

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014.**

**Chamber Ref: FTS/HPC/EV/25/1112**

**Re: Property at Flat C, 3 South Harbour Street, Ayr, KA7 1HZ (“the Property”)**

**Parties:**

**Skipton Building Society, The Bailey, Skipton, North Yorkshire, BB23 1DN (“the Applicant”)**

**Mr Thomas Stevenson, Flat C, 3 South Harbour Street, Ayr, KA7 1HZ (“the Respondent”)**

**Tribunal Members:**

**Shirley Evans (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 that an order against the Respondent for possession of the Property at Flat C, 3 South Harbour Street, Ayr, KA7 1HZ be granted in terms of Section 18 of the Housing (Scotland) Act 1988. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees, and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.**

**Background**

- 1. This is an application for eviction for an order for repossession under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”). The Applicant’s case is based on Ground 2 (Property to be sold by Lender) of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”).**

2. The application was accompanied by an extract decree of repossession from Ayr Sheriff Court dated 15 February 2024 and extracted on 1 March 2024, a Form BB dated 9 August 2023, a tenancy agreement between Thomas Barrie and Caroline Tweed as Landlords and the Respondent as Tenant dated 28 May 2013 with AT5 and Notice of Grounds of Repossession dated 28 May 2023, an AT6 dated 21 November 2024 together with a Sheriff Officer's Execution of Service dated 2 December 2024 and a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to South Ayrshire Council dated 12 March 2025 regarding persons unconnected with the application.
3. On 10 July 2025 the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 27 August 2025. This paperwork was served on the Respondent by Chelsea Murray, Sheriff Officer, Glasgow on 14 July 2025 and the Execution of Service was received by the Tribunal administration.
4. On 22 August 2025 the Tribunal issued a Notice of Direction requiring the Applicant to lodge a Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 in the name of the Respondent. On 22 August 2025 the Applicant's solicitor lodged the said Notice with an email to South Ayrshire Council dated 22 August 2025.

### **Case Management Discussion**

5. The Tribunal proceeded with the CMD on 27 August 2025 by way of teleconference. The Applicant was represented by Ms Macdonald from Aberdeen Considine, solicitors. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
6. The Tribunal had before it the extract decree of repossession from Ayr Sheriff Court dated 15 February 2024 and extracted on 1 March 2024, the Form BB dated 9 August 2023, the tenancy agreement between Thomas Barrie and Caroline Tweed as Landlords and the Respondent as Tenant with AT5 and Notice of Grounds of Repossession all dated 28 March 2013, the AT6 dated 21 November 2024 together with a Sheriff Officer's Execution of Service dated 2 December 2024 and the Notice in terms of Section 11 of the Homelessness (Scotland) Act 2003 together with an email to South Ayrshire Council dated 22 August 2025. The Tribunal noted the terms of these documents.
7. The Tribunal confirmed that it had read the application papers. In terms of the application the Tribunal noted that the Applicant was the heritable creditor of

the Property and that the Respondent had entered into an Assured Tenancy with his landlord, Thomas Barrie and Caroline Tweed on 28 March 2013. The Tribunal also noted the Applicant had obtained decree for possession of the Property against at Ayr Sheriff Court on 15 February 2024 and that the Applicant's solicitor had served a Form BB in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970.

8. Ms McDonald moved for an order for eviction to be granted so they could sell the Property to satisfy mortgage arrears. Her client had obtained an order for repossession against Thomas Barrie and Caroline Tweed as heritable creditor on 15 February 2024. Before that the Respondent had received the Form BB. The AT6 had been served on the Respondent on 2 December 2024 and the Respondent had had plenty of time to find alternative accommodation. She further submitted that there had been no direct contact with the Respondent but that in November 2024 after the AT6 had been served they had been contacted by Ayr Housing Aid Centre to advise the Respondent had been in contact with South Ayrshire Council regarding rehousing but had not received an offer of rehousing. On 9 July 2025 Sheriff Officers had attended at the Property and spoke with the Respondent who confirmed he had been in contact with the Council and that he would remain in the Property. There has been no further contact. She further submitted that her client had heard from Ms Tweed on 24 October 2024, the landlord that the Respondent had not paid rent since November 2023. The mortgage arrears continue to accrue.

### **Reasons for Decision**

9. The Tribunal considered the issues set out in the application together with the documents lodged in support and Ms Macdonald's submissions. The tenancy agreement between the Respondent and Thomas Barrie and Caroline Tweed was a short assured tenancy in terms of Section 32 of the 1988, which by definition is an assured tenancy for a term of not less than six months. Section 18 (6) of the Housing (Scotland) Act 1988 gives the power to the Tribunal to grant an order of possession under Ground 2 of Schedule 5 if the tenancy allows for it to be terminated on that Ground and if the Tribunal finds it is reasonable to evict.

10. As a ground of eviction Ground 2 of Schedule 5 of the 1988 provides –

“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.”

11. In this case Notice was given to the Respondent on 28 May 2013 that there was a heritable security over the Property and that in the event of default of the standard security the bank or building society would be entitled to repossess the Property in terms of Ground 2 of Schedule 5 of the 1988 Act.
12. The Tribunal was satisfied that the factual basis of the application had been established in relation to Ground 2 and was satisfied the Applicant intended to sell the Property as soon as they regained possession. The Tribunal accepted, based on the documents provided by the Applicant, that a standard security had been granted in their favour over the Property, that a calling up notice had been served, and that the Applicant had a sheriff court decree that entitled them to recover possession and sell the Property. The Tribunal was also satisfied that the Applicant had complied with the terms of Section 19 of the 1988 Act by serving a Form AT6 on the Respondent specifying they were seeking repossession of the Property under Ground 2 of Schedule 5 of the 1988 Act. A case under Ground 2 of Schedule 5 of the 1988 Act was accordingly met. However, the Tribunal also has to be satisfied that it is reasonable to evict.
13. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal was satisfied that the Applicant’s intention was to sell the Property when they obtained possession and that they required vacant possession to do so. The Respondent on the other hand had not been in contact with the Applicant and had not participated in the current proceedings. On balance the Tribunal considered the balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.
14. In the circumstances the Tribunal considered that in terms of Ground 2 of Schedule 5 it was reasonable to grant an eviction order in terms of Section 18 of the 1988 Act.

### **Decision**

15. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

### **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.**

Shirley Evans

27 August 2025

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Legal Member

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Date