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/26/2300

Re: Property at 44 Rothes Road, Glenrothes, Fife, KY6 1BN ("the Property")

Parties:

Executors of the late William Robert Birrell, Executors of the late William Robert Birrell, Executors of the late William Robert Birrell, 20 Croft-an-Righ, Kinghorn, Burntisland, Fife, KY3 9XX; 5 Kings Drive, Kinghorn, Burntisland, Fife, KY3 9XG; 81 Lady Nairn Avenue, Kirkcaldy, Fife, KY1 2AR ("the Applicants")

Ms Karen Morris, 44 Rothes Road, Glenrothes, Fife, KY6 1BN ("the Respondent")

Tribunal Members:

Serena Weir (Legal Member) and Tony Cain (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted against the Respondent in favour of the Applicants such order not to be enforced before 12noon on 01 February 2027

Background

1. The Applicants seek an eviction order in terms of Section 51 and ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 ("**the 2016 Act**"). A copy of the tenancy agreement, Notice to Leave and proof of delivery, Section 11 Notice, paperwork in relation to the appointment of the Applicants as executors, copy mortgage statement and a letter from Innes Johnston Solicitors confirming their instruction to sell the Property on behalf of the Applicants, were lodged with the application.
2. A copy of the application was served on the Respondent, and the parties were notified that a Case Management Discussion ("**CMD**") would take place by telephone conference call on 12 November 2026 at 2pm.
3. The CMD took place on 12 November 2026. The Applicants were represented by Ms McGowan of Innes Johnston Solicitors. The Respondent appeared personally.

Summary of Discussion

4. The Applicants' representative explained that following the death of the landlord, William Robert Birrell, the Applicants had been appointed as executors to his estate. The Applicants had concluded that they were not in a position to take on the responsibilities associated with being a landlord.
5. There is a mortgage over the Property with the Bank of Ireland (the "**Lender**"). The mortgage is an interest only mortgage. As at 31 March 2026, there was around £32,000.00 owed to the Lender in relation to the mortgage. As at the same date, the mortgage was in arrears of around £1,450.00. The Applicants have received letters from the Lender in regard to the arrears on the mortgage which are causing them significant stress and anxiety. The Applicants will use the free proceeds of the sale of the Property to repay the sums owed on the mortgage.
6. In or around March 2026, the Respondent instructed a solicitor to note her interest in purchasing the Property. The Respondent requested that a home report be carried out. The Applicants spent around £350.00 instructing this in an attempt to assist the Respondent with completion of the purchase of the Property prior to the end of the notice period. On or around 14 April 2026, the Respondent advised that she no longer wished to purchase the Property.
7. The Respondent explained that she understood the Applicants' position and that the application was not opposed. She explained that having received the home report, she concluded that she was not in a position to purchase the Property.
8. The Respondent is looking to be re-housed in a Fife Council property in order that she can have some more stability.
9. The Respondent lives in the Property with her 21 year old son. Neither have any health related vulnerabilities that the Respondent wished to make the Tribunal aware of.
10. The Respondent works full time as a support worker. She works in excess of 40 hours per weeks, often on shifts of 12/14 hours.
11. As a result, the Respondent would require some more time, over and above the usual 30 day period, in order to remove from the Property. She would require time to clear the Property, find a storage solution for her property and follow up with the Council about alternative accommodation.
12. The Respondent has engaged with her local Council for some time now. Their advice to her was to stay in the Property until such time as an eviction order was made in order that she can be re-housed. The Respondent has continued to keep the Council updated with progress of the present application.
13. The Applicants' representative explained that the request for more time from the Respondent was understandable and was not opposed.
14. It was explained by the Tribunal that whilst it was acknowledged that there were sums owed to the Lender who were pressing for repayment, an order from the Tribunal would provide some comfort to the Lender that the Applicants were able to market the Property for sale and that a date for vacant possession of the Property was known.

Findings in Fact

15. The late William Robert Birrell is the owner and landlord of the Property.
16. The Respondent is the tenant of the Property.
17. The lease between the late William Robert Birrell and the Respondent was a Private Residential Tenancy.

18. The Applicants have been appointed as the executors of William Robert Birrell following his death.
19. The Applicants are not in a position to take on the role of landlord of the Property.
20. The Applicants intend to sell the Property. They have instructed a firm of solicitors to market the Property for sale once it is vacant.
21. Consideration was given by the Applicants to selling the Property to the Respondent.
22. The Respondent was not in a position to purchase the Property.
23. The Respondent lives at the Property with her 21 year old son.
24. The Respondent is in full time employment. She works in excess of 40 hours per weeks, often on shifts of 12/14 hours.
25. As a result, the Respondent would require some more time, over and above the usual 30 day period, in order to remove from the Property.
26. No-one in the Property has any health conditions.
27. The Respondent has engaged with the Council about finding alternative accommodation with them.
28. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondents.
29. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 20 April 2026.
30. The Tribunal Application was submitted on 21 May 2026.
31. The Respondent does not oppose the application.

Reasons for Decision

32. The application was submitted with a Notice to Leave dated 20 January 2026 together with proof of service. The Notice to Leave states that an application to the Tribunal is to be made on ground 1: the Applicants intends to sell the Property. The Notice to Leave states that the earliest date that an application can be made to the Tribunal is 20 April 2026.
33. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicants has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicants also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicants has complied with Section 56 of the 2016 Act.
34. Section 51(1) of the 2016 Act states,

"The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."

35. Ground 1 of schedule 3 of the 2016 Act (as amended) states,

"(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."*

36. From the documents submitted and the information provided at the CMD, the Tribunal is satisfied that the Applicants intend to sell the Property and that part 1 of ground 1 is established.
37. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following.
38. The Respondent does not oppose the application. The Respondent wishes to be re-housed in a Council property. The Respondent has been in contact with the Council about this and has kept them updated about progress of the application.
39. The Respondent is in full time employment. No one at the Property has any health conditions.
40. The Applicants intend to sell the Property as part of the winding up of the estate of the late William Robert Birrell. The Respondents are not in a position to take on the responsibilities associated with being a landlord.
41. The Tribunal concludes that the Applicants has complied with the requirements of the 2016 Act and that ground 1 has been established. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged by the Applicants and the written and oral submissions on behalf of the Applicants and the oral submissions on behalf of the Respondent at the CMD, specifically that the request for a possession order was not opposed. Accordingly, the Tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction order.
42. In relation to the request for more time, this was not opposed by the Applicants' representative. In light of the time of year, the Tribunal was persuaded that it was appropriate to delay enforcement of the order until 01 February 2027.

Decision

43. The Tribunal determines that an eviction order should be granted against the Respondent but enforcement delayed until 01 February 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.

Serena Weir — **12/11/26**

Legal Member/Chair — **Date**