

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 109 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/26/2021

Re: 32 Glen Lyon Road, Kirkcaldy, Fife, KY2 6UU ('the Property')

Parties:

Gordon Wilson and Sheen Wilson. Unit 605 42 Page Street, Banksmeadow, New South Wales, 2019 ("the Applicant")

McKenzies Solicitors ('The Applicant's Representatives')

Julia Archibald residing at 32 Glen Lyon Road, Kirkcaldy, KY2 6UU ("the Respondent")

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

Tribunal Members: Jacqui Taylor (Legal Member) Robert Buchan (Ordinary Member)

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

1. Background

1.1. The Applicant submitted an application to the Tribunal for eviction/ possession of the Rented Property under section 51(1) of the Private Housing Tenancies (Scotland) Act 2016, in terms of Rule 109 of the Procedure Rules.

1.2 The application was dated 30th April 2026. The application states that the ground for eviction was as follows:

'The Landlord intends to sell the Property within three months of the eviction. Landlords have instructed Morton Napier, Estate Agents to sell the property as

evidenced by the letter dated 16th January 2026 enclosed and served with Notice to Leave dated 16th January 2026.'

1.3 Documents lodged with the Tribunal were:-

- The Private Residential Tenancy Agreement between the parties dated 6th October 2022.
- Notice to Leave dated 16th January 2026 advising the Tenant that an application will not be submitted to the Tribunal for an eviction before 12th April 2026 and the eviction ground is that the Landlord intends to sell the Property.
- Copy of letter from Morton Napier to Julia Archibald dated 16th January 2026 enclosing Notice to Leave.
- Proof of delivery tracked document including photograph and signature of 'Archibald' confirming delivery.
- Copy of recorded delivery letter to Fife Council dated 30th April 2026 attaching the Section 11 Notice.
- Section 11 Notice addressed to Fife Council.
- Copy of letter from Morton Napier to the Respondent dated 13th January 2026 detailing the checkout procedures.
- Copy of letter from Morton Napier to Julia Archibald dated 16th January 2026 confirming they have been instructed to act as estate agents to market the Property.

2. By Notice of Acceptance by Ruth O'Hare, Convener of the Tribunal, dated 26th May 2026, she intimated that he had decided to refer the application (which application paperwork comprises documents received on 7th May 2026) to a Tribunal.

3. The Respondent did not provide any written representations.

4. Case Management Discussion

This case called for a conference call Case Management Discussion (CMD) at 14.00 on 17th August 2026.

The Applicants' representative Isla Carmichael attended the CMD.

The Respondent did not attend and was not represented.

The Respondent had been served with a letter advising her of the CMD by William Wywalec, Sheriff Officer on 22nd July 2026. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.1 Oral Representations by the Applicants' Representative:

4.1.1 The Applicants are both of retirement age. Mr Wilson is 66 and Mrs Wilson is 64. They have relocated to Australia and are selling their portfolio of rented properties. They had three rented properties. They have sold one and the other two properties, including this one, will be sold.

4.1.2 There is a mortgage over the Property in favour of Skipton Building Society that will have to be repaid on sale. At the moment the rent payments meet the mortgage payments.

4.1.3 The rent account is not in arrears.

4.1.4 As far as she is aware the Tenant resides in the Property alone, the lease is in her sole name.

4.1.5 She asked the Tribunal to grant the eviction as it was reasonable for it to be granted as the Applicants need to sell the Property.

5. Decision

5.1 Requirements of Section 109 of the Procedure Rules.

(a) The Tribunal determined that the application correctly detailed the requirements of section 109(a) of the Procedure Rules namely:-

(i) the name, address and registration number of the Landlord.

(ii) the name and address of the Landlord's representative.

(iii) the name and address of the Tenant.

(iv) the ground of eviction. The ground stated in the application is that the Applicants intends to sell the Property.

The Tribunal accepted that this is Ground 1 of Schedule 3 of the 2016 Act.

(b) The Tribunal determined that the application correctly detailed the requirements of Section 109(b) of the Procedure Rules:

(i) evidence showing that the eviction ground or grounds had been met.

The Tribunal determined that the copy letter from Morton Napier to Julia Archibald dated 16th January 2026 produced was sufficient in its terms.

(ii) a copy of the notice to leave given to the Tenant as required by section 52(3) of the 2016 Act.

The Tribunal confirmed that the Notice to Leave was in correct form as set out in Schedule 5 of the Private Residential Tenancies Notices and Forms (Scotland) Regulations 2017 ('The 2017 Regulations').

The Notice to Leave was dated 16th January 2026 and advised the Tenant that an application would not be submitted to the Tribunal for an eviction order before 12th April 2026.

The commencement date of the lease was 6th October 2022. The Tenants had resided in the Property for more than six months and the application for eviction was based on ground 1 of Schedule 3 of the 2016 Act and therefore eighty four days notice was required. The Notice to Leave had been served on the Tenant by recorded delivery post. Section 4 of the tenancy agreement acknowledged that notices will be served by hard copy by personal delivery or recorded delivery. Section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016 provides that it is assumed that the Tenant will receive the Notice to Leave 48 hours after they were sent. The Notice to Leave correctly gave the Tenant the required notice.

(iii) a copy of the notice given to the local authority as required by Section 56(1) of the 2016 Act.

The Tribunal determined that a copy of the required notice had been provided.

(c) The Tribunal confirmed that the application form had been correctly signed and dated by the Landlord's representatives as required by Section 109(c) of the Procedure Rules.

5.2 The Tribunal determined that the Applicant had met the requirements of Ground 1 of Schedule 3 The Private Housing Tenancies (Scotland) Act 2016 for the following reasons:

5.2.1 The Tribunal had a copy of the Landlord's title FFE102000 and established that the Applicants are heritable proprietors of the Property and they are entitled to sell the Property.

5.2.2. The letter from Morton Napier to Julia Archibald dated 16th January 2026 is sufficient evidence that the Applicant intend to sell the Property.

5.3 The Tribunal find as a matter of fact that the Applicant intends to put the Property up for sale once they obtain vacant possession.

5.4 The Tribunal were mindful of the decision of Lord Greene in the case of *Cummings v Dawson* (1942) 2 All ER 653 on matters to consider when determining reasonableness:

'In considering reasonableness... it is 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, common sense way as a man of the world, and to come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or more weight, others may be decisive.'

The Tribunal found that it was reasonable for the eviction order to be granted given the fact that the Applicants need to sell the Property as they have relocated to Australia and the fact the Respondent has not lodged any written representations opposing the eviction application.

5.5 The Tribunal granted the eviction.

6. 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.

J Taylor

Legal Member

Date: 17th August 2026