

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Ref: FTS/HPC/EV/25/0774

Re: Property at 112 Fountainbleau Drive, Dundee, DD4 8BL (“the Property”)

Parties:

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

Abderdein Considine LLP, Solicitors, 18 Waterloo Street, Glasgow, Scotland, G2 6DB (the Applicant’s Representative)

Ms Stacey Cuthbert, 112 Fountainbleau Drive, Dundee, DD4 8BL (the Respondent)

**Ms Susanne L. M. Tanner K.C. (Legal Member)
Mr Gerard Darroch (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) (i) was satisfied that Ground 2 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: (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 that it was reasonable to make an eviction order in the circumstances; and (ii) made an order for eviction in terms of Section 51 of the 2016 Act.

The decision of the tribunal was unanimous

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 21 February 2025 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules). The Applicant seeks the Respondent's eviction from the Property under Ground 2 of Schedule 3.
2. The Applicant's Representative provided the following documents with the Application:
 - 2.1. Copy Notice to Leave and proof of delivery;
 - 2.2. Copy decree dated 21 March 2024;
 - 2.3. Copy tenancy agreement;
 - 2.4. Copy section 11 Notice to the Local Authority with confirmation of delivery by email; and
 - 2.5. Copy Form BB to occupier.
3. On 24 February 2025, the tribunal's administration obtained a copy of the Title Sheet for the Property which shows that the registered proprietors are Lloyd Scott and Nicola Ann Scott, since 14 August 2008; and that Applicant has been the registered proprietors' lender with a standard security in their favour since 8 September 2008.
4. The tribunal's administration obtained a copy of the registered landlord details for the Property which shows that there is no registered landlord.
5. The Application was accepted for determination. The tribunal sent letters of notification dated 29 May 2025 to both parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") teleconference in relation to the Application on 25 July 2025 at 1000h. The Respondent was told that if she wished to submit written representations these should be sent to the tribunal by 19 June 2025.
6. The Application paperwork was personally served on the Respondent by Sheriff Officers on 30 May 2025. The Sheriff Officers reported to the tribunal's administration that a neighbouring proprietor had informed them that the Respondent was in temporary housing somewhere else but still had keys for the Property and possessions within the Property.

7. The Respondent did not submit any written representations to the tribunal or make any contact with the tribunal.
8. The tribunal was provided with copy correspondence between the Applicant's Representative and the Respondent's Representative, Dundee Law Centre, in relation to whether the Respondent had moved out of the Property and whether the Application could be withdrawn. As at 24 July 2025, it was understood by both representatives that the Respondent had vacated the Property but may have left belongings. The Applicant's Representative confirmed to the tribunal's administration on 24 July 2025 that she wished to proceed and seek an order for eviction at the CMD.

CMD: 25 July 2025, 1000h, Teleconference

9. The Applicant's Representative, Mrs Masters Good, joined the CMD.
10. The Respondent, Ms Cuthbert, did not attend or made any contact with the tribunal. The tribunal was satisfied that the Respondent was served with Application and notification of the CMD on 30 May 2025 by Sheriff Officers and that the requirements of rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with. The tribunal proceeded with the Application upon the representations of the party present and all the material before it.
11. The Applicant's Representative sought an order for eviction.
12. The Applicant's Representative stated that a decree for possession was granted in favour of the Applicant as heritable creditor on 21 March 2024. That provided the right to repossess the Property. The NTL was served upon the Respondent on the basis of intention to sell with vacant possession in terms of statutory obligation to obtain best possible price. The NTL was served on 31 May 2024 and expired on 24 August 2024. The Respondent's tenancy agreement commenced in July 2018. She was served with a Form BB, which commences the repossession process, in September 2023 and has been aware of instructions since that date. There has been correspondence with Dundee Law Centre since the notice was served last year. Ms Masters Good was told at that time by Dundee Law Centre that the Respondent was planning to leave the Property but needed more time to do so. She was either pregnant or had just had a new baby in May 2024. She also had a daughter who was 17. There was no other adult living in the property with her. The Applicant held off the Application until the very last possible date. The Respondent was afforded a further six months. Since then, there has been contact from her solicitor to say that he is not instructed to appear at the CMD. The last contact he

had from the tenant was from 11 July 2025. She said to him that she would be out by 21 July and intended to have taken all the belongings that she wanted to take. Her solicitor said that she has probably left things that she does not want. Mrs Master Good asked for confirmation but none has been received.

13. The representative from Dundee Law Centre said that she is living elsewhere. The last 8 months or so she has been moving her belongings out of this property. Do not know whether it is temporary accommodation or she has been re-housed. Her agent has said that she has moved out but still has access and still has belongings in the Property.

14. The tribunal adjourned to deliberate.

15. The tribunal makes the following findings-in-fact:

15.1. The Applicant is the heritable creditor of the registered proprietors of the Property with a standard security over the Property.

15.2. The Applicant has repossessed the Property by decree dated 21 March 2024.

15.3. The Applicant wishes to sell the Property with vacant possession and realise the proceeds.

15.4. There is a private residential tenancy agreement between the landlord and the Respondent for the Property which began on 3 July 2018.

15.5. A Notice of calling up (Form BB) dated 29 September 2023 was served on the Respondent by recorded delivery.

15.6. On 31 May 2024, a Notice to Leave containing ground 2 of Schedule 3 to the 2016 Act was served on the Respondent.

15.7. The Applicant has given the Respondent at least 84 days' notice that it requires possession.

15.8. The Application to the tribunal was made on 21 February 2025.

15.9. The Applicant intends to sell the Property with vacant possession to realise the best possible price.

15.10. The Respondent has not stated any defence to the Application.

15.11. The Respondent has moved out of the Property but has retained keys and left belongings within the Property.

Discussion

16. The order for eviction is sought in terms of Section 51 and paragraph 2 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met. The tribunal is satisfied that the Applicant intends to sell the Property with vacant possession.

17. In relation to reasonableness, reference is made to the tribunal's findings in fact. The Respondent has not opposed the Application or made any submissions about reasonableness of eviction. The tribunal was satisfied on the balance of probabilities that the Respondent has left the Property but has retained keys and left belongings within the Property. The tribunal was satisfied that it was reasonable to evict the Respondent in the circumstances of the case.

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.

25 July 2025

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair