



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 18 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 65 of the Rules**

**Chamber Ref: FTS/HPC/EV/24/1585**

**Re: Property at 262 Gilmartin Road, Linwood, PA3 3ST (“the Property”)**

**Parties:**

**Bank of Scotland PLC, The Mound, Edinburgh, EH1 1YZ (“the Applicant”) per their agents, Aberdeen Considine, 18, Waterloo Street, Glasgow, G2 6DB (“the Applicant’s Agents”)**

**Miss Johann Burke, 262 Gilmartin Road, Linwood, PA3 3ST (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory ground being established and the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

1. By application dated 5 April 2024 (“the Application”), the Applicant’s agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground 2 of the Act that the Property is to be sold by the mortgage lender. The Application comprised a copy of repossession decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 in favour of the Applicant, copy tenancy agreement between the former mortgagee and the Respondent, copy Notice to Quit, copy Notice in terms of Section 19 of the Act and copy Form BB Notice to Occupier, all with proof of service, and copy Notice

under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Renfrewshire Council, being the relevant local authority.

2. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the "CMD") was fixed for 19 August 2024 at 11.30 by telephone conference and intimated to the Parties. Prior to the CMD, the Respondent, Ms. Burke, submitted a reference from the letting agent for the Property confirming her exemplary record as a tenant and confirming that no suitable accommodation was available for Ms. Burke to occupy.

### **CMD**

3. The CMD took place on 19 August 2024 at 11.30 by telephone. The Applicant did not take part. The Applicant was represented by Ms. McDonald of the Applicant's Agents. The Respondent, Ms. Burke, took part and was not represented. She was accompanied by her brother as a supporter.
4. Ms. McDonald confirmed that the Applicant sought an eviction Order. She explained that although the Decree for possession and sale was granted in April 2023, the Applicant had carried out its own internal procedures before instructing the evection action and the time taken for both processes had been lengthy.
5. Ms. Burke did not formally oppose the Application and explained that she had not been able to secure alternative accommodation. She explained that she has made applications for housing with seven housing associations and has also applied as homeless to Renfrewshire Council. Ms. Burke advised that none of the housing associations had been able to offer suitable accommodation, however, Renfrewshire Council have accepted her homeless application. She stated that she could not afford another private sector let.
6. With regard to her personal circumstances, Ms. Burke advised that she receives disability benefit for her mental health condition and, because of that condition, finds a flatted property detrimental to her well-being and finds a house with a garden or private outdoor space to be essential. Ms. Burke advised that her twenty-one year old son who works for an electrical supply company resides with her. She advised that she has still to provide the housing associations and Renfrewshire Council with full medical evidence in support of her applications.

### **Issue for the Tribunal**

7. The statutory ground and procedure being established, and the Application not being opposed formally, the issue for the Tribunal was to determine if it is

reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal “*may do anything at a case management discussion .....including making a decision*”. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Findings in Fact**

8. From the Application and the CMD, the Tribunal made the following findings in fact: -
- i) There is a short assured tenancy of the Property between the mortgagee of the Property and the Respondent;
  - ii) The Applicant is both entitled and bound by Conveyancing and Feudal Reform (Scotland) Act 1970 to sell the Property to recover the sums due to it by the mortgagee by virtue of Decree in its favour;
  - iii) The Respondent is a single lady in receipt of disability benefits;
  - iv) The Respondent resides with her twenty-one year old son who is in employment;
  - v) The Respondent has made applications for social housing without success;
  - vi) The Respondent has had an application for housing in terms of Part II of the Housing (Scotland) Act 1987;
  - vii) The Respondent’s clear preference is for accommodation with private outdoor space.

### **Decision and Reasons for Decision**

9. The Tribunal had regard to all the information before it and to its Findings in Fact.

10. Having found that the Applicant is entitled and bound to sell the Property in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970, the Tribunal found that the eviction Ground has been met.

11. The Tribunal then considered if it is reasonable to grant the Order and had regard to the circumstances of the Parties.

12. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application is made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

13. The Tribunal then looked to balance the rights and interests of both Parties.
14. The Tribunal had regard to the fact that the Applicant has a decree in its favour to repossess the Property and that the Applicant is bound by the Conveyancing and Feudal Reform (Scotland) Act 1970 to sell the Property at the best price to reduce the mortgagee's indebtedness.
15. The Tribunal had regard to the Respondent's position in respect of being unable to secure suitable accommodation and her medical issues, and, had great sympathy for her. The Tribunal noted that the Respondent does not oppose the Application and is seeking alternative accommodation. The Tribunal had regard to the fact that the Respondent has had an application to the local authority for assistance in terms of Part II of the Housing (Scotland) Act 1987 accepted and is eligible to access accommodation suitable for her needs.
16. On balance, the Tribunal took the view that not granting the Order would have a significantly greater detrimental impact on the Applicant as it would place the Applicant in breach of the Conveyancing and Feudal Reform (Scotland) Act 1970, than it would on the Respondent who has a route to obtain alternative housing.
17. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order. The Tribunal determined to stay the Order until 19 November 2024 to allow the Respondent sufficient time to secure suitable accommodation.

### **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.**

**Karen Moore**

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**Legal Member/Chair**

**19 August 2024**  
**Date**

