

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 of the Private Housing (Tenancies) (Scotland) Act 2017

Chamber Ref: FTS/HPC/EV/26/0430

Re: Property at 17/1 Moat Drive, Edinburgh, EH14 1NU (“the Property”)

Parties:

Norman Gifford, 3/2 Glendevon Park, Edinburgh, EH12 5XD (“the Applicant”)

Mr Daniel Paul Seavers and Miss Charlie Jenny Rose Bryans, 17/1 Moat Drive, Edinburgh, EH14 1NU (“the Respondents”)

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondents for possession of the Property at 17/1 Moat Drive, Edinburgh, EH14 1NU under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in his name may enter thereon and peaceably possess and enjoy the same.

Background

- 1. This is an application for eviction for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The application is based on Ground 1 (Landlord intends to sell the Property) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).**

2. The application was accompanied by a Private Residential Tenancy Agreement dated 1 May 2024, a Notice to Leave dated 22 October 2025 with email addressed to the Respondents, Terms of Business and a conveyancing quote from Gilston Gray, solicitors and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with email to Edinburgh City Council dated 28 January 2026.
3. On 27 July 2026 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 31 August 2026. The Respondent required to lodge written submissions by 17 August 2026. This paperwork was served on the Respondent by Alexander Horne, Sheriff Officer, Edinburgh on 28 July 2026 and the Execution of Service was received by the Tribunal administration.
4. On 28 July 2026, CHAI (Community Help and Advice Initiative) emailed the Tribunal to advise they had been instructed to represent the Respondents.
5. On 29 July 2026 the Applicant's agent lodged submissions on reasonableness.
6. On 13 August 2026, CHAI lodged written submissions for the Respondents together with supporting documents relating to the Respondents' recent medical diagnoses.
7. On 27 August 2026, the Applicant's agent lodged responses to the Respondents' written submissions. On 31 August 2026 the Applicant's agent lodged a mortgage statement.

Case Management Discussion

8. The Tribunal proceeded with the CMD on 31 August 2026 by way of teleconference. Mr Gray from Gilston Gray solicitors appeared on behalf of the Applicant. The Applicant was also in attendance. Ms Bennett from CHAI appeared for the Respondents. The Respondents were also in attendance.
9. The Tribunal had before it the Private Residential Tenancy Agreement dated 1 May 2024, the Notice to Leave dated 22 October 2025 with email addressed to the Respondents, the Terms of Business and a conveyancing quote from Gilston Gray, solicitors, the mortgage statement and Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 with email to Edinburgh City Council dated 28 January 2026 together with the application, submissions on reasonableness and submissions in response to the Respondents' submissions. The Tribunal also had before it letters from No.6 Autism Initiatives together with the written submissions lodged on behalf of the Respondents. The Tribunal considered these documents.

10. The Tribunal confirmed that it had had an opportunity of reading the application together with parties' written submissions setting out parties' respective positions.
11. Mr Gray submitted the Applicant intended to sell the Property and, on that basis, had served the Notice to Leave. The Applicant was seeking an order for eviction under Ground 1 of Schedule 3 of the 2016 Act. Mr Gray submitted the Applicant was 80 years of age. His health was such that he could not carry out repairs as he used to and now requires to pay for repairs. The Applicant does not consider it to be cost effective to continue to be a landlord. Mr Gifford confirmed he was retired. Mr Gray submitted that the Applicant intends to sell the Property so he can redeem the £78 000 mortgage on the other property and then gift it to his daughter. The mortgage on that other property was due to expire in December 2026. Mr Gray confirmed the Applicant had a heart condition.
12. In response Ms Bennett submitted that Mr Seavers had been resident in the Property since 2022 and Ms Bryans since 2024. She submitted that due to their medical conditions the Respondents were finding it difficult to find alternative accommodation. They were under emotional distress. They had approached the Council. Mr Seavers advised that they had had a homelessness assessment in January 2026. He explained that they would not be offered alternative accommodation until there was an order for eviction. The Respondents were students with Ms Bryans completing a post graduate course whilst working. He had been signed off by the GP as being unfit to work. They had been looking in the private sector as well. Mr Seavers went on to explain that for them to be considered for a mid-market rental they had to have an income of £1600. They did not qualify for the mid- market. They could not afford the rentals in the private sector but were able to afford the current rent. They were estranged from their families so could not offer a guarantor in the private sector. They needed to access the social sector. Mr Seavers advised that it was only him and Ms Bryans who lived in the Property.
13. On being questioned by the Tribunal, Mr Seavers advised his ideal position would be to remain in the Property and for it to be purchased by the Council otherwise he would be looking for 2-3 months to give the Council time to find alternative accommodation. The Tribunal enquired whether Ms Bennett had made enquiries about the Council purchasing the Property. She advised that the Council operated a tenant acquisition scheme where owners could sell their properties to the Council but was unsure whether the Council would purchase a property with tenants or whether it only applied to owner/occupiers. Otherwise, she submitted the Applicant could sell the Property with the Respondents in it, but there had been no evidence of

valuation. The Tribunal advised it was aware that only about 50% of the market value would be achieved with tenants as opposed to selling a property with vacant possession. The Tribunal enquired with Mr Gray as to whether the Property had been valued. He advised it had not, the intention being that the valuers would attend when the Applicant had vacant possession.

Findings in Fact

14. The Applicant is the owner of the Property. The Applicant is entitled to sell the Property. He is 80 years of age and suffers from a heart condition. He is retired and no longer wishes to be a landlord.
15. The Applicant as Landlord and the Respondents as Tenants entered into a Private Residential Tenancy in relation to the Property on 1 May 2026. The Respondents live in the Property.
16. The Applicant owns another property with an outstanding mortgage of £78,108.66 which comes to an end on 31 December 2026. The Property is mortgage free. The Applicant intends to sell the Property to clear the outstanding mortgage on the other property and then gift the other property to his daughter. The Applicant has instructed Gilston Gray solicitors in the sale of the Property.
17. The Applicant's solicitor served a Notice to Leave on the Respondents by email on 22 October 2025. The Notice to Leave required the Respondents to leave the Property by 17 January 2026. The Notice to Leave relied on Ground 1(Landlord intends to sell) of Schedule 3 to the 2016 Act.
18. The Respondents did not vacate the Property on 17 January 2026 and remain in the Property. The Respondents have sought advice and assistance from the City of Edinburgh Council. They undertook a homelessness assessment in January 2026. Due to the housing emergency the Council cannot offer any properties to the Respondents until such time as an eviction order is granted.
19. The Respondents have been looking for alternative accommodation in the private rental sector. They cannot afford to remain in the private rental sector. They cannot put forward a guarantor and do not earn enough money to qualify for the lowest end of the mid market. The Respondents are both students and are currently studying. Ms Bryans also works part time. Mr Seavers is currently unfit for work.

20. Both Respondents have recently been diagnosed with different levels of autism and attention deficit hyperactivity disorder (ADHD). Ms Bryans also suffers from polyendocrine metabolic ovarian syndrome. The Respondents' health conditions require careful management of any changes to routine and environment.
21. The Applicant's solicitor served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on the City of Edinburgh Council on 28 January 2026.

Findings in fact and in law

22. The Tribunal is satisfied that the facts required in Ground 1 of schedule 3 of the 2016 Act have been established.
23. The Tribunal is satisfied that it is reasonable to make an order for eviction.

Reasons for Decision

24. The Tribunal considered the issues set out in the application together with the documents lodged on behalf of both parties and the written and oral submissions made by both parties.
25. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 1 of Schedule 3 which provides:-

*“(1)It is an eviction ground that 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.*

26. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave or unless it is not in breach of any of sections 54 to 56 and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

27. Notice to Leave is defined in terms of Section 62 (1) of the 2016 Act as follows-*“References in this Part to a notice to leave are to a notice which*
(a) is in writing,
(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and
(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.”

28. In this case the Notice to Leave is in writing and clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 1 of schedule 3. The Notice to Leave specifies the date the landlord expects to become entitled to make an application for an eviction order and specifies a date in terms of Section 54(2) in this case 17 January 2026. The Notice to Leave was served on the Respondent by email on 22 October 2025. In terms of Section 54 the notice period of the Notice to Leave is 84 days. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.

29. The Tribunal considered the submissions made by Mr Gray and by Ms Bennet and also the additional submissions by Mr Seavers. The Tribunal accepted Mr Gray's submissions that the Applicant intended to sell the Property if he obtained vacant possession to clear the outstanding mortgage. In considering the question and meaning of “*intends*” the Tribunal considered the decision of Lord Justice Asquith in *Cunliffe v Goodman*[1950] 2K.B.237 at page 253:
“An “intention” to my mind connotes a state of affairs which the party “intending” – I will call him X – does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition.

X cannot, with any due regard to the English language, be said to “intend” a result which is wholly beyond the control of his will. He cannot “intend” that it shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to “intend” a particular result if its occurrence, though it may be not wholly uninfluenced by X’s will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X.’s volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence.” The Tribunal considered that the Applicant was intending to sell the Property. He had taken positive steps to enter into a sales agreement with Gilston Gray to market and sell the Property. When the Respondents did not leave the Property after the expiry of the Notice to Leave, he raised the current action. He has a genuine and firm intention to proceed to sell the Property. Mr Gray explained the Applicant’s reasons for doing so. The statutory requirements of Ground 1 do not require the Tribunal to consider the reasons for a landlord wanting to sell. However, the Tribunal is satisfied the Applicant’s reasons for doing so are genuine and that he has every intention of putting the Property up for sale within 3 months of obtaining vacant possession.

30. Accordingly, the Tribunal was satisfied on the basis of the documents lodged, together with submissions made by parties, that the factual basis of the application had been established in relation to Ground 1 and was satisfied the Applicant intended to sell the Property as soon as he regained possession.
31. Ground 1 is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the grounds, the Tribunal has to be satisfied that it is reasonable to evict.
32. The leading Scottish authority on reasonableness is the case of *Barclay v Hannah 1947 S.C. 245* at 249 per Lord Moncrieff ; the Tribunal must establish, consider and properly weigh the “*whole of the circumstances in which the application is made*”. It may take into account whether the parties’ intentions are subjectively reasonable, and it must “*objectively balance the rights and interests of both parties*” (*Manson and Downie v Turner (2023) UT 38 at paragraphs 41 and 42*).
33. In the present case it is relevant for the Tribunal to consider the Applicant’s legal right to sell the Property, his health condition and his age and stage of life. The relevant circumstances on the Respondents’ side is the difficulty in finding an affordable property to rent and their health conditions.
34. The Tribunal considers the deciding factor to be that the Applicant exercises a right of property, which gives him the right to sell the Property. The Tribunal is of

the opinion that that right must take precedence. The Applicant was at an age and stage in life where he was retired and no longer wanted to be a landlord and was planning for the future. The Tribunal did not accept Ms Bennett's submissions that the Applicant could sell the Property with sitting tenants. The Tribunal did not consider it reasonable for the Applicant to do so bearing in mind the time constraint he was working to clear the other property's mortgage and indeed his own age and health condition. On the other hand the Tribunal considered the Respondents had taken the sensible step of looking for alternative accommodation and engaging with the local Council which the Tribunal gave weight to. It was clear the Respondents also suffer from health conditions which the Tribunal appreciates can make the thought of moving unsettling. The Respondents' health conditions however do not outweigh the Applicant's right to sell the Property. The Tribunal considered that the Respondents would be rehoused in the local area which would enable them to continue with their studies. The Tribunal considered that a further period of time would allow the Respondents to adjust to the fact that they would need to move and would give the Council further time to assist them in advising on their rehousing options. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

35. In the circumstances the Tribunal considered that in terms of Ground 1 of schedule 3 of the 2016 Act it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

36. The Tribunal granted an order for repossession, superseded by a period of two months to allow further time for the Respondents to engage with the local Council to find alternative accommodation. The decision of the Tribunal was unanimous.

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.

Shirley Evans

31 August 2026

Legal Member

Date