



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/2040**

**Re: Property at 2 Duncan Crescent, Peterhead, AB42 1QX (“the Property”)**

**Parties:**

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

**Mr Kenneth Morrison, 2 Duncan Crescent, Peterhead, AB42 1QX (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction.**

**Background**

1. By application dated 3 May 2024 the applicant seeks an order for eviction, relying on ground 2 (property to be sold by lender) in Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The applicant lodged the following documents:
  - Copy tenancy agreement
  - Copy decree dated 25 October 2023
  - Notice to Leave dated 5 December 2023 with proof of service
  - Correspondence relating to rent arrears
  - Section 11 notice to Local Authority

- Copy form BB from repossession proceedings.

### **Case management discussion – teleconference- 12 September 2024**

3. The applicant was represented by Ms Imrie, solicitor, Aberdeen Considine. The respondent was not present or represented. The Tribunal was satisfied that proper notice of the cmd had been given to the respondent and in particular, Sheriff Officers had personally served papers on the respondent on 13 August 2024. The Tribunal determined to proceed with the cmd in the respondent's absence in terms of Rule 29.
4. Ms Imrie sought an order for eviction. She explained that the applicant had repossessed the property due to mortgage arrears owed by Ross Dougan the named landlord. Decree had been granted in respect of that action on 25 October 2023. The respondent had been served with a form BB on 21 April 2023 which had given notice of the mortgage repossession action and advised the respondent to seek advice. Ms Imrie explained that the applicant wished to sell the property to recover the sums due under the mortgage. She stated that vacant possession is required to achieve the optimum amount at sale. Ms Imrie stated that a notice to leave had been served on 7 December 2023. She advised that the respondent had been signposted to the Citizens Advice Bureau for advice by the sheriff officers who served notice. Ms Imrie stated that the applicant has not received any money toward the outstanding debt from Mr Dougan since decree had been obtained.
5. In relation to the respondent's personal circumstances, Ms Imrie stated that as far as the applicant was aware, he resided alone in the property. She submitted that he had known since April 2023 that repossession proceedings had been raised and accordingly had an extended notice period within which to seek alternative accommodation.

### **Findings in fact**

6. Ross Dougan granted a standard security in favour of the applicant.
7. The respondent entered into a tenancy agreement with Ross Dougan with a commencement date of 1 April 2022.
8. The applicant raised proceedings to repossess the property from Ross Dougan on the grounds of mortgage arrears. Decree was granted on 25 October 2023.

9. Notice to leave was served on the respondent on 7 December 2023.
10. The applicant is a mortgage lender and intends to sell the property.
11. It is reasonable to grant an order for eviction.

### **Reasons for the decision**

12. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account Ms Imrie's submissions at the cmd.

13. Ground 2 states:

*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 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.*

14. The Tribunal was satisfied, in the absence of any opposition that the applicant is a lender who intends to sell the property and that paragraphs (a), (b) and (c) apply.

15. In determining whether it was reasonable to grant an order for eviction the Tribunal took into account the information provided by the applicant that the respondent resided alone in the property. The Tribunal also took into account that the respondent had been aware since April 2023 that repossession proceedings had been raised against the landlord and that he had been advised to seek advice. The Tribunal gave particular weight to the fact that the respondent had not taken any steps to oppose the application or lodge a defence. The Tribunal also gave weight to the fact that the applicant's had repossessed the property due to the mortgage arrears and sought to sell the

property to cover the outstanding debt which the landlord had not made any payment towards for an extended period of time.

16. In the foregoing circumstances the Tribunal determined that it was reasonable to grant an order for eviction.

### **Decision**

**The Tribunal determined to grant an order for repossession relying on ground 2 in schedule 3 of the 2016 Act.**

### **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.**

Mary-Claire Kelly

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**Legal Member/Chair**

**12 September 2024**

**Date**