

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/25/0343

Re: Property at 34 Haldane Place, Dundee, DD3 0JR (“the Property”)

Parties:

The Mortgage Works (UK) Plc, Nationwide House, Pipers Way, Swindon, Wiltshire, SN38 1NW (“the Applicant”)

Tammy Nairn, 34 Haldane Place, Dundee, DD3 0JR (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

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 PRT in question was by “Taylor Housing” (which we understood to be a trading name of the Applicant’s customer, Mark Charles Taylor) to the Respondent commencing on 1 January 2019 (but the Respondent’s agent submitted that the Respondent had resided at the Property since 2012 under previous tenancies).
2. The application was dated 28 January 2025 and lodged with the Tribunal on that date.
3. The application relied upon an undated Notice to Leave in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 served upon the Respondent by Sheriff Officer on 11 October 2024 in accordance with the

Tenancy Agreement. The Notice relied upon Ground 2 of Schedule 3 Part 1 of the 2016 Act, being that “The Let Property is to be sold by the mortgage lender”. In regard to Ground 2, the body of the notice referred to the Applicant having obtained decree for recovery of possession in terms of their standard security over the Property, and to an attached copy of the Extract Decree. The Notice to Leave intimated that an application to the Tribunal would not be made before 4 January 2025.

4. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Dundee City Council on 6 June 2025 was provided shortly before the case management discussion (“CMD”) though the application papers included previous section 11 notices regarding the steps taken by the Applicant against Mr Taylor so as to obtain the decree for recovery under his standard security.

The Hearing

5. 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 2025 at 14:00. We were addressed by Chloe Imrie, solicitor, Aberdeen Considine for the Applicant and by Kenneth Marshall, principal solicitor, Dundee Law Centre, for the Respondent. The Respondent was not in attendance.
6. Prior to the calling of the CMD, submissions and productions were lodged by the Respondent but, due to mis-addressing, reached the Tribunal only immediately prior to the calling. (The Applicant’s agent had received copies in mid-May when they had originally been sent.) We adjourned commencement of the CMD until 14:25 so as to review them. They contained evidence of the gas boiler having received a warning notice on 2 May 2024 that it was not to be used, as well as a two-page letter of submissions for the Respondent. An abridged version of the submissions letter is as follows:

[T]he Respondent does not want to be evicted. In terms of schedule three paragraph one of the Private (Housing) Tenancy (Scotland) Act 2016, the Tribunal must be satisfied that it is reasonable to make an order to evict. She asks that the Tribunal refuse to make an eviction order and therefore that the Applicant, The Mortgage Works, sells the house with her as a sitting tenant.

[Details were provided of the sale of the neighbouring property in May 2022 for £155,561.] Even if the [Property] was to sell for significantly less than £155,561, which it probably would with her as a sitting tenant, she submits that, depending on how much is owed by her landlord, Mark Taylor, to the Applicant, the Applicant should be able to get it back selling the house with a sitting tenant. If the Applicant is unable to sell it and get his money back, then the Applicant could back to Tribunal and seek an order for eviction.

The tenant is currently paying a low rent of £550 per month for a four-bedroom house but she could afford to pay up to £1,000 a month. Indeed, if she was allowed to stay there, she would have her adult daughter, who left the house in November 2024, come back to live with her. Her adult daughter moved out because the gas boiler had been condemned as not working. In that regard, a certificate of defects identified on gas equipment, dated the 2nd of May 2024, is attached hereto. This was provided by a gas engineer who was sent there by the current agent for her landlord, Pavillion Properties. She has asked Pavillion Properties on several occasions to have the boiler replaced, most recently around March 2025. However, Pavillion Properties have delayed in replacing the boiler.

Also, the windows, the front door and the back door require some work to be done on them. Neither door shuts properly because they have warped over time.

She is well settled [at the Property], having lived there since 2012. The lease attached to the papers for the Tribunal states the 1st of January 2019 as being the start date of the lease but that was a new lease that was signed when her landlord employed a new agent, Pavillion Properties, who asked her to sign a new lease.

The Respondent's date of birth is 29/10/1983. She is currently on Universal Credit and is paying rent of £550 per month directly from Universal Credit to her landlord's agent, Pavillion Properties. Also living the house is her adult son Kyle Jackson (date of birth 13/08/2002). However, her adult daughter (date of birth 03/09/2005) and her adult daughter's son (date of birth 20/03/2022) would intend to move back into the property if she was allowed to stay in the house and the boiler was replaced.

She has applied to Dundee City Council, her local authority, for alternative accommodation and she is on the waiting list. She would be owed a duty to be rehoused as a homeless person if she were to be evicted. However, she does not know where she would be offered a house. She might well be offered a flat without garden ground. The current semi-detached that she lives in is spacious with garden ground and she likes the area.

7. In regard to disposal of the application, the letter provided the following comments (again abridged):

It is submitted that an option for the Tribunal would be to put this case on hold or continue for a lengthy period to allow the house to be sold with the Respondent as a sitting tenant.

If the Tribunal is not minded to refuse an eviction order, the Respondent asks that the Tribunal postpones the date of eviction for sufficient time to allow her to obtain suitable alternative accommodation.

8. Further to questions we posed him at the CMD, the Respondent provided the following additional information:
 - a. The Respondent grew up in the area where the Property is, and is settled there, but there were no other arguments for the Property being especially suitable to her or adapted for her needs.
 - b. The Respondent was not currently working. Her son was in employment.
 - c. The Respondent's budget for rent of £1,000 would permit her to obtain suitable alternative accommodation on the open market (though she had not been seeking such accommodation as she wished to stay at the Property or be rehoused into social housing).
 - d. He did not believe the Respondent to be in arrears. Rent was still being paid to Mr Taylor's agents, Pavillion Properties.
 - e. He accepted any new owner would, if the Respondent remained, require to undertake work to the boiler, windows and doors, but he did not believe that the Respondent and her son would require rehoused during such works (though he did not provide material detail on how he made this assessment).
 - f. The boiler remained broken but he was not aware how the Respondent and her son were currently obtaining heat and hot water. He posited that there may be an electric shower or other forms of heating.
 - g. He accepted that the Property was currently larger than the Respondent and her son required, though it remained the Respondent's wish that her daughter and grandchild move back in with her.
 - h. If eviction was not refused or materially postponed for marketing, then a grant of eviction with a four-month suspension should be sufficient for the Respondent to be rehoused into suitable rehousing without a period in temporary accommodation.
9. In regard to the Applicant, its agent sought eviction but was satisfied for a suspension of four months to be granted on any eviction order. She relied on section 25 of the Conveyancing & Feudal Reform (Scotland) Act 1970 in regard to the Applicant's duty to obtain the best price and that the best price would be a sale with vacant possession. Further, in terms of section 27, the Applicant was a trustee for Mr Taylor in respect of any interest he had in the sale proceeds from a repossession sale. She was not able to disclose the current level of debt (though we note that the Respondent should have received a copy of the Applicant's Calling Up Notice served on Mr Taylor in July 2023 appended to the Form BB served on the occupier at that time).
10. Parties were agreed upon the following:
 - a. That a residential property with vacant possession would normally sell for a higher price than one with a sitting tenant.
 - b. That neither had further evidence to produce, and both sought a decision made at the CMD.Along with these express agreements, neither party raised any issue generally with the factual details of the other's submissions.
11. No motion for expenses was made by either party.

Findings in Fact

12. On 4 December 2018, Mark Charles Taylor t/a Taylor Housing let the Property to the Respondent under a Private Residential Tenancy with commencement on 1 January 2019 (“the Tenancy”).
13. This Tenancy replaced a previous tenancy for the Property between Mr Taylor and the Respondent. The Respondent has resided at the Property since in or around 2012.
14. Mr Taylor granted a standard security over the Property in favour of the Applicant which was registered on 10 October 2006.
15. In or around 7 July 2023, the Applicant issued a Calling up notice against Mr Taylor, intimating a copy of it and a Form BB upon “the Occupier” of the Property.
16. On 14 December 2023, the Sheriff at Dundee granted a decree for recovery of possession in favour of the Applicant in respect of the Property further to expiry of the Calling Up notice.
17. In or around early October 2024, 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 as “mortgage lender”.
18. The Notice to Leave provided the Respondent with notice that no application would be raised before the Tribunal prior to 4 January 2025.
19. A copy of the Notice to Leave was served on the Respondent by Sheriff Officer on 11 October 2024 in accordance with the Tenancy Agreement.
20. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 2 of Schedule 3 Part 1 of the 2016 Act, on 28 January 2025.
21. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Dundee City Council on 6 June 2025.
22. The Applicant wishes to sell the Property with vacant possession in early course as it has a statutory duty (in terms of section 25 of the Conveyancing & Feudal Reform (Scotland) Act 1970) to “advertise the sale [of the Property] and to take all reasonable steps to ensure that the price at which ... [the Property is] sold is the best that can be reasonably obtained”.
23. The Property will sell for a materially better price with vacant possession than if the Respondent remains as a sitting tenant.
24. The Respondent resides with her 22 year-old son at the Property.

25. The Respondent has made active attempts to obtain alternative social housing but has thus far failed to be offered a new tenancy.
26. The Property requires repair work to the boiler, windows and doors in the short term.
27. The Property is a four-bedroom house.

Reasons for Decision

28. 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.
29. Ground 2 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
 - (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*
 - (d) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
30. On the basis of the application papers and submissions by the Applicant, we agreed that the ground was materially satisfied. In any event, the Respondent did not dispute that the material requirements of Ground 2 were satisfied (other than whether it was reasonable or necessary to evict, rather than sell with a sitting tenant).
31. We therefore considered the matters in dispute. We were concerned about a circularity in the argument by the Respondent. We accept that section 25 of the 1970 Act requires that the price “is the best that can be reasonably obtained” and that is for the Property as it is. The secured lender is not obliged to take material costly steps, such as building works, to improve the potential sale price. By extension, if the Property has a sitting tenant, because the Applicant is unable to evict, then marketing with a sitting tenant should be undertaken in a way that obtains “the best [price] that can be reasonably obtained”. It is, however, a ground for eviction in the 2016 Act that allow eviction of a tenant because a secured lender wishes to sell. These proceedings are not extraordinary steps, and the Applicant is entitled to seek them. We thus consider reasonableness on its own merits, though informed by the fact that the legislators permitted heritable creditors to seek to evict tenants in order to market with vacant possession, and informed by the agreed position that the Property would sell for a higher price with vacant possession.

32. We accepted the Applicant's reasons for wishing to sell to be prosaic but compelling. The Respondent's reasons for remaining were not, however, compelling. She may be settled, but she is settled in a property that has a mortgage secured over it. No health issues for remaining were provided nor any special suitability of the Property cited. She could obtain other housing, but would prefer not to. Her continued occupation, however, seems unsuitable. Work is required to the Property and the Property is larger than she currently requires (despite her future plans). In the circumstances, we think it reasonable to grant the order but that the eviction is subject to a suspension of an agreed four months.
33. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 10 October 2025.

Decision

34. 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 2 of Schedule 3 of that Act, suspended as stated above.

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

Joel Conn
Legal Member/Chair

— 9 June 2025
Date