



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51 Private Housing  
(Tenancies) (Scotland) Act 2016**

Reference number: FTS/HPC/EV/23/4567

Re: Property at Flat 4, 7 East Pilton Farm Crescent, Edinburgh, EH5 2GF (“the Property”)

The Parties:

Siberite Mortgages Limited, The Pavilions, Bridgwater Road, Bristol, BS13 8AE (“the Applicant”)

Rory MacAleece, Flat 4, 7 East Pilton Farm Crescent, Edinburgh, EH5 2GF (“the Respondent”)

**Decision (in the absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Flat 4, 7 East Pilton Farm Crescent, Edinburgh, EH5 2GF 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 Respondent. The order will include a power to Officers of Court to eject the Respondent 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 their 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 Applicant based his application on Ground 2 (Property to be sold by Lender) of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The application was accompanied by a Private Residential Tenancy Agreement dated 26 April 2019 between Roy Fever, the Landlord and the Respondent, copy title sheet MID99176, a Decree for possession of the

Property against Roy Fever from Edinburgh Sheriff Court dated 16 June 2022, a Notice to Leave dated 17 May 2023, recorded delivery proof of delivery and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Edinburgh City Council dated 4 December 2023

3. On 16 May 2024 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 21 June 2024. This paperwork was served on the Respondent by Christopher Andrew, Sheriff Officer, Edinburgh on 22 May 2024 and the Execution of Service was received by the Tribunal administration.

### **Case Management Discussion**

4. The Tribunal proceeded with the CMD on 21 June 2024 by way of teleconference. Ms McNeep from TLT LLP, solicitors appeared for the Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
5. The Tribunal had before it the Private Residential Tenancy Agreement dated 26 June 2019 between Roy Fever and the Respondent, the copy title sheet MID99176, Decree for possession of the Property against Roy Fever from Edinburgh Sheriff Court dated 16 June 2022, the Notice to Leave dated 17 May 2023 with recorded delivery proof of delivery and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with email to Edinburgh City Council dated 4 December 2023. The Tribunal noted the terms of these documents.
6. Ms McNeep submitted her client had decree of repossession of the Property granted in Edinburgh Sheriff Court on 16 June 2022. As mortgage lender they now required vacant possession of the Property. The Tribunal noted that in terms of the application Roy Fever the Landlord had granted a standard security in favour of GMAC-RFC Limited, to which Siberite Mortgages Limited now had right and which was recorded under Title Number MID99176. She submitted a Notice to Leave had been served on the Respondent on 17 May 2023 by recorded delivery post. He continued to remain in the Property. She was not aware of any mitigating reasons as to why the Order for possession should not be granted, although she was not aware of the Respondent's personal circumstances. She submitted the Form BB, Notice to Occupier in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 had been served on the Respondent at the time the action to call up the standard security had been raised. The Respondent had also had notification of the court action. Since then the Applicant has had no contact with the

Respondent. She was not aware as to whether the Respondent was paying rent to the Landlord, Mr Fever. The Applicant required vacant possession of the Property in order to enforce the Decree held in their favour entitling them to enter into possession and sell the Property. In the circumstances she submitted it was reasonable to evict.

### **Findings in Fact**

7. Roy Fever and the Respondent entered into a Private Residential Tenancy Agreement of the Property dated 26 June 2019.
8. Roy Fever had previously granted a standard security in favour of GMAC-RFC Limited, to which Siberite Mortgages Limited has now right. The said security was registered in the Land Register for Scotland, under title number MID99176 on 27 December 2006. The Applicant is heritable creditor of the Property.
9. The Applicant required to call up the said standard security. The Respondent had received notice that the standard security was being called up. The Applicant obtained Decree for possession of the Property against Roy Fever at Edinburgh Sheriff Court on 16 June 2022.
10. On 17 May 2023, agents for the Applicant, TLT LLP, issued a Notice to Leave to the Respondent. The said Notice was sent by first class recorded delivery. The Notice to Leave confirmed that an application would not be submitted to the Tribunal seeking an eviction order before 14 August 2023. The Notice to Leave relied on Ground 2 (Property to be sold by Lender) of Schedule 3 to the 2016 Act.
11. The Applicant requires vacant possession of the let property in order to enforce the Decree held in their favour entitling them to enter into possession and sell the let property.
12. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on Edinburgh City Council on 4 December 2023.

### **Reasons for Decision**

13. The Tribunal considered the issues set out in the application together with the documents lodged in support.
14. 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 2, namely the Lender intends to sell the Property. This is a discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.
15. 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, unless it is not made 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.

16. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states it is the Applicant's intention to sell the Property at Part 2 of the Notice in terms of Ground 2 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 14 August 2023. The Notice to Leave was served on the Respondent by way of recorded delivery post on 16 May 2023. In terms of Section 54 the notice period of the Notice to Leave is 84 days. The Notice to Leave stated the earliest date the Applicant could apply to the Tribunal was 14 August 2023. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice. Accordingly, the Notice to Leave complies with Section 62.
17. The Tribunal considered the submissions made by Ms McNeep. The Tribunal considered the Respondent had not disputed the application. The Tribunal was satisfied on the basis of the documents lodged, together with submissions made by Ms McNeep that the factual basis of the application had been established in relation to Ground 2 and was satisfied the Applicant intended to sell the Property in order to satisfy the standard security granted by the Landlord, Roy Fever.
18. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant was entitled to sell the Property. The Tribunal accepted Ms Neep's submissions that although she had no personal information regarding the Respondent, he had been received the notice from the Applicant that the standard security was being called up. The Tribunal considered that Decree of possession had been granted by Edinburgh Sheriff Court in favour of the Applicant. That Decree had been granted two years previously. The Respondent had not opposed the application. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
19. In the circumstances the Tribunal considered that in terms of Ground 2 of Schedule 3 it was reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

### **Decision**

20. The Tribunal granted an order for repossession. 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

23 June 2024

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Legal Member

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Date