management Discussion**

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 11<sup>th</sup> February 2026.

The Applicant's representative attended the CMD.

The First Respondent did not attend the CMD but she was represented by her Representative, Andrew Wilson.

The Second Respondent did not attend the CMD. Andrew Wilson advised the Tribunal that he was not formally instructed by Mr Nicolson but he has discussed the application with him and he agreed with Christina McNab's position.

The Second Respondent had been sent a letter dated 17<sup>th</sup> December 2025 advising him of the CMD. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

### **5.1 Oral Representations by the Applicant's Representative:**

5.1.1 The Applicant is his son. His home is a four bedroom property and himself, his wife, his younger son, the Applicant and the Applicant's wife and baby ( aged seven months) reside in his property.

5.1.2 His son needs to buy a property large enough for his growing family. His son sold previous house and also needs to sell 15/2 Restalrig to enable him to buy a larger property.

5.1.3 He is friends with the Respondents and he has unsuccessfully tried to help them find alternative housing. However, his son needs to move forward with his life and to do this he needs to sell the Property 15/2 Restalrig, Edinburgh.

5.1.4 His son has a mortgage over 15/2 Restalrig, Edinburgh. The mortgage is a two year fixed rate mortgage which expires in April 2026. When the fixed rate mortgage comes to an end the mortgage will move to a higher rate of interest and the monthly mortgage payments will exceed the monthly rent payments.

5.1.5 He does not agree to Mr Wilson's request for the eviction order to be delayed until the end of May. As explained, any delay to the eviction order being granted will cost his son money.

5.1.6 The Respondent's rent account is more or less up to date.

## **5.2 Oral Representations by the First Respondent's Representative:**

5.2.1 The Property 15/2 Restalrig is a two bedroom property. Ms McNab and Mr Nicolson are approximately 43 years of age. No one else resides in the Property with them.

5.2.2 Ms McNab has made an application to the Council for rehousing and is working with a housing officer to find alternative housing.

5.2.3 Ms McNab suffers from osteoarthritis in her hips and Mr Nicolson suffers from a cognitive impairment. Due to their disabilities their housing application has been prioritised but the number of suitable houses available is limited as they either need a ground floor property or a property with a lift.

5.2.4 If the eviction order was delayed until the end of May it would increase the likelihood of them being able to find alternative suitable accommodation.

## **6. Decision**

### **6.1 Requirements of Section 109 of the Procedure Rules.**

(a) The Tribunal determined that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenants.

(iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

**(b)** The Tribunal determined that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The emails from Mov8 dated 5<sup>th</sup> June 2025 and Ralph Slater dated 2<sup>nd</sup> June 2025 produced were sufficient in their terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 21<sup>st</sup> February 2025 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 17<sup>th</sup> July 2025.

The commencement date of the lease was 1<sup>st</sup> March 2022. The Tenant had resided in the Property for more than six months and the application for eviction was based on Ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Notice to Leave had been hand delivered to the Tenant on 21<sup>st</sup> February 2025. The Notice to Leave stated that an application would not be made to the Tribunal before 17<sup>th</sup> July 2025. The Notice to Leave correctly gave the Tenant a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal determined that a copy of the required notice had been provided.

**(c)** The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

**5.2** The Tribunal determined that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.2.1 The Tribunal had a copy of the title of the Property ( MID19232) and established that Connor Merrilees and Rachael Merrilees are heritable proprietors of the Property and they are entitled to sell the Property.

5.2.2 Evidence had been provided that the Applicant intends to sell the Property. The Tribunal accepted the following evidence:

5.2.2.1 The email from Mov8 dated 5<sup>th</sup> June 2025.

5.2.2.2 The letter from Ralph Slater dated 2<sup>nd</sup> June 2025.

5.3 The Tribunal find as a matter of fact that the Applicants intend to put the Property up for sale once they obtain vacant possession.

5.4 The Tribunal were mindful of the decision of Lord Greene in the case of Cummings v Dawson (1942) 2 All ER 653 on matters to consider when determining reasonableness:

*'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'*

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicant needs to sell the Property to redeem the outstanding mortgage to enable him to buy a larger property for his growing family and the fact the Respondents have applied for alternative housing, their housing application has been prioritised and they do not oppose the eviction application.

5.5 The Tribunal considered the representations by Mr Wilson to delay the eviction order to 27<sup>th</sup> May 2026 and the representations by the Applicant's Representative in relation to this request. The Tribunal acknowledge that any delay in the date of the eviction order beyond the end of April will result in increased costs for the Applicant. The Tribunal considered that in all of the circumstances it is reasonable to delay the date of the eviction by approximately six weeks to 30<sup>th</sup> April 2026 to allow the Respondents more time to secure suitable alternative rehousing.

5.6 The Tribunal granted the eviction.

## **6. 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.**

Jacqui Taylor

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**Legal Member**

**11<sup>th</sup> February 2026**