

Housing and Property Chamber
First-tier Tribunal for Scotland



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 ("The Act")

Chamber Ref: FTS/HPC/EV/25/0965

Re: Property at 38D Campbell Street, Dunfermline, Fife, KY12 0QJ ("the Property")

Parties:

Mr Arthur Small Cunningham, Mrs Jacquelin Cunningham, 3 The Heathery, Dunfermline, Fife, KY11 8TS ("the Applicant")

Miss Diana-Valentina Dinu, 38D Campbell Street, Dunfermline, Fife, KY12 0QJ ("the Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Tony Cain (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted the Application and made an Eviction Order subject to the condition that it may not be enforced prior to 16 October 2026.

Background

[2] The Applicants seek an Eviction Order under ground 1 of Schedule 3 of the Act. The Application is accompanied by a copy of the tenancy agreement and the notice to leave with proof of service. The relevant notice under Section 11 of the Homelessness (etc) (Scotland) Act 2003 is also produced. The Applicants have produced evidence setting out their reasons for wishing to sell the Property. The Respondent has submitted written representations and evidence setting out the basis of her opposition to the Application. The case had called previously for a Case Management Discussion and thereafter been continued to a Hearing for evidence and submissions to be heard before any final

decision was made. A previous Hearing had been adjourned on account of insufficient notice having been provided to the Respondent.

The Hearing

[3] The Application then called for a Hearing by video call at 10 am on 16 July 2026. The Applicants and the Respondent were both personally present. A Romanian interpreter was present for the benefit of the Respondent.

Preliminary matters

[4] The Tribunal began by ensuring that all parties understood the purpose of the Hearing and how it would be conducted. The Tribunal ensured that everyone was familiar with the documentation before it and that there were no outstanding preliminary matters. The Tribunal therefore proceeded to hear evidence from the Applicants and the Respondent. After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence each party also had the opportunity to make closing submissions.

Evidence

[5] The Tribunal comments on the evidence heard as follows.

The Applicants

[6] The Applicants are in their eighties. They explained that they desperately need to sell the Property for financial reasons. They have no private pensions and rely on the state pension. They have four investment properties in total. They have three properties in Aberdeen which are each in negative equity in the sum of around £20,000.00. They also have another investment property in Dunfermline. However, if they tried to sell that property they would face punitive redemption charges from the mortgage company. The Applicants wish to sell the Property and estimate it would release around £20,000.00 of equity. They suggested that they would have to use some of this as working capital to fund their day to day living expenses and they would have to use some to try and pay down some of the negative equity in the Aberdeen properties.

[7] There is no issue with the receipt of rent for the Property, but the Applicants simply indicated that if they didn't sell then they would be in dire financial straits. The Applicants had submitted their tax returns and other information vouching their financial position. They had also submitted emails showing their efforts to sell the Property with a sitting tenant. They explained that had invested time and effort in to doing that only to have the potential investors withdraw. They explained that this aborted project also cost them £650.00.

[8] The Applicants explained that their own health was not good and Mr Cunningham was registered blind.

[9] The Applicants gave evidence as something of a unit. The Tribunal was mindful that it would have been the norm for each Applicant to give evidence separately. However, it was clear that the Applicants, being in their eighties, and Mr Cunningham, being registered blind, were deserving of some flexibility and the Tribunal ensured that the approach taken did not result in any confusion or unfairness.

The Respondent

[10] The Respondent is 36 years of age and has lived in the Property since 2020. She is a Romanian national and moved to Scotland in 2019. She has no friends or relatives in the area. The Property is a small, one bedroomed property in Dunfermline. The Respondent explained that she is in very poor health. She receives Kidney Dialysis for several hours each week. She is awaiting a transplant operation and could receive notification of a date for her surgery any time. The Respondent explained that she understood the Applicants' desire to sell but that she simply had nowhere else to go. She was also anxious about being unwell and homeless and especially if she was recovering from major surgery. She currently received Adult Disability Payment and survived on state benefits. She also worked a five-hour shift in an Amazon warehouse each Friday. She lives alone in the Property.

Comment on the evidence

[11] The Tribunal noted that this was a sad situation for all concerned. The Applicants were clearly under a great deal of pressure and dealing with mortgages and landlord issues at an age when many may be enjoying their retirement. They were genuinely anxious about their financial situation. The Tribunal was also sympathetic to the Respondent's situation. She clearly had serious health concerns and was anxious about having to move house.

[12] Having heard evidence and having considered the documentation, the Tribunal made the following findings in fact.

Findings in Fact

1. *The Applicants let the property to the Respondent by virtue of a Private Residential Tenancy Agreement within the meaning of the Act.*
2. *The Applicants now wishes to sell the Property.*

3. *The Applicants competently served a notice to leave dated 1 November 2024 under ground 1 on the Respondent.*
4. *The Applicants have complied with Section 11 of the Homelessness (etc) (Scotland) Act 2003.*
5. *The Respondent has serious health issues and is awaiting kidney surgery. She receives dialysis several times a week which has a significant impact on her life. She otherwise lives alone in the Property and does not have the financial means to rent a flat in the private sector.*

Reasons for Decision

[13] Having made the above findings in fact, the Tribunal considered that ground 1 of Schedule 3 of the Act was established. The Tribunal thereafter proceeded to consider the “reasonableness” of granting an order.

The Reasonableness

[14] The Tribunal considered the arguments in favour of granting the order. The Tribunal concluded that it was certainly reasonable for the Applicants to wish to sell the Property. They were in a poor financial situation and selling this property was a rational and legitimate strategy for improving their own situation and helping themselves. Limiting their operation as landlords seemed natural and reasonable given their age and health.

[15] The Tribunal however was cautious as the Respondent had serious health issues and granting the order may have a profound impact on the Respondent’s life.

[16] In assessing reasonableness, the Tribunal weighed the competing circumstances of both parties. The Tribunal came to the view that it would have been reasonable to allow the Respondent to stay in the Property. But it would also be reasonable to grant the Application. The Tribunal noted that in such situations there can be more than one reasonable option. However, the test the Tribunal had to apply was to establish whether one of those reasonable options included granting the order. It clearly did. What the Applicants intended was not unreasonable.

[17] The Tribunal then considered whether the date by which any order could be enforced ought to be delayed. The Tribunal considered that it would be appropriate to allow the Respondent more time to secure alternative accommodation. The Tribunal concluded that allowing three months may assist the local authority in finding a new home for the Respondent that would be appropriate for her health needs.

Decision

[18] The Tribunal therefore granted the Application and made an Eviction Order subject to the condition that it may not be enforced prior to 16 October 2026.

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.

Legal Member/Chair

Andrew McLaughlin

16 July 2026

Date