



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/24/1602**

**Re: Property at 63 Carrick Crescent, Easthouses, Dalkeith, Midlothian, EH22 4HQ (“the Property”)**

**Parties:**

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

**Mrs Janette Gillies or Gilles, and Mr John Gillies or Gilles, both 63 Carrick Crescent, Easthouses, Dalkeith, Midlothian, EH22 4HQ (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession against the Respondents.**

**Background**

1. By application dated 9 April 2024, the Applicants sought an Order for Possession under Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Ground relied on was Ground 2 of Schedule 5 to the 1988 Act, namely that a heritable creditor requires possession of the Property in order to sell it.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Respondents as tenants, and Mr Paul Gallacher trading as GMD Homes, Glasgow, as landlord, commencing on 31 July 2016. The tenancy agreement gave notice that possession might be recovered under various Grounds in Schedule 5 to the 1988 Act, including Ground 2. The Applicants also provided copies of an Extract Decree of 20 June 2023 from Edinburgh Sheriff Court, authorising the Applicants to enter into possession and to sell the Property, a Form AT6 Notice dated 13 October

2023, advising the Respondents that the Applicants intended to raise proceedings against them under Ground 2 and that such proceedings would not be raised before 20 December 2023, and information from the Land Register showing a Standard Security by Mr Paul Gallacher in favour of the Applicants registered on 9 May 2008.

3. On 1 July 2024, the Tribunal advised the Parties of the time and place of a Case Management Discussion, and the Respondents were invited to make written representations by 22 July 2024. The Respondents did not make any written representations to the Tribunal.

### **Case Management Discussion**

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 7 August 2024. The Applicants were represented by Miss Katie Macdonald of Thorntons Law LLP, Glasgow. The Respondent, Mrs Janette Gillies was present. Her husband, the co-Respondent was, through ill-health, unable to attend.
5. The Applicants' representative told the Tribunal that a Form AT6 had been served on the Respondents on 20 December 2023, therefore they had had a considerable length of time to seek alternative accommodation. The Applicants required vacant possession in order to sell the Property and it was reasonable to make the Order. She accepted the Respondents are not in any way responsible for the situation in which they find themselves and the Applicants would have no objection to the date on which the Order could be enforced being delayed for a short time.
6. Mrs Gillies told the Tribunal that she lives in the Property with her husband, who has alzheimer's disease and mobility issues, and their 9-year-old granddaughter, who lives permanently with them. She has been in contact with the local authority regarding being re-housed, as private sector rents are very high, and has been told that she and her family will be provided with accommodation only after the Tribunal makes an Order for Possession. The Property is in need of significant repairs, which the landlord has failed to carry out and it would be in the best interests of the family to move out. They already have points towards priority housing, given her husband's mobility issues. Her husband's health has suffered as a result of the stress caused by the proceedings. Mrs Gillies had no objection to an Order for Possession being made, but asked if enforcement could be delayed for a short period of 5 weeks or so, to assist them to be rehoused.

### **Reasons for Decision**

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

8. Section 18 of the 1988 Act states that the Tribunal shall not make an Order for Possession of a house let on an assured tenancy except on one or more of the Grounds set out in Schedule 5. The Tribunal must also be satisfied that it is reasonable to make the Order.
9. Ground 2 of Schedule 5 to the 1988 Act provides, as a Ground on which the Tribunal may make an Order for Possession, 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 Tribunal is satisfied that it is reasonable to dispense with the requirement of notice”.*
10. The Tribunal was satisfied that the requirements of Ground 2 had been met. The Standard Security in favour of the Applicants was registered in the Land Register on 9 May 2008 and was, therefore, granted before the creation of the tenancy. The Applicants are entitled to sell the house and require it for the purpose of disposing of it with vacant possession and the tenancy agreement gave notice that possession might be recovered on Ground 2. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
11. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it and noted in particular the fact that the Applicants were heritable creditors who had obtained a decree from the sheriff court entitling them to enter into possession and sell the Property, and the views expressed by the Respondent Mrs Gillies regarding her husband’s health and the condition of the Property, as a result of which the Respondents’ considered that it would be in their best interests to move and had no objection to an Order being made.
12. Having taken into account all the evidence, written and oral, before it, the Tribunal decided that it would be reasonable to make an Order for Possession of the Property.
13. The Tribunal decided that the earliest date on which the Order can be enforced should be 16 September 2024. A short extension to the normal period of 30 days after the date of the Tribunal’s Decision had been requested by the Respondents and the Applicants’ representative had told the Tribunal that the Applicants would have no objection to that.

### **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.

George Clark

---

Legal Member/Chair

7 August 2024  
Date