



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/25/3029

Re: Property at 7 King's Road, Tranent, East Lothian, EH33 2EJ ("the Property")

Parties:

Mrs Emma Taylor, Mr Richard Taylor, 9 Kellie Place, Dunbar, East Lothian, EH42 1GF ("the Applicant")

Ms Michelle Haye, 7 King's Road, Tranent, East Lothian, EH33 2EJ ("the Respondent")

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the provisions of paragraphs 1 and 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") are met in this case.

The Tribunal therefore made an eviction order under section 51 of the 2016 Act.

In terms of section 54(1) of the 2016 Act, the private residential tenancy between the parties will end on 22 March 2026.

Background

- 1 This is an application for an eviction order under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules"). The Applicant relied upon ground 1 as the ground for possession, stating her intention to sell the property.
- 2 The application was accepted to proceed to a case management discussion ("CMD") to take place by teleconference on 27 January 2026.

- 3 On 4 November 2025 the Tribunal received a request from the Applicant to include ground 12 of schedule 3 of the 2016 Act in the application. The Applicant submitted written submissions, a rent statement, redacted bank statements, and a copy letter from the Applicant to the Respondent regarding rent arrears. The Tribunal advised the Applicant that her request would be considered at the CMD.
- 4 The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice along with a copy of the case papers was served upon the Respondent on 8 January 2026 and required her to submit any written representations in response to the application to the Tribunal by 28 January 2026. No written representations were received from the Respondent in advance of the CMD.

The CMD

- 5 The CMD took place on 19 February 2026 by teleconference. Mrs Taylor appeared on behalf of both Applicants. The Respondent also joined the call.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet confirming the Applicants' ownership of the property and proof of landlord registration;
 - (iii) Private residential tenancy agreement between the parties;
 - (iv) Notice to leave and proof of delivery to the Respondent by sheriff officers;
 - (v) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 and proof of delivery to the local authority;
 - (vi) Email correspondence between the Applicants and Future Property Auctions;
 - (vii) Email correspondence between the Applicants and East Lothian Council;
 - (viii) Letter from Premier Property Lawyers confirming instructions to sell the property; and
 - (ix) The Applicants' request to include ground 12 in the application together with supporting documents.
- 7 The Tribunal heard submissions from the parties. The following is a summary of the key elements of the submissions relevant to the Tribunal's determination of the application.
- 8 Mrs Taylor explained that she suffers from a longstanding degenerative condition and is planning to retire from work. She is currently in full time employment but is finding it difficult. She is 57 years old and will require an income to sustain her until she reaches pension age. She bought the property as part of her retirement planning. She requires to sell it to recoup her investment. She has a portfolio of four properties that she intends to sell. She is doing so one by one as she can no longer manage being a landlord. She has

explored selling the property back to the council with the Respondent in situ. The council has told her they will not buy back the property without vacant possession. Mrs Taylor therefore has no option but to recover possession of the property.

- 9 Mrs Taylor addressed the Applicants' request for ground 12 to be included in the application. She explained that the Respondent had stopped paying rent in April 2025. The property has a mortgage. There has been a detrimental impact on Mrs Taylor because of the loss of income. She has had to source funds from her own employment income to cover the mortgage. The arrears have now reached £6050.
- 10 The Respondent apologised for not paying the rent. She has had some health difficulties herself. She apologised for putting Mrs Taylor in this position. The Respondent indicated that she did not wish an eviction order to be granted but went on to say that she understood the Applicants' position and why the property needs to be sold, stating that it was "*only fair*" that Mrs Taylor "*gets what she needs*". The Respondent did not dispute the Applicants intention to sell the property. She outlined the support she has in place from the council who are fully aware of the Tribunal proceedings. She has been referred by the council for an occupational health assessment. She will require a ground floor property because of her mobility issues. She spoke with her contact at the council the day prior to the CMD and will be contacting them again once she has the outcome. It is likely she will be rehoused in homeless accommodation in the first instance.
- 11 The Respondent did not dispute the arrears and explained that she fully intends to pay the sums due. She resides in the property with her 23-year-old son. Neither of them is in employment. The Respondent cannot work due to her health. She stopped paying rent because her son moved out for a period and was no longer contributing to the household. She used the housing element of her universal credit for other household expenses.
- 12 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the proceedings and confirming the outcome.

Findings in fact and law

- 13 The Applicants are the owners and landlords, and the Respondent is the tenant, of the property in terms of a private residential tenancy agreement, which commenced on 30 June 2021.
- 14 The Applicants have given the Respondent a notice to leave within the meaning of section 62 of the 2016 Act. The notice to leave includes ground 1. The notice to leave was served upon the Respondent by sheriff officers on 11 April 2025.
- 15 The Applicants have given the local authority a notice under section 11 of the Homelessness etc (Scotland) Act 2003 at the time of making this application.

- 16 The Applicants are entitled to sell the property.
- 17 The Applicants intend to sell, or market the property for sale, within three months of the Respondent ceasing to occupy.
- 18 The first named Applicant suffers from a longstanding degenerative condition. The first named Applicant is planning to retire as she will no longer be able to work due to her condition.
- 19 The property was bought as part of the Applicants' retirement planning. The first named Applicant requires to sell the property to provide her with an income for retirement.
- 20 The Applicants' have a rental portfolio of four properties. The Applicants are selling off each property one by one. The Applicants wish to leave the private rented sector.
- 21 The rent due under the terms of the tenancy agreement is £550 per month.
- 22 The Respondent stopped paying rent to the Applicants on 24 April 2025. As at the date of this decision, there are rent arrears in the sum of £6050.
- 23 The Applicants have written to the Respondent with details of the rent due and outstanding arrears, have offered to agree payment plans, and have directed the Respondent to agencies for advice and support.
- 24 There is no evidence that the arrears are due to a failure or delay in the payment of a relevant benefit. The Respondent is in receipt of universal credit with a housing element. The Respondent has used the housing element to cover other expenses instead of paying it towards her rent.
- 25 The Respondent resides in the property with her 23-year-old son.
- 26 The Respondent cannot work due to her health. The Respondent has mobility issues.
- 27 The Respondent has support in place from the council, who are assisting her with her housing situation. The council will aid the Respondent if an eviction order is granted. The Respondent will be rehoused by the council, at minimum in homelessness accommodation.
- 28 It is reasonable to make an eviction order.

Reasons for decision

- 29 The Tribunal was satisfied that it could make relevant findings in fact to reach a decision based on the documentary evidence and submissions from the parties at the CMD, and that to do so would not be contrary to the interests of the

parties in this case. It was clear that the substantive facts of this case were not in dispute between the parties and the Tribunal did not therefore identify any issues to be resolved that would require an evidential hearing to be fixed.

- 30 Section 51 of the 2016 Act provides that “*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.*”
- 31 Section 52 of the 2016 Act goes on to state that “*an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.*” The Tribunal had before it a copy of a notice to leave in the prescribed form that had been sent to the Respondent which cites ground 1 of schedule 3 of the 2016 Act. The Tribunal was also satisfied that the Applicants had sent notice under section 11 of the Homelessness etc (Scotland) Act 2003 to the local authority in accordance with the requirements of section 56 of the 2016 Act.
- 32 In terms of section 52(5) of the 2016, the Tribunal may not consider a ground for eviction which was not stated in the notice to leave, unless it “*has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought*”.
- 33 The Applicant has requested the Tribunal also consider the inclusion of ground 12 in this application. She has provided evidence in support of this, including a rent statement that shows no rent has been paid by the Respondent for approximately 10 months. The arrears did not begin to accrue until after the notice to leave was given to the Respondent, therefore the Applicant would not have had cause to include the ground in the notice to leave. However, the arrears were now a serious issue as evidenced by the fact that the Respondent had stopped paying rent entirely. The Respondent had not sought to oppose the Applicant's request for an additional ground. The Tribunal therefore determined to permit ground 12 to be included in the application.
- 34 The Tribunal went on to consider the wording of the eviction grounds in this case.
- 35 The terms of ground 1 are contained in paragraph 1 of schedule 3 of the 2016 Act:-

“Landlord intends to sell

- 1(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.

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”

36 The terms of ground 12 are contained within paragraph 12 of schedule 3 of the 2016 Act:-

“Rent arrears

12 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2)

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) for three or more consecutive months the tenant has been in arrears of rent, and

(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit, and

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

(ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

(6) Regulations under sub-paragraph (4)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.”

- 37 The Tribunal determined based on the documents before it and the submissions from Mrs Taylor at the CMD that the Applicants are entitled to sell the property as the owners, and that they intend to do so within three months of the Respondent vacating. Their reasons for selling the property, as outlined in the Tribunal's findings in fact, were compelling and supported by the documentary evidence produced. The Respondent did not dispute their intention to sell.
- 38 The Tribunal therefore determined that paragraph 1(2)(a) and (b) of schedule 3 of the 2016 Act were met.
- 39 The Tribunal further determined that the rent account has been in arrears for three or more consecutive months based on the rent statement produced by the Applicants which confirms that no rent has been paid by the Respondent since April 2025. The Respondent did not dispute this fact. The Tribunal therefore determined that paragraph 12(3)(a) was met.
- 40 The Tribunal went on to consider the reasonableness of making an eviction order in this case in accordance with the terms of paragraphs 1(2)(c) and 12(3)(b) of schedule 3 of the 2016 Act.
- 41 The Tribunal considered the Applicants' property rights as the heritable owners, and their reasons for selling the property. The Tribunal noted that the first named Applicant's health is in decline due to her degenerative condition and she is planning to retire. The sale of the property, along with the other properties in her portfolio, will sustain her until she receives her state pension.
- 42 The Tribunal gave weight to both the level of arrears and the prolonged period during which no rent has been paid by the Respondent. There is no evidence that the arrears are a result of any failure or delay in the payment of a relevant benefit. The Respondent confirmed that she is in receipt of universal credit with a housing element and did not indicate any backdate may be due. The Tribunal was also satisfied based on the correspondence produced that the Applicants had sufficiently complied with the rent-arrears pre-action protocol by providing the Respondent with the opportunity to agree a payment plan and directing her to agencies for advice and support.
- 43 The Tribunal considered the impact of the arrears on the Applicants. The arrears have now reached a significant level and the Tribunal accepted that it will be causing the Applicants a level of stress, particularly as they have the ongoing burden of mortgage payments and associated property costs.
- 44 The Tribunal carefully considered the Respondent's circumstances. The Tribunal noted her living situation, and her health problems. Whilst the impact of eviction upon the Respondent was a cause for concern, the Tribunal considered this was mitigated by the level of support the Respondent has in place from the council regarding her housing situation. The Tribunal was

satisfied that she would have assistance from the council if an eviction order was granted, and that she would be offered rehousing under the council's statutory obligations.

- 45 The Tribunal found it difficult to accept the fact that no rent had been paid by the Respondent in nearly ten months, particularly as she had been in receipt of the housing element of universal credit during that time. The Respondent had cited her son moving out as the reason for this. However, the Respondent had confirmed her son was now back residing with her. There appeared to be no reason as to why rent continued to go unpaid. The Tribunal found it more credible that the Respondent had simply decided to stop paying rent upon receiving the notice to leave from the Applicant.
- 46 Accordingly, having carefully considered all the circumstances of this case as they pertain to reasonableness in terms of grounds 1 and 12, the Tribunal concluded that the balance weighed in favour of making an eviction order. The Tribunal therefore determined that the provisions of paragraphs 1 and 12 of schedule 3 of the 2016 Act had been met and made an eviction order under section 51 of the 2016 Act.
- 47 The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

19 February 2026

Legal Member/Chair

Date