

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 19 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/23/3688

Re: Property at 3 Darnaway Drive, Glenrothes, KY7 6GL (“the Property”)

Parties:

**Bank of Scotland PLC (Birmingham Midshires Division), Pendeford Business
Park, Wobaston Road, Wolverhampton, WV9 5HA (“the Applicant”)**

**Mr Craig Mellis, Mrs Lyndsey Mellis, 3 Darnaway Drive, Glenrothes, KY7 6GL
 (“the Respondents”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs H Barclay (Ordinary Member)

Decision

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

Background

1. This is an application received in the period between 17th October and 14th November 2023 and made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’). The Applicant representative lodged a copy of a short assured tenancy agreement that commenced on 1st March 2009, copy Form BB dated 12th February 2019, copy decree for repossession dated 25th November 2019, section 11 notice and evidence of service of notices. The Applicant is seeking an order for possession under ground 2 of the Housing (Scotland) Act 1988 (“the 1988 Act”)

The Case Management Discussion

2. A Case Management Discussion (“CMD”) took place by telephone conference on 7th February 2024. The Applicant was represented by Ms Ellen Masters, Solicitor. The Respondents were in attendance.

The Applicant's position

3. Ms Masters moved the Tribunal to grant an order for possession. Decree for repossession was granted in November 2019. The Applicant requires vacant possession in order to exercise their rights in terms of section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970. The Respondents have had ample notice of the position, with the Form AT6 having been served on 20th April 2023. Notice that possession might be recovered on this ground was given to the Respondents in terms of clause 5.4 of the tenancy agreement.

The Respondents' position

4. The Respondents said they were not challenging the order but were seeking an extension to the period allowed for execution of the order. The Respondents have separated and Mrs Mellis remains in the Property with their two children, aged 15 and 16. The children are in secondary school and are currently taking exams. Mrs Mellis is in contact with the local authority and has been told that no housing is available at this time. If the order was granted without an extension to the period allowed for execution, the family would be placed in a hostel or bed and breakfast, and this could be anywhere in Fife, rather than close to the children's school. The family have requested to be housed in the Glenrothes or surrounding area. Mrs Mellis said she has also been looking at private accommodation, but there is a current shortage of three-bedroom properties in the area. It would be her preference to obtain social housing for financial reasons. Mrs Mellis is currently the primary carer for the children. There was some discussion regarding a health condition in respect of one of the children that may be exacerbated by the change involved in the eviction process.
5. Mrs Mellis said the local authority had indicated that further points would have been awarded to the family if a form AT5 and a Notice to Quit had been served.

Response for the Applicant

6. Ms Masters said it was the Applicant's position that the Respondents had been given sufficient time to obtain alternative housing. A form AT6 had been served in January 2020 but the Covid-19 pandemic had delayed action being taken by the lender. Ms Masters indicated that the Applicant was unlikely to oppose a delay of six months in respect of execution of the order for repossession.
7. Ms Masters said the Applicant was entitled to proceed on a Form AT6 only.

Findings in Fact and Law

8.
 - i. The Property was subject to a standard security granted by the heritable proprietor in favour of Halifax plc as registered in the Land Register of Scotland on 7th June 2007.
 - ii. The Applicants acquired right to the standard security on 17th September 2007.
 - iii. The Respondents and the heritable proprietor of the Property entered into a short assured tenancy agreement commencing on 1st March 2009 for a period of six months, and continuing monthly thereafter if not brought to an end.
 - iv. Notice was given to the Respondents before the creation of the tenancy, in terms of clause 5.4 of the tenancy agreement, that possession of the Property may be recovered by a lending institution where the Property is subject to a legal charge which was made before the date of the tenancy agreement and the lender is entitled to recover possession in order to sell the Property with vacant possession under a power of sale.
 - v. A Notice of Calling-up of a standard security (Form BB) was served upon the Respondents dated 12th February 2019.
 - vi. Decree for repossession was granted to the Applicants dated 25th November 2019 as a result of default by the heritable proprietor.
 - vii. The Applicant has the right to sell the subjects and to enter into possession of the subjects and to exercise all powers competent to a creditor in lawful possession.
 - viii. Form AT6 was served upon the Respondents on 20th April 2023.
 - ix. The Respondent, Mrs Mellis, is seeking social housing.
 - x. There is a shortage of social housing in the area in which Mrs Mellis and the children wish to reside.
 - xi. The Respondents' children are currently undergoing school examinations.
 - xii. It would not be in the interests of the Respondents' children for an order for possession to be granted and actioned any sooner than a period of six months.
 - xiii. It is reasonable to grant an order for possession.

Reasons for Decision

9. Ground 2 of schedule 5 to the 1988 Act provides that the house is subject to a heritable security granted before the creation of the tenancy and— (a) as a result of a default by the debtor the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; and (b) either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this Ground or the First-tier Tribunal is satisfied that it is reasonable to dispense with the requirement of notice.
10. The Property was subject to a heritable security in favour of the Applicant which was registered on 7th June 2007, therefore, it was granted before the creation of the tenancy. Notice was given in writing to the Respondents not later than the date of commencement of the tenancy that possession might be recovered on this ground. Decree for repossession has been granted.
11. The Tribunal considered all the circumstances of both parties when considering whether it was reasonable to grant the order. The Tribunal noted that the Respondents were not opposed to the granting of the order, but required further time to allow Mrs Mellis and their children to obtain alternative housing. The Tribunal took into account the fact that there are significant issues in terms of supply of social and private housing currently. The Tribunal took into account the needs of the children in terms of their age, schooling and health needs, in deciding to delay execution of the order for a period of six months, in the hope that social housing or other suitable alternative housing will become available in that time, failing which, the children will have completed their exams and may be less affected if temporary housing has to be made available.
12. The Tribunal observed that a form AT5 is not required for a Rule 65 application. In any event, there is a form AT5 within the application case file.
13. In all the circumstance, the Tribunal considered it was reasonable to grant the order for possession.

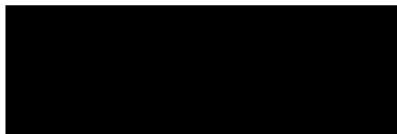
Decision

14. An order for possession is granted. The order is not to be executed prior to 12 noon on 7th August 2023

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.



Legal Member/Chair

Date 7th February 2024