

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 2016 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/26/0734

Re: Property at 26 Eildon Road, Hawick, TD9 8ES (“the Property”)

Parties:

Mr Michael Juska, 17 Sydney Terrace, Edinburgh, EH7 6SR (“the Applicant”)

Mrs Sharon Young, 26 Eildon Road, Hawick, TD9 8ES (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant against the Respondent. The Tribunal delayed execution of the order until 6 January 2027.

Background

1. An application was received from Lowrie Property Ltd on behalf of the Applicant on 13 February 2026 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were the following:
 - (i) Copy private residential tenancy agreement in respect of the property between the parties which commenced on 6 May 2019.
 - (ii) Copy Notice to Leave addressed to the Respondent dated 17 November 2025 citing ground 1, and stating the date before which proceedings could not be raised to be 11 February 2026.

- (iii) Copy sales agreement between the Applicant and Lowrie Property relating to the property dated 17 November 2025.
 - (iv) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 to Scottish Borders Council.
3. Following a request from the tribunal administration, the following further information was received from Lowrie Property Ltd on 18 March 2026:
- (i) Copy covering email sent to the Respondent on 17 November 2025 with the Notice to Leave
 - (ii) Copy covering email to Scottish Borders Council dated 13 February 2026 sent with the section 11 notice.
 - (iii) Mandate from the Applicant authorising Lowrie Property Ltd to represent him in the tribunal proceedings.
4. The application was accepted on 24 April 2026.
5. No written representations were received from the Respondent in advance of the case management discussion (CMD) scheduled for 3 August 2026.

The initial case management discussion

6. A CMD was held before a previous tribunal by teleconference call on 3 August 2026. The Applicant was represented by Ms Fox of Lowrie Property Ltd. The Respondent attended and represented herself.
7. The Respondent explained that she understood that the Applicant wished recover possession of the property. She considered that as it was his property, he was entitled to do so and to that extent she did not oppose the application. However, despite considerable efforts, she had been unable to obtain alternative accommodation. She had made applications for housing with the local authority and two housing associations in the area. She was also looking at private housing but nothing suitable was available. Social services had advised her that she requires a three-bedroom property on one level.
8. The Respondent explained that she lives in the property with her partner who has health issues. She and her son are his carers. Her son and her daughter also live with her. She has a part-time job as a carer, as does her son. They share the caring responsibilities for her partner.
9. Ms Fox confirmed that the Applicant owned four rental properties, each of which were currently tenanted. She could not advise the tribunal as to why the property was being sold and whether consideration had been given to selling it with the

Respondent in situ. The tribunal considered that these questions were important factors in considering the question of reasonableness. The tribunal therefore decided to continue consideration of the application to a further CMD. The tribunal issued a direction in respect of matters which it considered required to be addressed before a decision could be made on the application.

10. In its direction, the tribunal directed the Applicant to provide the following further information:

- 1) An explanation as to why the Applicant had decided to sell the property.
- 2) An explanation as to why the Applicant had decided to sell this property and not one of the other rental properties owned by the Applicant.
- 3) Whether the Applicant had considered selling the property with the Respondent in situ and if not, why not.
- 4) Why in the view of the Applicant, given the Respondent's circumstances, it would be reasonable for the tribunal to grant the order for eviction.
- 5) A note setting out whether the Applicant accepted that the Notice to Leave failed to comply with the statutory provisions. If so, whether the Applicant was entitled to rely upon it having regard to the Upper Tribunal decision in *Halcrow v Davies and Hunter* [2025] UT 68.

11. A response to the direction was received from Lowrie Property Ltd on 6 August 2026.

The continued case management discussion

12. The continued CMD was held before the present tribunal by teleconference call on 6 October 2026. The Applicant was represented by Miss Ashley Paterson of Lowrie Property Ltd. The Respondent attended and represented herself.

Preliminary issue

13. The tribunal noted that the Notice to Leave had been served on the Respondent by email, the method provided for in the tenancy agreement between the parties, on 17 November 2025. The notice stated that the date before which proceedings would not be raised was 11 February 2026. The correct period of notice for an application on ground 1 is 84 days. In terms of section 26 (6) of the Interpretation and Legislative Reform (Scotland) Act 2010, a document served by email is taken to have been received 48 hours after it is served, unless the contrary is shown.

14. In terms of section 62(4) of the 2016 Act, the date to be specified in the notice is the day following expiry of the notice period. In this case, the correct date would have been 12 February 2026.

15. The tribunal noted that the eviction application was not in fact submitted until 13 February 2026. The Respondent confirmed that she did not wish to challenge the validity of the Notice to Leave. Having considered the Upper Tribunal decision in *Halcrow v Davies and Hunter*, the tribunal determined that the error in the Notice to Leave did not materially affect the validity of the notice in terms of section 73 of the 2016 Act and therefore proceeded to determine the application.

The Applicant's submissions

16. Miss Paterson asked the tribunal to grant an eviction order in favour of the Applicant. She confirmed that the Applicant intended to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it, were an eviction order to be granted.
17. She confirmed that the Applicant no longer wished to be a landlord. He intended to sell all of his rental properties. He had sold one in 2024 or 2025. He wished to sell this property next, because it was a house with a garden. His two remaining rental properties were flats, which would be less attractive to potential buyers. He also intended to sell those flats in due course.
18. The Applicant had considered selling the house with the tenant in situ. Given the low rent, however, if he did so, he would need to sell it at a much lower price than it had been valued at. The tribunal noted that the tenancy agreement stated that the rent was £437.24 per week. Miss Paterson confirmed that this was an error. The rent was in fact payable on a monthly basis, and was currently £523.55 per month.
19. Miss Paterson said that Lowrie Property Ltd had been looking out for a suitable property for the Respondent. They had nothing on their books which was suitable, however. She also said that typical rents in the area had increased, and there was little within the Respondent's price range.

The Respondent's submissions

20. The Respondent reiterated that she understood that the Applicant was entitled to sell the property. She did not dispute his intention to sell it. She had been trying hard to find a suitable property since the end of last year, but had been unable to find one. She did not wish to remain in the property, but needed to find somewhere suitable for herself and her family.
21. She had applied for a number of properties in the area, and was in regular contact with the housing associations which she had applied to. She had arranged a

homelessness appointment with the council a couple of weeks before, but her partner had had another stroke and she had therefore been unable to attend this.

22. The difficulty was that there was a lack of three bedroomed properties which were all on one level within the local area. Social services and the care association had submitted letters to the council on her behalf. She needed to find a property with no stairs, which was difficult.
23. The current property was not really suitable, given her partner's worsened health. It has some stairs with a landing in between, which her partner can manage with some difficulty. The bathroom is downstairs and once he has got up in the morning, he remains downstairs for the rest of the day. She had been looking mainly within Hawick as neither she nor her son drive and both of them work in the town. If they had to move too far away, however, she was concerned that they might lose the care package which is currently in place for her partner.
24. She confirmed that her rent was paid direct to Lowrie Property Ltd via universal credit. She said that her son is now 19 and her daughter is 18 and is currently looking for work. While it would be possible for them to now seek their own housing, enabling her to search for a two bedroomed property, she relies on them to help with her partner's care. She said that she needed more time to find suitable accommodation.

Findings in fact

25. The tribunal made the following findings in fact:

- The Applicant is the registered owner of the property. He is therefore entitled to sell the property.
- The Applicant is the registered landlord for the property.
- There is a private residential tenancy agreement in place between the parties, which commenced on 16 May 2019.
- The Notice to Leave was validly served on the Respondent by email on 17 November 2025.
- The Applicant sent a valid notice to Scottish Borders Council under section 11 of the Homelessness etc. (Scotland) Act 2003 on 13 February 2026.
- The Applicant owns two other rental properties, and intends to put them all up for sale. He has already sold his fourth rental property.
- There is a mortgage over the property.
- The Applicant intends to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.
- The Respondent lives in the property with her partner who is disabled, and her two adult children, aged 18 and 19.

- The Respondent works as a part-time carer, and is in receipt of universal credit.
- The property is a three bedroomed house.
- The Respondent requires to find a property on one level which is suitable for her partner's health needs.

Reasons for decision

26. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

27. The tribunal considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

Landlord intends to sell

1(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, and

(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.

28. The tribunal determined that as the legal owner of the property, the Applicant is entitled to sell the property.

29. The tribunal then considered whether the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.

30. The tribunal had regard to the letter from Lowrie Property Ltd confirming that the Applicant had instructed them to market the property. The tribunal was satisfied that this is evidence tending to show that the Applicant has the intention set out in sub-paragraph 2(b) of Ground 1.
31. The Respondent confirmed that she did not dispute that the Applicant intends to sell the property.
32. Having considered all of this, the tribunal determined that the Applicant intends to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.

Reasonableness

33. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
34. The tribunal considered the Applicant's circumstances. The Applicant no longer wishes to be a landlord and intends to sell all of his three remaining rental properties, including this one. He has considered selling the property with the tenant in situ, but does not consider this to be feasible given the low rental for the property.
35. As the legal owner of the property, the Applicant has the legal right to use and dispose of it as it sees fit, within the confines of the law.
36. The tribunal noted that the Respondent has been living in the property for more than seven years. She and her family are facing the loss of their home through no fault of theirs.
37. The Respondent has clearly been making considerable efforts to find suitable alternative accommodation, but has been unable to do so due to the lack of suitable and affordable accommodation which is available in the area. She made it quite clear to the tribunal that she did not wish to remain in the property, but that she needed to find somewhere else to go. She was very clear that she accepted that the Applicant was entitled to sell the property and that she would have to move.
38. The tribunal had considerable sympathy with the Respondent, given her situation. It appeared to the tribunal, however, that the property was not suitable for the Respondent and her family, given her partner's health and care needs.

39. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order in favour of the Applicant.
40. In reaching its decision, the tribunal gave particular weight to the Respondent's clearly stated lack of opposition to the application.
41. Before deciding whether to make an eviction order, the tribunal sought the views of both parties on the possibility of delaying execution of any order in terms of rule 16A of the 2017 rules, to give the Respondent more time to find suitable alternative accommodation.
42. The Respondent said that she would like more time to try to secure suitable alternative accommodation. Miss Paterson confirmed that she had spoken to the Applicant during the tribunal's adjournment to consider its decision. She said that the Applicant appreciated the Respondent's difficult circumstances and was conscious of the upcoming Christmas period. He would therefore be agreeable to delaying execution of the order until January 2027.
43. The tribunal therefore decided to make an eviction order. It determined that it would be reasonable in all the circumstances to delay execution of the order for two months until 6 January 2027.

Decision

The tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The tribunal delayed execution of the order until 6 January 2027.

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.

Sarah O'Neill

Legal Member/Chair

6 October 2026

Date

