



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/25/5449

Re: Property at 7 Ardgowan Street, Paisley, PA2 6SX ("the Property")

Parties:

Mr Thomas Muir, Auchenglen, Kippford, Dalbeattie, Dumfries and Galloway, DG5 4LG ("the Applicant")

Ms Tracey Flynn and Mr Joseph Kerr, 7 Ardgowan Street, Paisley, PA2 6SX ("the Respondents")

Tribunal Members:

Gillian Buchanan (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Second Respondent)

At the Case Management Discussion ("CMD") which took place by telephone conference on 21 July 2026 the Applicant was not in attendance but was represented by Mr David Reilly. The First Respondent was present and represented by Ms Stella Cojocar of Renfrewshire Citizens Advice Bureau. The Second Respondent was neither present nor represented.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules") had been satisfied relative to the Second Respondent having received notice of the CMD.

Prior to the CMD the Tribunal received an email dated 6 July 2026 from Ms Cojocar for the First Respondent with written representations and productions attached.

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that -

Background

The Tribunal noted the following background –

- i. The Applicant is the heritable proprietor of the Property.
- ii. The Applicant previously leased the Property to the First Respondent.
- iii. On 7 September 2025 the Applicant served by Sheriff Officers a Notice to Leave purporting to require both Respondents to remove from the Property by 15 December 2025. The Notice to Leave is based upon Ground 1 of Schedule 3 of the

- Private Housing (Tenancies)(Scotland) Act 2016. The Notice to Leave refers to the Respondents having been in occupation of the Property since 2010.
- iv. The Applicant has served on Renfrewshire Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003. The Notice refers to the tenancy as being a Private Residential Tenancy ("PRT") under the 2016 Act.
 - v. The Respondents remain in occupation of the Property.
 - vi. The First Respondent denies the existence of a PRT and her submissions refer to the tenancy as having been and continuing to be Short Assured.

The CMD

At the outset of the CMD the Tribunal observed that the first and key issue for determination is the status of the tenancy between the parties.

Submissions for the Applicant

The Tribunal confirmed having carefully read the application and noted the difficulties arising for the Applicant which are summarised in Mr Reilly's email to the Tribunal of 12 February 2026 in which he states:-

"As confirmed in my previous emails and support statement the Landlords Wife dealt with everything to do with the property and sadly passed away at the end of August 2025. We telephoned the tenants at the end of August to say we were going to have to sell the property, they have had nearly 6 months to find alternative accommodation.

I unfortunately can't find any paperwork since my Mother in-law passed away, the only information I do have is that they had an original Short Assured Tenancy (SAT) when they moved into the property but this was changed to a new Private Residential Tenancy (PRT) when the tenants father moved into the property, he has now also passed away. I spoke to Shelter in Glasgow and they advised that I issue the longer 84 days notice as required by the Private Residential Tenancy, this is what was done."

Mr Reilly stated that all documents that could be found were sent to Shelter to review. Shelter advised that there was nothing within these documents that assisted in evidencing the PRT said to have been entered into. Shelter advised that as a Short Assured Tenancy only requires 28 days notice of termination then if 84 days notice was given that would give the Respondents more time to remove and cover both possibilities.

Mr Reilly accepted that, at the outset, the tenancy took the form of the "Rental Agreement – Scotland" produced by the First Respondent. He does not have a copy of that document which he had previously asked the Respondents to provide. He does not have a copy of any associated Form AT5 that would need to have been served prior to the creation of any Short Assured Tenancy.

Asked by the Tribunal how Mr Reilly knew a new tenancy had been signed sometime later Mr Reilly stated that the position had been spoken about a few years ago. He said he has no other supporting paperwork that he can provide to the Tribunal. He never expected to be in this position.

Mr Reilly referred to the Applicant as an elderly man sleeping on a mattress when he should be in his own home. Intimation had been given to the Respondents more than a year ago that the Property required to be sold but they have no intention of moving.

Mr Reilly stated that as far as he was aware the rent is up to date and still paid at £700 per month per the tenancy entered into in July 2010.

For the First Respondent

Ms Cojocararu confirmed the rent remains at £700 per month and is paid up to date.

The First and Second Respondents continue to live in the Property. They are spouses but separated.

The First Respondent explained that her father was ill in 2017. He moved into the Property for 2-3 weeks in around June 2017. No new tenancy was ever signed subsequent to the Short Assured Tenancy being entered into in 2010. The First Respondent has never spoken to Mr Reilly until now. Previously she had never spoken to the late Mrs Muir either. She only dealt with the Applicant during her 16 years of occupation of the Property. One repair was intimated by the First Respondent to the Applicant when a tree fell down damaging a wall. That repair was never done nor were any other repairs. The First Respondent never bothered the Applicant and vice versa. That worked for everyone.

With regard to the 2010 tenancy, the First Respondent does not have any Form AT5. The Applicant had previously tried to sell the Property without success then used a letting agent to find a tenant. The Respondents went to look at the Property and met the Applicant. A "gentlemen's agreement" was reached and he subsequently produced the "Rental Agreement - Scotland" which the parties signed and which was witnessed by friends.

Whilst the First Respondent appreciates the position is hard for the Applicant it is hard for her to find somewhere else to stay.

The Tribunal adjourned briefly to consider the position.

Reasons for Decision

This application is only competent if the tenancy between the parties is a PRT under the 2016 Act. The onus of proof that the tenancy between the parties is a PRT rests with the Applicant.

The Applicant cannot produce any adminicle of evidence that, subsequent to the tenancy agreement signed in 2010, a new tenancy agreement was entered into. To be a PRT any such agreement would have required to be entered into no earlier than 1 December 2017.

The parties are agreed that the tenancy agreement headed "Rental Agreement – Scotland" was signed by the Applicant and the First Respondent on 1 July 2010. Whilst that document states that the tenancy created is a Short Assured tenancy that may or may not be the case. The Tribunal does not require to reach a view on that matter for present purposes but observes that a Form AT5 Notice would have required to be served on the First Respondent prior to the creation of the tenancy to make it so. That Form AT5 Notice would also require to be produced in any subsequent Tribunal proceedings raised for the eviction of the First Respondent in terms of the Rules.

If the "Rental Agreement – Scotland" is not Short Assured it is an Assured tenancy under the Housing (Scotland) Act 1988. There is no ground of sale in terms of Schedule 5 of the 1988 Act.

In the absence of any evidence that the tenancy between the parties is a PRT the Notice to Leave served on 7 September 2025 is not competent to terminate the Short Assured or Assured tenancy that therefore still exists between the parties. The legal requirements to terminate a Short Assured or Assured Tenancy are not met.

In these circumstances, the application is incompetent and cannot proceed further.

The application is therefore refused. The Tribunal encourage Mr Reilly to seek specialist housing advice on the situation arising.

Decision

Application refused as incompetent.

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.

Gillian Buchanan

Legal Member/Chair

21 July 2026
Date