



**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 and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/24/4497**

**Re: Property at Home Cottage, Wester Covesea Farm, Elgin, IV30 5QX (“the Property”)**

**Parties:**

**Ms Kirsti Sinikka Paterson, Covesea House, Wester Covesea, Elgin, IV30 5QS (“the Applicant”).**

**Mr James Whittle, Solicitor, R & R Urquhart LLP, Representative of the Applicant.**

**Mr Erin Allan, Miss Natalie Laing, Home Cottage, Wester Covesea Farm, Elgin, IV30 5QX (“the Respondent”).**

**Ms Sonya Hayward, Moray Citizens’ Advice Bureau, Representative of the Respondents.**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Ann Moore (Ordinary Member) (“the tribunal”)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order against the Respondent be granted.**

**Background**

1. This is an application for recovery of the Property. The application is dated 3 July 2025. The Applicant is seeking recovery under Ground 11, Part 1 of

Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. This ground states that it is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

2. A case management discussion was held by teleconference on 30 April 2025. Both parties and their representatives were present. Determination of the Application was adjourned to an in-person hearing.
3. A Direction was issued on 30 April 2025, which required parties to provide details of witnesses and any evidence they intended to rely on.
4. Subsequent to the case management discussion, both parties submitted written representations.

### **The Hearing**

5. A Hearing was held in Elgin Sheriff Court on 28 January 2026.
6. The Applicant was present and was represented by Mr Whittle, solicitor.
7. The Respondents were present and were represented by Ms Hayward of Moray Citizens Advice Bureau.

### *Preliminary Matters*

8. Mr Whittle referred to an affidavit of the Applicant which he had submitted and invited the tribunal to adopt this as the Applicant's evidence. He said that the Applicant's position was that the Respondents had breached their obligations under the tenancy agreement. He said that her primary position was that Condition 17 of the private residential tenancy agreement had been breached and that the Respondents had not taken reasonable care of the Property. He said that Condition 17 was the overarching breach but that there were also breaches of Clauses 17, 35 and 37.
9. Ms Hayward said that the Respondents accepted that there had been breaches of their contractual obligations in terms of the tenancy agreement but did not accept the "*scale*" set out by the Applicant in her affidavit.
10. Ms Hayward referred to the Respondent's written submission dated 16 July 2025, in which it was stated that the Respondents accept that the Respondents have not fulfilled their duty in respect of Condition 17 of the tenancy agreement but that they "*would like to save their tenancy and are willing to work with the applicant to get their tenancy back on track.*"

11. Ms Hayward said that, although it was accepted that the eviction ground was met, the Respondents' position was that it was not reasonable that an order of eviction be granted.

### **Documents before the tribunal**

- 12.1 Copy of the private residential tenancy agreement for the Property dated 3 and 4 July 2021 showing the commencement of the tenancy to be 13 July 2021 and the monthly rent to be £390. The tenancy agreement showed the tenants to be the Respondents.
- 12.2 Affidavit of the Applicant dated 30 June 2025.
- 12.3 Notice to Leave dated 7 June 2024 and delivered by recorded delivery.
- 12.4 Notice to the local authority in terms of Section 11 of The Homelessness etc. (Scotland) Act 2003 dated 26 September 2024.
- 12.5 Print of Sasine Register showing ownership of the Property.
- 12.6 Written representations by the Respondent's Representative dated 19 March 2025, 3 July 2025, 16 July 2025 and 20 January 2026.
- 12.7 Written representations by the Applicant's Representative dated 22 April 2025 and 30 June 2025.
- 12.8 Communications between the Applicant and the Respondent.

### **Findings in Fact**

- 13.1 The Applicant is the owner of the Property.
- 13.2 The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property on 3 and 4 July 2021.
- 13.3 The start date for the tenancy was 13 July 2021.
- 13.4 The monthly rent for the Property is £390.
- 13.5 The Applicant gave the Respondent Notice to Leave which was served on 7 June 2024.
- 13.6 The Applicant has given notice to the local authority in terms of Section 11 of the Homelessness etc. (Scotland) Act 2003.
- 13.7 The Respondents reside at the Property.

13.8 The Respondents keep three cats and two dogs at the Property.

13.9 The Respondents allow their dogs to foul the garden of the Property.

13.10 The Respondents have failed to adequately take care of the Property and its garden.

13.11 The Respondents have failed to comply with Conditions 17, 35 and 37 of the private residential tenancy agreement dated 3 and 4 July 2021.

## **Findings in Fact and Law**

14.1 The Private Residential Agreement dated 30 January 2019 contains eviction grounds including Ground 11: *“It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.”*

14.2 The Respondents have failed to comply with obligations under the tenancy.

14.3 The Notice to Leave which was dated 7 June 2024 referred to the Ground 11 which is being relied on by the Applicant as the reason for seeking recovery of the Property.

14.4 It is reasonable to grant the order of eviction.

## **The Law**

The following are provisions of the Private Housing (Tenancies) (Scotland) (Act) 2016

*Section 51: 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.*

*(introduced by section 51)*

## **Schedule 3, Part 11**

### **Breach of tenancy agreement**

*11(1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

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

*(a) the tenant has failed to comply with a term of the tenancy, and*

*(b) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*

*(3) The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

### **Evidence**

15. The tribunal had regard to the documentation which had been submitted by the parties.

16. The matters before the tribunal were focused. The Respondents accepted that the eviction ground had been met, but their position was that it was not reasonable, on account of that ground, for the order of eviction to be granted. It was also the Respondent's position that the extent of the breach of the private residential tenancy agreement was more limited than that set out by the Applicant.

17. The Applicant's affidavit set out her position and she also gave evidence.

18. Both Respondents gave evidence.

### *Matters not in dispute*

19. It is useful to set out matters which were agreed.

20. The Property is situated in an estate which had been purchased by the Applicant and her late husband. It is now owned wholly by the Applicant. The estate consists of a house occupied by the Applicant, and there are 10 residential and 21 commercial units which are let out.

21. The Property is situated close to the house occupied by the Applicant.

22. Condition 35 of the private residential tenancy agreement states that the tenant is not allowed to have pets without the written consent of the landlord.

23. The Respondents keep two dogs and three cats in the Property.

24. The Applicant consented to the Respondents keeping two cats in the Property, notwithstanding the terms of the private residential tenancy agreement. The Applicant did not give permission for the Respondents to keep three cats and two dogs in the Property.

25. Condition 17 of the private residential tenancy agreement obliges the tenant to take reasonable care of the Property.

26. Condition 37 of the private residential tenancy agreement obliges the tenant to maintain the garden and trim the hedge, and to have the chimney swept twice a year if in use, and once a year if not in use.

### *Matters in dispute*

27. The Applicant's evidence was that the Property had not been kept in good condition by the Respondents. She gave oral evidence in support of that and referred to photographs which had been taken during an inspection.

28. The Respondents accepted that the Property could be better cared for but said that its condition at the commencement of the tenancy was not good. Ms Laing said that she would be prepared to instruct a cleaner and that the Respondents had received a quotation for this. She said that the cleaner had not been instructed.

29. Mrs Doliana McKay, grandmother of Mr Allan gave evidence and said that, at the start of the tenancy, the Property was not clean, the carpets were dirty, the bathroom had urine staining and the garden was untidy and overgrown.

30. Ms Laing said that they had to have the carpets shampooed when they took entry to the Property.

31. The Applicant disputed that the garden was in poor condition at the start of the tenancy and said that the Respondents had allowed it to be overgrown and that the grass was not cut. The Applicant disputed that the Property was in poor condition at the start of the tenancy.

32. Ms Laing said that the Respondents have an arrangement for someone to cut the grass.

33. The Applicant said that she had a public health background and was concerned that the Respondents had dogs which they allowed to foul the garden of the Property. She referred to photographs which had been submitted and which she said evidenced this. She said that, when she recovered the Property, she would have to arrange for the topsoil in the garden to be replaced. She also said that dog dirt would be carried into the house and that this would contaminate the carpets.

34. The Respondents said that they walked their dogs but accepted that the dogs did use the garden as a toilet. Ms Laing said that she and her partner “*tried to lift the dog dirt two or three times a week.*” Ms Laing said that she did not dispute the photographs which showed dog dirt in the garden.

35. Ms Hayward referred the tribunal to a written request by the Respondents to be allowed to keep dogs in the Property. She said that this had been a request for retrospective consent, and that it had not been granted.

36. Ms Laing was questioned on possible rehoming of the dogs but she said that she had not been able to do so. She said that she needed her dogs for her “*mental health*” because having them made her go out. Ms Laing said that she intended to keep the dogs.

37. Ms Laing said that she wanted to keep the tenancy and was prepared to work with the Applicant to ensure that she could do so.

38. Parties gave conflicting evidence on the use by the Respondents of wood from a wood store which belonged to the Applicant, and the use of a fire in the Property. The Applicant said that they had no permission to do so and the Respondents that they used a limited amount for kindling, but that they no longer used the fire. The Applicant disputed this and said that the chimney was not been swept and that this was in contravention of the tenancy agreement. The Respondents’ evidence was that the chimney did not have to be swept if the fire was not being used.

39. Parties gave conflicting evidence on whether the Property was adequately ventilated.

40. The Respondents said that it was only they who lived in the Property. Mr Allan is employed as a baker and Ms Laing is employed as a carer. They said that they tried to get alternative accommodation in the area but that they could not find anything within their budget.

41. The Applicant said that she now needs more help and that she would like to recover the Property because her niece and her husband could move into it and be close to her if she needed assistance during the night. The Applicant said that the Property is only 100 metres or so from where she lives. She said that her niece would be inheriting the estate and that it would be good to have her near so that she could learn about the running of it. After an intervention by Ms Hayward, the Applicant conceded that her niece stays in another property on the estate which is about 500 metres from where she lives.

42. The Applicant said that the mother of her niece's husband is frail and lives some distance away and that it might be possible for her to relocate so that she could live in the Property to be near her son.

## **Submissions**

### *Applicant*

43. Mr Whittle submitted that the breaches of the tenancy agreement had been admitted and that it was reasonable for the order of eviction to be granted.

44. Mr Whittle said that the Respondents had kept pets in the Property which was in breach of the tenancy agreement and that it was reasonable for the Applicant to expect that her property was free of pets, if that was what she wanted. He said that the presence of the pets contributed to the deteriorating condition of the Property and that the Respondents had no permission to keep dogs.

45. Mr Whittle said that there had been evidence that the Property had not been properly cared for and he cited the evidence about the dog fouling in the garden and the lack of care for the Property. He said that the Respondents accepted that the Property could be cleaner and that there was dog dirt in the garden. He said that it was reasonable for the Applicant to recover the Property to prevent further damage and loss.

46. Mr Whittle said that the Applicant was 81 years old and had no children. He said that her niece was to take over the running of the estate and that the Applicant wanted her to be near her for that reason, and also because she needed support because of her health.

### *Respondents*

47. Ms Hayward said that the Respondents had tried to find alternative accommodation and had been unsuccessful. She said that many available properties were not within their budget and that, in relation to social landlords, they may be considered to be intentionally homeless if the eviction order were granted.

48. Ms Hayward said that there were also issues in finding accommodation which would allow their animals to be with them. She said that a family member may assist in looking after the animals but that this could only be on a short term basis. She referred to the evidence which Ms Laing had given in which she said that she needed to keep her dogs to help her mental health. Reference was made to medication which Ms Laing has had prescribed.

49. Ms Hayward said that the Respondents are in full time employment and that it would not necessarily be the case that they would be able to find accommodation in

the Elgin/Lossiemouth area which might mean difficulties for them getting to their places of work.

### **Discussion and Determination**

50. The documentation lodged by the Applicant evidenced that appropriate notice had been given to the Respondents and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc. (Scotland) Act 2003.

51. The tribunal considered whether the requirements of Ground 11 had been met. The Respondents accepted that they had and the tribunal was satisfied, on the basis of the evidence, that the requirements of Ground 11 had been met.

52. In considering whether or not it is reasonable to grant the order of eviction sought by the Applicant, the tribunal had to carry out a balancing exercise after considering the respective position of the parties. It had regard to the oral and written evidence, and to the submissions of the representatives of the Applicant and the Respondents.

53. The tribunal considered the personal circumstances of the parties.

54. The Applicant is effectively a portfolio landlord, with a number of commercial and residential properties which are let out. She said that she wanted to recover the Property so that it could be occupied by her niece, not only to train her in management of the estate, but also to be near her in case support was needed for health reasons. Whilst the tribunal had some sympathy for the Applicant's position, it did not consider it reasonable that an order of eviction be made on that basis. The Applicant's niece already lives on the estate in a property which was close to her.

55. The tribunal had some sympathy for the Respondents and accepted that they had attempted to find alternative accommodation. It also accepted that, if the order of eviction were granted, it is possible that they may find difficulty in getting accommodation convenient for their work and also which would enable them to keep their animals.

56. In considering reasonableness, the tribunal disregarded some evidence as irrelevant such as the use of wood from a wood store and whether a chimney needed to be swept. It came to no view on the condition of the Property at the start of the tenancy.

57. The Respondents accept that the Property could be cleaner and, to this end, had got a quotation for a cleaner. It was unfortunate that they had not engaged the cleaner to carry out any work prior to the Hearing.

58. The Respondents accept that they do not have permission to keep dogs in the Property and they accept that their dogs foul the garden. Notwithstanding the

prohibition on keeping dogs, the Respondents did not display a willingness to ensure that the dogs had the minimum impact on the Property. Ms Laing said that they try to pick up dog dirt two or three times a week. She accepted that the photographs before the tribunal accurately showed that there was dog dirt in the garden. It seemed to the tribunal that, if the dogs were properly supervised, their faeces should be uplifted as soon as deposited by them.

59. It was the clear evidence of the Respondents that if the application for an eviction order was refused, they intended to keep the dogs in the Property. The tribunal accepted that keeping dogs may be beneficial to Ms Laing's wellbeing.

60. The tribunal was required to balance the Applicant's position against that of the Respondents. The Applicant wanted to recover the Property, partly because of its unclean condition and, more importantly because of the existence of unauthorised dogs and the ongoing damage as a consequence of them fouling the garden. The tribunal had no convincing evidence before it that topsoil would need to be replaced if the Applicant recovered the Property. However, the tribunal considered it reasonable that a landlord was entitled to decide that they did not want dogs in a property and it was also reasonable that a landlord should expect that a garden of a tenanted property be kept free of dog dirt.

61. If the order of eviction is not granted, the Respondents intend to continue to keep dogs in the Property.

62. Weighing matters, the tribunal considered that it was reasonable to grant the order of eviction.

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

### **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 McAllister

**Martin J. McAllister  
Legal Member**

**23 February 2026**