

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/26/0284

Re: Property at 4A Shawbank Place, Kilmarnock, KA1 3HH (“the Property”)

Parties:

Mr Domenico D'Andrea, 34 Stafflar Drive, Kilmarnock, KA1 4UQ (“the Applicant”)

Mr William Murray, 4A Shawbank Place, Kilmarnock, KA1 3HH (“the Respondent”)

Tribunal Members:

Gabrielle Miller (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 the order for recovery and possession should be granted in favour of the Applicant.

Background

1. An application was received by the Housing and Property Chamber dated 20th January 2026. The application was submitted under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. On 16th July 2026, all parties were written to with the date for the Case Management Discussion (“CMD”) of 19th August 2026 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 6th August 2026.
3. On 17th July 2026, sheriff officers served the letter with notice of the hearing date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 17th July 2026.

The Case Management Discussion

4. A CMD was held on 19th August 2026 at 2pm by teleconferencing. The Applicant not present but was represented by Mr Calum Haswell, Associate, James Guthries & Co LLP. The Respondent was not present and was not represented. The Tribunal proceeded in terms of Rule 29 of the Rules.
5. The Tribunal explained the purpose of the CMD and the powers available to the Tribunal to determine matters.
6. Mr Haswell confirmed that the Applicant wished the order for eviction to be made.
7. Mr Haswell said that the Applicant no longer wishes to own this property. The Respondent has had antisocial behaviour letters from the local authority. The Police have had to undertake a search in the Property which resulted in heroin being found in the Property. This has caused alarm and distress to the neighbours. The Applicant has informed Mr Haswell that the front door has been smashed in and he is in the process of dealing with it. The Applicant has found the tenancy to be very stressful and no longer wants to rent this property. The Applicant has taken legal advice from Mr Haswell in regarding the best way to proceed in terms of an eviction. He had considered raising an antisocial behaviour case but there are more issues with that route. Mr Haswell said that the clearest way is to sell the Property. The Applicant had considered selling it prior to this tenancy but decided to rent it out again a further time. The Applicant has 15 properties in total. He has been given advice from Mr Haswell that if he does not sell the Property then he is at risk of an unlawful eviction application being raised. The Applicant fully intends to sell the Property.
8. Mr Haswell said that he understands that the Respondent lives alone in the Property. It is believed that there are no children in the Property. It is a flat but he does not know if it is a one or two bedroomed property. The Respondent is 29 years old. Mr Haswell said that he has not been instructed in terms of any arrears.
9. The Tribunal was content to grant an order for eviction in terms of the information before it and that there were not sufficient issues of reasonableness to prevent an eviction being granted.

Findings and reason for decision

10. The Applicant is the registered owner of the property.
11. A Private Rented Tenancy Agreement commenced 8th January 2026.
12. On 22nd October 2025 the Applicant served upon the Respondent a notice to leave as required by the Act. Service was effected by recorded delivery post and the Notice became effective on 22nd October 2025

13. The notice informed the Respondents that the Applicant wished to seek recovery of possession using the provisions of the Act.
14. The notice was correctly drafted and gave appropriate periods of notice as required by law.
15. The notice set out one of the grounds contained within schedule 3 of the Act, namely ground 1 (that the Applicant wishes to sell the Property)
16. The Applicant now wants to sell the Property. The Applicant does not want to rent out this property anymore. The behaviour of the Respondent has made it very stressful for the Applicant when renting out this property. The Property requires to be vacant before it is sold or there will be a reduction in the sale value for the Property.
17. The Respondent does not have any known vulnerabilities or disabilities.
18. The basis for the order for possession on ground 1 was thus established.

Reasons for the decision

19. The Order for possession sought by the Applicant was based on a ground specified in the Act and properly narrated in the notice served upon the Respondent. The Tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the Applicant was entitled to seek recovery of possession based upon that ground.
20. The Tribunal accepted the evidence presented on behalf of the Applicant with regard to the Applicant wanting to sell the Property.
21. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on ground 1 can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
22. 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.
23. The Tribunal now 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. 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. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n 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 conclusion 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”.

24. In this case the Tribunal finds that it is reasonable to grant the order.
25. The Respondent has lodged no written representations with the Tribunal despite being offered the opportunity to do so. He did not attend the CMD to provide any information to the Tribunal to dispute the information provided by the Applicant nor to set out any reason why it would not be reasonable to grant the Order
26. In all the circumstances the Tribunal decided that it was reasonable to grant the order sought.
27. The Tribunal decided to exercise the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

Decision

28. The Tribunal found that ground 1 has been established and granted an order in favour of the Applicant.

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.

Gaby Miller

19th August 2026

Legal Member/Chair

Date