



**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/24/2341

Re: Property at 143 Craufurdland Road, Kilmarnock, KA3 2HX (“the Property”)

Parties:

**Rooftop Mortgages Limited, 1st Floor, Crown House, Crown Street, Ipswich,
IP1 3HS (“the Applicant”)**

**Mr Andrew Canavan, 143 Craufurdland Road, Kilmarnock, KA3 2HX (“the
Respondent”)**

**Tribunal Members: Ruth O’Hare, Legal Member, and Eileen Shand, Ordinary
Member**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of ground 2 of schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 18 of the 1988 Act.

Background

- 1 This is an application for an eviction order under rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 18 of the 1988 Act. The Applicant relied upon ground 2 as the eviction ground, stating the lender’s intention to sell the let property.
- 2 The application was referred to a case management discussion (“CMD”) to be held by teleconference on 18 October 2024. The Tribunal gave notice of the CMD to the parties in accordance with rule 17(2) of the Rules. Both parties were invited to make written representations.

- 3 On 11 October 2024 the Tribunal received written representations from Barnett's Solicitors on behalf of the Respondent. In summary, the Respondent had resided in the property for approximately 7 years with no issues during that time. He resided with his two sons aged 20 and 16. His 16 year old son attended the local school. The Respondent had been unable to find alternative accommodation. He was limited by rent levels and the properties available from the local authority were unsuitable. Whilst the Respondent agreed in principle to move out of the property, he could not do so until he secured alternative accommodation. The Respondent had a physical disability which meant he required significant bed rest, limiting his ability to search for properties. The Respondent and his sons did not wish to be separated. It was unreasonable for an eviction order to be made. The Respondent required further time to find alternative accommodation. Eviction would impact on the Respondent's health and his son's education, as well as their mental wellbeing.

The CMD

- 4 The CMD took place on 18 October 2024 by teleconference. The Applicant was represented by Ms Chloe Imrie of Aberdeen Considine Solicitors. The Respondent was represented by Ms Lucia Petrescu of Barnett's Solicitors.
- 5 Ms Imrie moved the Tribunal to grant an eviction order. As a result of the landlord's default, the Applicant as lender was entitled to sell the property and required vacant possession to do so. The provisions of ground 2 were met. The Respondent had been given a Form AT6 which had expired on 10 April 2024. He had been given ample time to find accommodation. The Applicant required vacant possession in order to achieve the best purchase price in accordance with their statutory duties.
- 6 Ms Petrescu confirmed the Respondent's position, namely that it would be unreasonable for an eviction order to be granted. The Applicant could market the property for sale with a sitting tenant. The prejudice to the Respondent were an eviction order granted far outweighed the prejudice to the Applicant. The Respondent would be homeless with his two sons. The local authority had told the Respondent that they did not have suitable accommodation for his family. It was becoming increasingly difficult for tenants to find alternative accommodation with the local authority, even after the granting of an eviction order.
- 7 Having heard from the parties, the Tribunal determined to fix an evidential hearing, with the issue to be resolved as whether it was reasonable for an eviction order to be granted in the particular circumstances of this case. Ms Petrescu confirmed that the Respondent did not dispute that the provisions of ground 2 had otherwise been met.

The hearings

- 8 A hearing was scheduled for 7 March 2025. On 18 February 2025 the Tribunal received a request for postponement of the hearing from the Applicant's

solicitor to accommodate counsel's availability. On 20 February 2025 the Tribunal received an email from the Respondent's solicitor confirming that she did not object to the postponement.

- 9 The hearing was rescheduled to take place on 18 August 2025. The Tribunal gave notice of the hearing to the parties. On 17 July 2025 the Tribunal received confirmation from the Respondent's solicitor that she had withdrawn from acting for the Respondent. On 13 and 15 August 2025 the Tribunal received emails from Mr David Anderson of Ayr Housing Aid Centre advising that he had recently been instructed by the Respondent and had not yet had sight of the case papers. He was therefore requesting a postponement of the hearing. The Tribunal provided Mr Anderson with a copy of the case papers on 15 August 2025 and advised that the Tribunal would consider the postponement request at the hearing on 18 August 2025.
- 10 The hearing took place on 18 August 2025 by videoconference. Mr Giles Reid, Junior Counsel, represented the Applicant. The Respondent joined the call and was represented by Mr Anderson.
- 11 As a preliminary matter, the Tribunal heard submissions from parties on the postponement request. Mr Anderson explained that he had been referred the case by the Housing Options team at East Ayrshire Council. He had not yet had the opportunity to discuss the case papers with the Respondent, having only received these on the Friday prior to the hearing. There would be extreme prejudice to the Respondent were the hearing to proceed. Mr Anderson did not know that a hearing had been fixed, he had thought the Tribunal were holding a CMD. The Respondent explained that the withdrawal of his previous solicitor had been due to a communication breakdown. Mr Anderson confirmed that he was also working with the Respondent to secure him a suitable offer of housing.
- 12 Mr Reid confirmed that the Applicant opposed the postponement. He understood Mr Anderson's difficulties but noted that the Respondent had been represented for the majority of the proceedings and had benefitted from that. Mr Reid noted the length of time that had passed since the application was made to the Tribunal in June 2024. The arrears continued to increase. The postponement would prejudice both the Applicant and the property owner.
- 13 The Tribunal adjourned the hearing to deliberate before resuming the proceedings. The Tribunal determined that there was good cause to postpone the hearing to provide the Respondent with the opportunity to be represented by Mr Anderson. The Tribunal accepted that the Respondent would face significant difficulties in conducting the hearing in the absence of a representative, and was mindful of the overriding objective to ensure, insofar as practicable, that parties are on an equal footing procedurally and are able to fully participate in the proceedings. The Tribunal also took into account that a previous hearing in March had been postponed on the Applicant's request to accommodate counsel's availability.

- 14 On 7 October 2025 the Tribunal received an email from Mr Anderson advising that the Respondent had received an offer of housing from East Ayrshire Council. Mr Anderson provided a copy of the offer and confirmed he would update the Tribunal in due course.
- 15 The second hearing took place on 13 October 2025 by videoconference. The Applicant was represented by Ms Eleanor Hamilton, Solicitor of Aberdeen Considine. The Respondent was represented by Mr Anderson.
- 16 Mr Anderson advised the Tribunal that the Respondent had been offered, and had accepted, a house from the local authority. He was in the process of moving out. He no longer opposed the eviction order on that basis. Ms Hamilton confirmed that the Applicant maintained their motion for an eviction order.

Findings in fact

- 17 The Respondent is the tenant of the property in terms of an assured tenancy agreement which commenced on 10 May 2017.
- 18 The owner and landlord of the property is Mr Calum Watt. On or around 4 December 2007 Calum Watt granted a standard security over the property to Edeus Mortgage Creators Limited. The standard security was assigned to the Applicant on or around 15 October 2019.
- 19 On 21 June 2023 the Applicant obtained a decree from Kilmarnock Sheriff Court against Calum Watt. Said decree entitles the Applicant to sell the subjects and enter into possession of the subjects and to exercise all powers competent to a creditor in lawful possession of the subjects under the Conveyancing and Feudal Reform (Scotland) Act 1970.
- 20 On 9 February 2024 the Applicant gave the Respondent a Form AT6. The Form AT6 included ground 2 of schedule 5 of the 1988 Act and stated that proceedings would not be raised before 10 April 2024.
- 21 The Applicant sent East Ayrshire Council a notice under section 11 of the Homelessness etc (Scotland) Act 2003 at the time of making this application.
- 22 The Applicant is entitled to sell the property. The Applicant requires to sell the property with vacant possession in order to achieve best value.
- 23 The Respondent resides in the property with his two sons, aged 20 and 16. The Respondent's 16 year old son attends school in the local area.
- 24 The Respondent has a physical disability.
- 25 The Respondent has received an offer of housing from East Ayrshire Council, which he has accepted. The Respondent is in the process of vacating the property.

26 The Respondent does not object to the eviction order.

Reasons for decision

27 The Tribunal was satisfied that it could make relevant findings in fact based on the documentary evidence and oral submissions from the parties at the CMD and the hearings in order to reach a decision on the application. It was clear that the substantive facts of the case were no longer in dispute.

28 Section 19 of the 1988 Act states "*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*". The Tribunal was satisfied based on the documentary evidence before it that the Applicant has given the Respondent a Form AT6 notice which complies with the provisions of section 19 of the 1988 Act, and therefore the application can be entertained. The Tribunal was further satisfied that the Applicant has given the local authority the required notice under section 11 of the Homelessness etc (Scotland) Act 2003.

29 Section 18 of the 1988 Act states "*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....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*".

30 The Tribunal considered the wording of 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."

31 The Tribunal accepted based on the extract decree from Kilmaronock Sheriff Court that the Applicant is entitled to sell the property, and requires vacant possession in order to maximise the sale proceeds and achieve best value. The Tribunal took into account the terms of the desktop valuation report produced by the Applicant from DM Hall which confirmed that a sale with a sitting tenant was likely to result in a drop in market value of around £10,000. The Tribunal was also satisfied that the Respondent had been given notice at the commencement of the tenancy that possession might be recovered on ground 2.

- 32 The Tribunal therefore went on to consider whether it would be reasonable for an eviction order to be granted in the particular circumstances of this case which requires the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to them.
- 33 The Tribunal gave significant weight to the Applicant's property rights, and the extract decree which entitles them to enter into possession, and sell, the property. The Tribunal also gave significant weight to the Respondent's circumstances. Having now secured a council tenancy, he and his family would no longer face homelessness if an eviction order were granted. They were in the process of moving out of the property. This allayed any concerns the Tribunal would have had about the impact of eviction, particularly in view of the Respondent's physical health and his son's education.
- 34 The Tribunal therefore concluded that the balance weighs in favour of making an eviction order in this case.
- 35 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.

Ruth O'Hare

13 October 2025

Legal Member/Chair

Date