



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/5691**

**Property at 29/8 Iona Street, Edinburgh, EH6 8SP (“the Property”)**

**Parties:**

**Tamsin Ansdell, 2 Whitrig Bog Cottages, Melrose, TD6 9DS (“the Applicant”)**

**Lisa Clark, 29/8 Iona Street, Edinburgh, EH6 8SP (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision - in absence of the Respondent**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondent in favour of the Applicant. The Tribunal also ordered a delay in enforcement of the eviction order until 22 April 2026 in terms of Section 16A(d) of the Procedure Rules 2017.**

**Background**

- 1. The Applicant seeks an eviction order in terms of Section 51 and ground 1 of Schedule 3 of the 2016 Act. A copy of the application was served on the Respondent, and the parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 14 August 2025 at 10am.**
- 2. Prior to the CMD both parties lodged written submissions. The Respondent indicated that the application was opposed on three grounds – the validity of the notice to leave, the lack of evidence in relation to the intention to sell and whether it would be reasonable to grant the order.**
- 3. The CMD took place on 14 August 2025. The Applicant was represented by Mr Gray. The Respondent participated.**

4. Ms Clark advised the Tribunal that her position was as set out in her written submission. The application is opposed as she wants to continue to reside at the property.
5. The Legal Member advised the parties that it seemed appropriate to deal with the challenge to the Notice to Leave before considering the eviction ground. If the Notice to leave had not been validly served and/or was invalid, the application would probably be refused on that basis. Following further discussion, the parties were advised that the CMD would be adjourned so that they could consider the law and lodge additional submissions regarding the validity of the notice and the competency of the application. The Tribunal would then issue a preliminary decision on this aspect of the defence to the application.
6. Ms Clark told the Tribunal that she could not understand the Applicant's frantic desire to sell the property. She said that she has been a good tenant and would be willing to pay an increased rent as she is very keen to stay there. She said that she has only had a cursory look for alternative accommodation as she hopes to be successful in her defence to the application. She confirmed that she has lived at the property for 4 years, owned her own home in the past and, before renting the property, had lived in a friend's house. She had considered buying the property but is unable to obtain a mortgage. She confirmed that she is in employment. Mr Gray told the Tribunal that the Applicant has instructed a selling agent, and he has submitted evidence of this. However, the property has not been valued as the Applicant has had difficulty getting access.
7. Having considered the parties' preferences in relation to the format of an evidential hearing, if required, the Tribunal determined that a video conference hearing should take place as this could be accommodated by both parties, would minimise inconvenience and expense but allow the parties and Tribunal to see each other.
8. The Tribunal adjourned the CMD and issued a direction to the parties. The Applicant lodged a written submission in relation to the Notice to leave. The Respondent then lodged a written submission which stated that she accepted that the Notice to leave was valid and had been validly served. The Tribunal noted that this part of the defence to the application had been withdrawn and the parties were notified that a hearing would be scheduled, restricted to whether the ground is established and the question of reasonableness.
9. The parties were notified on 30 December 2025 that the Hearing would take place by video conference on 12 February 2026 at 10am. At 9am on 12 February 2026, the Respondent sent an email to the Tribunal which stated that she was unable to attend, had recently been diagnosed with cancer and had been notified the previous day that she had to attend an urgent hospital appointment on the day of the Hearing. She did not provide any details and did not request a postponement. A reply was issued at 9.30am which asked her to confirm if a postponement was required and to provide evidence of the

appointment if this was the case. The Respondent replied to the caseworker at 9.47am. She said that the Hearing should proceed in her absence and that she had already provided her views. However, this email was not received by the Tribunal until Monday 16 February 2026.

10. The Hearing took place on 11 February 2026. The Applicant participated and was represented by Mr Smart.

## **The Hearing**

11. The Tribunal advised the Applicant and Mr Smart about the email from the Respondent. The Applicant confirmed that she wanted to proceed with the Hearing. The Tribunal noted that the Respondent had not requested a postponement and had not provided evidence that she was unable to participate. The Tribunal determined that the Hearing would proceed.
12. Ms Ansdell told the Tribunal that the property is a small, two bedroom tenement flat. She purchased it in 2003 and has lived there for two separate periods of time, when she was single and had no children. She currently lives in a three bedroom house with her husband and their children aged 10 and 4. Her stepdaughter who is 17 also resides there. Her stepson who is 23 stays occasionally and her mother in law stays one night per week for childcare reasons. The plan is to sell both properties to buy a larger one as they need 4 bedrooms. Ms Ansdell said that the property is worth about £200000, maybe more. She owns the lender £128000. She plans to use the equity to help fund the purchase of a larger house. More importantly, she has to pay off the mortgage because she has been advised that she is not eligible for a mortgage for a house purchase until she does so. As a result, any current mortgage application can only be based on her husband's income, and this means that cannot purchase a property which is large enough to meet their needs. In response to further questions from the Tribunal Ms Ansdell said that her monthly mortgage payment is £623. She also now has factoring charges, landlord insurance, repairs and annual safety checks. A lot of the white goods and other items in the property are now needing to be replaced. Ms Ansdell said that both she and her husband work full time. She stated that she lived in the property when she bought it for about 5 years and then rented it out for about 2 years. She lived there again until 2014, and it has been rented out since then. She has offered to sell the flat to the Respondent who has said that she cannot do so but would pay a higher rent. However, this would not solve the Applicant's financial problems.
13. In response to questions about the Respondent, Ms Ansdell said that she has lived at the property since 2021 and lives there alone. There are no rent arrears although the rent was late last month. The Respondent told her that she had been diagnosed with cancer and was on half pay. She said that she was undergoing treatment. Ms Ansdell told the Tribunal that her husband mostly deals with the tenancy for her. She feels that the property is not being well looked after. The Respondent failed to report a drainage issue. They only found out when the neighbour reported a leak. Her husband discovered a major blockage. While he was there, he took some photographs and the Applicant is

concerned about what these show. The flat did not look clean and the appliances in the kitchen all appeared to be switched off and not being used. There was a cover over the hob, and the dishwasher and fridge were not in use. However, the Respondent is definitely still living there. Ms Ansdell does not know if the Respondent has spoken to the Local Authority, but she has previously spoken to Shelter and knows her rights. She is also quite well paid.

14. In relation to the question of a delay in enforcement of an eviction order, if granted, Ms Ansdell said that she wants to sell as soon as possible. However, she would accept a delay as she would still have a date to work towards.
15. In response to questions from Mr Smart, Ms Ansdell said that she has investigated the possibility of selling with the Respondent in occupation as tenant, but the sale proceeds are likely to be 25% less than with vacant possession. This is not an option, particularly as she has an interest only mortgage. Currently, her 17 year old stepdaughter has to share a bedroom with a much younger sibling, which is not good for her mental health and wellbeing. She has no privacy and nowhere to study. The current situation has also caused the Applicant to develop mental health issues, and she is currently under the care of her doctor and receiving medication. She has looked in her local area and there have been suitable properties on the market which they could afford, if the rental property is sold. She referred to the schedule of income and outgoings which has been lodged.
16. In his final submission, Mr Smart invited the Tribunal to find that the ground is established and that it would be reasonable to grant the order. He referred to the documents lodged in support of the ground. He said that the Applicant has explored the other options, but that the Respondent has indicated that she cannot purchase the property and the price difference if it is sold with her as tenant is too substantial. The Applicant's current living situation is unsustainable as the family is living in overcrowded conditions. The Respondent is single and in employment with no dependants. She will be able to seek assistance from the Council if she cannot find alternative accommodation.

### **Findings in Fact**

17. The Applicant is the owner and landlord of the property.
18. The Respondent is the tenant of the property.
19. The tenancy is a private residential tenancy.
20. The Applicant intends to sell the property.
21. The Applicant served a Notice to leave on the Respondents on 4 September 2024.

22. The Respondent resides at the property alone and is in employment.
23. The Respondent has told the Applicant that she has been diagnosed with cancer.
24. The Applicant currently resides in a three bedroom property with her husband and three children under 18 years of age. The property is inadequate for their needs as their 17 year old daughter has to share a bedroom with a younger sibling. As a result, she has no privacy and nowhere suitable to study.
25. The current living arrangements have caused mental health problems for the Applicant and her step daughter.
26. The Applicant cannot afford to purchase a larger home for her family unless she sells the property and repays the mortgage.
27. The Applicant has concerns that the Respondent is not looking after the property but there are no arrears of rent.

### **Reasons for Decision**

28. The Tribunal found the Applicant to be credible and reliable. Her evidence was largely supported by the documents lodged with the application and prior to the hearing. The Tribunal did not hear evidence from the Respondent. However, the Respondent stated at the CMD that the Applicant had not provided sufficient evidence of the intention to sell. She did not claim that the Applicant does not intend to do so. She also stated that it would not be reasonable to grant the order, having regard to the parties' circumstances.
29. The application was submitted with a Notice to Leave dated 3 September 2024, together with Sheriff Officer certificate of service which establish that it was served on the Respondent on 4 September 2024. The Notice states that an application to the Tribunal is to be made on ground 1, the landlord intends to sell the let property. The Notice states that the earliest date that an application can be made to the Tribunal is 28 November 2024. The application to the Tribunal was made after expiry of the notice period.
30. In her initial submissions lodged prior to the CMD, the Respondent challenged the validity of the Notice to Leave. She said that the method of service was invalid and that the date in Part 4 of the Notice was incorrect. The validity of the Notice was discussed at the CMD, and the parties were then given the opportunity to consider the position and to make further submissions. Having considered the Applicant's further submission, as well as the legislation and a relevant Upper Tribunal decision, the Respondent withdrew her challenge to the Notice. The Tribunal is satisfied that the Notice is valid and that Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section

56 of the 2016 Act.

31. Section 51(1) of the 2016 Act states, “The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”
32. Ground 1 of schedule 3 (as amended) states, “(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.”
33. From the documents submitted the information provided at the CMD and the Applicant’s evidence at the hearing, the Tribunal is satisfied that the Applicant intends to sell the property and that part 1 of ground 1 is established. The Tribunal noted that the Applicant has instructed agents to deal with the sale and has obtained a valuation. She also provided the Tribunal with her reasons for selling the property and why this must be with vacant possession.
34. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
  - (a) The rental income from the property does not cover all the outgoings associated with it. These include mortgage payments, factoring charges, insurance and repairs and maintenance.
  - (b) The Applicant is unable to purchase a larger home for her family until she sells the property. She requires the equity in the property to reduce her debt and/or contribute to the purchase. In addition, she requires to repay the mortgage over the property before she will be considered for another mortgage.
  - (c) The Applicant’s current accommodation is inadequate for the family of five currently living there. Although the Applicant mentioned her mother in law and 23 year old stepson, the Tribunal noted that neither live at the property. However, the Tribunal accepted the Applicant’s evidence that it is unsatisfactory that a 17 year old has to share with a much younger sibling and that this has had a negative impact on her.
  - (d) The stress of the current living arrangements has also had an impact on the Applicant’s mental health.
  - (e) The Respondent did not attend the Hearing and did not request a postponement. In her written submissions, she provided very little information about her circumstances. At the CMD she told the Tribunal that she is in employment. She also said that she had only had a very cursory look for alternative accommodation as she wanted to stay in the property. However, she did not indicate that it would be difficult for her to find somewhere else to live

and confirmed that she could afford to pay a higher rent. There are no rent arrears in relation to the property. The Respondent recently told both the Applicant and the Tribunal that she has been diagnosed with cancer. However, she did not provide any evidence to support the statement or any details about treatment or prognosis.

35. Having regard to the available information and evidence, the Tribunal is satisfied that the Applicant has established that it would be reasonable to grant the order. The Applicant provided convincing evidence that she requires to sell the property, due to pressing financial and personal reasons. The Tribunal is persuaded that the impact on the Applicant of having to sell the property with a sitting tenant or continue as a landlord outweighs the impact on the Respondent of the order being granted. Tribunal also notes that the Notice to leave was served in September 2024. As a result, the Respondent has been aware for almost 18 months that the Applicant wants to recover possession of the property.
36. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 1 has been established. For the reasons outlined in paragraphs 34 and 35 the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.
37. The Applicant told the Tribunal that she hopes to sell the property as quickly as possible. However, she did not strenuously oppose the suggestion that a delay in enforcement might be ordered. The Applicant said that she needs a date to work towards in terms of getting the house on the market. Although not verified, the Tribunal notes that the Respondent may be undergoing medical treatment. In the circumstances, the Tribunal determines that a delay in enforcement until 22 April 2026 would be appropriate.

## **Decision**

38. The Tribunal determines that an eviction order should be granted against the Respondent.

## **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.**

Josephine Bonnar

