



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/3988

Re: 30 Crofton Square, Paisley, PA4 8YY ("the Property")

Parties:

Steven Anderson and Irene Anderson residing at 20 Lochty, Carnoustie, DD7 6EF ("the Applicant")

David Doig, Raeside Chisholm, Solicitors ('The Applicant's Representative')

Chris Anderson residing at 30 Crofton Square, Paisley, PA4 8YY ("the Respondent")

Christopher Norman residing at 40 Glendaruel Avenue, Bearsden, Glasgow ("the Respondent's Representative")

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

Tribunal Members: Jacqui Taylor (Legal Member) Gerard Darroch (Ordinary Member)

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 27th August 2024. The application states that the ground for eviction is as follows:

Ground 4: The Landlord intends to live in the let Property.

1.3 Documents lodged with the Tribunal by the Applicants were:-

- Notice to Leave dated 10th May 2024 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 12th August 2024 and the ground of eviction is that the Landlord intends to live in the Property.
- Royal Mail Track and Trace delivery confirmation confirming that the letter was delivered on 11th May 2024.
- Section 11 Notice to Renfrewshire Council.
- Email to Renfrewshire Council dated 17th May 2024 enclosing the section 11 notice.
- Email from Renfrewshire Council dated 17th May 2024 acknowledging receipt of the section 11 notice.
- Entry from the Scottish Landlord Register confirming that Irene Anderson is the registered landlord of the Property.
- Email from the Applicant's solicitor dated 3rd October 2024 advising the parties did not enter into a formal tenancy agreement. The Tenant is the father of the applicant's grandson. The parties agreed that Mr and Mrs Anderson would buy the property and Christopher Anderson would live there with the Applicants' grandson and pay £700 per month in the name of rent, and pay his own utilities and maintenance. The Property owners were to pay buildings insurance.
- Email issued to the Respondent dated 17th April 2023 which states: *'We have discussed our portfolio with and sought advice from financial advisers. It has been recommended that we sell some properties to mitigate capital gains tax and inheritance tax. One recommendation was to sell the house in Muirhead. This has been discussed with James and he is happy to progress this matter. As you know we have used that Property as a home when in the Glasgow area. As we intend to continue to live in the vicinity we want to move into the townhouse in Crofton Square. We don't want to anger or upset you but we would like you to look for an alternative home and vacate the townhouse.'*
- Copy letter from the Applicants' solicitors to the Respondent dated 5th May 2023 advising that access is required for the EICR and Gas Safety Certificate.
- Copy email exchange between the Respondent and the Applicant's solicitors between 5th May and 17 May 2023. The Respondent confirmed that access would be provided to enable the safety checks to be carried out.

1.4 Documents lodged with the Tribunal by the Respondent:

- The Signed and dated Affidavit by Harry Anderson (the Respondent's son).
- Undated fee quotation for the purchase of 30 Crofton Square, Renfrew addressed to Stephen and Irene Anderson.
- NHBC Certificate for 30 Crofton Square, Renfrew.
- Completion Certificate for 30 Crofton Square, Renfrew.
- Copy of the Land Certificate for 30 Crofton Square (REN143637). The registered proprietors are Steven and Irene Anderson and the date of entry was 5th March 2021. There are no heritable securities registered over the property. The date of the search/ title sheet was 13th March 2025.
- A copy of the letter from the Applicants to the Respondent dated 14th April 2023.
- Email from the seller of 30 Crofton Square, Renfrew to the Respondent dated 29th January 2021 detailing the items to be included in the price and email forwarding this email to Irene Anderson also dated 29th January 2021.

- Email from Irene Anderson to prp legal regarding settlement of 30 Crofton Square.
- Email from PennyLane Homes Renfrew to the Respondent dated 5th March 2021 regarding arrangements for collection of the keys for 30 Crofton Square.
- Email from PennyLane Homes Renfrew to the Respondent dated 28th January 2021 confirming viewing arrangements of 30 Crofton Square.
- Emails between PennyLane Homes Renfrew and the Respondent dated 10th February 2021 regarding required ID for Irene Anderson. The emails acknowledge that the purchase is no longer in the Respondent's name.

2. By Notice of Acceptance by Nicola Irvine, Convener of the Tribunal, dated 3rd November 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 28th August 2024 and 4th October 2024) to a Tribunal.

3. Written Representations on behalf of the Applicant.

4. Written Representations by the Respondent.

'With reference to Maria Dawkins' email dated 20th September 2024, the Applicant's solicitor was asked to provide a copy of the tenancy agreement. In the solicitor's response he confirmed that the parties did not enter into a formal tenancy agreement. This is correct because there has never been any form of tenancy agreement between me and the applicant whether formal or otherwise. To provide the tribunal some background, I attach a note of the circumstances leading to the purchase of 30 Crofton Square. You will note that the agreement between me and the applicant was that the property would be purchased by the applicant and that I would pay a one third share of the cost of the property over a period of 10 years. The applicant's solicitor has confirmed that I agreed to pay £700 per month. This is correct but it was not "in name of rent" as stated by the applicant's solicitor, these were instalments towards my third share of the cost of the property over 10 years. The property cost £252,000 including legal fees and outlays and the instalments agreed are £700.00 x 12 months x 10 years which is £84,000 being the exact cost of my one third share of the property. Neither Irene Anderson or Steven Anderson ever saw the property until after the date of entry and neither had any part in negotiating the purchase. It was agreed at the outset that I should attend to this as co-owner. I attach copies of my correspondence with the estate agents who sold the property and the solicitors who dealt with the purchase conveyancing. All of these show that I was in control of the purchase process as I would as a co-owner. I attach a copies of the Completion Certificate and NHBC Certificate for the property together with a copy of the applicants email to me enclosing the Completion Certificate and confirming that she would forward on the NHBC documentation along with arrangements for me to collect the keys following the purchase. There would be no reason for a landlord to send these documents to a tenant. I was sent these documents as coowner of the property. 2 Following the purchase of the property I arranged and paid for installation of astroturf in the back garden of the property. This cost to me for this was £1000.00. In March 2023 I arranged and paid for the redecoration of four rooms within the property. I pay for all maintenance of the property. Shortly after the date of entry I paid £400.00 to repair the

hot water system and £200.00 to repair the cooker hood in the kitchen. I also pay all factoring costs for the property. I take responsibility for all of these items because I am a co-owner living in the property. 30 Crofton Square was purchased on 5th March 2021. I have never been a tenant of the property. It was only after the applicant's letter of 14th April 2023, 2 years after the purchase, that the applicant took steps to obtain a gas safety certificate, an EICR report and register as a landlord. I would ask the tribunal to confirm with the applicant why she decided to take these steps over 2 years after the purchase, knowing that it is illegal to rent property without these certificates and registration. My belief is that the applicant only took these steps in order to create a claim that a tenancy existed when it never had. I attach a copy of the Land Certificate for 32 Haining Wynd, Muirhead. This is the property referred to in the applicant's letter dated 14th April 2023. Section C of the Land Certificate shows a Standard Security by James Tagg, the title holder, to the applicant. I understand that this Security was granted to secure the applicant's substantial interest in the property. I understand from the applicant that they paid two thirds of the purchase price of 32 Haining Wynd, Muirhead and James Tagg took out a house purchase loan for his one third share. This is a very similar arrangement to that which I have with the applicant for 30 Crofton Square. I was aware of this arrangement prior to agreeing to the purchase arrangement for 30 Crofton Square. Because I knew that the applicant had a history of owning shares in properties, I agreed to take on 30 Crofton Square on the same basis. Until I received the applicant's letter of 14th April 2023, I trusted the applicant to honour our co-ownership agreement without the necessity of formalising it in writing. Given that there is not and never has been a tenancy agreement between me and the applicant, I would respectfully request that the tribunal dismiss the applicant's application for eviction on the basis that there is no private residential tenancy as set out in the Private Housing (Tenancies) (Scotland) Act 2016. With reference to Maria Dawkins' email dated 20th September 2024, the Applicant's solicitor was asked to provide evidence to support the ground of eviction as set out in the legislation. My understanding is that the ground of eviction is paragraph 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 which is that the landlord intends to live in the property. Sub paragraph (2) states that this ground applies if (a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact. I understand that the applicant currently owns or has a substantial interest in at least three other properties in addition to 30 Crofton Square. They own 20 Lochty Street, Carnoustie DD7 6EF, Land Registration Title Number ANG52640. This is a substantial semi-detached property which they purchased in 2008. They still own this property, and I understand that they occupy this property as their principal home. You will note from the Applicant's solicitor's response to Maria Dawkins at comment 4. that he confirms that "Both applicants reside together at 20 Lochty Street, Carnoustie". My understanding is that the applicant has no intention to sell this property. Steven Anderson, one of the coapplicants is very frail and is settled in this property along with the other co-applicant Irene Anderson. I would ask the Tribunal to confirm with the applicant whether or not they have engaged a solicitor or estate agent concerning the sale of this property. As previously stated, I understand that the applicant also has a part share of a property at 32 Haining Wynd, Muirhead. I attach a copy of the letter dated 14th April 2023 addressed to me and purportedly from Irene Anderson and Steven Anderson. This is the letter referred to by the Applicant's solicitor in his response to 3 Maria Dawkins. This confirms the applicant's interest in

this property as at April 2023. I understand that this property has not been sold and is still used by the applicant. I attach a copy of the Land Certificate for 30 Crofton Square. The Property Section shows Steven Christopher Anderson, the co-applicant, residing at 32 Haining Wynd, Muirhead. The Applicant's solicitor in his response to Maria Dawkins refers to the applicant's letter dated 14th April 2023 which states, in relation to the Muirhead property, "As you know we have used that property as a home when in the Glasgow area. As we intend to continue to live in the vicinity we want to move in to the townhouse in Crofton Square". This implies that they do not intend to use 30 Crofton Square as their principal home and would effectively use it as an occasional holiday home. I understand that Irene Anderson has told her grandson, Harry Anderson, that she has no intention of living in 30 Crofton Square and that she intends to sell the property and continue to live in 20 Lochty Street, Carnoustie. She has told Harry Anderson that she wishes to sell the property at 30 Crofton Square to fund her future lifestyle. Harry Anderson has confirmed to me that he is willing to swear an affidavit to this effect. I attach a copy of the affidavit that Harry Anderson has confirmed he is willing to swear. To date I have been unable to arrange an appointment with a solicitor for Harry Anderson to swear this as he is a student living in another property owned by the applicant being Flat 11c Pentland Crescent, Dundee. I would like to request until 6th April 2025 to obtain an affidavit from Harry Anderson. This would allow me to lodge the affidavit no less than 7 days prior to the case management discussion on 14th April 2025. In the light of the above I would ask the tribunal to conclude that they are not satisfied that the ground for eviction has been met. With reference to Maria Dawkins' email dated 20th September 2024, the Applicant's solicitor was asked to provide the Recorded Delivery posting receipt with reference number to match the tracking report they had lodged. The posting receipt states that the item was signed for by "ANDERSON". This is incorrect. The item was not signed for by me. The signature shown on the receipt is not mine. The receipt states that the item was delivered at "09:35, Saturday 11 May 2024". I did not sign for the item because I was working at St Enoch Centre at the time. I attach a copy of my Euro Car Parks receipt which shows that my car was parked at St Enoch Centre from 09:37 AM to 11:37 AM on 11th May 2024. I am the only person insured to drive my car. I would ask the Tribunal to conclude that the Notice to Leave was not correctly served on me. With reference to Maria Dawkins' email dated 20th September 2024, the Applicant's solicitor was asked to confirm whether the application was to be made in the joint names of both Irene Anderson and Steven Anderson. It is my understanding that Steven Anderson my no longer have sufficient mental capacity to instruct solicitors in this matter or to give effective authorisation to Irene Anderson to proceed in her sole name. I would ask the tribunal to seek evidence from the applicant's solicitor that they have properly tested Steven Anderson's ability to instruct them. My concern is that Irene Anderson is seeking to force the repossession and sale of 30 Crofton Square against the previously declared wished of Steven Anderson by taking advantage of his poor state of mental capacity. I would like to be assisted at the Case Management meeting by Christopher Norman Allen of 40 Glendaruel Avenue, Bearsden, Glasgow as a lay representative. I understand that as a lay representative, Mr Allen will be able to attend the Case Management meeting in addition to me and not instead of me. Please let me know if you require any further details for Mr Allen.'

5. Case Management Discussion

This case called for a conference call Case management Discussion (CMD) at 14.00 on 14th April 2025.

The Applicant's Representative attended the CMD.

The Respondent and his Representative attended the CMD.

At the start of the CMD Mrs Taylor read the parties Procedure Rule 17 that details the purpose of the Case Management Discussion.

The parties then confirmed that they agreed the following facts:

5.1 The Applicants purchased the Property 30 Crofton Square, Paisley in March 2021.

5.2 The Respondent has lived in 30 Crofton Square, Paisley since March 2021.

5.3 The Respondent paid the Applicants £700 per month from March 2021. The parties agreed that a pattern of payment was established but they did not confirm or agree the end date of the monthly payments.

5.4 The Property is relatively new and the NHBC cover started in 2016.

5.5 The Property is a four bedroom three storey terraced townhouse.

5.6 The Respondent resides in the Property as his principal dwelling.

5.7 The Respondent's son resides in the Property with the Respondent for half the year when he is not at college.

5.8 The Respondent pays the council tax for the Property.

5.9 The Applicants pay the building insurance for the Property.

5.10 The Respondent pays the Factors charges.

5.11 The Respondent pays for repairs to the Property.

5.12 The Applicants do not reside in the Property.

5.13 The Applicants did not provide the Respondent with the PRT statement.

Mr Doig invited Mr Anderson to confirm that he never entered into a Private Residential Tenancy Agreement with the Applicants and that he does not consider himself to be a tenant.

Mr Anderson confirmed.

On this basis Mr Doig invited the Tribunal to dismiss the application.

6. Decision

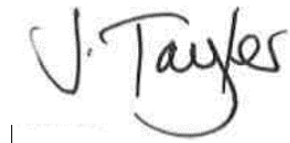
The Tribunal accepted Mr Doig's motion and dismissed the Application.

7. 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.

Legal Member: J Taylor

Date: 14th April 2025

A handwritten signature in black ink, appearing to read 'J. Taylor', is written over a horizontal line.