

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/EV/25/0275

Re: Property at 24a Kinneil Road, Bo'ness, EH15 0AY ("the Property")

Parties:

Konrad Pioatkowski, c/o 4 The Vennel, Linlithgow, EH49 7EX ("the Applicant") and

Paul Rolfe Lettings, c/o 4 The Vennel, Linlithgow, EH49 7EX ("the Applicant's Representative") and

Maiev Hart, 24a Kinneil Road, Bo'ness, EH15 0AY ("the First Respondent") and

Jarvellis Rogers 24a Kinneil Road, Bo'ness, EH15 0AY ("the Second Respondent") and

Stephen J. Hart, 27 Stewart Avenue, Bo'ness EH51 0HT ("the Respondents' Representative")

Tribunal Members:

Mr G McWilliams - Legal Member

Mr A Khan - Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the provisions of Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") have been met in this case and that it is reasonable to make an eviction order.

The Tribunal therefore grant an eviction order under section 51 of the 2016 Act

Background

1. This is an Application for an eviction order under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the 2017 Rules") and section 51 of the 2016 Act. The Applicant relied

upon Ground 1 as the ground for possession, stating that the Applicant intends to sell the Property.

2. The Applicant's Representative had provided to the Tribunal, as part of the Application, the following documents:-
 - a. Application (Form E) dated 16 January 2025
 - b. Private Residential Tenancy Agreement ("PRT") commencing 14 January 2022
 - c. Notice to Leave ("NTL") dated 27 September 2024, with proof of service by email.
 - d. Section 11 Notice to Falkirk Council, with proof of delivery
 - e. Letter from Veitch Solicitors & Notaries, dated 3 January 2025, confirming instruction to act in the sale of the Property
3. All of the documents and forms, referred to in paragraph 2 above, had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied. This is discussed further at paragraphs 10 and 11, below.
4. The Application was referred to a Case Management discussion ("CMD") to take place by remote teleconference call on 8 August 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules, validly served by Sheriff Officers. The parties were provided with the Notification of Hearing, the application papers, and Tribunal Guidance Notes. The Sheriff Officers' Certificate of Intimation was lodged confirming service.
5. On 12 July 2025, the Respondents' representative, Mr Hart, who is also a Guarantor in respect of the Respondents' PRT obligations, wrote to the Tribunal advising that both tenants had disabilities which prevent them from participating in real-time proceedings (in person, by telephone, or by video). He explained that live verbal interaction presents substantial cognitive and psychological barriers. He therefore requested, as a reasonable adjustment under the Equality Act 2010, that the CMD be conducted by way of the Tribunal's consideration of the Application papers and all parties' other written submissions. He confirmed that the Respondents were willing to engage in writing and undertook to coordinate responses on their behalf. The request was not accompanied by medical evidence. The Tribunal initially stated that it would be helpful to hear from parties' Representatives at the scheduled CMD. By email dated 31 July 2025, Mr Hart asked the Tribunal to reconsider this decision and said that he has a formal diagnosis of autism spectrum disorder ("ASD"), which would prevent his attendance at the CMD. In the circumstances the Tribunal decided that it was fair and just to proceed on the basis that they would consider the Application papers and written submissions at a CMD, in the absence of both parties and their Representatives. The Tribunal issued a Notice of Directions to the Representatives, direction was issued, seeking further information, particularly regarding the issue of the reasonableness, or otherwise, of the grant of an eviction order, on 7 August 2025. Both Representatives provided further written submissions.

Case Management Discussion on 28 August 2025

6. The Tribunal members proceeded remotely by telephone conference call on 28 August 2025. They discussed the case by consideration of written representations only, comprising the following documents:

Applicant's Representative's submissions dated:-

- a) 17 July 2025
- b) 18 July 2025
- c) 31 July 2025 – item 1
- d) 31 July 2025 – item 2
- e) 4 August 2025
- f) 18 August 2025 and 19 August 2025

Respondents' (and their Representative's) submissions dated: -

- a) 29 June 2025
- b) 12 July 2025
- c) 24 July 2025
- d) 31 July 2025
- e) 4 August 2025
- f) 5 August 2025
- g) 15 August 2025
- h) 20 August 2025

7. As a preliminary matter, the Tribunal dealt with the Respondents' Representative's submission dated 12 July 2025 in which he invited the Tribunal to exercise its powers, under Rule 8 or Rule 27 of the 2017 Rules, to reject or dismiss the Application. Mr Hart contended that the Application is procedurally and substantively flawed on the following grounds:

- No valid or authorised NTL under 2016 Act.
- Lack of lawful standing by Paul Rolfe Lettings to bring the Application;
- No evidence submitted in support of any statutory eviction ground;
- Concealment and inconsistency in the landlord's identity and ownership;
- Breaches of statutory duties, including failure to comply with pre-action requirements

11. The Tribunal noted that, on 20 February 2025, a Legal Member of the First-tier Tribunal, acting under delegated powers of the Chamber President, had reviewed the Application paperwork and determined that no further documents or information were required for the Application to be accepted. The Tribunal found no reason to depart from that earlier decision and decided to reject the Respondents' Representative's preliminary argument. The Tribunal decided that it was fair and just to proceed to consider the written submissions made by the Representatives of the parties, including the arguments made by the Respondents' Representative in support of his preliminary point.

12. The following is a summary of the submissions made by and on behalf of the parties. It is not a detailed commentary on each of the written representations made.

Submissions for the Applicant

13. For the Applicant, Paul Rolfe Lettings advised that a rent account notice had been issued in error and that no rent increase was due. They also confirmed that the rent account was up to date throughout the time they had managed the tenancy.
14. Paul Rolfe Lettings provided copies of correspondence that was sent to both Respondents and their Representative advising of the change of agency, including a letter from the landlord, and responses showing that both the Respondents and their Representative engaged with them thereafter.
15. In addition, Paul Rolfe Lettings submitted evidence that the Applicant wishes to sell the property as his interest-only mortgage has ended, and refinancing is not possible. Correspondence was provided to support the position that the property is to be marketed for sale once vacant possession is obtained.
16. In response to the Tribunal's Notice of Directions, the Applicant's Representative stated that the Applicant has an adult son and grandchildren whom he is unable to support due to the financial strain of paying the mortgage loan in respect of the Property. The Applicant is aged 67 and took medical retirement due to ongoing health issues. He has no other rental properties and no ability to work to supplement his pension. The mortgage account balance, for the Property, is £76,094, and an application for a new mortgage in July 2025 was declined. The net rent covers only the monthly mortgage payments and is insufficient for repairs, renewals, or other costs such as building insurance. The Applicant submits that this position is financially unsustainable.

Submissions for the Respondents

17. The Respondents provided detailed submissions in their email of 29 June 2025, setting out why they felt the Application was "procedurally and substantively flawed" on five grounds :-
- Lack of lawful standing by Paul Rolfe Lettings
 - No valid or authorised NTL
 - No evidence provided for eviction grounds
 - Concealment and inconsistency of the landlord's identity
 - Breaches of statutory duties by both landlord and representatives
18. The submission went on to list 13 points in respect of their claims, and these are summarised below.

Reason 1: Lack of Legal Standing in the Tenancy.

19. Paul Rolfe Lettings had no legal authority to act as letting agent. The tenancy agreement specified only Northwood Central Scotland Ltd, and no evidence of a proper handover or authorisation was produced. Documentation later relied upon was vague, undated, and retrospective. Property details were inconsistent, service methods improper, and no valid contact information provided. Communications and the NTL were therefore procedurally invalid.

Reason 2: Concealment and Irregularities in Landlord Identity.

20. The true identity of the landlord was unclear throughout the tenancy and Tribunal process. The tenancy agreement named Mr Konrad Pioatkowski but provided only agent contact details, bore no landlord signature, and was executed solely by the agent. Notices were issued without direct landlord involvement. Helen McCallum acted without disclosure, and Sandra Calder was an undisclosed co-owner. Emails produced on 20 August 2025 show Mr Pioatkowski corresponding with the agent via an address apparently belonging to Ms McCallum, creating further doubt as to who was instructing eviction.

Reason 3: Invalid and Unauthorised Notice to Leave

21. The NTL was issued from an email address not recognised in the tenancy agreement, was not lawfully received, and bore no landlord signature or authorisation. The only document purporting to authorise Paul Rolfe Lettings was unsigned, retrospective, and post-dated the NTL. The NTL therefore fails to meet the statutory requirements under Section 50 of the 2016 Act for valid service, rendering the Application procedurally defective.

Reason 4: Failure to Comply with Agreed Method of Service for Legal Notices

22. Paul Rolfe Lettings failed to comply with the agreed method of service set out in Clause 4 of the tenancy agreement, which specifies that all legal notices must be sent to the authorised email address, central@northwooduk.com. The NTL and rent increase communications were issued from @paulrolfe.co.uk addresses, which are not listed in the tenancy agreement and were never formally authorised. No substitution of agent or updated contact details were provided, and some @paulrolfe.co.uk emails were blocked, preventing them from receiving or verifying notices. As a result, service was procedurally defective and incapable of triggering statutory notice periods or obligations.

Reason 5: Failure to Provide Landlord's Address and Identity Within the Statutory Timeframe

23. The landlord's legal identity and contact address were not provided within the statutory timeframe, in breach of section 327(1) of the Housing (Scotland) Act 1987. Multiple requests to Northwood Central Scotland Ltd and later Paul Rolfe Lettings were ignored or only met with the agents' own office addresses. Legal notices, deposit transfers, and Tribunal documents failed to identify the landlord

directly, and references to landlords in the Tribunal Application papers are inconsistent or unverifiable. This lack of transparency obstructed communication, prevented verification of authority, and constitutes a serious procedural defect that undermines the validity of the eviction application.

Reason 6: Use of Unlawfully Obtained Personal Data and Improper Notice Delivery

24. Paul Rolfe Lettings used the Respondents' personal and tenancy data without consent or lawful authority. No privacy notice was issued and the use of unapproved @paulrolfe.co.uk email addresses caused communications, including legal notices, to be blocked or diverted to a spam folder. This improper use of personal data and unauthorised service prevented the service of a valid statutory notice under the 2016 Act and such conduct undermines the procedural validity of the eviction process.

Reason 7: Failure to Follow Pre-Action Requirements

25. Paul Rolfe Lettings failed to comply with reasonable pre-action requirements, including sending an email on 22 February 2025 misrepresenting the status of the Tribunal proceedings, creating a misleading impression that eviction was imminent and inevitable. Subsequent requests by the Respondents for case reference numbers, copies of the Application, confirmation from the Tribunal, clarification of rights, grounds for eviction, and landlord contact details were largely ignored or deflected. This conduct violated the Letting Agent Code of Practice ("the Code"), caused unnecessary administrative burdens, delayed formal service until 24 June 2025, and provided only 3 weeks to respond. A false claim of rent arrears was submitted to Falkirk Council, potentially misrepresenting the tenancy and prejudicing the Respondents' ability to respond fairly.

Reason 8: Non-Compliance with Disclosure Duties under the Letting Agent Code of Practice

26. Paul Rolfe Lettings failed to comply with mandatory disclosure duties under the the Code. The Respondents were not provided with the agent's terms of business, complaints procedure, or guidance on how to escalate disputes, in breach of Paragraph 17 of the Code and Section 32(1) of the Housing (Scotland) Act 2014. This left them without the necessary information to challenge the agent's conduct or seek redress. The agent also failed to clarify legal rights, statutory notice periods, or obligations when requested. This non-compliance undermines procedural fairness and raises questions about the agent's fitness to operate.

Reason 9: Use of Rent Increase as a Coercive Tactic During Eviction Proceedings

27. Paul Rolfe Lettings issued a substantial rent increase of 66% during ongoing eviction proceedings, without landlord approval, supporting documentation, or proper service. The notice was sent from an unauthorised email address and

blocked due to prior misuse of personal data. The increase was inconsistent with the stated purpose of eviction (the sale of the Property), lacked justification, such as an inspection or valuation, and was intended to pressure the Respondents to vacate the Property. This action reflects a pattern of coercive and procedurally improper conduct.

Reason 10: Conflict of Interest Arising from Linked Letting and Sales Functions

28. Paul Rolfe Lettings operated a dual role as both letting agent and estate agent for the sale of the Property, creating a conflict of interest. The company coordinated internally to secure vacant possession for the sale, prioritising commercial objectives over tenant rights. This conflict was undeclared, and the agent failed to act impartially or treat them fairly, and such conduct breaches the Letting Agent Code of Practice and undermines procedural fairness.

Reason 11: Landlord's Breach of Legal and Contractual Duties

29. The landlord has breached legal and contractual duties under the 2016 and 1987 Acts by failing to disclose their identity and contact details, failing to formally appoint or authorise agents, and failing to monitor the agents' compliance with statutory requirements. The landlord's inaction has resulted in improper notice delivery, data misuse, undisclosed conflicts of interest, and non-compliance with the agreed method of service, undermining the fairness and legitimacy of the eviction process.

Reason 12 False and Unsupported Allegation of Rent Arrears

30. The applicant's letting agent falsely claimed rent arrears in an email to Falkirk Council. The Respondents have never been in arrears, and there is no evidence of unpaid rent in the Tribunal Application papers. This misstatement could prejudice the Tribunal and represents an abuse of the statutory notification process.

Reason 13: Summary of Procedural and Ethical Failings

31. The Respondents' final point summarises the earlier issues, asserting cumulative procedural, legal, and ethical failings.
32. In response to the Notice of Directions, the Respondents, through their Representative, confirmed that they have no children residing with them. The First Respondent is aged 27 and has a diagnosis of ASD. The Second Respondent is aged 31 and has a diagnosis of complex post-traumatic stress disorder and attention deficit hyperactivity disorder. Neither Respondent is in employment. The Second Respondent recently graduated from university and was previously supported by a research grant. The First Respondent has undertaken occasional consulting work, which does not constitute employment. The Respondents have made a joint claim for Universal Credit, including the Housing Element, with the first payment received on 7 August 2025. They have not applied for an alternative tenancy, though they have made enquiries. They

also stated that their ability to secure a new tenancy has been restricted as their deposit was taken into the control of Paul Rolfe Letting without their consent.

Findings in Fact

32. Having considered all of the available papers, the Tribunal made the following findings in fact:

- a) The parties entered into a PRT in respect of the Property on 14 January 2022.
- b) The tenancy is a PRT as defined by section 1 of the 2016 Act.
- c) The Applicant is the landlord and owner of the Property.
- d) On or before 11 March 2024, the Respondents were advised that the Applicant had appointed Paul Rolfe Lettings as the managing agent for the Property. The Respondents thereafter engaged with Paul Rolfe Lettings who were acting in their stated capacity.
- e) On 27 July 2024, the Applicant, through his agent, served an NTL on the Respondents by email.
- f) The NTL relied upon ground 1 of Schedule 3 to the 2016 Act and stated that no application for an eviction order would be made to the Tribunal before 24 December 2024.
- g) The NTL was in the form prescribed by the relevant regulations and validly served.
- h) The Applicant intends to sell the property.
- i) The Applicant is 67 years of age, retired, and has medical issues that prevent him from working. The Property is his only rental property and it is subject to a mortgage agreement, the term of which has expired, and which now requires to be repaid. The Applicant cannot obtain another mortgage to repay the existing mortgage.
- j) The First and Second Respondents are aged 27 and 31, respectively, and are not currently in employment. They have no dependents and have stated that they suffer from medical conditions.

Statement of Reasons

33. The Tribunal was satisfied that it was able to make the necessary findings in fact and reach a decision on the Application in terms of Rule 18 of the 2017 Rules, without the need for an oral CMD or Hearing. In reaching that view, the Tribunal took account of the Application papers, the extensive written representations submitted by both parties, and the Respondents' stated preference that the matter be determined on the basis of written submissions alone.

34. In terms of Section 51 of the 2016 Act the Tribunal is to issue an eviction order under a private residential tenancy if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.

35. Schedule 3 (1) (1) to the 2016 Act provides that it is an eviction ground that a landlord intends to sell the let property and confirms the criteria for the grant of an eviction order on this ground.

36. Having made their findings in fact the Tribunal was satisfied that the tenancy between the parties was a PRT and that the Applicant had served a NTL in compliance with the provisions of the 2016 Act. The Tribunal was also satisfied that the Applicant had given his local authority Notice under section 11 of the Homelessness etc. (Scotland) Act 2003 and had submitted correspondence from both a solicitor and an estate agent confirming his intention to sell. Further the Tribunal was also satisfied that the Applicant intends to sell the Property for the reasons given by his Representative. The Applicant had also lodged a letter from Veitch Solicitors & Notaries dated 3 January 2025, confirming his instruction to them to act in the sale, as well as correspondence with the letting agent regarding arrangements for marketing and sale. Accordingly, the Tribunal found in law that the Applicant wishes to sell the Property.
37. With reference to the Respondents various points, outlined above, the Tribunal, having considered all of the available papers, also found that the Applicant, Mr. Konrad Pioatkowsk, is the owner and landlord of the Property and is entitled to instruct his letting agent, Paul Rolfe Lettings, to bring this Application. The tenancy agreement clearly identifies him as the landlord. The Respondents raised several challenges concerning the landlord's identity, including the use of the agent's contact details, the execution of the tenancy agreement by the agent, and the involvement of other individuals such as Helen McCallum or the co-owner named on the title, Sandra Calder. They also submitted emails suggesting that Mr Pioatkowski had communicated via an email account apparently belonging to Ms McCallum. The Tribunal carefully considered these points and found that they relate to the landlord's administrative arrangements and private matters of ownership. They do not invalidate Mr. Pioatkowski's status as the landlord or his authority to act in this matter. Furthermore, any alleged breach of the duty under section 327(1) of the Housing (Scotland) Act 1987 to provide the landlord's address is a separate matter that does not affect the validity of this Application or the established ground for eviction.
38. The Tribunal also found that Paul Rolfe Lettings was authorised to act on the Applicant's behalf in all matters relating to the parties PRT, including the use of the Respondents' personal data for this purpose. The Respondents were notified of the Applicant's change of letting agent via email on 11 March 2024. This notification was acknowledged by the Respondents' Representative on 13 March 2024. Included with his email submission, dated 24 July 2025, The Respondents' Representative contested the weight of this evidence, characterising the 13 March 2025 communication as "unreadable" and arguing that it obscured context. He further submitted that any correspondence between the Respondents and the agent related only to practical matters and did not constitute acceptance of their full agency role. The Tribunal found these points to be misconceived. The evidence of the email exchange is legible, and its existence and essential content are conceded in the Respondents' Representative's own correspondence. The Tribunal is satisfied that this communication was sufficient to notify the Respondents of the agent's role. The agent was entitled to act on the landlord's instructions in all aspects of the tenancy, in line with their agreement, and the respondents' engagement on practical matters is consistent with this understanding. There is no evidence of

any limitation on the agent's authority that would preclude them from conducting these proceedings.

39. Further, the parties' PRT permits service of the NTL to the designated email addresses of parties. Whilst the Respondents have argued that service from an @paulrolfe.co.uk address was invalid because the agreement specified central@northwooduk.com, the Tribunal is satisfied that emails sent from an @paulrolfe.co.uk address were a valid way of serving the NTL by the Applicant's new letting agent. The Tribunal are satisfied that the NTL was properly issued by Paul Rolfe Lettings on behalf of the Applicant in terms of section 62 of the 2016 Act and in a form prescribed under section 62(1)(d) by the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ("the 2017 Regulations") There is no requirement in the 2017 Regulations for a landlord to sign or be named on the notice. Under section 62(5) of those Regulations, Notices are deemed received 48 hours after sending. The NTL was served by email on both Respondents, irrespective of whether it was directed to a spam folder. Accordingly, the Tribunal found that the Respondents' point that service was defective due to email addresses used or blocked messages was without merit. The Respondents were clearly aware of the NTL before the Application was lodged on 14 January 2025. The Tribunal also considered the Respondents' submission that proof of service of the NTL consisted only of a screenshot of what appeared to be an email dated 27 September 2024, and that accordingly, there was no verifiable evidence before the Tribunal that the NTL had been lawfully served. Having considered the email correspondence produced by the letting agent, the Tribunal was satisfied that it showed proper service of the Notice.
40. The Tribunal also considered the Respondents' points regarding the agent's conduct, including an erroneous rent increase Notice, the false assertion of rent arrears, the dual role of providing both letting and sales services, withholding their deposit, and the potential financial and emotional impact of these matters. The Tribunal noted that the letting agent has acknowledged that the rent increase notice was issued in error and that no rent arrears exist. It is common practice for property businesses to operate as both letting and estate agents. Further, returns of deposits are expected at the end of tenancy agreements.
41. Therefore, the Tribunal did not find that any of the Respondents' points affected the Tribunal's finding that the statutory requirements in Ground 1 of Schedule 3 to the 2016 Act are met.
42. Having determined that the requirements of Ground 1 of Schedule 3 of the 2016 Act had been met, the Tribunal then considered whether or not it is reasonable to grant an eviction order in the circumstances of this case.
43. In deciding whether it is reasonable to grant an order for possession, the Tribunal must consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947). This is not itself a finding of fact but rather a conclusion reached through the exercise of judgement (City of Edinburgh Council v Forbes 2002 Hous. L. R. 61). The Tribunal's assessment must take account of all relevant circumstances as they

exist at the date of the hearing (Cumming v Danson [1942] All ER 653 at 655). In assessing reasonableness, the Tribunal may consider whether the parties' intentions are subjectively reasonable and must "objectively balance the rights and interests of both parties" (Manson and Downie v Turner 2003 UT 38).

44. The Tribunal took into account the Applicant's property rights and personal circumstances, giving significant weight to the Applicant's age, and the financial burden of the mortgage loan which he must repay and the fact that he cannot obtain another mortgage to enable him to do so.
45. The Tribunal considered the Respondents' circumstances. The Tribunal acknowledge that the Respondents have medical conditions. However, no submissions were made which demonstrated that for health or other reasons the Respondents require to remain in the Property or that their needs cannot be met elsewhere. Accordingly, the Tribunal were not able to make any findings regarding the Respondents' need to stay in the Property.
46. The Tribunal also found that there had been no conduct on the part of the Applicant or his Representative that would make it unreasonable to grant the order for possession sought.
47. In the Tribunal's opinion, the balance of interests falls in favour of the Applicant. The Tribunal also notes the decision in *Stainthorpe v Carruthers and Swan* (2024) UT 30 in which a deciding factor is that a landlord exercises a right of property and may use or dispose of it as they see fit. That case states that property rights must take precedence over a tenant's wish to continue in occupation indefinitely.
48. Accordingly, having weighed all relevant factors, the Tribunal concluded that the Applicant's right to sell the property outweighed the Respondents' desire to remain, and that the balance favoured granting an eviction order and that it was reasonable to do so.
49. Given the circumstances of this case, in particular the Respondents' medical conditions and the fact that the rent account is up to date, the Tribunal also decided that the date for enforcement of the eviction order should be deferred until 17th November 2025 to allow additional time for the Respondents to obtain alternative accommodation.

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.

G McWilliams

17th September 2025

Tribunal Legal Member

Date