



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/5205

Re: Property at Pow, Evie, Orkney, KW17 2NN (“the Property”)

Parties:

Mrs Julia Nichol, Eynhallow, Evie, Orkney, KW17 2NN (“the Applicant”)

Ms Rachel Belfield, Pow, Evie, Orkney, KW17 2NN (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of paragraph 3 of schedule 3 of the 2016 Act

1. Background

1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant seeks an eviction order on the basis of ground 3 of schedule 3 of the 2016 Act, namely, the Applicant intends to refurbish the property and it would be impracticable to do so with the tenant occupying the property. The application was accompanied by copies of a written summary of the tenancy terms, the notice to leave given to the tenant, affidavits of the Applicant and her husband, notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 and a quote setting out the proposed works to the property.

1.2 Written representations were lodged by the Respondent by email and letter on 10 and 16 June 2026. These largely focused on issues experienced by the Respondent with the condition of the property and made reference to a counterclaim to be made.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 29 June 2026 by teleconference. The Applicant was represented by Ms Sutherland of dandh Law and attended with her. The Respondent attended personally.

2.2 The Tribunal heard firstly from Ms Sutherland. She confirmed that the application was insisted upon. The quote from Slater's joiner set out the work to be done to the property. The heating system and water tank were to be replaced, the kitchen and pipework were to be replaced, the shower system upgraded and the whole property redecorated. These works could not be done with the tenant in situ. No rent had been paid since October 2025 however the Applicant was not insisting upon that as a ground upon which an eviction order could be issued. If there were issues with dampness in the property, these would also be addressed.

2.3 Ms Belfield confirmed that she took occupancy of the property on 1 May 2025. She lived alone. She was not currently in employment and her income consisted of £899.00 per month paid in welfare benefits. £475.00 per month of her housing costs were covered by benefits. She had contacted the local authority and understood she was to be treated as unintentionally homeless, however there was no available stock for an offer of alternative accommodation to be made at present. There was potentially a property in Stromness to become available at an unknown later date but the local authority were also looking at the mainland for available accommodation.

2.4 Ms Belfield also advised that the property suffered from dampness and mould growth. She believed that this was rising damp caused by water traversing the ground at the rear of the property. The mould would be cleaned but would reappear quickly. She also had concerns about radon exposure. Ms Belfield advised that she accepted the rent had been unpaid since October 2025 however, she paid in cash and this simply had not been collected by the Applicant. The money had been kept to one side. She accepted the works intended by the Applicant required to be done and wanted to live elsewhere. She was reliant on the local authority as there was nothing available in the private sector and, although she was registered with Orkney Housing Association, no offers of housing had been made.

2.5 The Tribunal indicated that it would adjourn to consider everything said at the Case Management Discussion as well as in the papers and issue a written decision.

3. Reasons For Decision

3.1 The Tribunal had noted that valid notice to leave had been given to the Respondent by the Applicant. The Applicant sought an eviction order on the basis of paragraph 3 of schedule 3 of the 2016 Act. Paragraph 3 is in the following terms:-

3(1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

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

(a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),

(b) the landlord is entitled to do so,...

(c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord, and

(d) 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)(a) includes (for example)—

(a) any planning permission which the intended refurbishment would require,

(b) a contract between the landlord and an architect or a builder which concerns the intended refurbishment.

In the present case, although no evidence in the form of planning permission or a contract was lodged, a quote for the proposed work did accompany the application. Given what was said on behalf of the Applicant, and that the Respondent accepted the work required to be done the Tribunal was satisfied that the landlord did have that intention. As proprietor of the property they were entitled to do so. Further, given the extent of the works set out, it would appear impracticable for them to be carried out whilst the Respondent occupied the property.

3.2 The Tribunal thereafter considered it reasonable to issue an eviction order. The Respondent wanted to move elsewhere. Her position is that the property also suffered from dampness and mould growth. The Respondent had applied for rehousing with the local authority who had assumed a duty to provide permanent accommodation. The Tribunal also considered it appropriate to order a delay of two months in enforcement of the eviction order as sought by the Respondent, given the issues they may face in obtaining accommodation. Given the parties' position regarding the unpaid rent, no weight was placed on the arrears accrued.

3.3 The Respondent made reference in her representations to making a counterclaim. The Tribunal made clear at the Case Management Discussion that it could not consider the issue of any loss said to be suffered by her with a separate civil proceedings application being needed. Accordingly, the Tribunal did not consider it relevant to determine the extent or causes of any dampness and mould growth within the property.

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.

Alastair Houston

Legal Member/Chair

29 June 2026
Date