



Decision on Review under 39(1) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) and section 44 of the Tribunals (Scotland)

Chamber Ref: FTS/HPC/EV/25/1045

Re: Property at 42 Highfield Avenue, Inverness, IV3 8QS (“the Property”)

Parties:

Mr Benjamin Clokie, Mrs Joanna Clokie, Lindean, Manse Brae, Gargunnock, FK8 3BQ (“the Applicants”)

Mrs Anna Hapka, Mr Mariusz Strugala, 42 Highfield Avenue, Inverness, IV3 8QS (“the Respondents”)

Tribunal Members: Ruth O’Hare, Legal Member with delegated powers from the Chamber President

Decision

The Legal Member determined in terms of section 39(1) of the Procedural Rules and section 44 of the Tribunals (Scotland) Act 2014, having reviewed its decision of 30 May 2025, to re-decide the matter concerned.

The Legal Member determined that the application now meets the mandatory requirements for lodgement and gave notification to the parties under Rule 9 of the Rules that the application has been accepted to proceed to a tribunal for full determination.

Background

- 1** This is an application for an eviction order under Rule 109 of the Rules and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants relied upon ground 1, stating their intention to sell the property.
- 2** By decision dated 30 May 2024, the application was rejected by a Legal Member of the Tribunal with delegated powers from the Chamber President. On 3 June 2024 the Applicants submitted a request for review of the decision under Rule 39 of the Rules.

Relevant Legislation

- 3 The provisions regarding review of a Tribunal decision are contained with Rule 39 of the Procedural Rules and section 44 of the Tribunals (Scotland) Act 2014:-

“39.—(1) The First-tier Tribunal may either at its own instance or at the request of a party review a decision made by it except in relation to applications listed in rule 37(3)(b) to (j), where it is necessary in the interests of justice to do so.

(2) An application for review under section 43(2)(b) of the Tribunals Act must—

(a) be made in writing and copied to the other parties;

(b) be made within 14 days of the date on which the decision is made or within 14 days of the date that the written reasons (if any) were sent to the parties; and

(c) set out why a review of the decision is necessary.

(3) If the First-tier Tribunal considers that the application is wholly without merit, the First-tier Tribunal must refuse the application and inform the parties of the reasons for refusal.

(4) Except where paragraph (3) applies, the First-tier Tribunal must notify the parties in writing—

(a) setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing; and

(b) may at the discretion of the First-tier Tribunal, set out the First-tier Tribunal's provisional views on the application.

(5) In accordance with rule 18, the decision may be reviewed without a hearing.

(6) Where practicable, the review must be undertaken by one or more of the members of the First-tier Tribunal who made the decision to which the review relates.

(7) Where the First-tier Tribunal proposes to review a decision at its own instance, it must inform the parties of the reasons why the decision is being reviewed and the decision will be reviewed in accordance with paragraph (4) (as if an application had been made and not refused).

(8) A review by the First-tier Tribunal in terms of paragraph (1) does not affect the time limit of 30 days in regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016 for making an application for permission to appeal.”

“44 Actions on review

(1) In a review by the First-tier Tribunal or the Upper Tribunal under section 43, the Tribunal may—

- (a) take no action,*
- (b) set the decision aside, or*
- (c) correct a minor or accidental error contained in the decision.*
- (2) Where a decision is set aside by the First-tier Tribunal in a review, it may—*
 - (a) re-decide the matter concerned,*
 - (b) refer that matter to the Upper Tribunal, or*
 - (c) make such other order as the First-tier Tribunal considers appropriate.*
- (3) If a decision set aside by the First-tier Tribunal in a review is referred to the Upper Tribunal, the Upper Tribunal—*
 - (a) may re-decide the matter concerned or make such other order as it considers appropriate,*
 - (b) in re-deciding that matter, may do anything that the First-tier Tribunal could do if re-deciding it.*
- (4) Where a decision is set aside by the Upper Tribunal in a review, it may—*
 - (a) re-decide the matter concerned, or*
 - (b) make such other order as it considers appropriate.*
- (5) In re-deciding a matter under this section, the First-tier or Upper Tribunal may reach such findings in fact as it considers appropriate.”*

Reasons for decision

- 4** The Legal Member was satisfied that it would be in the interest of justice to review the decision of 30 May 2025 to reject the application. The Applicant has now provided further information having reviewed his paperwork and the Legal Member is satisfied that the application meets the mandatory requirements for lodgement.
- 5** The Legal Member therefore determined to accept the application under Rule 9 of the Rules. The Applicants are however put on notice that acceptance of the application does not mean that the Tribunal has reached a final decision on the application. The Applicants may require to make further legal submissions to the Tribunal at the case management discussion. In particular, the Applicants will require to satisfy the Tribunal that the notice to leave has been properly given to both Respondents.

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.

R.O'Hare

9 June 2025

Legal Member/Chair

Date