



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/24/5613**

**Re: Property at 13 Ballantrae Gardens, Dundee, Angus, DD4 8QA (“the Property”)**

**Parties:**

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

**Mr Richard McPhee, 13 Ballantrae Gardens, Dundee, Angus, DD4 8QA (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Elizabeth Williams (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 eviction.**

**Background**

1. By application dated 29 November 2024 the applicant seeks an order for possession relying on ground 2 (property to be sold by a lender) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.
2. The following documents were lodged with the application:
  - Copy tenancy agreement
  - Section 11 notice with proof of intimation
  - Notices to leave and proof of service
  - Copy decree dated 28 March 2024
  - Copy form BB with proof of service

### **Case management discussion (“cmd”) – 25 June 2025 – teleconference**

3. The applicant was represented by Ms Macdonald, Aberdeen Considine solicitors. The respondent was not present or represented. The Tribunal was satisfied that papers had been served on him by Sheriff Officers. As he had been properly notified of the cmd in terms of rule 24 the Tribunal determined to proceed in his absence in terms of rule 29.
4. Ms Macdonald sought an order for eviction. She stated that decree for repossession had been granted on 28 March 2024. The respondent had been served with a form BB and had been aware of the repossession proceedings for over a year. A notice to leave had been served by Sheriff Officers on 3 June 2024. In terms of the respondent’s personal circumstances Ms Macdonald stated that the applicant was aware that the respondent resided with his 4 children, some of whom attended university. During a conversation with a Sheriff Officer when papers had been served he had advised them that he would be seeking assistance from the local authority. Ms Macdonald advised that the respondent was still residing in the property.

### **Findings in fact and law**

5. The respondent and Lloyd Scott entered into a private residential tenancy agreement with a commencement date of 13 May 2018.
6. The applicants are the heritable creditor under a mortgage over the property.
7. On 28 March 2024 the applicant obtained a decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 granting them the power to sell the property and enter into possession of the property.
8. The applicant intends to sell the property.
9. The respondent has not submitted any opposition to the present application.
10. It is reasonable to grant an order for eviction.

### **Reasons for the decision**

11. Rule 18 states:

*Power to determine the proceedings without a hearing*

**18.—(1) Subject to paragraph (2), the First-tier Tribunal—**

*(a) may make a decision without a hearing if the First-tier Tribunal considers that—*

*(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

*(ii) to do so will not be contrary to the interests of the parties; and*

*(b) must make a decision without a hearing where the decision relates to—*

*(i) correcting; or*

*(ii) reviewing on a point of law,*

*a decision made by the First-tier Tribunal.*

*(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

12. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

13. Ground 2 states:

*2(1) It is an eviction ground that a lender intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the let property is subject to a heritable security,*

*(b) the creditor under that security is entitled to sell the property, ...*

*(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession , and*

*(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

14. The Tribunal took into account the written representations and documents lodged together with oral representations at the cmd. The Tribunal was satisfied that the applicant intends to sell the property.

15. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against

16. The Tribunal gave significant weight to the fact that the respondent did not seek to defend the application.
17. The Tribunal took into account the information provided by Ms Macdonald that the respondent resided with his 4 children. The Tribunal also gave weight to the length of time that the respondent had resided in the property. However, in light of the lack of opposition to the application the Tribunal determined that it was reasonable to grant an order.

### **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.**

**Mary-Claire Kelly**

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**Legal Member/Chair**

**25 June 2025**

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**Date**