

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/25/1856

Property : 41 Morar Place, Irvine KA12 9PT (“Property”)

Parties:

Bank of Scotland plc, The Mound, Edinburgh EH1 1YZ (“Applicant”)

**Aberdein Considine, 18 Waterloo Street, Glasgow G2 6DB (“Applicant’s
Representative”)**

Kimberley Leigh Burns, 41 Morar Place, Irvine KA12 9PT (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Frances Wood (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined to grant an order for possession of the Property.**

Background

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E along with Form AT6 dated 11 February 2025; sheriff officer certificate of service of the AT6 evidencing service of the AT6 on 12 February 2025; extract decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 dated 13 November 2024; form BB dated 26 June 2024; short assured tenancy between Robert Neil and the Respondent which commenced on 8 October 2011; form AT5 dated 8 October 2011 and notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email. The application was served on the Respondent by sheriff officer on 3 October 2025.

Case Management Discussion (“CMD”)

2. An CMD took place before the Tribunal on 12 November 2025 by teleconference. The Applicant was represented by Katie Macdonald of the Applicant’s Representative. The Respondent was not in attendance.

3. Ms Macdonald told the Tribunal that the Applicant had attempted to make contact with the Respondent on a number of occasions without success. She said that letters had been issued asking the Respondent to get in touch but she had not done so. She said that sheriff officers had attended the Property on 23 October 2025 and had spoken with the Respondents daughter who appeared to be in her twenties. She told the sheriff officers that her mother was asleep upstairs. Ms Macdonald said that the Applicant had no information about the Respondent's personal situation. She said that the Property was one in a portfolio of approximately ten properties owned by the landlord, Robert Neil. She said that Mr Neil was co-operative and had provided the copy tenancy agreement. She confirmed that Applicant had not been collecting rent from the Respondent.

Findings in Fact

The Tribunal made the following findings in fact:

1. Robert Neil and the Respondent entered into a Tenancy Agreement for the Property which commenced on 8 October 2011.
2. A standard security over the Property in favour of the Applicant was registered on 17 November 2008.
3. On 13 November 2024 decree was granted in favour of the Applicant under the Conveyancing and Feudal Reform (Scotland) Act 1970 in terms of which the Applicant is entitled to enter into possession of the Property.
4. The Applicant intends to sell the Property.
5. The Applicant requires the Respondent to leave the Property for the purpose of disposing of it with vacant possession.
6. The Form AT6 was served on the Respondent by sheriff officer on 12 February 2025. The Form AT6 stated that proceedings would not be raised before 13 April 2025.
7. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. The Property is subject to a heritable security granted before the creation of the tenancy.

2. The Applicant is entitled to sell the Property.
3. Notice was given to the Respondent in writing not later than the date of commencement of the tenancy that possession might be recovered on the basis of ground 2 of schedule 5 of the Housing (Scotland) Act 1988.
4. It is reasonable for the Tribunal to grant an order for possession of the Property.

Reasons for the Decision

4. The Applicant sought an order for possession of the Property in terms of section 18 of the Housing (Scotland) Act 1988 ("1988 Act") which provides that the Tribunal shall not make an order for possession of a house let on an assured tenancy except on one of the grounds set out in schedule 5 to the 1988 Act and, if satisfied that any of the grounds is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so. Section 18 is subject to section 19 which provides that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord has served on the tenant a notice in accordance with section 19.
5. The ground for possession relied upon was ground 2 which is that the house is subject to a heritable security granted before the creation of the tenancy and, as a result of 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 and 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 Tribunal is satisfied that it is reasonable to dispense with the requirement of notice.
6. A heritable security in favour of the Applicant was registered on the title to the Property before the tenancy was entered into. The Tenancy Agreement gave notice to the Respondent that possession might be recovered on ground 2. The Applicant obtained decree entitling them to sell and the Applicant had served the notice required by section 19 of the 1988 Act.
7. Having established that the requirements of ground 2 and section 19 of the 1988 Act have been met, the Tribunal considered the question of reasonableness. The Applicant is a lender who is entitled to sell the Property in order to repay the sum due to them. In terms of the Conveyancing and Feudal Reform (Scotland) Act 1970, the Applicant is obliged to achieve the best price for the Property when selling. Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it is reasonable to issue an eviction order.

Decision

8. The Tribunal grants an order for possession of the Property.

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.

Joan Devine

**Joan Devine
Legal Member**

Date : 12 November 2025