

**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/24/5669**

**Re: Property at Flat 1/2, 47 Neilston Road, Paisley, PA2 6LY (“the Property”)**

**Parties:**

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

**Joseph Robert Griffin, Flat 1/2, 47 Neilston Road, Paisley, PA2 6LY (“the  
Respondent”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elizabeth Dickson (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 Annelies Omari to the Respondent commencing on 27 November 2017 and running until 27 May 2018, and continuing on a two-month basis since.
2. The application was dated 10 December 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 April 2024. Evidence of service of the notice by Sheriff Officer on 12 April 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 9 January 2024 by

the Applicant against Annelies Natalie Omari or Silverwood 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 9.1 of 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 10 December 2024 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Renfrewshire Council was provided with the application.

### **The Hearing**

5. On 1 July 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 Katie Macdonald, solicitor, Aberdeen Considine for the Applicant and by the Respondent himself.
6. The Applicant's agent confirmed that the application was still insisted upon. The Respondent confirmed that he did not oppose the application, but we took both parties through submissions on the application and sought to confirm that the Respondent appreciated the consequences of not opposing the application.
7. The Respondent stated that he was in contact with the local authority in regard to rehousing and that he had been told to return to them when an order for eviction was granted against him so that his application could be assessed. He did not have any firm information as to the likelihood of being rehoused but was satisfied that he could vacate within one month if required. He explained that the Property had been let furnished so little of the contents were his own and he would be able to pack up within a month. We sought specific confirmation from the Respondent that he understood the implications of an eviction order being granted against him and that he understood he may be evicted if he were not rehoused before the 30-day period for appeal ended. He confirmed that he understood the position.
8. 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 one-bedroom flat;
    - ii. not specially adapted for the Respondent's use; and
    - iii. is close to the train station which the Respondent uses to travel to work.
  - c. The Respondent has submitted an application for social housing but has been told that the housing authority would require a decision on the eviction application before considering his application further.
  - d. The Respondent was currently paying rent to the letting agent that the landlord had used.

- e. There were no known issues with the condition of the Property relied upon by either party.
  - f. The Respondent is 44 years old and in full time employment.
9. We were further aware that in terms of statute the Applicant is under a duty to maximise any sale price in a repossession and for that reason sought vacant possession before selling the Property.
10. No order for expenses was sought.

### **Findings in Fact**

11. On 27 November 2017 Annelies Omari (also known as Annelies Natalie Omari and Annelies Natalie Silverwood) leased the Property to the Respondent, on an assured tenancy, commencing on 27 November 2017 and running until 27 May 2018 (“the Tenancy”), continuing thereafter on a two-monthly basis.
12. In clause 9.1 of the Tenancy Agreement Ms Omari provided notice to the Respondent that the property is subject to a heritable security and that Ground 2 of Schedule 5 to the Housing (Scotland) Act 1988 applied to the Tenancy and may be relied upon.
13. Annelies Omari (designed as “Annelies Natalie Silverwood”) granted a standard security over the Property in favour of the Applicant’s predecessor, Halifax plc t/a Birmingham Midshires, which was registered on 17 August 2007 prior to the commencement of the Tenancy.
14. On 9 January 2024, the Applicant received decree against “Annelies Natalie Omari or Silverwood” for eviction and declaring that the Applicant is entitled to enter into possession and sell the Property.
15. On 11 April 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 13 June 2024.
16. On 12 April 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 10 December 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 10 December 2024 on the Applicant's behalf.
19. The Respondent lives alone at the Property.
20. The Property is a one bedroom flat. It is not specially adapted for the Respondent.
21. The Property is suitable for the Respondent's use due to the proximity to public transport that he uses to travel to work.
22. By the date of commencement of the Tenancy, there was prior notification by Annelies Omari to the Respondent that a creditor may wish to recover possession under ground 2 of Schedule 5 of the 1988 Act.
23. The Applicant's intention is to repossess and sell the Property in performance of its duties as a heritable creditor.

### Reasons for Decision

24. 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.*

25. 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.
26. 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.

27. 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, as well as of the Applicant's desire to sell with vacant possession and not become a residential landlord. Further, the Respondent did not dispute the application.
28. 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, we were obliged to his straight-forward approach to the matter and his confirmation that he did not oppose the application and understood the implications. We are thus satisfied that it is reasonable to evict.
29. 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.

### **Decision**

30. 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.

### **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**

Joan Devine

# Joel Conn

**Legal Member/Chair**

\_\_\_\_\_  
**Date**