

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 51(1) of the Private Housing  
(Tenancies ) ( Scotland ) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/5094**

**Re: Property at Flat 0/2, 104 Middleton Street, Glasgow, G51 1SG (“the  
Property”)**

**Parties:**

**Landmark Mortgages Ltd, Admiral House Harlington Way, Fleet, GU51 4YA (“the  
Applicant”)**

**Elisei Preda, Flat 0/2, 104 Middleton Street, Glasgow, G51 1SG (“the  
Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted in terms of Ground 2 of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the let property is subject to a heritable security, the creditor under the security is entitled to sell the let property and requires the tenant to leave the property to allow it to be sold with vacant possession and it is reasonable on account of these facts to issue an eviction order.

**Background**

1.This application for an eviction order in terms of Rule 109 of the Tribunal rules of procedure was first lodged with the Tribunal on 6<sup>th</sup> November 2024 and accepted by the Tribunal on 28<sup>th</sup> January 2025.A case management discussion was fixed for 14<sup>th</sup> July 2025 at 2pm.

**2.Case Management Discussion**

The Applicant did not attend the case management discussion but was represented by Mr Docherty Solicitor of Ascent Legal Scotland. There was no appearance by or on behalf of the Respondent. The Tribunal noted that the application, supporting papers and the date of the case management discussion had been intimated to the Respondent by Sheriff Officers serving these on her personally on 22<sup>nd</sup> April 2025. The Tribunal was satisfied that the Respondent had received fair notice of the Application, papers and date of the case management discussion and that the tribunal could proceed in her absence.

3. The Tribunal had sight of the application, a paper apart, a tenancy agreement, statutory terms of tenancy and supporting notes, an extract decree, a Notice to Leave, an execution of service of the Notice to Leave, a notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003, an e mail sending this Notice to the local authority and a Form BB.

4. Mr Docherty advised the Tribunal that the Applicant was the holder of a standard security in respect of the property and had obtained a decree at Glasgow Sheriff Court dated 25<sup>th</sup> January 2024 against the owner of the property who was the landlord in terms of the tenancy agreement. A calling up notice in respect of the standard security had been served on the landlord and he was found to be in default in terms of the standard security by the court which granted the decree. This decree entitled the Applicant to repossess the property, sell it and eject any occupants from the property as the landlord had defaulted. The Applicant was now required to seek an eviction order against the tenant in the property in order to act further on the decree against the landlord.

5. Mr Docherty explained that it was understood that the tenant may not have been in occupation at the property for 6 months, the tenancy between the parties having commenced on 31<sup>st</sup> July 2024. The Respondent was understood to be living elsewhere. Mr Docherty's office had received a call from the Respondent tenant on 27<sup>th</sup> August 2024, shortly after the Notice to Leave had been served, asking if the proceedings could be put on hold and the tenant was directed to take advice from Shelter Scotland.

6. Little was known by the Applicant of the Respondent tenant's circumstances, but it was suggested that the landlord had entered into the tenancy agreement in bad faith as he had known of the decree when the tenancy commenced. He said that the landlord had cooperated with the Applicant to an extent and had advised that the tenant had not been in touch with him.

7. The Tribunal had sight of a Notice to Leave dated 22<sup>nd</sup> August 2024 which advised the tenant that an application to the Tribunal would not be made before 26<sup>th</sup> September 2024. Mr Docherty advised that the shorter notice period applied here as the tenant had been in occupation at the property in terms of the tenancy agreement for less than 6 months.

8. The Applicant had produced a Notice in terms of Section 11 of the Homelessness etc ( Scotland ) Act 2003 which had been sent to the local authority.

9. In terms of reasonableness Mr Docherty submitted that the Applicant had complied with Notice requirements and the existence of the standard security and calling up notice had been made known to the occupier of the property as Form BB has been served on the occupier of the property in January 2023. The court papers and date of the hearing at which the decree was granted had been served on the occupier on 28<sup>th</sup> November 2023. He accepted that these documents had been served before the start of the tenancy. He submitted that the lender had been reasonable as there had been a request for a delay by the Respondent and the Applicant had signposted them to a source of advice and had applied to the Tribunal for an order several weeks after the earliest date when the application could have been made to the Tribunal.

10. Mr Docherty also advised that in terms of whether the property could be sold with a sitting tenant this had been considered by the lender. He explained there was an internal process which considered the information available as to whether to sell with or without a sitting tenant and that everything provided by way of information would be considered. He did set out that in the normal course of events that the Applicant would seek to sell the property with vacant possession in order to achieve the best price for the property.

11. The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings been fair.

### **Findings In Fact**

12. A tenancy agreement was entered into at the property with effect from 31st July 2024 between the Respondent in this application and a Mr James McGrath, then the owner of the property.

13. Mr McGrath had entered into a heritable security at the property in favour of the Applicant in this application.

14. As the holder of a standard security over the property the Applicant raised court proceedings against the landlord in the tenancy agreement, Mr McGrath following up on service of a calling up notice on him.

15. On 25th January 2024 the applicant was granted a decree at Glasgow Sheriff Court confirming that the landlord under the tenancy agreement had defaulted on the standard security held by the Applicant over the property.

16. On 25th January the court confirmed that the Applicant has the right to sell the property and to enter into possession of the property and exercise all powers competent to a creditor in lawful possession of the property. The court also granted warrant to sell the subjects, to receive rent for all or part of the property, to rent it out and required Mr McGrath, the landlord in terms of the tenancy agreement to vacate the property and granted warrant for his ejection.

17. Form BB was served on the occupier of the property on 25<sup>th</sup> January 2023 and notification of the court hearing was made to the occupier of the property on 30<sup>th</sup> November 2023.

18.A Notice to Leave the property was served on the Respondent on 23<sup>rd</sup> August 2024 giving notice that the let property was to be sold by the mortgage lender and indicating that an application to the Tribunal would not be made before 26<sup>th</sup> September 2024.

19.The Respondent contacted the Applicant in August 2024 asking for the Tribunal application to be delayed and the Applicant waited a number of weeks after the earliest date when an application could be made to lodge an application to the Tribunal.

20.A notice in terms of Section 11 of the Homelessness etc ( Scotland ) Act 2003 was sent to the local authority in relation to this application on 6<sup>th</sup> November 2024.

21.The Applicant understands that the Respondent is not occupying the property and may live elsewhere although no formal notification of ceasing to occupy the property as a tenant has been made by the Respondent.

22.The Applicant requires to sell the let property which is the subject of a heritable security and is entitled to sell it having been granted decree to allow a sale at Glasgow Sheriff Court on 25<sup>th</sup> January 2024 and requires the tenant to vacate the property so that it can be sold with vacant possession.

23 Having considered whether to sell with a sitting tenant the Applicant considers it requires to sell the property with vacant possession to obtain the best price for it.

## **Reasons for Decision**

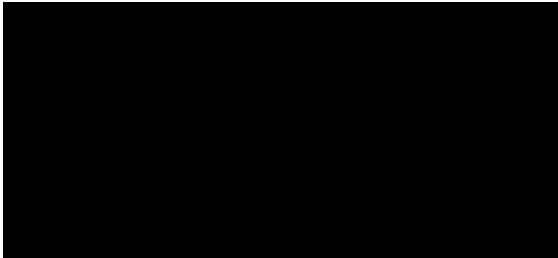
The tribunal was satisfied that the eviction ground was made out as the Applicant, the holder of the heritable security, is entitled to sell the property and requires the tenant to leave the property so that it could be sold with vacant possession. The applicant delayed for a short period in making an application to the tribunal at the request of the tenant whose circumstances are largely unknown. It is understood the tenant is living elsewhere but the tenant did not engage with tribunal proceedings. Having regard to all of the circumstances before the tribunal it appeared reasonable to grant the eviction order.

## **Decision**

The Tribunal determined that an eviction order be granted in terms of Ground 2 of Schedule 3 of the Private Housing ( Tenancies) ( Scotland ) Act 2016 in that the let property is subject to a heritable security, the creditor under the security is entitled to sell the let property and requires the tenant to leave the property to allow it to be sold with vacant possession and it is reasonable on account of these facts to issue 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.**



**14.7.25**

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**Date**