



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/25/0858**

**Re: Property at 28 Whyterose Terrace, Methil, Leven, KY8 3AS (“the Property”)**

**Parties:**

**The Mortgage Works (UK) Plc, Nationwide House, Pipers Way, Swindon, Wiltshire, SN38 1NW (“the Applicant”)**

**Mr Stuart Smith, 28 Whyterose Terrace, Methil, Leven, KY8 3AS (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Janine Green (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be made on the basis of paragraph 2 of schedule 5 of the 1988 Act.**

**1. Background**

1.1 This is an application under rule 65 of the Chamber Rules whereby the Applicant sought an order for recovery of possession of a property let on an ongoing short assured tenancy agreement. The application was accompanied by, amongst other things, copies of the written tenancy agreement, the form AT6 given to the Respondent and the sheriff court decree granted in favour of the Applicant.

1.2 No written representations from the Respondent had been received in advance of the Case Management Discussion.

**2. The Case Management Discussion**

- 2.1 The Case Management Discussion took place on 14 July 2025 by teleconference. The Applicant was represented by Miss Masters, Aberdeen Considine solicitors. The Respondent did not attend and was not represented.
- 2.2 The Applicant's representative confirmed that the applications were insisted upon and wished to proceed in the Respondent's absence. Given that intimation of the applications and Case Management Discussion had been given to him by sheriff officers, the Tribunal considered it appropriate to proceed in his absence as permitted by rule 29 of the Chamber Rules.
- 2.3 Miss Masters confirmed that the relevant application for warrant to take possession of and sell the property had been granted in the Applicant's favour by the Sheriff Court in October 2023. The debtor had defaulted on their payments to the Applicant and that default, to date, had not been remedied. The Applicant became aware that the property was tenanted in July 2024. Sheriff officers had visited the property in February 2025 on the suggestion it was unoccupied however, the Respondent had telephoned them to advise he was only temporarily absent on business and still resided there. Sheriff officers had made a further visit at the beginning of July 2025 and the Respondent would not answer the door but still appeared to reside there. It was believed that he resided there alone. Vacant possession was sought as the Application had a duty in terms of section 25 of the Conveyancing & Feudal Reform (Scotland) Act 1970 to ensure that the price at which the property was sold was the best that could reasonably be obtained.

### **3. Reasons For Decision**

- 3.1 Section 19 of the 1988 Act requires that notice be given to the Respondent of the application for an order for recovery of possession. Said notice has been given in form AT6. The ability of the Tribunal to grant the order sought is defined in section 18 of the 1988 Act, the relevant provisions of which are as follows:-

*(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.*

...

*(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.*

3.2 In the present application, the written tenancy agreement contained a replication of ground 2 of schedule 5 of the 1988 Act. The Tribunal considered this also to be notice that possession may be recovered on this ground. The sole issue therefore was whether it was reasonable to grant the order.

3.3 The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Applicant had been granted authorisation by the Sheriff Court to take possession of and sell the property following a default in payment by the debtor. The Respondent had been given notice of the Applicant's intention. There was no material before the Tribunal to suggest it would not be reasonable to grant the application to enable the Applicant to obtain vacant possession for the purpose of sale.

## **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.**

# A. Houston

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**Legal Member/Chair**

**14 July 2025**  
**Date**