



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/24/4872

Re: Property at 3 ALBERTA AVENUE, LIVINGSTON, EH54 6AN (“the Property”)

Parties:

Mr Gary Robertson, residing at 50 Andrew Meikle Grove, East Linton, East Lothian, EH40 3EL (“the Applicant”)

Mr Stephen Stewart And Ms Rodella Stewart, residing together at 3 Alberta Avenue, Livingston, EH54 6AN (“The Respondents”)

Tribunal Member:

**Andrew Cowan (Legal Member) and David Fotheringham (Ordinary Member)
Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should not be granted.

Background

1. This is an application by the Applicant for an eviction order in relation 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”).
2. The application relied upon a Notice to Leave dated 22 January 2024, issued in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016* (“*the Act*”), which had been served upon the Respondents, all in accordance with the provisions of the PRT. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 25th July 2024.

3. The Application papers included evidence that a section 11 notice, in terms of the Homelessness Etc. (Scotland) Act 2003, had been served upon West Lothian Council on 22nd October 2024.
4. The application papers also included a valuation report in respect of the Property prepared for the Applicant by Slater Hogg and Howison, Estate Agents dated 23rd January 2025, together with an email of the same date to the Applicant from the estate agents which confirmed details of the estate agents fees in connection with the marketing and sale of the Property.

Case Management Discussion

5. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 4th August 2025.
6. By email dated 24th June 2025 the Respondents lodged a letter with the Tribunal which set out their concerns in relation to the application. At the CMD the Respondents confirmed that they wished to oppose the application. The Tribunal understood that the Respondent’s position is that they do not consider it to be reasonable, in all the circumstances, for the Tribunal to grant an order for eviction
7. At the CMD, the Tribunal raised with the Applicant questions as to the validity of the Notice to Leave which had been served upon the Respondents prior to the commencement of the application.
8. In the Application the Applicant states that the rent for the Property is £830 per month whilst his mortgage plus insurances total £1100. At the CMD the Applicant was Directed to lodge written evidence of his monthly mortgage and insurance costs in relation to his ownership of the Property.
9. At the CMD the tribunal decided to fix a hearing in relation to the Application. The tribunal intimated to parties that, if the Tribunal were satisfied as to the validity of the Notice to Leave, the Tribunal would hear evidence from parties as to whether it is reasonable to grant an eviction order.
10. By email dated 1st September 2025 the Applicant’s solicitor launched written representations on behalf of the applicant in response to the tribunal’s direction relative to questions as to the validity of the notice to leave. The Applicant also lodged evidence of his monthly mortgage and insurance costs in relation to his ownership of the property.
11. By e-mail dated 1st September 2025 the Respondents lodged an “impact statement” in which they set out their position as to the effect of any eviction order upon them and their family.

The Hearing

12. The matter called for a hearing of evidence, conducted by remote telephone conference call, on 9th February 2026.
13. The Applicant joined the conference call. He was represented on the conference call by his solicitor, Mr Stephen Nicolson. The Applicant gave evidence to the Tribunal at the hearing.
14. The Respondents also joined the conference call. The First Named Respondent gave evidence to the Tribunal.

Preliminary Issues

Validity of Notice to Leave

15. The Tribunal had directed the Applicant is to lodge a written submission with the Tribunal which set out:
 - a. The legal authority for the contention that the terms of the Notice to Leave served upon the Respondents complies with Section 54 of the Private Residential (Tenancies)(Scotland) Act 2016 (“the Act”), notwithstanding the period of notice given, and
 - b. The legal authority for the contention that the Notice to Leave had not expired under the terms of Section 55 of the Act, prior to the date of the Application to the Tribunal.
16. In their written submission, dated 1st September 2025, the Applicant’s solicitor had addressed both of the issues raised by the tribunal in relation to the validity of the notice to leave. The Respondent did not seek to make any submission in relation to the validity of the notice to leave. Having considered the terms of the applicants written submission on these issues the tribunal accepted that the Notice to Leave complies with section 54 of the Act and that the notice to leave had not expired under the terms of section 55 of the Act.
17. The application was in terms of rule 109, being an order for eviction of a PRT. The Tribunal is satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent
18. 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.
 - (2) 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.
- 19. The Applicant has engaged agents to sell the Property. He has instructed Slater Hogg and Howison in connection with the sale of property. The Tribunal accepted the unchallenged evidence that the Applicant wishes to sell the property. The Respondents accept that the Applicant wishes to sell the Property. We were satisfied on the uncontested evidence that the Applicant has a genuine intention to sell the property for market value, or at least put it up for sale, within 3 months of the Respondents ceasing to occupy the Property.
- 20. The only issue to be determined by the Tribunal at the hearing was whether it is reasonable to issue an eviction order. The Tribunal therefore proceeded to hear evidence from parties on that issue.

Summary of Evidence

- 21. At the hearing on evidence, the Applicant's agent confirmed that the application for eviction was insisted upon. The Applicant and the First Named Respondent gave evidence to the Tribunal in relation to the question as to whether it would be reasonable to grant an order of eviction.

The Applicant's evidence

- 22. The Applicant is the owner of the Property. He purchased the Property in 1999 at an approximate cost of £45000. The Applicant lived in the Property until 2011 at which time he married and moved to live in the Scottish Borders. The Applicant retained the Property at that time as an investment opportunity to subsidise his pension in his later years.
- 23. The Property was let as a private tenancy from 2011. It has been continuously let to the Respondents from 2013. The Applicant has always had a good relationship with the Respondents and there have been no issues in relation to the tenancy.
- 24. The Property was initially rented to the Respondents for £830 per month. The Applicant was content with that rent level as it covered the mortgage payments and overheads that he paid in respect of the Property.

25. Around August 2020 the Applicant's fixed term mortgage came to an end and the payments due to be paid in respect of his mortgage started to increase. At August 2020 the Applicant's mortgage payments were £696 per month. The mortgage payments due by the Respondent thereafter increased over time and by November 2022 the mortgage payments due by the Respondent was a monthly payment of £920. That liability continued to increase and by early 2023 the mortgage payment due in respect of the Property had reached £1155 per month. Throughout that period of rising mortgage payments, the rent for the Property remained at £830 per month. The Respondent accordingly was incurring a monthly financial deficit of approximately £270 per month (after taking account of mortgage payments and insurance costs). The Respondent reasonably estimates that this financial deficit totalled approximately £1980 between November 2022 and May 2023.
26. The Applicant confirmed in his evidence that due to the continuing financial deficit he was incurring whilst letting the Property, he decided to sell the Property.
27. A notice to leave dated 22nd January 2024 was served upon the Respondents. That notice advised the Respondents that the Applicant wished to sell the Property. The notice gave particulars of why the ground had arisen and stated that "due to financial issues surrounding interest rate increases offset against rent. It leaves a deficit which we had to put measures in place. I have tried for this past 12 months to find alternative solutions without success." The Notice to Leave stated that it provided evidence that the monthly rent paid in respect of the property was £830 per month whilst mortgage and insurance payments due in respect to the property were £1100 per month.
28. The Applicant remortgaged the Property around June 2023. At that time, he changed his mortgage from a capital and interest mortgage to an interest only mortgage. From mid 2023 the mortgage payments paid by the Applicant reduced to £521 per month.
29. Following a statutory review process the Rent Officer fixed the market rent for the Property as £1270 per month from November 2025. As at the date of this hearing the Applicant is receiving monthly rent for the lease of the Property of £1270. The Applicant is currently making mortgage payments of £521 per month and also pays additional outgoings in respect of insurance and a gas maintenance contract in the total sum of £123 per month. The Applicant accepts that as the date of this Tribunal hearing he continues to make an income surplus by leasing the Property to the Respondents.
30. The Applicant is employed as a train driver and his take home pay is approximately £3300 per month. The Applicant's wife is employed as a prison officer. The Applicant was not able to confirm to the Tribunal his wife's income.
31. The Applicant has four children. His eldest child, aged 26, resides with her mother. The Applicant wishes to be able to support this child in obtaining her own accommodation for her and her child.

32. Two of the Applicant's children reside with a former wife. The Applicant pays £435 per month as financial maintenance for these children. In addition, the Applicant regularly makes additional payments towards the costs of his children's interests in football and dancing classes.
33. The Applicant's fourth child resides with the Applicant and his wife.
34. The Applicant wishes to be able to provide for all his family, He wishes to sell the Property to allow him to realise the unsecured capital value of the Property which he estimates to be in the region of £80000. He wishes to use that capital to support his family.
35. The Applicant gave evidence that he considers he has given ample time for the respondents to find alternative accommodation. The Applicant stated that he has attempted to support the respondents in identifying suitable alternative accommodation, although no further detail of that support was given in his evidence. The Respondent also confirmed that he has given the Respondent the opportunity to buy the Property.

The First Respondent's evidence

36. The first respondent gave evidence to the Tribunal. He confirmed that he and his family had lived at the property for over 13 years. The First Respondent confirmed that the current rent is £1270 per month. The First Respondent confirmed that the Respondents pay approximately £170 per month from their own income towards the rent and the balance is paid through Universal Credit.
37. The respondents reside at the property with their five children, aged 26, 20, 16, 13 and 7. The three youngest children are in full-time education whilst the 2 elder children are employed.
38. The First Respondent confirmed that the property is a five bedroom property suitable for the needs of of a family of seven.
39. The First Respondent confirmed that he has a number of medical concerns. He had a heart attack in 2019 followed by a triple heart bypass. He has also had a possible minor stroke. The First Respondent relies upon the Second Responded as his carer. The First Respondent has also been diagnosed with two types of cancer.
40. The First Respondent confirmed in his evidence that he and his family are settled in the Property as their home. It is located close to the hospital where The First Respondent continues to attend for treatment.
41. The Respondent's two youngest children attend school close to the location of the Property.

42. The Respondents received the Notice to Leave which was served upon them. At that time they approached the local authority for support and assistance in identifying alternative accommodation for them. They were advised that the local authority had no suitable accommodation. They were further advised that the local authority would not make an offer of accommodation unless the Tribunal determined that they were to be evicted from the Property.
43. The First Respondent confirmed the Respondents have attempted to source alternative accommodation in the private sector. The Respondents are not able to make payment of any necessary deposit required to secure the lease of an alternate property in the private sector. The First Respondent stated that it is difficult to find any properties of a size suitable for their family of seven people. The First Respondent confirmed that the eldest child is also looking for accommodation but cannot afford the rent she would require to pay were she to let a property in the private sector. That child has applied to local authority for her own accommodation, but she is not given any priority and it is unlikely that any such accommodation will be offered in the short term.

Parties Submissions

44. The Applicant's solicitor invited the Tribunal to determine that it was reasonable to grant an eviction in all the circumstances of this case. It was highlighted that the Applicant's financial circumstances had changed since the property was first let to the Respondents. The Applicant's solicitor highlighted that the Applicant had given the Respondents a long period of notice to leave the Property as an opportunity for the Respondents to find alternative accommodation. The Applicant's solicitor highlighted that whilst it was accepted that the rent currently paid for the property was well in excess of the Applicant's financial obligations, in relation to the Property, this had only been achieved as the Applicant had changed his mortgage from a capital interest mortgage to an interest only mortgage. The Applicant's solicitor submitted that the Respondents two elder children can now seek their own accommodation and that the Respondents' family do not require a 5 bedroom property. The Applicant's solicitor confirmed that, were the Tribunal to grant an eviction order, the Applicant was agreeable to a suspending execution of that order for a period of three months to allow the Respondents a further opportunity to find alternate accommodation for the Respondents and their family.
45. The First Respondent invited the tribunal to determine that it was not reasonable the grant any eviction order. The First Respondent confirmed that he understood that the Notice to Leave had been served as the Applicant wished to sell the property as he could not afford the deficit between the rent and the mortgage and other outlays due on the property. The First Respondent highlighted that the Applicant's position appeared to have changed by the date of this hearing, as the Applicant was now suggesting that he wished to sell the property to release a capital sum to enable him to support his own family. The first respondent highlighted the effect of an eviction order on his family. He considered it would add considerable additional stress to his family, and it would

have a major effect on his family who would find it extremely difficult, if at all possible, to find alternative accommodation suitable for their needs.

Findings in Fact and in Law

46. On 17th August 2020 the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date (“the Tenancy”).
47. Notice to Leave, dated 22nd January 2024, was emailed to the Respondents on 3rd January 2024.
48. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 part 1 of the 2016 Act on 22nd October 2024,
49. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon West Lothian Council on the Applicant’s behalf on 22nd October 2024.
50. The Applicant has instructed Slater Hogg and Howison, estate agents, to market the Property for sale.
51. The Applicant intended to sell the Property at the date of service of the Notice to Leave. The Applicant is entitled to sell the let property. The Applicant 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.
52. It is not reasonable to issue an eviction order.

Reasons for Decision

53. The application was in terms of rule 109, being an order for eviction of 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.
54. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made, it follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:
“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion

giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

55. The Tribunal took into account the application and documents lodged by the parties together with the oral representations and evidence heard at the hearing in reaching a decision.
56. The Applicant had let the property as an investment and expected a return on his investment. In early 2022, because of a change in interest rates, the Applicant noted that the rent paid by the Respondents was no longer covering the mortgage and other outlays the Applicant required to pay in respect of the Property. The Applicant stated in the Notice to Leave that he served on the Respondents that it was for this reason that he wished to recover the Property. The Tribunal noted, however, that by the date the notice to Leave was served on the Respondents the Applicant had, in fact, remortgaged the Property. By the date of service of the Notice to Leave the Applicant was, again, making a modest return on his property investment. After the Notice to Leave had been served, and before the date of this hearing, the Applicant had increased the rent due by the Respondents. That rent increase further increased the surplus of income which the Applicant achieved by letting the property. As at the date of this hearing the Tribunal do not accept that the applicant required to sell the property to alleviate financial hardship - which was the reason given by the Applicant for serving the Notice to Leave upon the Respondent, and the reason given for raising the application. The Tribunal accept that the Applicant wishes to now sell the Property to realise the capital equity and to use those funds to further support his family, but that is not the reason that the Applicant gave in relation to raising the application itself. The Tribunal noted that the applicant and his wife have a reasonable current income and the Tribunal were not persuaded that there was any pressing need for the Applicant to sell the property to further support his family.
57. The Tribunal noted that the Respondents have occupied the Property as their home and have done so for almost 13 years. The Respondents have no alternative accommodation available and, although they have made appropriate enquiries, the local authority is not able to make an offer of suitable alternative accommodation to them at this time. If the possession order were to be granted the Respondents would be rendered homeless and would require to await the decision of the local authority to determine what accommodation, if any, the local authority could make available for the Respondents and their family. The uncertainty of where the Respondents would live would cause significant stress and concern for the Respondents and their family.. The Tribunal also gave weight to the fact that the Respondents were unable to afford the deposit for another private let of suitable accommodation. The Tribunal also accepted that the First Named Respondent has significant health issues, although that factor was not regarded as of significant weight when considering whether it was reasonable

to grant an order of eviction as, arguably, the care and support required by the First Named Respondent could be delivered in any future location

58. The Tribunal consider that the balance of reasonableness in this case is, weighted towards the Respondents. If a possession order is granted, then the Respondents will be homeless. The Respondents have made reasonable efforts to secure alternative accommodation but have failed to identify any Property which is suitable for their needs, and which is affordable for them. The grant of a possession order will cause the Respondents significant upheaval and stress. The Tribunal consider that it would not be reasonable to grant an order for eviction in these current circumstances. Whilst the Tribunal accept that the Applicant wishes to realise the value of the Property through selling the Property to realise a capital sum, this was not the same reason given for seeking the order in the Notice to Leave or in the application to the Tribunal. The application to the Tribunal was directly related to the financial hardship the Applicant averred he was suffering as a consequence of increased mortgage interest rates when set against the rental achieved by letting the Property. The Applicant in his evidence accepted that the rent achieved by the Property now exceeds the interest and other financial outgoings he incurs as owner and landlord. The Tribunal considered that when balancing competing factors on the issue of reasonableness the fact that the Applicant and his wife had a reasonable joint income at their disposal to support themselves and their families was a significant factor. The Applicant has not set out a compelling case which justifies the requirement for an immediate sale of the Property. The Tribunal is not satisfied that it would be a reasonable to grant an order for possession. The impact of an eviction order upon the Respondents would far outweigh the impact upon the Applicant if no such order is granted.

Decision

59. In all circumstances the Tribunal determined that an eviction order should not 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.

Andrew Cowan

09/02/26

Legal Member/Chair

Date