



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 (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)

Chamber Ref: FTS/HPC/EV/25/0087

Re: Property at 78 Morar Place, Castlepark, Irvine, Ayrshire, KA12 9PX (the Property)

Parties:

Siberite Mortgages Limited, The Pavillions, Bridgwater Road, Bristol, (the Applicant)

Aberdein Considine, Solicitors, 18 Waterloo Place, Glasgow, Scotland, G2 6DB (the Applicant's Representative)

Ms Denise Kelly, 78 Morar Place, Castlepark, Irvine, Ayrshire, KA12 9PX (the Respondent)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Ms. Ann Moore (Ordinary Member)**

Decision (in the absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal) is satisfied that Ground 2 in Schedule 3 to the 2016 Act is established by the Applicant, namely a lender intends to sell the let property in that: (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 (d) it is reasonable to issue an eviction order on account of those facts; and the tribunal made an order for eviction in terms of section 51 of the 2016 Act.

The decision of the tribunal is unanimous.

Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal on 12 March 2025 in terms of section 51 of 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).
2. The Applicant seeks an order for eviction of the Respondent from the Property under Ground 2 of Schedule 3 to the 2016 Act, in summary that a lender intends to sell the let Property; following the lender obtaining a decree for repossession against the mortgage customer (landlord) dated 22 May 2024.
3. The Applicant's Representative lodged with the Application:
 - 3.1. Private Residential Tenancy agreement;
 - 3.2. Extract decree;
 - 3.3. Notice to Leave
 - 3.4. Proof of Notification of Notice to Leave;
 - 3.5. Section 11 Notice;
 - 3.6. Proof of service; and
 - 3.7. Form BB.
4. The tribunal's administration obtained the Title Sheet for the Property on 3 March 2025 which shows that the Applicant is heritable creditor of the Property, following assignation by the previous lender, Mortgage Express. The tribunal's administration checked the Scottish Landlord Register, which showed that the property is not registered.
5. The Application was accepted for determination by a tribunal. Both parties were notified by letters dated 25 July 2025 of the date, time and place of Case Management Discussion (CMD) in relation to the Application on 8 September 2025 at 1400h by teleconference. The Respondent was invited to make written representations in response to the Application by 15 August 2025. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification was personally served on the Respondent by Sheriff Officers.

6. The Respondent did not submit any written representations in response to the Application.

Case Management Discussion (CMD) 8 September 2025, 1400h: Teleconference

7. Ms Masters Good, Solicitor from the Applicant's Representative attended on behalf of the Applicant.
8. The Respondent, Ms Kelly, did not attend. The tribunal was satisfied on the basis of the certificate of service by Sheriff Officers that she had received the Application paperwork and notification of the CMD. The tribunal decided to proceed in her absence on the basis of the information before it and representations of the Applicant's Representative in terms of Rule 29 of the 2017 Rules.
9. Ms Masters Good stated that the lender is seeking the eviction order to be granted on the basis of the decree granted in May 2024 in the Sheriff Court.
10. Ms Masters Good stated that Notice to Leave was served on the Respondent on basis of the lender's intention to sell.
11. The Applicant's Representative stated that the firm and/or Sheriff Officers instructed by them have been in touch with the Respondent throughout their instruction. Calling up notices were served in July 2023. On 4 July 2023, the Respondent told the Applicant's Representative that she and her two children live in the property. The law firm and/or the sheriff officers have spoken to the Respondent at various points when they have attended the Property. The Respondent said to the firm in September 2024 that she was fully aware of the repossession proceedings and was intending to find a new property through the local authority. In August 2025, sheriff officers were instructed to attend at the Property and they attended on 28 August 2025 and said that she continues to reside there and told them that she is awaiting an eviction order to be re-housed by the local authority. Ms Masters Good stated that she does not have any additional information about the number and ages of the Respondent's children.

12. The tribunal adjourned to deliberate.

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

- 13.1. David William Lynn has been the registered proprietor of the Property since 3 December 2017 (the Landlord).
- 13.2. The Landlord granted a security in favour of Mortgage Express which was registered on 3 December 2007 and assigned to the Applicant on 22 July 2019.

- 13.3. The Applicant is the heritable creditor of the Property.
- 13.4. There is a current arrears balance on the mortgage.
- 13.5. The Landlord entered into a private residential tenancy with the Respondent with a start date of 28 November 2019.
- 13.6. On 29 June 2023 the Applicant served a calling up notice.
- 13.7. The Applicant obtained a Sheriff Court decree dated 22 May 2024 entitling it to sell the let Property and to enter into possession of the subjects.
- 13.8. On 3 October 2024, the Applicant's Representative issued a Notice to Leave to the Respondent based on Ground 2 of Schedule 3 of the 2016 Act.
- 13.9. More than 84 days' notice was provided to the Respondent.
- 13.10. The Applicant requires vacant possession of the Property to enforce the decree in their favour entitling them to enter into possession and sell the let Property.
- 13.11. The Respondent resides in the Property with children.
- 13.12. The Respondent intends to seek local authority accommodation if an eviction order is granted.

Discussion

- 14. The application for an order for eviction was not opposed. The Respondent has not engaged with the tribunal proceedings. The tribunal was satisfied on the basis of the Applicant's Representative's submissions that the Respondent is aware of the application for eviction, is awaiting an eviction order and intends to seek alternative accommodation for her and her children with the local authority.
- 15. The tribunal was satisfied on the basis of the findings in fact that Ground 2 in Schedule 3 of the 2016 Act is established.
- 16. The tribunal was satisfied that in all the circumstances, it was reasonable to make an order for eviction.
- 17. The tribunal therefore made an order for eviction in terms of Section 51 of the 2016 Act.

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.

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

8 September 2025