



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/25/3570

Re: Property at Bagira, The Row, Letham, Cupar, KY15 7RS (“the Property”)

Parties:

Mrs Sheila Jane McCann, Cunnoquhie Mill House, Cunnoquhie Mill, Ladybank, KY15 7RU (“the Applicant”)

Mrs Cheryl Weatherly Binnie, Bagira, The Row, Letham, Cupar, KY15 7RS (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Helen Barclay (Ordinary Member) (“the tribunal”)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined that the application for an order of eviction be granted.

Background

1. On 19 August 2025, the Applicant’s agents submitted an application to the First-tier Tribunal for Scotland seeking an order of eviction on Ground 4, Part 3 of Schedule 3 of the 2016 Act have been met.
2. On 27 January 2026, the Applicant’s agents submitted another application and sought to amend the original application by inclusion of an additional ground which was Ground 12, Part 3 of Schedule 3 of the 2016 Act: the Respondent is in rent arrears over three consecutive months.
3. On 14 September 2025, the original application was accepted for determination by the Tribunal.

4. A case management discussion was held by audio conference on 4 March 2026.

The case management discussion

5. Ms Dorka Llonka, solicitor, represented the Applicant who was not present.
6. The Respondent was present.
7. The Legal Member explained the purpose of a case management discussion.
8. Ms Llonka invited the tribunal to determine the matter without a Hearing and to issue an eviction order under Rule 101 of the Tribunal Rules on the grounds that the conditions set out in Grounds 4 and 12, Part 3 of Schedule 3 of the 2016 Act have been met.
9. Mrs Binnie stated that she had stopped paying rent as a consequence of damages which occurred to her personal belongings for reasons which she attributed to the Applicant. She did not accept that all the rent arrears were lawfully due.
10. Mrs Binnie had made written representations of 9 February 2026 in which she stated that she wanted to move from the Property. Mrs Binnie restated this and said that the difficulties she had encountered in moving from the Property were that there are still outstanding matters to be determined by her insurance company in relation to the damage to her belongings. She said that she hoped that these issues would be resolved in a matter of weeks.
11. Mrs Binnie said that she accepted that Ground 4 was met and, on the basis of that, would offer no opposition to the granting of an order of eviction which she said would be reasonable because she had found somewhere else to move to. She said that she would appreciate sufficient time to allow her to facilitate this.
12. After some discussion, Ms Llonka said that she would not insist on an order of eviction on Ground 12. She said that she would also have no objection to delaying execution of the order until 17 April 2026.

13. Findings in Fact

- (i) The Applicant and the Respondent entered into a private residential tenancy agreement in respect of the Property.
- (ii) The tenancy commenced on 1 August 2023.
- (iii) The monthly rent due under the private residential tenancy is £950.
- (iv) The Applicant intends to live in the Property.

14. Finding in Fact and Law

- (i) It is reasonable to grant the order of eviction.

15. Documents before Tribunal

- (i) Private residential tenancy agreement.
- (ii) Copy Notice to Leave dated 7 May 2025.
- (iii) Copy Section 11 intimation to local authority.
- (iv) Formal offer for Applicant's current residential property.
- (v) Pre -sale agreement between the Applicant and her husband in respect of their matrimonial home.
- (vi) Letter from Applicant's general practitioner dated 4 February 2026.

16. The Law

Section 51 of the 2016 Act:

First-tier Tribunal's power to issue an eviction order

(1) The First-tier 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.

(2) The provisions of schedule 3 stating the circumstances in which the Tribunal may find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.

(3) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.

(4) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

Ground 4, Part 3 of Schedule 3 of the 2016 Act

Landlord intends to live in property

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 subparagraph (2) includes (for example) an affidavit stating that the landlord has that intention.

Applicant's position

17. The Applicant's position was set out in written representations. She is an elderly woman who is required to sell her residential property because she is separating from her husband. The tribunal had sight of a pre-sale agreement entered into between the Applicant and her husband in relation to the sale of the matrimonial home. The Applicant owns no other property and her position is that she wants to adapt the Property to meet her specific needs. The tribunal had sight of a letter from the Applicant's doctor which set out medical issues which the Applicant has.

The Respondent's Position

18. Mrs Binnie was clear in stating that she wanted to leave the Property but had been unable previously to do so because of unresolved issues arising from an insurance claim relating to damage to her possessions.

19. Mrs Binnie said that, although she harboured some doubts about whether the Applicant will live in the Property, she was prepared to accept that it was her intention to do so.

Determination of whether Ground 4 had been met

20. The tribunal was satisfied that the Applicant intended to make the Property her principal place of residence. It was satisfied with the evidence presented to it in relation to the Applicant's separation and need to recover the Property.

21. The tribunal determined that Ground 4 had been met and that it required to consider if it was reasonable to grant the order of eviction.

Reasonableness

22. The Applicant's representations state that she has no other properties other than the Property and a share in the matrimonial home. She is elderly and has health issues. She is currently separating from her husband and she has stated that she requires the Property to make it her place of residence.
23. Mrs Binnie said that she wants to move from the Property and that it is only because of outstanding issues with regard to her insurance claim that she has not done so.

Reasons for Decision

24. The tribunal saw no reason for determination of the application to be continued to a Hearing. There was no dispute between the parties with regard to Ground 4 being met.
25. The tribunal was satisfied that the Notice to Leave was in appropriate terms and had been served on the Respondent. The tribunal was satisfied that the appropriate notice had been served on the local authority.
26. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness, a balancing exercise requires to be undertaken.
27. The Applicant had clear need for somewhere to live and it was reasonable that she should recover the Property.
28. The Respondent wanted to move and accepted that it was reasonable for the Applicant to recover the Property to live in it. The Respondent was clear in stating that she wanted to move from the Property.

Date of Eviction.

29. The Applicant's solicitor indicated that she had no objection to the date of eviction being deferred to 17 April 2026 and the tribunal considered it reasonable to do so.

Decision

30. The tribunal determined that the application be granted and that an eviction order be made.

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.

**Martin J. McAllister
Legal Member
4 March 2025**