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

Chamber Ref: FTS/HPC/EV/25/4977

Re: Property at Chromain Cottage, Sandbank, Dunoon, PA23 8PN ("the Property")

Parties:

Michele Hamilton (as administrator of the late William Russell), c/o Patten & Prentice, 2 Ardgowan Square, Greenock, PA16 8PP ("the Applicant")

Jane Anne Byars, Chromain Cottage, Sandbank, Dunoon, PA23 8PN ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background and procedural history

1. This is an application by the Applicant for an eviction order in regard 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"). The Applicant relied on a PRT by the late William Russell to the Respondent commencing on 1 December 2017 but the Tenancy Agreement was in a short-assured tenancy style, and the nature of the tenancy was initially a matter of dispute between the parties.

2. The application was lodged with the Tribunal on 19 November 2025 (and subsequently amended on 9 December 2025). The application relied upon a Notice to Leave dated 15 July 2025 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, intimated upon the Respondent by Sheriff Officer on 15 July 2025. The Notice relied upon Ground 1 of Schedule 3 Part 1

of the 2016 Act, referring to the Applicant's intention to sell the Property as part of the winding up of the estate of her late father, William Russell. A Home Report and correspondence from intended solicitors and estate agents were lodged in support.

3. Prior to the case management discussion ("CMD") we issued a Notice of Direction seeking further information on a number of issues, but principally regarding the occupancy of the Property and when occupancy commenced. In advance of the CMD, both parties provided submissions in response to the Notice (the Applicant lodged one set and the Respondent two sets). The submissions further addressed reasonableness.

The CMD

4. The matter called for a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 9 June 2026 at 10:00. Both parties were represented. Full details of the discussion at the CMD are within the Case Management Discussion note but in summary:
   a. Much of the discussion related to the history of occupation and the then-outstanding dispute on the nature of the Tenancy. We were informed that the Property was occupied by the Respondent, her son and daughter-in-law Richard and Chrisna Byars, and Mr and Mrs Byar's young children. The layout of the Property was discussed (though we took further detail on this at the hearing, which is referred to below).
   b. Further, the Applicant's agent made reference to a separate Repairing Standards application regarding the Property, which had been advanced in the joint name of Richard and Chrisna Byars and the Respondent (reference RP/25/3083).
   c. In regard to reasonableness, the Respondent's principal defence on reasonableness, per the written submissions, was "that eviction would be unreasonable and disproportionate in light of the Respondent's exceptional medical circumstances, age, and vulnerability". These issues were addressed at length at the hearing and are referred to below.

5. In the circumstances, we determined that it was appropriate to appoint matters to a Hearing with witnesses. We issued a further Notice of Direction with a structured deadline for: unsuitable dates, Lists of Witnesses, provision of documentation and submissions on factual points (in particular provision of any further medical information regarding the Respondent), submissions on legal issues, and witness statements. Reference is made to the Notice of Direction for full details of what it required lodged.

Further to the second Notice of Direction

6. Though parties were not fully compliant with the deadlines set within the Notice of Direction (in particular regarding the provision of witness statements), both parties provided witness statements and the Respondent provided limited further documentation including: a letter from Inverclyde Royal Hospital dated 10 June 2026 setting out the nature of her current and intended future treatment, and a

letter from “HOME Argyll” dated 16 July 2026 confirming that Mr and Mrs Byars were on the housing waiting list with the maximum number of points being 200 (though they actually had 210 points worth of qualifying circumstances: 200 for “Statutorily homeless” and 10 for “Home has significant condition problems”).

7. In regard to the legal issues in the matter, further to the Notice of Direction, the Respondent confirmed that she did not dispute that the Tenancy was a PRT of 1 December 2017, and accepted that ground 1 was made out by the Applicant. Further, the Respondent’s submissions appeared no longer to oppose eviction, but instead seek a suspension to “allow further time to secure housing” on the grounds of considering the Respondent’s “age, serious health condition” and “lack of alternative accommodation”.

8. We further noted that the Applicant’s witness statement engaged with the prospect of a suspension, indicating that the Applicant would agree to a suspension until 1 March 2027.

9. Shortly before the hearing, the Respondent’s agent confirmed that she would not be appearing as a witness, but that Mr Byars would give evidence on both his own statement and the matters within the Respondent’s statement.

The Hearing

10. The matter called for a hearing by videoconference on 6 November 2026 at 10:00. We were addressed by the Applicant’s representative, Kenneth Caldwell, solicitor, Patten & Prentice. The Respondent was represented by Laura McLeod, Housing Rights Advisor, Argyll & Bute Citizens Advice Bureau.

11. In regard to the Applicant, the agent confirmed that eviction was still insisted upon as she required to wind up her late father’s estate but that she was still willing to agree to a suspension until 1 March 2027. The Respondent’s agent confirmed that the defence was now restricted to the length of a suspension (based on reasonableness grounds) but that she sought a suspension of 12 months. In light of there being no prospects for an agreement between the parties, we commenced hearing the witnesses.

Elizabeth Hamilton

12. Miss Hamilton is the Applicant’s daughter (and grand-daughter of the late landlord of the Property). She adopted her written statement of 2 November 2026. She is 44 years old and gave evidence regarding assisting her mother with the task of winding up her grandfather’s estate which she described as “a nightmare”. She provided evidence of the history of dealing with Mr Byars (who was the principal contact for her and her mother, and the estate’s solicitors, regarding the Property). Her evidence was that the English solicitors for the estate first gave notice to Mr Byars in 2021 that they wished to recovery the cottage to sell it, and that the Applicant then instructed Patten & Prentice in June 2024.

13. Her evidence reviewed her understanding of the relationship between her grandfather and Mr Byars, and the changing nature of Mr Byars' claims regarding the Property (such as a past suggestion that he had been allowed to occupy it as a condition of employment for her grandfather, and a previous claim that there was no written tenancy agreement). She gave evidence that the written Tenancy Agreement on which the application was founded was only obtained following "an approach to the local authority" when it was found that the Respondent was listed as the tenant. She regarded this as evidence that Mr Byars had not been truthful in his dealings with her and the Applicant.

14. Her evidence further reviewed abortive negotiations with Mr Byars in regard to his attempts to purchase the Property. They failed to result in an acceptable proposal (as Mr Byars said he could only commit to a deposit and then a long deferred period prior to full payment) and the Applicant then instructed a Notice to Leave to be issued. After this, Mr Byars ceased to make offers to purchase and started to refer to an intention to raise the Repairing Standards application.

15. In regard to the condition of the Property, Miss Hamilton provided evidence of instructions to tradespeople and the steps taken to address the Repairing Standards application. She said that repairs undertaken to that date had "cost in excess of £33,000" and had included works that sought to address issues with the roof, and renewal of the sink and cooker hood.

16. Miss Hamilton's evidence addressed reasonableness. She acknowledged that "there will be significant inconvenience" to the Respondent "in moving home standing her age" but referred to the Respondent being given high priority on the housing list. Further, she said that the Property was "entirely unsuitable for Mrs Byars" given the size and number of occupants. She said that tradespeople had reported to her that Mr Byars had told them that he intended to leave the cottage as it was no longer suitable. The witness further made reference to the Applicant's willingness to agree a suspension to 1 March 2027.

17. In her oral evidence Miss Hamilton stated that a suspension of 12 months "feels too long" and stressed that it was over five years since the first contact of the English solicitors with Mr Byars about a sale of the Property. She said that any continued delay meant increased costs for the estate in solicitor's fees, insurance of the Property, maintenance of the Property, and arranging site visits. She said that the Applicant is also dealing with issues relating to her brother (the witness's uncle) who was unwell, but that the Applicant was not a landlord and had no experience of dealing with such matters. The costs and responsibility were "too heavy" for the Applicant and it was a very complicated estate. The witness said that the Applicant wanted to close matters down and conclude the work on the estate.

Michele Byars (the Applicant)

18. The Applicant is the daughter of the late landlord of the Property. She adopted her written statement of 2 November 2026. She is 65 years old and gave

evidence regarding the death of her father on 29 January 2020 (at age 86) and her appointment as administrator of the estate on 20 May 2021.

19. The estate included assets in England & Wales and Scotland, and included property in Dunoon including the Hunters Quay Hotel and the Property. The Property is the last asset in the estate to be sold. (In her oral evidence, she explained that the penultimate property (a former golf clubhouse) was sold a few days earlier.) The sale of the Property was needed in order to conclude the winding up of the estate.

20. She provided similar evidence as Miss Hamilton had regarding a history of dealing with Mr Byars but her knowledge of the occupation of the Property dated back to 2019, as she said her father had discussed with her that he was wanting to recover possession at that time. She also gave evidence that the English solicitors for the estate first gave notice that they wished to recovery the cottage to sell it in 2021, and that she instructed Patten & Prentice in June 2024. Further, she gave evidence regarding the changing nature of Mr Byars' claims regarding the Property (similarly providing evidence of a past suggestion that he had been allowed to occupy it as a condition of employment for her grandfather, and a previous claim that there was no written tenancy agreement). She described Mr Byars as "evasive in answering questions", and also provided evidence on abortive negotiations to sell to Property to Mr Byars.

21. She said that the administration of the estate had been "difficult for me to navigate" and she now wished to bring "the administration of the estate to a conclusion". She said she had "never been a landlord, do not own any other rental properties, and do not have the experience of knowledge to take on those responsibilities". She provided evidence of her caring responsibilities for her brother, who has dementia. She made reference to her willingness to agree a suspension to 1 March 2027.

22. In her oral evidence, she was asked as to why 1 March 2027 had been selected as the date to which she wished the order suspended. She explained that it allowed the Byars family time to find a new home, but allowed her to have the Property put in a condition suitable for marketing in Spring 2027, which was the preferred period for marketing. She was asked about her attitude to a suspension until November 2027 and she said that she thought it too long to wait another year to sell. She thought that if she did not regain possession until November 2027, it would be unlikely to be on the market before March 2028. She explained that she was keen to have the estate concluded for the sake of her brother (who was co-beneficiary).

Richard Byars

23. Mr Byars is the son of the Respondent. He adopted his written statement of 22 October 2026. He is 57 years old and gave evidence regarding his mother's health and the effect of eviction upon his mother and his family.

24. It was explained to us by the Respondent's agent that the Respondent was in the same building as Mr Byars but was in bed at the time of the hearing and would not be well enough to come to the room to provide her own evidence. Mr Byars adopted the written statement of his mother, dated 21 October 2026, and confirmed that it represented his understanding of her position. The Respondent's statement focused on her medical situation and the significant effect that eviction would have upon her.

25. The following record of Mr Byars' evidence includes matters raised directly in his statement, matters raised in the Respondent's statement, as well as from his oral evidence due to the significant overlap in the evidence on certain issues from these three sources.

26. In respect of the Respondent, her medical position was that:
    a. She was 86 years old and currently undergoing treatment for breast cancer. This was her third diagnosis of breast cancer and it had now spread to her lungs.
    b. She had suffered a fall which resulted in a bleed on her brain, and then a subsequent fall which resulted in another. During a period of hospital treatment, she had lost her front teeth in a further fall.
    c. The Respondent required an operation but that this would not be reconsidered until a follow-up appointment in December 2026, due to monitoring the bleeding on her brain. The operation would take place in December or January at the earliest.
    d. The Respondent had recently suffered a bad reaction to treatment that had left her confused for a period.
    e. The Respondent's health was variable. M Byars said that some days she seemed very much improved but also that if she had an outing it may tire her out for days after. Though Mr Byars said that her health had deteriorated over the last year, she was now getting stronger. She was elderly and in poor health but not bed-bound and was often able to get up and make a cup of tea herself. When they took her out, she sometimes used a wheelchair. She had a commode if she felt she could not get to the toilet, and Mrs Byars would sometimes assist her in going to toilet or washing (but not always).
    f. Mr Byars had been her carer since 2013 but when asked in cross-examination if the Respondent was reliant on him and his wife he did not confirm that she was. He merely said that he and his wife "would not walk away and leave her". His written statement however referred to him having to provide "round-the-clock care duties" (albeit due to also having a young child, as well as his mother, to care for).
    g. Mr Byars referred to his father having moved into a hospice prior to his death. He said that he would not wish that, or nursing home care, for the Respondent. He said that his wife grew up in a multi-generational household and that the two of them were happy to care for the Respondent.

27. In regard to the rest of the family, Mr Byars lived in the Property with his wife, and their two children, aged 1 and 7. The older was in the local primary school and settled, with friends in the local area.

28. In regard to the Property, Mr Byars made reference to the historic repairs issues and his view that the Applicant required to be forced into carrying out repairs by the Repairing Standards application. He confirmed that work had now been carried out and he had no complaints about the quality of work undertaken. The Property was described as being "farm cottage" or "shepherd's cottage" with a sizable two-storey extension. He explained that, if entering from the front door, you could enter the living room on the left, and that went through to the kitchen. From the front door on the right, you entered the Respondent's bedroom through which you reached the Property's only bathroom. There was a further passageway where you could enter the bathroom without going through the Respondent's bedroom (but Mr Byars said that generally they went through his mother's room to reach the bathroom). In regard to the upper floor, there was a large mezzanine area above the living room which was used as a bedroom for the other four family members. It had a privacy screen erected, and behind the screen was a very large area where Mr and Mrs Byars and their children currently slept, but before you reached it there was an initial area with a bed which their older son was planning to move into (and which was used currently by any visitors).

29. Mr Byars was pressed on whether the Property was very cluttered. He accepted that they had substantial belongings in it, as a result of the contents of his and the Respondent's previous homes both being stored there. He said they were slowly working through clearing things out, and that there were "walkways" to travel safely through all rooms.

30. The Respondent and her family occupied the cottage, entrance way and ½ acre of garden. The title to the Property comprised that plus a couple of large fields but the Byars did not occupy the fields. Mr Byars said that he previously assisted in maintaining the fields, on the request of Mr Russell, but that stopped when the tractor that Mr Russell had supplied had broken down.

31. In respect of the threat of eviction, Mr Byars described his mother as "terrified" of being evicted with nowhere to go and "worried sick" about he and his wife, and the children. Mrs Byars' statement described the Property as her "safe place" and that it allowed her to "maintain what little independence I have left". She explained that it was close to her GP and pharmacy and that her oncology treatment was at Inverclyde Royal in Greenock. She expressed the concern that leaving the area would mean her losing a "life-sustaining support system" of such proximity plus her family and close neighbours. She described eviction as having a "catastrophic impact… on my health and my life". Mr Byars' statement expressed a concern, in anticipation of an operation in the next months around the same time as a potential eviction, that "disruption to her clean, stable environment will directly jeopardize her post-operative recovery and significantly increase her risk of surgical infection".

32. Mr Byars explained that the family were now on the housing list but he believed it took around a year on average for a suitable property to be available, normally taking 10-16 months. He said that they were down for a three-bedroom property

as they were told that there was more availability for those than four-bedroom properties. They needed a property with at least one bedroom and bathroom on the ground floor, for his mother. They had put Dunoon as their preferred location but that they were willing to consider other areas.

33. He had looked into private rented properties but there were few properties available, and they mostly went very quickly, or were not suitable for his mother's needs, or were out of his price range of £800/month. They had therefore not viewed anything recently as the few that he had enquired about were already gone by the time he called.

34. Regarding dealings with the Applicant and her solicitors, Mr Byars thought he was first contacted in 2020 by the English solicitor but then he heard nothing further and assumed they were no longer wishing them to move out until Patten & Prentice made contact in 2024. In regard to the negotiations to purchase, his brother had been selling a property and had offered to fund the purchase from his proceeds of sale. Mr Byars thought his offer, which he confirmed involved a deposit and then a period to pay the balance, was a reasonable one but when it was not accepted his brother did something else with his money. Mr Byars further raised the point that the Applicant was free to have sold the Property with a sitting tenant at any point.

Submissions

35. The Applicant's agent noted that the Respondent accepted Ground 1 was established and that the defence was restricted to reasonableness. In regard to the appropriate approach to reasonableness, he quoted *Cumming v Danson, [1942] 2 All ER 653* (Lord Greene MR at p655):

> *[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.*

36. In regard to the Respondent's health, he noted that there was limited medical information, no up-to-date medical reports or documentation, and no medical information that commented on the specific effect of rehousing. He suggested that the Respondent's family were being too restrictive in regard to the housing that they were seeking, but that it should be noted that the Property itself was unsuitable for them.

37. Regarding timing, Mr Byars had known of the estate's wish to sell since 2020 but there was no clarification of the nature of the Tenancy until during this application. Despite initial claims that there was no written agreement, the written Tenancy Agreement was located via the local authority in 2025 but then the nature of the Tenancy was disputed until shortly after the CMD. Therefore, there was no

prospect of the Applicant being able to sell with a sitting tenant, as until recently the tenant disputed the nature of the tenancy. He did not think it was tenable to sell the farm land separately in the meantime, as it was of limited value. He also stated that the Applicant was very willing to have sold at a significant discount to Mr Byars (as the deceased had purchased in 2017 for £300,000) but that no acceptable offer had been made.

38. Regarding any suspension, the Applicant's agent conceded that 1 March 2027 was simply a date that was felt to be sufficiently in advance to provide the Respondent and her family time to move out, but early enough to catch the best period for marketing. He could see that an extra month or so would be roughly equivalent. We asked him to provide his submissions on a hypothetical suspension until mid-July, as being 12 months after the letter confirming the Byars were on the housing list, and also after the end of the school year. He noted that the Respondent did not make any submission related to the school calendar. He accepted that eviction in July may still allow marketing during the Summer, but moved that a suspension to March (or April) was preferrable given the passage of time.

39. The Respondent's agent urged us to consider the Respondent's health and not grant a suspension to as early as 1 March 2027. She painted a bleak picture of the housing stock in the area, and the limited options for homeless accommodation. From her experience, she affirmed Mr Byars' evidence about the timing for being rehoused into a three-bedroom property. We pressed her on her views as to the likelihood of rehousing either by 1 March or 6 November 2027 (the two extremes of dates proposed by the parties). She accepted that it was possible, but highly unlikely, that the Byars would receive an offer of suitable rehousing by 1 March 2027. In regard to 6 November 2027, she said it was possible, but highly unlikely, that they would <u>not</u> have received a suitable offer by then. She said that as soon as they had an offer, they would wish to move out and it could thus be earlier than November 2027. The agent confirmed that properties on the local private rented sector went very quickly and she believed that those who were able to move fast (such as being in employment and able to provide references and deposit money) would be more successful in securing private sector accommodation.

40. In the event that the Respondent and her family had not received a suitable offer of rehousing by the date of eviction, the only emergency housing available was a hotel in Dunoon (if available, as otherwise it would be a hotel elsewhere, such as Oban). The hotel accommodation was a basic room with no cooking facilities except a kettle. The Respondent's agent accepted that, at her age and with her health conditions, the Respondent may be suitably housed in a nursing home, even on a temporary basis (leaving her son and his family with more flexibility to seek accommodation), but she had never seen that as an option for emergency homelessness accommodation. First, the Respondent would need to start applying for such a place, and be assessed and her finances considered. Second, there may be no local home suitable. Third, she did not think it reasonable to see the Respondent forced to be separated from family and grandchildren in this way (even temporarily).

41. We pressed the Respondent's agent on the nature of the housing list application. We noted the following:
    a. Unlike some housing authorities, Argyll & Bute Council will provide applicants with a full 200 points based on their receipt of an appropriate Notice to Leave, and not require an order for eviction.
    b. The authority had thus already accepted their 'homelessness duty' towards the Respondent and her family. If they were now to leave the Property, even before an order for eviction, they would be entitled to emergency accommodation (but that would be hotel accommodation).
    c. Thus, it was the Respondent's agent's view that the Respondent and her family would receive no greater priority if they had an order for eviction against them. They are already as high up the housing list as they can be. When they will reach the top of the list, the next available suitable property will be offered to them, regardless of whether this is before or after the date of an eviction.
    d. The Respondent's family applied for the housing list following the CMD, on the agent's suggestion.
    e. As the Respondent would have been entitled to full points based on the Notice to Leave, and the Notice to Leave expired on 10 October 2025, the Respondent and her family could have applied then, and likely have been placed on the list (with full points) within a month of applying. Had they done so at the time, they would have now been on the list for over 12 months. In mitigation, the agent argued that the Byars family have had a stressful few years dealing with the Respondent's health issues (which we took to imply that this contributed to their failure to focus on the option earlier).

Findings in Fact

42. On 1 December 2017, William Russell let the Property to the Respondent under a Private Residential Tenancy with commencement on that date ("the Tenancy") albeit the agreement was in a short-assured tenancy style.

43. Mr Russell died on 29 January 2020.

44. The Applicant was appointed as administrator of the estate of the late Mr Russell on 20 May 2021.

45. The Applicant is the daughter of the late Mr Russell. She and her brother are the beneficiaries to his estate.

46. The Applicant's brother suffers from dementia and she has some caring responsibilities to him.

47. The Applicant has no background or experience in managing private rental properties other than that which she has had to undertake in respect of her late father's estate.

48. The Applicant sought to realise the entire estate of her late father as part of her duties as administrator. In this regard, she has wished to sell the Property from the earliest stages of the probate process.

49. On or about 15 July 2025, the Applicant's agent drafted a Notice to Leave in correct form addressed to the Respondent, providing the Respondent with notice, amongst other matters, that the Applicant wished to sell the Property.

50. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 10 October 2025.

51. The Notice to Leave was served on the Respondent by Sheriff Officer on 15 July 2025.

52. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on or around 17 November 2025, subsequently lodging an amended application on 9 December 2025.

53. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Argyll & Bute Council on 19 November 2025.

54. The Applicant wishes to sell the Property with vacant possession in early course so as to conclude the process of winding up the estate of the late Mr Russell. The Property is the sole remaining asset of the estate yet to be sold.

55. The Applicant has engaged a surveyor to provide a Home Report and engaged solicitors to act in a sale.

56. The Respondent resides at the Property with her son, her daughter-in-law and her two grandchildren (aged 1 and 7).

57. The Respondent's 7-year-old grandchild attends a primary school local to the Property.

58. The Respondent is 86 years old with complex health care and medical needs, following a diagnosis of cancer but currently being unable to undergo a necessary operation due to previous bleeding on her brain.

59. The Respondent maintains a degree of independence around the Property but is materially reliant on her son and daughter-in-law for her care.

60. The Property is a two-bedroom property of unusual configuration, with:
    a. The only toilet accessed through the Respondent's bedroom or via a rear passageway; and
    b. A mezzanine level that is sub-divided by a privacy partition into two sleeping areas (which are occupied by the Respondent's son and his family).

61. The Respondent's family have investigated alternative private rented accommodation but little is available in the area.

62. The Respondent's family first sought social housing in June 2026, following the CMD, and were awarded full points. They await an offer of housing, but it is unlikely to be forthcoming until at least around May 2027.

Reasons for Decision

63. 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. In any case, the Respondent confirmed after the CMD that the grounds for eviction were not disputed.

64. 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.*
>
> *(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.*

65. There was evidence provided of the type mentioned in paragraph (3) (a Home Report and letter from Patten & Prentice confirming they were instructed to act in any sale) but, in any case, we were satisfied by the Applicant's evidence that she wished to sell so as to wind up her late father's estate. This is the natural progress of an executry or probate. We thus accept that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondent did not dispute that the material requirements of Ground 1 were satisfied.

66. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicant's reasons for wishing to sell with vacant possession. Mr Byars' view that a sale with sitting tenants was possible was not, in our view, realistic or appropriate. The Applicant's agent correctly stated that no sale would have been tenable until July 2026, when the Respondent finally conceded the nature of the Tenancy. Further, we accept that a sale with vacant possession likely realises a greater value for the estate and is

a more straight-forward sale proposition. The Applicant is reasonable in seeking a sale with vacant possession.

67. The remaining issue is thus a length of any suspension. We were obliged to both parties for their clear submissions on their competing alternative dates of 1 March 2027 and 6 November 2027. In light of the submissions, we held that it was reasonable to grant an order for eviction at the CMD subject to an appropriate suspension.

68. The Applicant did not seek to dispute that the Respondent suffered material health issues, or that moving would be a significant disruption. The Applicant's submissions were, however, that 1 March 2027 provided sufficient time to plan for such a disruption, especially in the context of the Byars family being aware since around 2021 that a sale with vacant possession was one day going to occur. We also accept the Applicant's criticisms of the Respondent's submissions and evidence as lacking clear statement as to what the Respondent's current medical position was and how her treatment might specifically be affected by moving. There was a limit to how much should just be assumed based on the Respondent's age and diagnosis. The written statements of the Respondent and her son did not engage with the process of moving at all. Their tenor was that the Respondent and her family wished to remain indefinitely, as any move would be "catastrophic". The Respondent's agent was far more measured. Though she submitted that the prospect of the Respondent being forced into emergency hotel accommodation would be "catastrophic", she submitted that the Respondent and her family accepted that they would need to move eventually, and that they just wanted enough time to be rehoused properly.

69. That brings forth the question as to what is sufficient time. We were grateful to the Respondent's agent for her candour and concession that the Respondent would likely have already been on the housing list for 12 months by now (and thus, may have already been rehoused) had her family engaged earlier with rehousing. Instead, no attempt was made to seek social housing until after the CMD. It was also not until after the CMD that the Respondent abandoned attempts to challenge the nature of the Tenancy. Until that time, apparently driven by Mr Byars, it appeared that there had been much obfuscation.

70. We are resistant to reward delay and obfuscation. If the Respondent needed an average of one year to be rehoused, the Respondent's motion effectively means that she should be given over two years. Part of this is because she made no effort to start on time, and only sought to join the housing list around 8 months after being at risk of homelessness. Notwithstanding, the Respondent's health conditions weigh heavily upon our consideration as to what is reasonable. Further, even if the Respondent did not seek to rely upon it, we are reticent to set up the possibility of an eviction during a school year. Conversely, we are not attracted by a possible eviction late in the year, when the weather is deteriorating again and when the Applicant will struggle to place the Property on the market for some months after.

71. For these reasons, we are not satisfied to suspend until 6 November 2027. We were not convinced that such a lengthy period was required. Further the Respondent and her family placed themselves where they are in the housing process by not taking appropriate steps at an earlier stage (despite many years of warning). We are however willing to give the Respondent the "average" (per her son's evidence and her agent's submissions) of 12 months to be rehoused. The letter confirming their points is dated 16 July 2026, which also means that a 12-month suspension from then would expire after the end of the current school year, and still with sufficient time for the Applicant to seek to market the Property during late Summer and early Autumn. The first Monday following the anniversary of the housing letter is 19 July 2027 and we regard that as an appropriate date for the suspension to expire.

72. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time, suspended to 19 July 2027 as stated.

Decision

73. In all the circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* further to ground 1 of Schedule 3 of that Act, suspended as stated.

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.

Joel Conn — 6 November 2026

Legal Member/Chair — **Date**