



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/24/2079

Re: Property at 6 Annan Court, Falkirk, FK1 2QN (“the Property”)

Parties:

TSB Bank plc, Henry Duncan House, 120 George Street, Edinburgh, EH2 4LH (“the Applicant”)

Ms Samantha Kerr AKA Samantha Kidd, 6 Annan Court, Falkirk, FK1 2QN (“the Respondent”)

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Ahsan Khan (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 possession on ground 2 – (heritable creditor seeking vacant possession in order to sell the property) in schedule 5 of the Housing (Scotland) Act 1988

Background

1. By application dated 8 May 2024 the applicant seeks an order for possession relying on ground 2 (heritable creditor seeking vacant possession in order to sell the property) in schedule 5 of the Housing (Scotland) Act 1988
2. The following documents were lodged with the application:
 - Copy tenancy agreement
 - Section 11 notice
 - Notice to quit and form AT6 with proof of service
 - Extract decree in favour of the applicant
 - Sheriff Officers report

Case management discussion (“cmd”) – 12 November 2024 – teleconference

3. The applicant was represented by Mr Docherty, solicitor, Ascent Legal. The respondent was not present or represented. The Tribunal was satisfied that the respondent had been served with the papers and had received proper notice in terms of rule 24.1. The Tribunal proceeded with the cmd in the absence of the respondent in terms of rule 29.
4. Mr Docherty sought an order for eviction. He highlighted that the respondent had not attended the cmd to oppose the application being granted. She had also not lodged any written representations opposing an order being granted. Mr Docherty referred to the terms of ground 2. The first requirement of ground 2 is that the house was subject to a heritable security before the creation of the tenancy. Mr Docherty stated that the extract decree which had been provided showed that the landlord had granted a standard security on 1 June 2007. The standard security had been assigned to the applicant on 4 June 2016. This predated the tenancy agreement which commenced on 1 July 2017.
5. Mr Docherty referred to the extract decree which had been granted on 29 March 2023 which showed that as a result of a default by the debtor the applicant is entitled to sell the house. He submitted that an eviction order is required in order to dispose of the property with vacant possession in exercise of that entitlement – this fulfilled the second requirement of ground 2.
6. Mr Docherty also referred to paragraph (b) in ground 2 which requires that either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered using ground 2 or that it is reasonable to dispense with the requirement of notice. Mr Docherty referred to the tenancy agreement which had been lodged with the application. He submitted that the terms of the tenancy agreement were sufficient to comply with the notice requirement.
7. Mr Docherty stated that an order for possession was sought in terms of section 18(6) of the 1988 Act. This provision applies when a notice to quit, bringing the contractual tenancy to an end has not been served. Section 18(6) states:

(6)The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a)the ground for possession is Ground 2 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9, Ground 10, Ground 1, or Ground 17; and

(b)the terms of the tenancy make provision for it to be brought to an end on the ground in question.

8. Mr Docherty referred to the tenancy agreement which had been lodged. Clause 12.2 of the agreement stated “*The tenancy agreement may be brought to an end if the mortgagee requires possession on default of the borrower under Ground 2, Schedule 3 of the Housing (Scotland) Act 1988.*” Mr Docherty submitted that although the clause in the tenancy referred to the equivalent English legislation it did make provision for the tenancy to be brought to an end in the event that the landlord defaulted on a mortgage and accordingly the requirements of section 18(6) had been met.
9. On the question of reasonableness Mr Docherty referred to the Sheriff Officers report which had been lodged with the papers in respect of service of the Notice to quit and AT6 dated 9 January 2024. The letter stated that the Sheriff Officer had been advised by neighbouring residents that the respondent had been in the process of moving out of the property and had been removing items over the Christmas period. Mr Docherty also submitted that the question of reasonableness was different in a situation where the heritable creditor had repossessed the property. The heritable creditor required vacant possession in order to recover sums due to them. The heritable creditor had no previous involvement with the respondent as there had been no landlord – tenant relationship. Mr Docherty also stated that in the present case no rent had been collected by the applicant since the repossession decree had been granted on 23 March 2023. The respondent will therefore have had an extended rent free period in the subjects.

Findings in fact and law

10. The respondent and the landlord, Samantha Jane Dick-Marner entered into an assured tenancy agreement in respect of the property with a commencement date of 1 July 2017.
11. The applicant is the heritable creditor in terms of standard security granted in their favour by Samantha Jane Dick- Marner.
12. Samantha Jane Dick-Marner defaulted on the terms of the standard security.
13. Decree granting the applicant, as heritable creditor warrant to enter into possession and sell the property was granted at Falkirk Sheriff Court on 29 March 2023.
14. No rent has been collected by the applicant since 29 March 2023.
15. Ground 2 in schedule 5 of the Housing (Scotland) Act 1988 has been established.
16. A valid notice of proceedings for possession in terms of section 19 of the 1988 Act was served on the respondent.
17. The tenancy agreement makes provision for the tenancy to be brought to an end relying on ground 2.
18. It is reasonable to grant an order for eviction relying on ground 2.

Reasons for the decision

19. Ground 2 in schedule 5 of the 1988 Act states that it is a ground for eviction if:
 - 2. 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.

20. Section 18(1) of the 1988 Act states:

(1)The First-tier 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 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy....

(4)If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

21. Section 18(6) is set out at paragraph 7 above.

22. The Tribunal took into account the written representations and documents lodged together with oral representations at the cmd. The respondent lodged no opposition to the application.

23. In light of the fact that the action was undefended the Tribunal followed the approach taken by the Upper Tribunal in *Alice Mande Elias Woro against Ian Brown 2022UT28*. The Tribunal was satisfied that the application had been brought competently and that the applicant sought vacant possession in order to sell the property and recoup sums due under the standard security. The applicant had produced the documents listed at paragraph 2 to establish ground 2. The Tribunal was satisfied that ground 2 had been established and that a valid notice in terms of section 19 had been served on the respondent.

24. The Tribunal accepted Mr Docherty's submissions that the tenancy agreement provided notice that ground 2 could be proceeded upon in compliance with section 18(6)

25. In relation to whether it is reasonable to grant an order for possession the Tribunal took into account that the applicant required vacant possession in order to sell the property and recover sums due by the debtor in terms of the

standard security. The Tribunal had little information relating to the personal circumstances of the respondent however, it did take into account the information provided by Mr Docherty that the respondent had not been asked for rent by the applicant since March 2023 when decree was granted in their favour and also the information provided that the respondent may have moved out of the property which would provide an explanation for the lack of opposition to the application.

26. The Tribunal gave significant weight to the fact that the respondent had taken no steps to oppose the application. Taking the above factors into account the Tribunal was persuaded that on balance it was reasonable to grant an order for eviction in favour of the applicant.

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.

M-C.Kelly

Legal Member/Chair

12 November 2024

Date