



**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/24/5429**

**Re: Property at 26B Stirling Drive, Johnstone, PA5 8TH (“the Property”)**

**Parties:**

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

**Joanne Adam, 26B Stirling Drive, Johnstone, PA5 8TH (“the Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The tenancy in question was said to be an Assured Tenancy of the Property by Gavin Wallace to the Respondent commencing on 24 July 2013 and running until 24 January 2014, and continuing by tacit relocation since.
2. The application was dated 22 November 2024 and lodged with the Tribunal on that date. The application relied upon a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 dated 11 July 2024. Evidence of service of the notice by Sheriff Officer on 17 July 2024 was included with the application.
3. The said AT6 relied upon ground 2 of Schedule 5 to the 1988 Act: that the house was subject to a heritable security and the Creditor is entitled to sell and requires vacant possession. An Extract Decree of repossession dated 7 November 2023 by the Applicant against Gavin Wallace was lodged with the application papers along with further evidence of steps in the repossession process. A copy of the

Title Sheet confirmed the Applicant's security over the Property. Clause (c) of the Schedule to the Tenancy Agreement contained evidence of a notice to the Respondent, at the commencement of the Tenancy, that ground 2 of Schedule 5 may be relied upon.

4. Evidence of a section 11 notice dated 22 September 2023 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Renfrewshire Council was provided with the application.
5. Shortly prior to the case management discussion ("CMD"), a representative for the Respondent lodged submissions and medical documentation which was reviewed at the CMD as discussed below.

### **The Hearing**

6. On 12 May 2025 at 14:00, at a CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by Chloe Imrie, solicitor, Aberdeen Considine for the Applicant and Stella Cojocar, Housing Project Adviser, Renfrewshire Citizens Advice Bureau for the Respondent. The Respondent was also in attendance but was satisfied with her representative providing all submissions on her behalf.
7. The submissions lodged for the Respondent provided evidence of significant and long-standing medical issues and continuing treatment being received. (We were provided with full details but, for the purposes of this application, do not require to repeat those here.) The Respondent confirmed in the submissions that she was seeking rehousing but had not yet been rehoused and that, if the application were to be granted, she sought a suspension of the order for an unspecified period so as to provide her with a greater chance to obtain suitable rehousing and then – in consideration of her medical conditions – provide her with enough time to vacate voluntarily.
8. In light of these submissions, we sought confirmation as to whether the Respondent sought to oppose the application or solely to seek a suspension. Her representative confirmed that she solely sought a suspension. We asked for submissions on the proposed length of suspension and the Respondent's representative suggested three months. We sought the Applicant's response on matters and, in consideration of the medical evidence provided, the Applicant's representative confirmed that there was no opposition to a suspension of three months. We sought specific confirmation from the Respondent that she understood the implications of an eviction order against her and that, even with a three-month suspension, that she understood she may be evicted at the end of the suspension period if she were not rehoused before then. She confirmed – through her representative – that she understood the position.
9. In order to consider the matter in full, we sought further information from both parties on reasonableness. We were provided with the following (either in the written or oral submissions), none of which points were disputed by the opposing party:

- a. The Respondent lives alone.
  - b. The Property is:
    - i. a two-bedroom flat;
    - ii. specially adapted for the Respondent's use by installation of additional hand-rails on stairs and of a bath lift. The bath lift could be uninstalled and moved to a new property; and
    - iii. is close to the Respondent's GP and shops and a pharmacy. It is also very close to relatives who provide her with support.
  - c. The Respondent has submitted an application for social housing and is at the top of the list for rehousing but has been told that, due to low housing stock, the housing authority is awaiting a decision on the eviction application before considering her application further.
  - d. The Applicant does not wish to act as a landlord and holds that it has not yet taken possession as landlord. (The Respondent said she continues to pay rent to Mr Wallace.)
  - e. The Applicant is under a duty to maximise any sale price in a repossession and for that reason seeks vacant possession before selling the Property.
10. No order for expenses was sought.

### **Findings in Fact**

- 11. On 24 July 2013 Gavin Wallace leased the Property to the Respondent, on an assured tenancy, commencing on 24 July 2013 and running until 24 January 2014 ("the Tenancy").
- 12. Since 25 January 2014, the Tenancy has continued by tacit relocation.
- 13. In a Schedule to the Tenancy Agreement, at clause (c), Mr Wallace provided notice to the Respondent "that Ground 2 of Schedule 5 to the Housing (Scotland) Act 1988 as amended applies to this Tenancy as the property is subject to a mortgage... and as a result of a default by the creditor the Lender is entitled to exercise a power of sale and the Lender may require possession of the property in order to dispose of it with vacant possession...".
- 14. On 7 November 2023, the Applicant received decree against Gavin Wallace for eviction and declaring that the Applicant is entitled to enter into possession and sell the Property.
- 15. On 11 July 2024, the Applicant's agent drafted an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Ground 2 of Schedule 5 to the 1988 Act. The AT6 gave the Respondent notice that proceedings would not be raised before 18 September 2024.

16. On 17 July 2024, a Sheriff Officer acting for the Applicant competently served the notice upon the Respondent. The Respondent was thus provided with sufficient notice that the Applicant sought to evict under the ground set out in the AT6.
17. On 22 November 2024, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 65, relying on the Property not yet having been vacated and the Applicant still seeking vacant possession as a heritable creditor; and that it was reasonable to make the order.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon Renfrewshire Council on 22 September 2023 on the Applicant's behalf.
19. On 18 March 2025, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 12 May 2025.
20. The Respondent lives alone at the Property.
21. The Respondent has a number of current medical conditions further to long-standing medical issues and historic medical procedures. She receives ongoing treatments and expects to require material medical treatment for the foreseeable future.
22. The Property is a two bedroom flat with some special adaptations for the Respondent.
23. The Property is suitable for the Respondent's use due to the proximity to family members (who provide her with support for her medical conditions), and to her GP, and to local shops including a pharmacy.
24. By the date of commencement of the Tenancy, there was prior notification by Mr Wallace to the Respondent that a creditor may wish to recover possession under ground 2 of Schedule 5 of the 1988 Act.
25. The Applicant's intention is to repossess and sell the Property in performance of its duties as a heritable creditor.

### **Reasons for Decision**

26. The relevant statutory provisions in the 1988 Act relating to this application are as follows:
  - 18.— *Orders for possession.*
  - (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.*
- ...
- (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 15 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.*
- ...

**19.— Notice of proceedings for possession.**

- (1) *The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*
  - (a) *the landlord ... has served on the tenant a notice in accordance with this section; or*
  - (b) *the Tribunal considers it reasonable to dispense with the requirement of such a notice.*
- (2) *The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*
- (3) *A notice under this section is one in the prescribed form informing the tenant that—*
  - (a) *the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*
  - (b) *those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*
- (4) *The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—*
  - (a) *two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
  - (b) *in any other case, two weeks.*
- ...

- (7) *A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.*

*Schedule 5: Ground 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.*

27. The application is in terms of rule 65, being an order for possession in relation to assured tenancies. We were satisfied, on the basis of the application and supporting papers, and the oral submissions provided at the CMD, that a valid AT6 had been issued on the Respondent; and that the appropriate notice period of the AT6 had expired without vacant possession being provided.
28. In regard to pre-tenancy notification of the intention to rely upon ground 2, we were satisfied that the Tenancy Agreement contained both this and sufficient provision to satisfy section 18(6) of the 1988 Act. Further no issue was made of any lack of notice or provision in the submissions provided by the Respondent.
29. This requires us to consider whether we have any doubt as to whether ground 2 has been made out and, if not, whether it is reasonable to evict. In respect of the former question, we had no doubts. Sufficient vouching of: the Applicant's position as heritable creditor was provided, and the Applicant's desire to sell with vacant possession and not become a residential landlord. Further, the Respondent did not dispute the application.
30. In regard to reasonableness, we find the Applicant's arguments simple but compelling. It is obvious why it seeks vacant possession. In regard to the Respondent's position, her medical circumstances give pause for consideration whether it is reasonable to evict but we were obliged to her straight-forward proposal that a suitable suspension be put in place. Her proposal of a three-month suspension was consented to by the Applicant and further seemed reasonable to ourselves. We are thus satisfied that it is reasonable to evict subject to such a suspension.
31. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession relative to rule 65 but with a three-month suspension.

**Decision**

32. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988 suspended until 13 August 2025 for the above reasons.

## 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.

Joel Conn

15 May 2025

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Legal Member/Chair

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Date