



**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/24/4733

**Re: Property at 15c Kilcreggan View, Greenock, Renfrewshire, PA15 3JA (“the
Property”)**

Parties:

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

**Mr Daniel Bain, 15c Kilcreggan View, Greenock, Renfrewshire, PA15 3JA (“the
Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

**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 under Section 18 and Ground 2 of the
Housing (Scotland) Act 1988**

Background

1. By application, dated 11 October 2024, the Applicants sought an Order for Possession of the Property in terms of 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 the Property is subject to a heritable security granted before the creation of the tenancy and as a result of a default by the debtor the creditor is entitled to sell the Property and requires it for the purpose of disposing of it with vacant possession and 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 the Ground or the Tribunal is satisfied that it is reasonable to dispense with the requirement of notice..
2. The application was accompanied by a copy of a Tenancy Agreement between Mr Alex McWaters as landlord and the Respondent as tenant, commencing on 1 August 2016. It purported to be a Short Assured Tenancy,

and a Form AT5 to that effect was produced, but it did not include an ish date, so could not definitively be said to be for a period of not less than six months. Accordingly, the Tribunal regarded it as an Assured Tenancy. The Tenancy Agreement included notice that possession might be recovered under Ground 2 of Schedule 5 to the 1988 Act. The Applicants also provided copies of an Extract Decree of the Sheriff at Greenock, for repossession of the Property, against Bernadette McWaters, the heritable proprietor, dated 11 January 2024, evidence of intimation to the Respondent on 6 June 2023 that a Calling-up Notice had been served on the landlord and that the house might be at risk of repossession, and a Form AT6 Notice, dated 28 June 2024, specifying the Ground under which the Applicants were seeking an Order for Possession and that proceedings would not be begun before 3 September 2024. The Extract Decree related to a Standard Security recorded in the Land Register on 5 January 2009.

3. On 1 March 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 22 March 2025. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

4. A Case Management Discussion was held on the morning of 7 May 2025. The Applicants were represented by Miss Elleen Masters of Aberdeen Considine, solicitors, Glasgow. The Respondent was not present or represented.
5. Miss Masters told the Tribunal that she had written to the Respondent on 1 May 2025, advising him of the Case Management Discussion and signposting him to sources of help and assistance. She confirmed that he is still living in the Property and is understood to live alone.

Reasons for Decision

6. 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 sufficient information and documentation to enable it to decide the application without a Hearing.
7. Section 18(1) of the 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 to the Act. By Section 18(4) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I or II of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless the Tribunal considers it reasonable to do so.
8. Ground 2 of Schedule 5 to the Act states that it is a Ground 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 Property 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.”

9. The Tribunal was satisfied that the heritable security was granted before the creation of the tenancy, that the Applicants are entitled to sell the Property and require it for the purpose of disposing of it with vacant possession and that the Tenancy Agreement included notice to the Respondent that possession might be recovered under Ground 2. Accordingly, the only matter for the Tribunal to consider was whether it would be reasonable to make an Order for Possession.
10. The Tribunal noted that the Applicants have a Decree for Repossession and wish to sell the Property with vacant possession. The Respondent did not make any written representations to the Tribunal and was not present or represented at the Case Management Discussion, so had not offered any personal or other circumstances that he would wish the Tribunal should take into account in making a determination on reasonableness. He would have been aware of the possibility of an Order for Possession following intimation of the Calling-up Notice on 6 September 2023 and from the Form AT6 Notice dated 28 June 2024.
11. Having considered the evidence before it, the Tribunal decided that it would be reasonable to make an Order for Possession under Ground 2 of Schedule 5 to the 1988 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.

George Clark

Legal Member/Chair

7 May 2025
Date