



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the Private Housing
(Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

Chamber Ref: FTS/HPC/EV/26/0051

Re: Property at 42 Dunkeld Place, Hamilton, ML3 9PT (“the Property”)

Parties:

Topaz Finance Limited t/a Hyalite Mortgages, The Pavillions, Bridgewater Road, Bristol, BA13 8AE (“the Applicant”)

Mark Szaszi, Magddna Kolombaki, 42 Dunkeld Place, Hamilton, ML3 9PT (“the Respondent”)

Tribunal Members:

Craig Chisholm (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 7 January 2026, the Applicant sought an order in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Procedure Rules”).
2. On 25 February 2026 the application was accepted by the Tribunal and referred for determination by the Tribunal.
3. A Case Management Discussion (CMD) was set to take place on 28 August 2026, and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

4. The CMD took place on 28 August 2026 *via* telephone conference call. Mr Oswald from Messrs TLT LLP appeared on behalf of the Applicant. The Respondent was not personally present or represented at the CMD.
5. The Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters.
6. The Tribunal asked various questions of the Applicant's representative with regard to the application.
7. The Applicant's representative confirmed the Applicant wished for the order for eviction to be made.

Findings in Fact

8. The Applicant has a heritable security registered against the Property.
9. The Applicant obtained a decree for repossession of the Property against Mr Calum Watt on 30 August 2023.
10. Mr Watt is the registered owner of the Property.
11. Mr Watt and the Respondent are respectively the landlord and tenant under a Private Residential Tenancy Agreement in terms of the 2016 Act for the Property, which commenced on 3 March 2020.
12. On 22 August 2025 the Applicant served upon the Respondent a Notice to Leave (NTL) as required under the 2016 Act. Service was effected by Record Delivery on that date. The NTL informed the Respondent that the Applicant wished to seek recovery of possession under ground 2 contained within Schedule 3 of the 2016 Act, namely that the Property is to be sold by the mortgage lender.
13. The NTL was correctly drafted, however, it provided only 86 days' notice. On the strict application of 62(4) of the 2016 Act, the NTL was 1 day short. The application was not lodged with the Tribunal until 7 January 2026, over 7 weeks after the expiry of the NTL. The Applicant made submissions that this error was not material and did not materially affect the effect of the NTL and

relied on section 73 of the 2016 Act and the decision of Sheriff SG Collins KC in John Halcrow and Elizabeth Halcrow v Ben Johnson Davies and Shauni Hunter, FT Case reference FTS/HPC/EV/24/2653 and UT Case reference UTS/AP/25/0019. The Tribunal accepted the unchallenged evidence of the Applicant in relation to this point.

14. The Applicant obtained decree from Hamilton Sheriff Court under court reference HAM-B542-25 against Mr Watt on 30 August 2023. The Court granted decree in terms that the Applicant has the right to sell the Property in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970.

15. The basis for the order for possession on ground 2 was thus established.

Reason for Decision

16. The order for possession sought by the Applicant was based on the ground specified in the 2016 Act and was properly narrated in the NTL served on the Respondent. The Tribunal was satisfied that the NTL had been served in accordance with the terms of the 2016 Act and that the Applicant was entitled to seek recovery of possession based upon that ground.

17. The Tribunal accepted the unchallenged evidence of the Applicant. Attempts had been made by the Applicant to engage with the Respondent in relation to eviction proceedings and the Respondent had not engaged with the process. The Applicant made submissions that to the best of their knowledge and belief the Respondent remained in the Property. The Applicant was bound by obligations under the Conveyancing and Feudal Reform (Scotland) Act 1970 to seek the best price for the Property on the open market and, as a consequence, submitted that a higher valuation was more likely to be achieved if the Property was sold with vacant possession.

18. The Tribunal was satisfied that the Respondent was aware of proceedings and had not taken any steps to engage in the eviction proceedings.

19. Ground 2 was accordingly established.

Decision

20. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will

be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson* [1942] 2 All ER 653 at 655, where Lord Greene MR said:

“In considering reasonableness... it is, in 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 commonsense way as a man of the world, and come to his conclusions giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.”

21. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
22. In this case, the Tribunal finds that it is reasonable to grant the order. The balance of reasonableness in this case is weighted towards the Applicant for the reasons noted above.

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.

Craig Chisholm

28th August 2026

Legal Member/Chair

Date