

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/24/5425

Re: Property at Flat 7, 8 Riverview Place, Glasgow, G5 8EB (“the Property”)

Parties:

Mortgage Business PLC, Trinity Road, Halifax, HX1 2RG (“the Applicant”)

Mr Andres Pulun, Flat 7, 8 Riverview Place, Glasgow, G5 8EB (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to the Order sought for recovery of possession of the property.

Background

1. The Applicant submitted an application under Rule 109 of the Housing & Property Chamber Procedure Regulations 2017 (“the Rules”) for an order to evict the Respondent from the property.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 29 March 2025 informing both parties that a CMD had been assigned for 19 June 2025 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and

considers the procedure to have been fair. The Respondent was invited to make written representations by 19 April 2025. No representations were received.

The case management discussion – 19 June 2025

4. The CMD took place by conference call. The Applicant was represented by Miss Katie Macdonald, solicitor. The Respondent did not join the conference call and the discussion proceeded in his absence. The Tribunal explained the purpose of the CMD.
5. The Applicant's representative explained that the Applicant obtained a decree against the landlord, Neil Anderson, on 4 October 2019. That decree entitles the Applicant to enter into possession of the Property and sell it. There has been a delay in the Applicant selling the Property because of the covid restrictions and thereafter because the landlord was in negotiations with the Applicant in relation to the sale of the Property. Those discussions did not come to fruition and the Applicant now wishes to recover vacant possession of the Property in order to sell it. The Applicant is under a duty in terms of section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to achieve the best sale price for the Property.
6. The landlord entered into this tenancy agreement without the consent of the Applicant. The Applicant has no information about the personal circumstances of the Respondent. After the notice to leave expired, the Applicant instructed sheriff officers to attend at the Property to establish information about the Respondent. The sheriff officers left contact details but the Respondent did not make contact.
7. There have been no recent payments made by the landlord to the mortgage account and it is believed that the Property will be in negative equity.

Findings in Fact

8. The registered proprietor of the Property is Neil Anderson.
9. On 15 September 2004, a standard security granted by Neil Anderson in favour of the Applicant was registered against Property.
10. On 4 October 2019 the Sheriff at Glasgow granted a decree in favour of the Applicant which declared that Neil Anderson was in default for failing to comply with a calling up notice and entitled the Applicant to enter into possession of the Property and sell it.
11. The Respondent entered into a private residential tenancy with Neil Anderson which commenced 9 May 2024.

12. The Applicant served Notice to Leave on the Respondent by sheriff officer on 16 July 2024.
13. The Applicant intends to sell the property. The Applicant requires the Respondent to leave the property for the purpose of disposing of it with vacant possession. The Applicant has a legal duty to achieve best value for the owners.

Reason for Decision

14. The Tribunal took into account the application and supporting papers and the submissions made at the CMD. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules and make relevant findings in fact based on the information provided by the Applicant. The Tribunal did not identify any issues to be resolved in this case that would require a hearing to be fixed.
15. Having considered the application and supporting papers, the Tribunal accepted that the Respondent had been given a notice to leave which complied with the provisions of sections 52, 54 and 60 of the 2016 Act. The Tribunal therefore went on to consider whether ground 2 had been met in this case.
16. The Tribunal accepted that the Applicant is the holder of a standard security over the Property and that it held a Sheriff Court decree entitling it to sell the Property. The Tribunal further accepted that the Applicant has a duty to achieve best value in any sale and would be unable to do so in the absence of vacant possession. The Tribunal was satisfied that ground 2 was established. The Tribunal therefore went on to consider whether it was reasonable to make an eviction order on account of the facts in this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to give to them.
17. The Tribunal gave significant weight to the fact that the Applicant is the holder of a standard security over the Property, which gave it rights over the Property in terms of disposal. The Tribunal also accepted that a sale with a sitting tenant would attract a far lesser value than if the Property was offered with vacant possession. The Applicant had a duty to ensure that the maximum sale price was achieved in order to protect the owner's interests, and could only do that if the Property was marketed in the best possible condition.
18. The registered proprietor had entered into a tenancy agreement without the consent of the Applicant. The Tribunal had no information about the Respondent's circumstances. The Respondent did not join the conference call, nor did he lodge any written representations. The Applicant attempted to make contact with the Respondent but those attempts proved unsuccessful.
19. Having weighed up factors relevant to reasonableness in this case, the Tribunal concluded that the balance weighed in favour of making an eviction order.

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.

N. Irvine

Legal Member/Chair

19 June 2025
Date