

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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/26/1007

Re: Property at 27 Broad Cairn Court, Motherwell, ML1 2PE (“the Property”)

Parties:

Bank of Scotland PLC, The Mound, Edinburgh, EH1 1YZ (“the Applicant”)

Mr Patrick McCarron, 27 Broad Cairn Court, Motherwell, ML1 2PE (“the Respondent”)

Tribunal Members:

Elaine Paton (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 eviction order should be granted against the Respondent in favour of the Applicant.

Background

1. An application has been received under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”).
2. The Applicant seeks an eviction order in terms of Section 51 and Ground 2 of schedule 3 of the 2016 Act. Copies of a tenancy agreement, Form BB dated 31 January 2025, Extract Decree for repossession in favour of the Applicant granted 01 July 2025, Notice to leave with evidence of service, and section 11 notice with evidence of service were lodged with the application.
3. A copy of the application was served on the Respondent by Sheriff Officers on 04 August 2026. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 08 September 2026 at 2pm and that they were required to participate. The Respondent was invited

to lodge written representation in response to the application. No representation was received from the Respondent in advance of the CMD hearing.

4. The CMD took place on 08 September 2026 by telephone conference call. The Applicant was represented by Ms Hamilton of Aberdeen Considine, solicitors. The Respondent did not participate.

Summary of Discussion at CMD

5. Ms Hamilton stated that she had spoken directly to the Respondent the previous Friday and despite efforts to encourage the Respondent to attend the CMD to put forward his circumstances to the Tribunal directly the Respondent had informed her that he would not be attending. Ms Hamilton stated the Respondent told her he suffers from panic attacks and anxiety and felt unable to attend. Ms Hamilton stated the Respondent volunteered information to her about his various health conditions and told her he was comfortable with her conveying this information to the Tribunal. The Tribunal noted the Respondent's health conditions, including related function level(s), in addition to an impairment already disclosed within the case papers; also, that the Respondent had informed Ms Hamilton he was getting treatments in relation thereto, and had spoken to his doctor about his panic attacks, anxiety and the other conditions.
6. Ms Hamilton stated the Respondent had always been very cooperative. Ms Hamilton stated Sheriff Officers had been instructed at the instance of the Applicant to call to the Property on 26 August 2026 to check if the Respondent was still in the Property and he had confirmed to them he was still residing there. Ms Hamilton stated that the Respondent had told her he had been advised by the local authority that they did not have any council properties available and he needs to have an ejection date. Ms Hamilton stated she explained to the Respondent that the CMD was a less formal setting, in the format of a telephone conference call, rather than face to face in a courtroom, and urged him to attend to let the Tribunal know about what he had been told and also about his registered impairment. The Respondent told Ms Hamilton he had spoken to the Council and they had nothing for him; all properties were on high floors and that was not suitable for him with his impairment therefore he needs to look at private lets more like the present Property. The Respondent had then stated his difficulty regarding private lets is that it comes down to money, he has nothing to put down for a deposit or pay for rent upfront. Ms Hamilton stated she spoke to the Respondent about other options and mention was made about the Property being sold with him as a sitting tenant but the Respondent indicated he does not want to stay there indefinitely. The Respondent asked Ms Hamilton if the Applicant might be able to assist him, perhaps by giving him some money to cover a deposit and some rent, which she explained to him was not something that would normally happen but she told him she could take instructions about anything the Applicant could possibly help him with. In response to the Tribunal, Ms Hamilton stated she did ask if the Respondent had been in touch with any advice agencies about his situation but he stated he would need to find a solicitor and could not face all that. The Respondent had made mention of looking at private lets but nothing being

suitable. Responding to the Tribunal, Ms Hamilton confirmed the Property is an upper flat, on the first floor. Further responding to the Tribunal, Ms Hamilton stated there had been no discussion with the Respondent around the subject of any benefits he might already been in receipt of. Ms Hamilton stated the Respondent did tell her that he was nearly 65 years old and she had agreed with the Respondent that she would let the Tribunal know about all of the matters he told her about himself and that he wanted passed on to the Tribunal at the CMD. The Tribunal asked Ms Hamilton, by way of clarification through her discussion with the Respondent, if the impression the Respondent gave her was that he was looking for more time to potentially find something more suitable than the Property, or if he wants to remain in the Property due to its suitability. In response, Ms Hamilton stated the Respondent did not seem to want more time as he stated there appeared no point insofar as his view appears to be it is unlikely something suitable for him would become available via social housing with the local authority anyway, and he seems fixed on a move to a private let as this is best for him however, he just does not have the funds.

7. In relation to the notice period provided to the Respondent through the legal process, Ms Hamilton stated that before the Applicant had taken matters to court a copy of the Calling Up Notice dated 31 January 2025 was served on the Respondent via recorded delivery post. Thereafter the Applicant's court papers were served on the Respondent by Sheriff Officers however he did not enter into the proceedings. Ms Hamilton stated that in relation to the landlord debtor's heritable security in favour of Halifax plc there had been a reorganisation in 2006 and Halifax plc was now a trading name of the Applicant.
8. In response to the Tribunal, Ms Hamilton stated a potential sale of the Property with a sitting tenant would be something flagged up to the Applicant, continuing to explain this would involve a requirement for them to get a valuation and advice on the sale of the Property with a tenant in situ, then the difference in price would be a consideration, taking account of their obligation regarding the best price that can be achieved.
9. Ms Hamilton stated her primary position was to request the Tribunal to grant an eviction order with vacant possession of the Property; her secondary position, if the Tribunal was not minded to grant the application, would be to request continuation of the CMD to allow other options to be explored including the Respondent's request about a goodwill payment. The Tribunal stated to Ms Hamilton that it was positive to hear the efforts she had made in seeking to engage the Respondent to attend to put forward his position directly, and noted from Ms Hamilton: she had been clear with the Respondent that she could not provide him with any advice however she would tell the Tribunal the points that he wanted passed on at the CMD. The Tribunal adjourned for a period before reconvening.

Findings in Fact

10. The tenancy arrangement between the Respondent and his landlord in relation to the Property commenced on 06 March 2020. Consequently, the tenancy is a

private residential tenancy. The Respondent is the tenant. Samson Chevedza is the landlord.

11. At the time the application was lodged, Samson Chimedza was the registered landlord under registration number: 81681/320/09070 however at the date of the CMD the Property was no longer registered in the Landlord Register.
12. Samson Simbarashe Chimedza, formerly Samson Bowers, is the registered proprietor noted in the Title Sheet to the Property registered in the Land Register for Scotland.
13. The Property is subject to a heritable security (a mortgage). The heritable security was registered in the Land Register for Scotland on 31 July 2006 under the Title Sheet for the Property. The Applicant's trading name Halifax plc is noted as the mortgage lender and creditor under the said heritable security secured against the Property.
14. A Form BB Notice to The Occupier was sent to The Occupier of the Property on 31 January 2025.
15. The Applicant obtained a Decree in its favour under the Conveyancing and Feudal Reform (Scotland) Act 1970 ('the 1970 Act') granted by Hamilton Sheriff Court on 01 July 2025, extracted on 16 July 2025. In terms of Section 24(1B) of the 1970 Act, the Applicant has the right to sell the Property and to enter into possession of it.
16. A Notice to Leave dated 13 October 2025 was issued to the Respondent which advised that proceedings would not be raised before 07 January 2026. The Notice to Leave was served on the Respondent by Sheriff Officers on 14 October 2025.
17. A section 11 notice by the Heritable Creditor of the Landlord was issued on 03 March 2026 to the local authority, and sent by email the same day, advising that proceedings for recovery of possession of the property has been raised on that date in the First-tier Tribunal for Scotland.

Reasons for Decision

18. The application was submitted with a copy tenancy agreement. The Respondent has resided at the Property since 06 March 2020.
19. Copy Extract Decree dated 01 July 2025 obtained by the Applicant under the 1970 Act was produced with the application together with Form BB Notice to the Occupier dated 31 January 2025.
20. The application was also submitted with a Notice to Leave dated 13 October 2025, together with Sheriff Officers' certificate of execution of service which establishes that the Notice was served on the Respondent on 14 October 2025. The Notice states that an application to the Tribunal is to be made on ground 2 (the let property is to be sold by the mortgage lender) and references the decree

granted in favour of the Applicant on 01 July 2025.

21. The application to the Tribunal was made after expiry of the notice to leave period on 07 January 2026. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a Section 11 Notice with evidence that it was sent to the relevant Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.

22. Section 51(1) of the 2016 Act states, *“The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.”*

In terms of Section 63 of the 2016 Act references to “landlord” include *“a creditor in a heritable security over the let property who is entitled to sell the property”*.

A creditor holding a decree under Section 24 of the 1970 Act has title and interest to make an application to the First-tier Tribunal for an eviction order under the 2016 Act and is entitled in its own right to serve notice to leave and take the prerequisite steps in relation to an application for eviction.

23. Ground 2 of schedule 3 (as amended by the Coronavirus (Recovery and Reform (Scotland) Act 2022) states, *“(1) It is an eviction ground that a lender intends to sell the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if– (a) the let property is subject to a heritable security, (b) the creditor under that security is entitled to sell the let property, ... (c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and (d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”*

24. The Tribunal accepted the unchallenged evidence of the Applicant in the form of the documents submitted and the information provided at the CMD.

25. The Tribunal is satisfied that the let property is subject to a heritable security and that the Applicant, as creditor under that security, is entitled to sell the Property by virtue of the Decree granted in its favour by Hamilton Sheriff Court on 01 July 2025. The Tribunal is satisfied that vacant possession of the Property is required by the Applicant for the purpose of disposing of it in order to comply with its duty under Section 25 of the 1970 Act which states *“it shall be the duty of the creditor to ...take all reasonable steps to ensure that the price at which all or any of the subjects are sold is the best that can be reasonably obtained”*.

26. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following:

(a) The Tribunal noted the debtor and landlord entered into a tenancy arrangement with the Respondent on 06 March 2020. The Respondent has been residing in the Property for six and a half years to date.

(b) The Tribunal noted Sheriff Officers attended at the Property as follows, at the instance of the Applicant/Applicant's solicitors:

- (i) to serve the Notice to Leave upon the Respondent on 14 October 2025;
- (ii) for an occupancy check on or around 14 January 2026; and
- (iii) for a further occupancy check on 26 August 2026.

On all three occasions the Respondent was established to be residing in the Property.

(c) The Tribunal noted the Applicant's representative Ms Hamilton stated the Respondent had always been cooperative with her and Sheriff Officers instructed at the instance of the Applicant/Applicant's solicitors.

(d) The Tribunal noted the Respondent had provided the Applicant's solicitor with the following information that he requested be put forward to the Tribunal at the CMD: -

- (i) The Respondent is nearly 65 years old;
- (ii) The Respondent has a registered impairment and several physical health conditions, in relation to which he is receiving treatment;
- (iii) The Respondent suffers from panic attacks and anxiety and he has spoken to his doctor about these (and also in relation to his physical health);
- (iv) The Respondent has made efforts to seek advice from the local authority regarding his housing options and was told by the local authority there was no alternative accommodation for him at the time being and he needed an ejection date; and he had been left with the understanding that there was no social housing that would be suitable for his needs (properties being on high floors);
- (v) The Respondent regards another private let as his best option for alternative accommodation however he has insufficient funds for a deposit or upfront rent;
- (vi) The Respondent made a request to the Applicant's solicitor about the Applicant potentially assisting him financially in relation to a deposit/upfront rent regarding alternative accommodation in a private let;
- (vii) While the Respondent sought advice from the local authority regarding housing options, he had not sought the advice from other agencies or organisations regarding his circumstances, having stated that would involve getting a solicitor, suggesting that was overwhelming for him.

- (e) The Tribunal is satisfied there is no evidence to contradict the Applicant's solicitor's position as outlined above, nor her understanding regarding the Respondent's circumstances as put to her. It is within judicial knowledge that the information stated to the Respondent by the local authority's housing services regarding provision of an ejection date is a commonly stated position, whereby priority supports are commenced once an eviction order has been granted.
- (f) The Tribunal is satisfied the Applicant is under a statutory obligation to obtain the best price that can reasonably be obtained for the Property.
- (g) The Tribunal is satisfied that the application papers were served upon the Respondent by Sheriff Officers on 04 August 2026. The Respondent has chosen not to submit any response to the application in advance of the CMD. The Respondent did not join the CMD telephone conference call to put forward his position directly before the Tribunal, albeit his explanation as conveyed to the Tribunal by the Applicant's solicitor was accepted.
- (h) The Tribunal is satisfied the Respondent has had knowledge of the Applicant's intention to sell the Property for a significant period (approximately eleven months from the date of service of the Notice to Leave); the Respondent has had sufficient time to obtain advice and assistance in order to make representation (if any) in response to the application. The Respondent has put forward no opposition to the application but did request that information about his personal circumstances be relayed to the Tribunal.

The Tribunal concludes that the Applicant has complied with Rule 109 of the 2017 Rules, the requirements of the 2016 Act, and that ground 2 has been established. For the reasons outlined in paragraph 26, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction, but determined additional time be allowed to the Respondent for him to initiate (and/or advance existing) supports regarding alternative housing and financial and welfare benefits, as necessary.

Decision

The Tribunal determines that an eviction order should be granted against the Respondent, with the earliest date of eviction in said order stated as 09 November 2026.

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.

Elaine Paton, Legal Member

08 September 2026

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