

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/25/0206

Re: Property at 29 Rannoch Court, Blantyre, Glasgow, G72 0YP (“the Property”)

Parties:

Bank of Scotland plc, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

Mr Barry Gorman, 29 Rannoch Court, Blantyre, G72 0YP (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 2 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application had been received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained:
 - a. the tenancy agreement,

- b. notice to leave with evidence of service
- c. section 11 Notice with evidence of service
- d. copy decree of 22 November 2023
- e. copy form BB to occupier

3. This case called for a case management discussion on 19 May 2025. In attendance was the applicant's representative, Ms McDonald, from Aberdeen Considine. The respondent appeared.

Discussion

- 4. The applicant's agent advised that the applicant was seeking an order for recovery of the possession of the property under the ground 2 (the let property is to be sold by the lender). The Applicant intended to sell the Property and required vacant possession in order to do so. A Notice to Leave had been served on the Respondent on the basis of Ground 2 of Schedule 3 to the 2016 Act, on 3 June 2024.
- 5. The applicant was a creditor under a heritable security. The heritable proprietor of the Property was a landlord under a Private Residential Tenancy Agreement ("the Agreement"), which commenced 8 January 2019. The landlord had defaulted on their mortgage and the Applicant had called up the security and obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 for possession of the Property and sale thereafter, dated 22 November 2023.
- 6. The applicant's agent advised that the respondent had had notice since June 2023 when the BB notice had been served on the respondent that the applicant was seeking recovery over the property. In addition the notice to leave had been served in May 2024. She submitted that respondent had therefore had ample time to find other accommodation and it would therefore be reasonable to grant the order for eviction.

7. The Respondent continues to reside in the Property. The respondent confirmed that he was not opposing the order for eviction but wanted to find out how long he had to move out of the property. He advised he is 44 years old; he is currently on benefits; and he resides in the property by himself. He confirmed that he had been in contact with the council to try and secure other accommodation; they had advised him to notify them as soon as he had an eviction date.

Findings in Fact

8. The Tribunal found the following facts established: -
- a. There existed a private residential tenancy. It had commenced on 8 January 2019. The tenant was Barry Gorman. The landlord had been Calum Watt.
 - b. The property was 29 Rannoch Court, Blantyre.
 - c. There was submitted a notice to leave dated 28 May 2024, stating that an application would not be made until 29 August 2024. It sought eviction under ground 2 the let property is to be sold by the mortgage lender. It set out that the Bank of Scotland obtained a decree to repossess and sell the property on 22 November 2023. There was evidence of service.
 - d. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.
 - e. The applicant is a creditor under a heritable security secured against the Property.

- f. The applicant has obtained Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 from Hamilton Sheriff Court on 22 November 2023 and had the right to sell the property and to enter into possession of it.
- g. That a Form BB notice to occupier had been served on the occupier on 21 June 2023.
- h. The Respondent did not oppose the order. He is 44 years old; he is currently on benefits; and he resides in the property by himself. He confirmed that he had been in contact with the council to try and secure other accommodation; they had advised him to notify them as soon as he had an eviction date.

Reasons for Decision

- 9. Section 51 of the 2016 Act provides the Tribunal with the power to grant an order for eviction for a private residential tenancy if it finds that one of the grounds in Schedule 3 of the Act applies.
- 10. The ground which the Applicant seeks eviction is ground 2:-

2 Property to be sold by lender

- (1) It is an eviction ground that a lender intends to sell the let property.
- (2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if—
 - (a) the let property is subject to a heritable security,
 - (b) the creditor under that security is entitled to sell the property,
 - (c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession [, and] ⁴

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

11. The applicant's agent confirmed that they sought an order for eviction based on ground 2.
12. The tribunal was satisfied that the terms of ground 2 had been met namely, that the property is subject to a heritable security; that the applicant intends to sell the property; and is entitled to do so by virtue of the extract decree issued at Hamilton Sheriff Court dated 22 November 2023; and that the applicant requires the tenant to leave the property for the purpose of disposing of it with vacant possession.
13. The tribunal was satisfied that a notice to leave had been served on the respondent and which specified that ground in accordance with the requirements of section 52 of the 2016 Act.
14. The tribunal was satisfied that in all the circumstances it was reasonable to grant the order, the respondent had been aware of the lender wanting to sell the property for 2 years; and the respondent confirmed that he did not oppose the order being granted.

Decision

15. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 2 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

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.

Melanie Barbour

19 May 2025

Melanie Barbour

Legal Member/Chair

Date