



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/25/3051

Re: Property at 55/5 Home Street, Edinburgh, EH3 9JP (“the Property”)

Parties:

Wah Cheong Koh, Tu Quyen Koh, 25 Clermiston Road North, Edinburgh, EH4 7BN (“the Applicants”)

Amber Day, 55/5 Home Street, Edinburgh, EH3 9JP (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy (“PRT”) in terms of rule 109 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended (“the Rules”). The PRT in question was by the Applicants to the Respondent commencing on 1 December 2017 (though it was in a “short assured” style as discussed further below).
2. The application was dated 14 July 2025 and lodged with the Tribunal on that date. The application relied upon a Notice to Leave in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* dated 27 February 2025 and said to be served upon the Respondent by Sheriff Officer on that date. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice gave no greater detail. The Notice to Leave intimated that an application to the Tribunal would not be made before 23 May 2025.

3. The application papers included a brief letter from the Applicants' agents, Chrissling Property, dated 7 July 2025 that they were instructed to market after vacant possession was obtained. Further, an email exchange was included regarding attempts in late May 2025 to obtain access for the Home Report (detailing that attempts to contact the tenant had been unsuccessful).
4. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon City of Edinburgh Council on 14 July 2025 was included in the application papers.

The Hearing

5. The matter called for a case management conference ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 27 February 2025 at 10:00. We were addressed by Selina Law, Letting Agent, Chrissling Properties for the Applicants.
6. There was no appearance for the Respondent but there had been email contact from an advice agency, Edinburgh Housing Advice Partnership, on her behalf on 18 February 2026. It sought postponement of the CMD on the basis of the representative having no one available to represent the Respondent at the hearing. The email provided the following information on the motion to postpone and on opposition to the application:

...I must regretfully request that the tribunal postpones the case management discussion scheduled for Friday 27th February 2026.

Reason for Postponement

I understand that that since receiving notification of the CMD, Ms Day has sought legal representation from solicitors without success. We held an initial appointment by telephone yesterday and were able to provide some advice on defending the application. However, we do not have any staff available to represent at the hearing on the 27th February.

Our service is a small project within our charitable advice agency. Although the project provides advice and representation on homeowner debt and tenancy cases across Edinburgh and Midlothian, we have only one part-time and two full-time advisers. Our part-time adviser is unable to work on Friday. Our other full-time adviser is currently on medical leave and I myself will be away attending a family funeral.

Respondent's Opposition

If the tribunal is not minded to postpone the case management discussion, the respondent respectfully opposes the application made on at least two grounds.

First, the application is brought under Rule 109 of the Chamber Rules. It seeks an order from eviction from a private residential tenancy under the

Private Housing (Tenancies) (Scotland) Act 2016. However, the respondent submits that by virtue of regulation 6 of The Private Housing (Tenancies)(Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017, their tenancy of the let premises is a short assured tenancy under the Housing (Scotland) Act 1988. Therefore, the application is improperly made and should be rejected.

Esto, if the application is allowed to proceed, the respondent respectfully submits that it would not be reasonable to grant the order.

We specifically noted that the email did not: dispute the Applicants' intentions to sell; provide any details as to why the Respondent submitted it would not be reasonable to grant an order for ejection; nor provide any reason why the Respondent would not be able to attend the CMD personally.

7. The motion to postpone was only passed to us for consideration on 25 February 2026. A copy had been passed to the Applicants' agent but no consent to the motion was received prior to the CMD, so it called at the scheduled time.
8. We sought confirmation from the Tribunal's clerk as to any other contact from or on behalf of the Respondent but there had been none. The Applicants' agent confirmed that there had been no material contact with the Respondent for a number of years (as detailed further below regarding reasonableness). In all the circumstances, and having not commenced the CMD until 10:05, we were satisfied to hear the application in the absence of the Respondent. (In any event, neither the Respondent nor anyone on her behalf sought to dial into the CMD call at any time before its conclusion.)
9. We sought the Applicants' position on the motion to postpone. It was opposed on the grounds that the Notice to Leave had been issued a year earlier and the Applicants sought progress in the application. The Applicants sought eviction at the CMD. We decided to hear full submissions and consider the competing motions side-by-side.
10. We sought further information from the Applicants' agent on the reasons for the intended sale. She explained that the Applicants were retired and found being landlords to be stressful. They were concerned about the condition of the Property (due to the lack of access), and wished to sell so as to realise funds to assist their child in starting on the property ladder.
11. In regard to the Respondent's conduct, the Respondent was paying rent privately and was not in arrears. There was no knowledge of any anti-social behaviour or other breaches of the Tenancy, other than a refusal to provide access. The Applicants thus had no idea whether the contractual provisions on maintenance were being followed. The Applicants' agent gave the following further details:
 - a. It was over four years since access had last been granted to the Applicants' representatives.
 - b. During that time, the Applicants' agent had undertaken a normal process of messaging the Respondent with proposed dates for inspections or

contractors and, on receiving no reply, had sent out agents to attend. On all occasions, access had not been provided.

- c. Specifically, reference was made to a leak from the flat above in 2025. The upstairs neighbour said that the leak had been identified and resolved, but the Applicants had sought access to the Property to assess any internal damage (such as to paintwork and ceiling plaster). This was refused by the Respondent, and instead the Respondent instructed a plumber herself. She contacted the Applicants' agent to say that her plumber had found no leaks and sending in the invoice for reimbursement. Despite the Applicants not having intended to send a plumber (as they were concerned with water damage to walls and ceiling, and had not expected any leaks within the Property itself) they reimbursed the invoice nonetheless.
- d. The Property has no gas, so there is no statutory requirement for regular safety inspections. The Applicants had not thus far sought an order for entry.
- e. As stated above, attempts to arrange access with the Respondent for a Home Report were not responded to. In the circumstances, the Applicants could not consider a sale with a sitting tenant and required to obtain vacant possession before selling.

12. In regard to the Respondent's submission on the competence of the application, we noted the terms of regulation 6 of *The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017*:

6. Saving provision

Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 321 and 332 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—

- (a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;*
- (b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and*
- (c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the end of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).*

13. We sought the Applicants' submissions on the provision. The Applicants' agent stated that the Tenancy did not commence until 1 December 2017 and thus was not "created" prior to that date. She explained that no access of any sort had been provided prior to 1 December 2017, and there had been no tenancy to the Respondent of the Property prior to 1 December 2017. In the circumstances, the

Applicants submitted that regulation 6 did not apply and the Tenancy, having started on 1 December 2017, could only be a PRT.

14. In regard to why the Tenancy documentation was in a “short assured” style, the Applicants’ agent explained that the parties had negotiated a tenancy between them themselves, and the Applicants had no legal advice at the time. They had used a style which they understood was suitable, and had signed it up on 22 November 2017, but with a clear commencement date of 1 December 2017.
15. In respect of reasonableness, we were provided with the following further information by the Applicants’ agent:
 - a. The Property was a two-bedroom second floor flat.
 - b. The Respondent’s mother was believed to reside with the Respondent at the Property.
 - c. No information was held on the ages, health, or employment status of the Respondent or her mother. All that could be discerned was that they had sufficient private funds to pay the rent.
 - d. The Property is not adapted for the use of the Respondent nor her mother.
 - e. It is not known whether the Property is especially suitable for her or her mother’s needs because no information was held about them.
 - f. The Applicants have no other rental properties.As we say, there was no information on reasonableness provided by the Respondent except to submit that “it would not be reasonable to grant the order”.
16. No motion was made for expenses.

Findings in Fact

17. On 22 November 2017, the Applicants agreed to let the Property to the Respondent (“the Tenancy”) with a commencement date of 1 December 2017.
18. The Respondent had no prior tenancy or occupancy of the Property prior to 1 December 2017.
19. The Respondent’s occupancy of the Property is as her main residence.
20. On 27 February 2025, the Applicants’ solicitor drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicants wished to sell the Property.
21. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 27 February 2025.
22. A copy of the Notice to Leave was served on the Respondent by Sheriff Officer on 27 February 2025.
23. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 14 July 2025.

24. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon City of Edinburgh on 14 July 2025.
25. The Applicants instructed a surveyor to prepare a Home Report of the Property on 27 May 2025 but the surveyor's attempts to gain access from the Respondent were unsuccessful.
26. The Applicants have instructed Chrissling Properties to market the Property once vacant possession has been obtained.
27. The Applicants wish to sell the Property with vacant possession in early course to raise funds to provide to their child for their own home purchase.
28. The Applicants further wish to discontinue acting as landlord of the Property in consideration that they are retired and find acting as landlords to be stressful.
29. The Applicants have no other rental properties.
30. The Respondent resides at the Property with her mother.
31. The Respondent has declined to provide access to the Property for over four years, despite reasonable requests on behalf of the Applicants.
32. The Applicants are reasonably apprehensive that there are unaddressed wants of repair within the Property. They wish to sell the Property with vacant possession, rather than attempt to maintain the Property over the obstruction caused by the Respondent's refusal to provide access.
33. On 14 January 2026, a Sheriff Officer acting for the Tribunal intimated the CMD of 27 February upon the Respondent.

Findings in Fact and Law

34. The Tenancy is a Private Residential Tenancy having not been created until 1 December 2017.

Reasons for Decision

35. On procedure, we were provided with no reason why the Respondent was not in personal attendance. Further, her representative sought a postponement solely to be in attendance, and not to seek further instructions or investigation. Material submissions were provided by email. Had the Respondent wished to say more about either defence, she could have appeared to do so, or her representative could have included it in the emailed submissions.
36. Further, we saw merit in the Applicants' opposition based on it being exactly a year since service of the Notice to Leave. Though we accept a person may encounter difficulty in obtaining prompt legal advice between the date of the intimation of the CMD and the CMD itself, there was nothing to suggest that the Respondent had timeously sought advice after receipt of the Notice to Leave nor

engaged with the Applicants on the threat of eviction. When she did obtain advice, she instructed an agent whom she (presumably) was told was not going to be available for the CMD.

37. In the circumstances, we were satisfied that we had submissions from the Respondent and she had declined to appear to give additional submissions. Along with making a decision to continue the CMD in her absence, we decided that the motion to postpone was not reasonable.
38. In considering the application, it was in terms of rule 109, being an order for eviction under a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent. In any case, she did not extend a defence in regard to the validity of the Notice itself, though challenged the competency of the application in general.
39. To address the Respondent's defence on competence, we accepted the Applicants' submissions. There was no pre-existing contractual tenancy and none could have come into existence between 22 and 30 November, so regulations 6(b) and (c) do not apply. In regard to our interpretation of regulation 6(a), we are satisfied that a tenancy is "created" when it commences, not when it is documented. The creation date is 1 December 2017, and the Tenancy can thus only be a PRT, not a short assured tenancy. We reject the defence.
40. In considering the merits of the application, ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (1) *...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.*
41. The email from the Applicants' agent and evidence of attempts to obtain a Home Report constitute evidence under paragraph (3) and this was augmented by the oral submissions as to the intention to sell. On the basis of the papers and submissions for the Applicants, we agreed that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondent did not extend a defence challenging the ground for eviction.

42. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicants' reasons for wishing to sell. In the absence of any detailed defence on reasonableness from the Respondent, we were provided with nothing to counter the Applicants' submissions on reasonableness to evict. In any case, the Applicant's arguments were substantial, especially in regard to the Respondent's failure to engage with access for inspections. We were satisfied that it was reasonable to evict at this time.
43. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time in normal terms.

Decision

44. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act.

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.

Joel Conn

27 February 2026

Legal Member/Chair

Date