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/24/5798

Re: Property at 118 Morar Place, Irvine, Ayrshire, KA12 9PX ("the Property")

Parties:

Siberite Mortgages Limited, The Pavilions, Bridgwater Road, Bristol, BS13 8AE ("the Applicant")

Ms Lynsey Murray, 118 Morar Place, Irvine, Ayrshire, KA12 9PX ("the Respondent")

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to grant an order in favour of the Applicant against the Respondent for recovery of possession of the assured tenancy under ground 2 of schedule 5 of the Housing (Scotland) Act 1988; and further determines that the order cannot be enforced until 19 August 2025.

Background

1. An application had been received under Rule 65 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ("the 2017 Rules") seeking recovery of possession under an assured tenancy by the Applicant against the Respondent for the Property.

2. The application contained: -

   a. the tenancy agreement,

   b. AT6 and evidence of service

   c. Tenancy agreement

   d. Section 11 notice and

   e. copy Form BB to occupier

3. This case called for a case management discussion on 19 June 2025. In attendance was the applicant's representative, Ms Hamilton, from Aberdein Considine and Mr Meek from CHAP for the respondent appeared.

Discussion

4. The applicant's agent advised that the applicant was seeking an order for recovery of possession of the property under ground 2 (the let property is to be sold by the lender). The mortgage lender had obtained a decree for repossession against the mortgage customer, the landlord, dated 26 June 2024.

5. The respondent had been served with the application papers. She had sought advice from CHAP. The respondent did not oppose the order being granted, subject to the order not being executed for two months from the date of the case management discussion and that it would not be enforceable until 19 August 2025. Mr Meek confirmed this was an agreed position.

Findings in Fact

6. The Tribunal found the following facts established: -

   a. There existed a tenancy. It had commenced on 21 April 2016. The tenant was Lynsey Murray. The landlord had been David Lyn.

   b. The property was 118 Morar Place, Irvine.

c. There was submitted an AT5 Notice 21 April 2016.

d. The AT6 Notice was dated 30 September 2024 and confirmed that recovery was sought under ground 2. There was evidence of service of this notice.

e. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. There was evidence of service.

f. The applicant is a creditor under a heritable security secured against the Property.

g. The mortgage was created and registered on 31 August 2007.

h. The applicant has obtained a Decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 from Kilmarnock Sheriff Court on 26 June 2024 and had the right to sell the property and to enter into possession of it.

i. That a Form BB notice to the occupier had been served on the occupier on 28 June 2023.

j. The Respondent did not oppose the order, but wanted until 19 August 2025 to remain in the property before the order could be enforced.

Reasons for Decision

7. Section 18 of the 1988 Act provides the Tribunal with the power to grant an order for eviction for a tenancy if it finds that one of the grounds in Schedule 2 of the Act applies.

8. The ground on which the Applicant seeks eviction is ground 2, 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 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 [F4First-tier Tribunal] is satisfied that it is reasonable to dispense with the requirement of notice.

9. The tribunal was satisfied that the terms of ground 2 had been met namely, that the property was subject to a heritable security before the creation of the tenancy; the tenant received notice before the commencement of the tenancy that possession might be enforced under this ground; that the applicant intends to sell the property; and is entitled to do so by virtue of the extract decree issued at Kilmarnock Sheriff Court dated 26 June 2024; and that the applicant requires the tenant to leave the property for the purpose of disposing of it with vacant possession.

10. The tribunal was satisfied that an AT6 notice to leave had been served on the respondent which specified which ground in accordance with the requirements of the Act.

11. The tribunal was satisfied that in all the circumstances, it was reasonable to grant the order; the respondent had been aware of the lender wanting to sell the property and did not oppose the order being granted, subject to not having to leave the property until 19 August 2025

<u>Decision</u>

12. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the tenancy under ground 2 of schedule 5 of the Housing (Scotland) Act 1988, but postpones enforcement of the order until 19 August 2025.

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. Barbour

19 June 2025

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Legal Member/Chair   **Date**