



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/24/3011

Property : 1B Brunswick Street, Tarbert, Argyll PA29 6UN (“Property”)

Parties:

**Pepper (UK) Limited, Harman House, 1 George street, Uxbridge, London
UB81QQ (“Applicant”)**

**Yuill & Kyle Limited, Capella, 60 York Street, Glasgow G2 8JX (“Applicant’s
Representative”)**

Francis Boyle, 1B Brunswick Street, Tarbert, Argyll PA29 6UN (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined to grant an order for possession of the Property but to
delay enforcement until 12 January 2026.**

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E with supporting documents. A Case Management Discussion (“CMD”) took place before the Tribunal on 20 March 2025. Reference is made to the note of the CMD. The outcome was that an evidential hearing was fixed for 5 September 2025. The Tribunal issued a direction in terms of which Parties were to lodge a response by 1 June 2025. On 30 May 2025 the Applicant’s Representative lodged a response to the direction which included a written submission. On 23 May 2025 the Respondent lodged a letter in which he stated that he hoped to purchase the Property.
2. The documents produced on behalf of the Applicant were :

- Tenancy Agreement between Mr J Dennis and the Respondent which commenced on 7 October 2013 ("Tenancy Agreement") and in terms of which the Respondent acknowledged receipt of a form AT5;
- Notice to Quit addressed to the Respondent dated 8 April 2024 ("Notice to Quit") seeking to terminate the Tenancy Agreement on 10 June 2024;
- Form AT6 dated 26 April 2024;
- sheriff officer certificate evidencing service of the Notice to Quit and AT6 on 26 April 2024;
- extract decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 dated 31 May 2019;
- notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 3 July 2024;
- Title sheet for the Property;
- List of properties to let; and
- Landlord Register search.

3. The Respondent did not lodge any documents.

Evidential Hearing

4. An evidential hearing took place before the Tribunal on 5 September 2025 by teleconference. The Applicant was represented by Alex Robertson of the Applicant's Representative. The Respondent was in attendance.
5. The Tribunal explained to the Parties that the outcome of the CMD in March was that an evidential hearing was to be fixed. The Tribunal noted however that the letters sent to the Parties regarding the hearing to take place on 5 September 2025 said the hearing was a CMD. The Tribunal asked the Parties if they were content to proceed with an evidential hearing. Mr Robertson said that he had one witness noted who would not be attending today but he was content to proceed with the evidential hearing. Mr Boyle said that he was also content to proceed with the evidential hearing.
6. The Tribunal noted that there were certain factual matters which did not appear to be in dispute and asked the Parties if the following was agreed :

- The Applicant entered into a Tenancy Agreement for the Property which commenced on 7 October 2013.
- The landlord, Mr Dennis, had granted a security over the Property in favour of Kensington Mortgage Company Limited.
- On 31 May 2019 decree was granted in favour of Kensington Mortgage Company Limited under the Conveyancing and Feudal Reform (Scotland) Act 1970 in terms of which Kensington Mortgage Company Limited was entitled to enter into possession of the Property.
- Kensington Mortgage Company Limited assigned their interest in the security to the Applicant with effect from 20 May 2022.
- The Applicant served a Form AT6 on the Respondent by sheriff officer on 26 April 2024. The Form AT6 stated that proceedings would not be raised before 27 June 2024.

The Parties confirmed that each of those matters were agreed and were not in dispute.

7. The Tribunal invited Mr Robertson to explain the Applicant's position. He said that he adopted the written submissions lodged. He said that the key issue was the question of reasonableness. Mr Robertson referred to *Cumming v Danson* 1942 2 All ER 653 which provided that the Tribunal required to take into account all relevant circumstances at the date of the hearing. He then referred to *Cresswell V Hodgson* 1951 2KB 92 and in particular to page 95. Mr Robertson submitted that the balance favoured the grant of an order for eviction. He explained that the Applicant is a lender who did not operate as a landlord. He noted that decree in favour of the previous mortgage provider was granted in 2019. The security was assigned to the Applicant in May 2022. He said that the Applicant does not have the resources to act as a landlord. He said they do not have the facility to collect rent.
8. As regards why there had been a delay between the date of the decree being granted and this application being made Mr Robertson referred to Page 3 of his written submission. He explained that the assignation of the security happened in May 2022 but the account was not fully transferred to the Applicant until 2024. He said that the Applicant then followed due process to recover possession of the Property. He said that any delay had been outwith the control of the Applicant and had caused no prejudice to the Respondent.
9. As regards why the Applicant did not wish to market the Property with the Respondent as sitting tenant, Mr Robertson submitted that the Applicant wished to obtain vacant possession in order to sell the Property for the best

possible price. He referred to section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 which places a duty upon a creditor to advertise a repossessed property for sale and take all steps to achieve the best price. He noted that this was necessary because any balance remaining after the sum due to the lender was paid from the proceeds of sale would be remitted to the borrower.

10. Mr Robertson noted that the Tribunal also had to consider the Respondent's circumstances. He noted that Mr Boyle is aged 70, he is semi-retired and lives in the Property with his partner. He noted that Mr Boyle had spoken to the local authority who could not guarantee that he would be re housed in the Tarbert area. He also noted that Mr Boyle's partner may need to find an alternative job if she could not stay in the Tarbert area. Mr. Robertson submitted that it was not reasonable to refuse to grant the order due to the Respondent's circumstances. He said that the Respondent had provided no evidence to show that he had attempted to secure alternative accommodation. He noted that in addition the local authority may not assist the Respondent until such time as an eviction order is granted. Mr Robertson noted that the Respondent does not have any dependents living in the Property and therefore there was no issue to consider such as schooling. He said that it was not the responsibility of the Applicant to provide accommodation for the Respondent. He said that if an eviction order was not granted the arrears on the security account would continue to grow. Mr Robertson noted that collecting rent from the Respondent may lead to the applicant being deemed to have entered into possession of the Property which meant they could incur liabilities in respect of the Property.
11. The Tribunal asked Mr Robertson if the Applicant had attempted to market the Property with Mr Boyle in place as tenant. He said that he was not aware of any marketing having taken place. The Tribunal noted that Mr Boyle had indicated he wished to purchase the Property and asked Mr Robertson if the Applicant would consider that option. Mr Robertson said that the Applicant would be happy to communicate with the Respondent in that regard.
12. The Tribunal asked Mr Boyle if he had seen the written submission lodged on behalf of the Applicant. He said that he had seen it and had read it. The Tribunal asked Mr Boyle to explain his circumstances. He said that he is semi-retired and when he is working he carries out odd jobs. He said that his partner works in the castle in Tarbert which is close by. He said that his partner does not drive and cycles to work.
13. The Tribunal asked Mr Boyle if he had spoken with the local authority regarding alternative accommodation. He said that he had a case worker who was to call him the following day. He said that in May he had been offered a house by the

local of authority. He said it was a flat on an upper level. He said that he has chronic obstructive pulmonary disease ("COPD") and therefore cannot climb stairs. He said that the Property is on the ground floor. He said that he has told the local authority about his COPD. The Tribunal asked Mr Boyle if he has been allocated points which would assist his housing application. He said that he has told the local authority that he wishes to purchase the Property and they have therefore put his housing application to one side. He said that he has not been allocated any points.

14. Mr Boyle told the Tribunal that he has arranged a mortgage via Echo Finance to enable him to purchase the Property. He said that he had not had a valuation carried out but he thought the Property was worth around £50,000. He said that his former landlord had marketed the Property earlier in 2025 at £65,000 and had one interested party. He said that after the CMD the advertisement was closed down.
15. The Tribunal asked Mr Boyle if he still pays rent to his former landlord. He said that he stopped paying rent after the CMD. He said that he still sees his former landlord in the village. He said that he had showed him all of the "court papers" and his former landlord had told him that he would "sort things out". The Tribunal asked Mr Boyle whether the amount which he sought to take out as a mortgage could be increased. He said that the Property needs extensive refurbishment. He said that it has no central heating and is damp.
16. Mr Boyle confirmed that there are no other family members living in the Property with him and his partner. He confirmed that there are no other health issues, for either himself or his partner, of which the Tribunal should be made aware.
17. The Tribunal asked Mr Boyle if he had been in touch with any housing associations regarding alternative accommodation. He said that Fine Homes provided accommodation for disabled people. He said that he had been in touch with ACHA. The Tribunal asked Mr Boyle if the local authority had told him that if an eviction order was granted he would be placed in temporary accommodation. Mr Boyle said that local authority had told him they would "try to find something". The Tribunal asked Mr Boyle if he had inquired about options for alternative accommodation in the private rented sector. He said that there was not much available in the Tarbert area during the summer. He said that there may be more availability in the winter.
18. The Tribunal asked Mr Robertson if he was aware of the value of the Property. He said that he was not. He said that the arrears on the mortgage account are £15,000 and the outstanding balance is £71,000.

19. The Tribunal asked Mr Boyle if there was any other issue that he wished to bring to the attention of the Tribunal before the Tribunal proceeded to make a decision. He said that there was not and that he was content for the Tribunal to proceed to make a decision.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant entered into a Tenancy Agreement for the Property which commenced on 7 October 2013.
2. Clause 8 of the Tenancy Agreement states that the Property is subject to a heritable security granted before the creation of the tenancy and the provisions of ground 2 of schedule 5 of the Housing (Scotland) Act 1988 apply accordingly.
3. A standard security over the Property in favour of Kensington Mortgage Company Limited was registered on 5 November 2007.
4. On 31 May 2019 decree was granted in favour of Kensington Mortgage Company Limited under the Conveyancing and Feudal Reform (Scotland) Act 1970 in terms of which Kensington Mortgage Company Limited was entitled to enter into possession of the Property.
5. Kensington Mortgage Company Limited assigned the standard security in their favour over the Property to the Applicant conform to assignation registered on 20 May 2022.
6. The Applicant intends to sell the Property.
7. The Applicant requires the Respondent to leave the Property for the purpose of disposing of it with vacant possession.
8. The Form AT6 was served on the Respondent by sheriff officer on 26 April 2024. The Form AT6 stated that proceedings would not be raised before 27 June 2024.
9. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
10. The Respondent lives in the Property with his partner.
11. The Respondent is aged 70, is semi-retired and suffers from COPD.
12. The Respondent has expressed an interest in purchasing the Property.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. The Property is subject to a heritable security granted before the creation of the tenancy.
2. The Applicant is entitled to sell the Property.
3. Notice was given to the Respondent in writing not later than the date of commencement of the tenancy that possession might be recovered on the basis of ground 2 of schedule 5 of the Housing (Scotland) Act 1988.
4. It is reasonable for the Tribunal to grant an order for possession of the Property.

Reasons for the Decision

20. The Tribunal requires to determine firstly, whether or not the ground for eviction relied upon has been established and secondly, if the ground is established, whether or not it is reasonable to grant an order for possession.
21. The Applicant sought an order for possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988 ("1988 Act") which provides that the Tribunal shall not make an order for possession of a house let on an assured tenancy except on one of the grounds set out in schedule 5 to the 1988 Act and, if satisfied that any of the grounds is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so. Section 18 is subject to section 19 which provides that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord has served on the tenant a notice in accordance with section 19.
22. The ground for possession relied upon was ground 2 which is that the house is subject to a heritable security granted before the creation of the tenancy and, as a result of default by the debtor, the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession and notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this ground.
23. It was not disputed that a heritable security in favour of Kensington Mortgage Company Limited was registered on the title to the Property before the Tenancy Agreement was entered into; that the Tenancy Agreement gave notice to the Respondent that possession might be recovered on ground 2; that Kensington Mortgage Company Limited obtained decree entitling them to

sell; that the security in favour of Kensington Mortgage Company Limited was assigned to the Applicant and that the Applicant served the notice required by section 19 of the 1988 Act.

24. Having established that the requirements of ground 2 and section 19 of the 1988 Act have been met, the Tribunal considered the question of reasonableness. When addressing the question of reasonableness, the Tribunal has a judicial duty to consider the whole circumstances in which the application is made. Some factors may have little or no weight, others may be decisive but it is wrong for the Tribunal to exclude from consideration matters which they ought to take into account. The Tribunal must objectively balance the rights and interests of both Parties.
25. The Applicant is a lender who is entitled to sell the Property in order to repay the sum due to them which, the Tribunal was told, is £71,000. In terms of the Conveyancing and Feudal Reform (Scotland) Act 1970, the Applicant is obliged to achieve the best price for the Property when selling. If the Applicant takes steps such as collecting rent from a tenant in the Property they may be deemed to have entered into possession of the Property and thereby acquire liability for matters such as repairs.
26. The Respondent has lived in the Property since October 2013. He lives with his partner who works locally. The Respondent is semi-retired and suffers from COPD. The Respondent has made inquiries about alternative accommodation but he wishes to buy the Property. He has arranged finance to allow him to do so. As he has told the local authority that he intends to buy the Property, his housing application is not being progressed. The Respondent has not paid rent for the Property since around March 2025. The Respondent's evidence was that the Property is damp and in need of refurbishment.
27. Having considered all of the circumstances, the Tribunal determined that it is reasonable to issue an eviction order. The Parties are currently in an unsatisfactory situation with the Applicant unable to accept rent, the Respondent being unable to pay rent and the Applicant having no responsibility for any repairs that may require to be carried out to the Property. Reference is made to the Upper Tribunal decision 2024 UT03 in respect of the repairing standard application which proceeded under reference FTS/HPC/RP/23/1039. The Tribunal determined to delay enforcement of the order to allow time for the Parties to discuss, and possibly agree, that the Property should be sold to the Respondent, failing which, the additional time would allow the Respondent to find alternative accommodation.

Decision

28. The Tribunal grants an order for possession of the Property but determined to delay enforcement until 12 January 2026.

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.



**Joan Devine
Legal Member**

Date : 8 September 2025