

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/25/1254

Re: 82F Balgarthno Road, Dundee, DD2 4RA ('the Property')

Parties:

Wendy McGavin residing at 2 Millbay Gardens, Invergowrie, Dundee, DD2 5JR ('the Applicant')

Miss Julita Blazniak, Solicitor, Joseph Myles, 7-9 South Tay Street, Dundee, DD1 1NU ('The Applicant's Representatives')

John Reilly residing at 82F Balgarthno Road, Dundee, DD2 4RA ('the Respondent')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Members: Jacqui Taylor (Legal Member) Melanie Booth (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the order for possession of the Property be granted.

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 20th March 2025. The application states that the ground for eviction the Applicant requires vacant possession of the Property as she intends to sell the Property. The application also referred to neighbour difficulties and explained that the Tenant no longer lived in the Property.

1.3 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement between the parties dated 21st July 2021
- Notice to Leave dated 19th December 2024 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 19th March 2025 and the eviction ground is that the Landlord intends to sell the Property.
- A copy of the Certificate of Service by Alan Black, sheriff officer, dated 19th December 2024 confirming service of the Notice to Leave on the Respondent on 19th December 2024.
- A letter from J Myles & Co solicitors dated 15th November 2024 confirming that they have been instructed to act for the Landlord in connection with the sale of the Property.
- Email to Dundee City Council dated 20th March 2025 attaching the Section 11 Notice.
- Section 11 Notice addressed to Dundee City Council dated 20th March 2025.

2. By Notice of Acceptance by Karen Moore, Convener of the Tribunal, dated 10th April 2025 she intimated that he had decided to refer the application (which application paperwork comprises documents received on 24th March 2025) to a Tribunal.

3. The Respondent did not provide any written representations.

4. Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 10.00 on 5th September 2025.

The Applicant's representative attended the CMD. The Respondent did not attend and was not represented.

The Respondent had been served with a letter advising him of the CMD by Roger Ewen, Sheriff Officer, on 28th July 2025. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.1 Oral Representations by the Applicant's Representative:

4.1.1 The Applicant intends to sell the Property to enable her to retire sooner. She is 62 years of age. Her mother suffered from dementia. Whilst the Applicant is in good

health she wants to live her life before her health deteriorates. She is employed as a research scientist and is already training someone to take over her work.

4.1.2 There is no mortgage over the Property. The value of the Property is approximately £70,000. The Property will require to be upgraded before it can be placed on the market. The Applicant owns three other rented properties with long terms tenants. She is not looking to sell those properties at this stage. She sold another rented property last year. The Applicant's son is getting married next year and she wishes to use money from the sale of the Property to contribute to the wedding costs.

4.1.3 The Tenant is in his early 20's. He has no children. He has not lived in the Property for sometime and stays with his grandmother. His possessions are in the Property. The rent arrears amount to approximately £1000. He is in receipt of housing benefit that pays the majority of the rent. As far as she is aware the Respondent does not have any mental health issues.

4.1.4 The Property was recently broken into. The Applicant arranged for the locks to be changed. When she was at the Property the Respondent advised her that he was not staying there and he was using the Property as a mail drop. The joiner who replaced the locks reported that there was unopened mail at the Property.

4.1.5 The neighbours have reported to the Applicant that the Respondent has been neglecting the Property. The application refers to an infestation of bluebottles.

4.1.6 In March 2025 the Respondent's mother advised the Applicant that the Respondent was not staying in the Property and he was staying with friends. That arrangement seems to have changed as he is now staying with his grandmother.

5. Decision

5.1 Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal determined that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

- (ii) the name and address of the Landlord's representative.
- (iii) the name and address of the Tenant.
- (iv) the ground of eviction. The ground stated in the application is that the Applicant intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal determined that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The letter from J Myles & Co solicitors dated 15th November 2024 that has been produced is sufficient in its terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 19th December 2024 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 19th March 2025.

The commencement date of the lease was 1st August 2021. The Tenant had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Notice to Leave had been served on the Tenant by sheriff officer on 19th December 2024. The Notice to Leave correctly gave the Tenant a minimum of eighty four days notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal determined that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

5.2 The Tribunal determined that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.2.1 The Tribunal had a copy of the Landlord's title (ANG10831) and established that the Applicant is heritable proprietor of the Property and she is entitled to sell the Property.

5.2.2 Evidence had been provided that the Applicant intend to sell the Property. The Tribunal accepted the letter from J Myles & Co solicitors dated 15th November 2024.

5.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once she obtains vacant possession.

5.4 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is my opinion, perfectly clear that the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicant needs to sell the Property to enable her to retire early, the fact that the Respondent does not live in the Property and he has not lodged any written representations opposing the eviction application.

5.5 The Tribunal granted the eviction.

5.6 The decision of the Tribunal was unanimous.

6. 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.

Jacqui Taylor

Legal Member

5th September 2025