



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/24/5340

Re: Property at 6B Calton Street, Coupar Angus, Blairgowrie, PH13 9BJ (“the Property”)

Parties:

Executors of Alexander McAllan, Hodge Solicitors LLP, Union Bank Building, Calton Street, Blairgowrie, PH13 9AJ (“the Applicant”)

Wojciech (Otherwise Wosk) Kozlowski (Otherwise Kozidler), and Eva Krystyna Ziarko, 6B Calton Street, Coupar Angus, Blairgowrie, PH13 9BJ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Robert Buchan (Ordinary Member)

Decision (in the absence of the Respondent)

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

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 included: -

- a. notice to leave with evidence of service.
 - b. section 11 Notice with evidence of service .
 - c. a letter from the estate agent confirming that they would act in the sale once the tenancy had ended.
3. The applicant's agent, Mr Lancaster, from Hodge Solicitors, appeared at the case management discussion on 27 May 2025.
4. There was no appearance by either respondent. There was evidence of service of the application on Wojciech (Otherwise Wosk) Kozlowski (Otherwise Kozidler),
5. There was no evidence of service on Eva Krystyna Ziarko. It appeared that there had been an error and Eva Krystyna Ziarko had not been included as the second respondent. The applicant moved to amend the application to include the second tenant as second respondent. The tribunal granted this amendment.
6. Consideration of the application was continued for service of the application on the second respondent. A copy of the application was served on the second respondent. A copy of the case management discussion note and a direction were also served on all parties; the direction confirmed to the second respondent that she had until 27 June 2025 to contact the Chamber if she wished to defend the eviction proceedings. There was no response from either respondent to the direction or service of the application.

Discussion

7. At the case management discussion on 27 May 2025, the applicant's agent, Mr Lancaster advised that he was seeking an order for recovery of the possession of the property under ground 1 (intention to sell).
8. The applicant's agent advised that the landlord had passed away. He was acting for the executors of the late Alexander McCallan.

9. He advised that the late Mr McCallan had owned and rented out 8 properties. He managed these by himself. They were unable to locate a tenancy agreement in this case. He advised that the tenants had moved in since December 2017 and therefore they were tenants under a private residential tenancy.
10. Mr Lancaster had provided a copy of the notice to leave and also evidence of service.
11. Mr Lancaster told us that the applicants were the executors of the late Mr McCallan and they wished to sell the property. The executors were also the three beneficiaries of the estate. They were the children of the deceased. The two daughters were currently managing the rental properties. To date they had sold 5 of the 8 properties and were proceeding to sell the other three once the tenants had left them. They did not wish to be landlords and they wished to wind up the estate. The estate is to be divided into three, none of the children wish to be landlords. They have never been landlords and have no experience in renting out properties. They are therefore trying to dispose of the properties.
12. Mr Lancaster advised that the executors had spoken to the tenants, and they were waiting on the local authority to provide them with housing. He advised that the tenants were older, one had retired and the other worked; their dates of birth were in 1957 and 1966. He did not believe that there was anyone else residing in the property.
13. The property is a two-bedroom flat.

Findings in Fact

14. The Tribunal found the following facts established: -
15. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 1 January 2023.

16. The tenants were Wosk Kozydler and Eva Krystyna Ziarko.
17. The landlords were the executors of the late Alexander McAllan. Confirmation for the estate of the late Alexander McAllan was granted by the Commissary Clerk at Perth Sheriff Court on 27 March 2024.
18. The property is 6B Calton Street, Coupar Angus, Blairgowrie. It forms part of the estate of the late Alexander McAllan.
19. There was submitted a notice to leave dated 30 May 2024, stating that an application would not be made until 25 August 2024. It sought eviction under ground 1.
20. The notice to leave had been posted to the tenants. There was evidence of service.
21. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property.
22. There was a letter from an Estate Agent dated 13 November 2024 to one of the daughters of the late landlord, confirming that they would market the property for sale.
23. The property is part of the estate of the late landlord. The executors of the late landlord want to wind up the estate, and thereafter distribute the estate to the beneficiaries.

Reasons for Decision

24. Section 51 of the 2016 Act provides the Tribunal with a 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.

25. The grounds which the Applicant seeks eviction under are grounds 1. Ground 1 is in the following terms: -

1 Landlord intends to sell.

(1) It is an eviction ground that the landlord intends to sell the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph

(1) applies if the landlord—

(a) is entitled to sell the let property,

(b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and

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

(3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—

(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,

(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

26. The applicant's agent appeared. He explained that the landlord had passed away. The executors of the landlord wish to wind up the landlord's estate. Confirmation of the estate showed that the property was part of the estate. The executors were entitled to sell the property. They had produced a letter from an estate agent confirming that the estate agent would market the property for sale once the sitting tenant had vacated it. We find that the application meets the tests set out in ground 1.

27. The tribunal was then required to consider whether it would be reasonable to grant the order. We consider it would be reasonable to grant the order for eviction. In deciding to grant the order we place weight on the fact that the respondents are not opposing the order. We also place considerable weight on the fact that this property forms part of an executry estate. The executors, who are also the beneficiaries, wish to wind up the estate. They have been going through a process of selling off all the rented properties, as they become vacant of sitting tenants. None of the beneficiaries wishes to take on the duties of a landlord. None of them has acted as a landlord previously. The tenants have had notice for some time that the executors sought vacant possession in order that the properties could be sold. Having regard to the matters set out above, the tribunal was prepared to find that it is reasonable to grant the order for eviction under ground 1.

Decision

28. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 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.

M. Barbour

30 July 2025

Legal Member/Chair

Date