



**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/24/3501

Re: Property at 11 Hawthorn Place, Douglas, Lanark, ML11 0PH (“the Property”)

Parties:

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

**Mr John Frame, Mrs Carol Frame, 11 Hawthorn Place, Douglas, Lanark, ML11
0PH (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (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 have been met in this case but that in terms of section 18 of the 1988 Act it would be unreasonable to make an eviction order at this time.

The Tribunal therefore refused the application.

Background

- 1 This is an application for an eviction order under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 2 of schedule 5 of the 1988 Act.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 11 March 2025. 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 in advance of the CMD.

- 3 On 24 February 2025 the Tribunal received written representations from the Respondent.

The CMD

- 4 The CMD took place by teleconference on 11 March 2025. Miss Katie McDonald of Aberdeen Considine represented the Applicant. Mr Frame appeared on behalf of the Respondents.
- 5 The Tribunal explained the purpose of the CMD and invited parties to make written submissions regarding the application.
- 6 Ms McDonald confirmed that the Applicant sought an eviction order. A decree for possession had been granted on 8 March 2024, which entitled them to possession of the property. A Form AT6 had been given to the Respondents on that basis. The Respondents had been given ample time to find alternative accommodation, having been sent the Form BB notification back in May 2023. It was reasonable to make an eviction order. Ms McDonald also pointed out the relevant provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970 ("the 1970 Act") which placed an obligation on the Applicant to obtain best value. She noted that the Respondents had offered to purchase the property at market value, however that would not achieve best value, and instead the Applicant required to place the property on the open market. The sale of the property at market value would also be detrimental to the current owner, who would be deprived of the best value of the property.
- 7 The Tribunal asked about the possibility of obtaining an independent valuation report for the property in order to effect a sale to the Respondents. Ms McDonald referred to the ground for possession, which was reflected in the terms of the tenancy agreement. It allowed the Applicant to pursue an eviction order and put the property on the market to obtain the best possible price. Ms McDonald referred to a decision of the First-tier Tribunal in which this principle had been accepted (*FTS/HPC/EV/24/2107 – Pepper UK Ltd v Bartalos*).
- 8 The Tribunal heard submissions from Mr Frame. He and his wife had lived in the property for 12 years. They had fully maintained the property during that time and had carried out renovations at their own cost. They had done so under the assumption that they would have the opportunity to purchase the property at some point. However, the property owner had defaulted on his mortgage payments and had left them in an awful position. It was not until late 2024 that they received the Form AT6. They had tried to look for another property in the area, however there was a severe housing shortage. They had offered solutions to the Applicant to avoid eviction, such as purchasing the house at market value. They had secured a mortgage from Halifax for this purpose. They had offered to remain in the property and pay rent to the new owner. They had tried everything to avoid eviction. Mr Frame explained that his family was from Douglas. His daughters and mother in law lived nearby. Moving from the area was not an option. He was almost 59 years old and had not imagined he would be in this position.

- 9 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 made in this case. Mr Frame did not dispute that the remaining provisions of ground 2 of schedule 5 of the 1988 Act had otherwise been met.
- 10 A Direction was issued to parties requiring additional evidence, details of witnesses, and all relevant legal authorities to be lodged with the Tribunal no later than fourteen days prior to the hearing.
- 11 The hearing was scheduled for 22 September 2025 by videoconference. The Tribunal gave notice of the hearing to the parties in accordance with the Rules.
- 12 On 8 September 2025 the Tribunal received an inventory of productions, written submissions, and list of authorities from the Applicant. On 12 September 2025 the Tribunal received an affidavit from Mr David Holmes, an employee of the Applicant.
- 13 On 15 September 2025 the Tribunal received further documentary evidence from the Respondent.

The hearing

- 14 The Applicant was represented at the hearing by Mr Giles Reid, advocate. The Respondents were represented by Mr Frame.
- 15 The Applicant had one witness, Mr David Holmes. Mr Frame gave evidence on behalf of the Respondents.
- 16 As a preliminary matter, the Tribunal noted that both parties had lodged further evidence following the deadline set by the Direction. It was noted that Mr Frame had attempted to submit photographs which had not been received by the Tribunal. The Tribunal therefore held a short adjournment for Mr Frame to email the photographs to the Tribunal clerk, which were then sent to Mr Reid. Mr Reid confirmed he had no objection to the late productions. Mr Frame similarly confirmed he had no objection to Mr Holme's affidavit being received late.
- 17 The Tribunal further noted that the Respondent had requested the Tribunal consider an award for compensation in their recent submissions, in the event of an eviction order being made. The Tribunal advised that it could not consider such a claim in respect of this application but the Respondents could seek independent advice if they believed they were entitled to compensation.
- 18 The Tribunal proceeded to hear evidence from the parties. The following is a summary of the key elements of the evidence and is not a verbatim account.

The Applicant's evidence

- 19 Mr Reid confirmed that Mr Holmes adopted his affidavit evidence but was happy to take any questions from the Tribunal. In response to questions from the Tribunal Mr Holmes clarified in terms of his affidavit that he had first become aware of the Respondents in May 2023 when Mr Frame contacted the Applicant's solicitors. Mr Holmes had not attended the property himself at any point. The Tribunal asked whether the Applicant would consider selling the property to the Respondents. Mr Holmes advised that any sale of this nature would have to be with the agreement of the mortgage customer. If the customer agreed with the direct sale then it could be done. Mr Holmes confirmed that the mortgage arrears currently stood at £13,321.40 and the current balance was £81,209.63.
- 20 Mr Reid was given the opportunity to ask Mr Holmes any further questions. He queried whether Mr Holmes was familiar with the Applicant's duties under the 1970 Act. Mr Holmes advised he was not familiar with the specific provisions of the Act.

The Respondent's evidence

- 21 Mr Frame confirmed that he and his wife have resided in the property for the last 12 years. The landlord had not been the best during that time. The Respondents had maintained the upkeep of the property and had refurbished rooms in the house. The landlord had not contributed anything towards these costs. The Respondents wanted a nice home to live in. They had believed that the landlord would sell the house to them at the current market value after a period of ten years had expired. The landlord had then defaulted upon his mortgage, putting the Respondents in a difficult position.
- 22 Mr Frame explained that the Respondents had a mortgage approved in principle. They had always had the funds to cover the purchase. They had made three mortgage applications in the past few years. They had tried to offer solutions to the Applicant but were still in the same position. It had taken a huge toll on the Respondents. They had done everything they reasonably could to remain in the property. They had not done anything wrong. Mr Frame explained that the Respondents had previously had a mortgage approved at a value of £75,000. However the value was reduced to £70,000 after they received the valuation report for the property from the Applicant. The Respondents had the funds to cover the deposit.
- 23 Mr Frame confirmed that he and his wife resided in the property. Their two daughters lived in the village. The Respondents looked after their grandchildren, who spent almost every day at their house. The Respondents had been through all of the estate agents in the area and had registered for property alerts. However, Douglas was a desirable area. There were seldom properties coming up for let, and when they did the rent was unaffordable. There were some properties for sale, but again these were outwith the Respondents' price bracket. The Respondents had spoken with the local authority but had been told they required to present as homeless before they would receive assistance.

- 24 Mr Frame referred to the photographs evidencing the condition of the property, which had been taken on 15 September 2025. Mr Frame advised that the Applicant had contacted him to request access to the property for a valuation report. The proposed date was not suitable and the Respondents asked if the valuer could come out the following week. The Respondents received no response and subsequently noted that a desktop valuation had been carried out. The Respondents believe that the valuation does not reflect the true value of the property, as it does not take into account the second bedroom.
- 25 Mr Reid was given the opportunity to cross-examine Mr Frame. He took Mr Frame through the photographs produced, confirming the changes that had been made by the Respondents. These included a replacement bathroom, a replacement kitchen, removal of the fireplace in the living room, the conversion of the dining room to a bedroom, new electrics, replastering and painting. Mr Frame confirmed that the Respondents would require a 2 to 3 bedroom house. Those types of properties did not come up for let that often in Douglas. The Respondents had not seen any that would be suitable for rent. Mr Frame confirmed that the Respondents had started looking for alternative accommodation in early to mid 2023. They had not looked outwith the local area. Leaving Douglas would be their very last choice due to the ties they had there.

Closing submissions

- 26 Both parties were given the opportunity to make closing submissions.
- 27 Mr Reid addressed the reasonableness of making an eviction order. He firstly referred to the financial position. The Applicants faced an outstanding loan balance of £81,209.63, and mortgage arrears of £13,321.40. The purpose of selling the property was to clear the mortgage arrears and the outstanding balance. The Applicant has a duty to obtain best price for the property. Mr Reid adopted the Applicant's written submissions on this point. Section 25 of the 1970 Act placed a duty on the Applicant to take all reasonable steps to secure the best price for the property. This was not just in the Applicant's interest, it was also a duty to the borrower to recoup the maximum funds. Mr Reid accepted that the duty under section 25 was qualified by the issue of reasonableness. If the Tribunal refused the eviction order, the Applicant could not be criticised. There was a statutory tension between the duties and powers in the various Acts. The Applicant relied on the proposition that a higher value would be achieved in a sale with vacant possession, as opposed to a sale with a sitting tenant. This was evidenced by the valuation report produced by the Applicant which identified a £5000 reduction in value with a sitting tenant. Mr Reid acknowledged Mr Frame's comments regarding the accuracy of the valuation report but did not think it would make much difference. The point was the difference between selling with vacant possession and selling with a tenant. The valuation report described the difference as nominal, but given the level of outstanding arrears £5000 was a significant sum.
- 28 Mr Reid addressed the factors that may weigh against an eviction order. Mr Reid submitted that it would be difficult for the Tribunal to take into account the work

that had been done to the property with the agreement of the owner, on the expectation that the Respondents would ultimately purchase the property. Whilst this was an unfortunate situation, ultimately it was a question between the Respondent and the property owner. The question for the Tribunal was whether it was reasonable for the Applicants as heritable creditor to seek an order. The property owner was not represented and his interests were affected. Mr Reid submitted that any financial consequences were not capable of resolution in these proceedings.

- 29 Mr Reid noted the offer made by the Respondents to purchase the property, which was supported by the agreement in principle. The legal difficulty arose from the Applicant's duties under the 1970 Act. In terms of section 25, they had a duty to advertise the sale. No matter how a creditor sells a property, it has to be advertised first. Mr Reid could sympathise with the Respondents' position, but at the same time understood why the 1970 Act made such provision. He acknowledged that it did not neatly reflect every scenario. With regard to the Respondents' offer to remain in the property and pay rent, this was contrary to the Applicant's duty to secure best value.
- 30 Finally, Mr Reid addressed the availability of alternative accommodation. He submitted that this should not go against the granting of an order for possession. It was frequently an issue in repossession cases. At best, it may be a basis for suspension of the execution of the order rather than a refusal. Mr Reid submitted that it was reasonable for an eviction order to be granted, albeit he could recognise the unfortunate aspects of the case.
- 31 Mr Frame referred to his evidence. He reiterated that the Respondents had been in the property for 12 years. He understood the bank's position. The landlord had put the Respondents in a terrible position. The Respondents could have purchased the property from him at an earlier stage but he wasn't interested. The landlord had continued to accept rent from the Respondents, despite being in default on his mortgage. The Respondents would love to remain in the property. If the house was sold with sitting tenants, the Respondents would be happy for the rent to be increased. The rents in Douglas were high. The Respondents' preferred options would be for the property to be sold to them at open market value, or sold with them as sitting tenants. It made no sense for the Respondents to be evicted. They had offered to pay rent to the Applicant but this had been declined.

Findings in fact

- 32 The property is owned by Calum Watt. On or around 27 March 2008 Calum Watt granted a standard security over the property in favour of the Applicant.
- 33 Calum Watt subsequently defaulted on his mortgage payments. On 8 March 2024 the Applicant obtained a decree from Lanark Sheriff Court which entitles them to sell the subjects and enter possession of the subjects and to exercise all powers competent to a creditor in lawful possession of the subjects under the 1970 Act.

- 34 As at the date of the hearing, the mortgage arrears owed by Calum Watt amount to £13,321.40. The outstanding mortgage balance is £81,209.63.
- 35 Calum Watt is the landlord, and the Respondents are the tenants, of the property in terms of an assured tenancy agreement which commenced on 10 September 2025.
- 36 The Respondents were given notice no later than the commencement of the tenancy that possession might be recovered on ground 2 of schedule 5 of the 1988 Act.
- 37 The Applicant has sent the Respondents a Form AT6 under section 19 of the 1988 Act which includes ground 2 of schedule 5 of the 1988 Act.
- 38 The Applicant is entitled to sell the property. The Applicant requires the property for the purpose of selling it with vacant possession in exercise of that entitlement.
- 39 In terms of section 25 of the 1970 Act, the Applicant has a duty to *“to advertise the sale and take all reasonable steps to ensure that the price at which all or any of the subjects are sold is the best that can be reasonably obtained”*.
- 40 The Respondents’ family is from Douglas. The Respondents’ daughters, grandchildren and the second Respondent’s mother all live in the town.
- 41 The Respondents provide childcare for their grandchildren on a regular basis.
- 42 The Respondents have carried out extensive works to refurbish the property at their own expense.
- 43 The Respondents have made attempts to source alternative accommodation. The Respondents have not identified any alternative properties in the local area, either for rent or to purchase, that are within their budget.
- 44 The Respondents will have to present to the local authority as homeless if an eviction order is granted.
- 45 The Applicant has instructed a valuation of the property by DM Hall. The report from DM Hall provides a market value of £70,000 with vacant possession, and £65,000 with a tenant in situ.
- 46 The Respondents have obtained an agreement in principle from Halifax to secure a mortgage of £63,000 to purchase the property, with a deposit of £7,000. The Respondents have funds to pay the deposit. The agreement in principle is valid until 11 December 2025.

Reasons for decision

- 47 The Tribunal took into account all of the oral and documentary evidence before it in reaching its decision together with the submissions and authorities from the parties. It appeared to the Tribunal that the material facts in this case were largely undisputed.
- 48 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 is further satisfied that the Applicant has given the local authority the required notice under section 11 of the Homelessness etc (Scotland) Act 2003.
- 49 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*".
- 50 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."
- 51 The Tribunal accepts based on the extract decree from Lanark Sheriff Court that the Applicant is entitled to sell the property and requires to seek vacant possession in order to exercise that entitlement. The Tribunal is also satisfied that the Respondents have been given notice at the commencement of the tenancy that possession might be recovered on ground 2.
- 52 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.
- 53 As rightly pointed out by Mr Reid in his closing submissions, there is a significant tension between the duties incumbent upon a creditor under the 1970 Act, and

the Tribunal's powers under section 18 of the 1988 Act. The Applicant holds a sheriff court decree which entitles them to enter into possession of the subjects in order to sell. They have therefore assumed the property rights previously afforded to the property owner. It is perhaps not surprising that in the majority of such cases that come before the Tribunal, the Tribunal will find in favour of the mortgage lender. An example of this is the decision of the First-tier Tribunal referred to in the Applicant's written submissions (*The Mortgage Works v Nairn*, 9 June 2025, FTS/HPC/EV/24/0343), although it should be noted that decisions of the First-tier Tribunal are not binding on the Tribunal in terms of the determination of this application.

- 54 However, the provisions of section 18 of the 1988 Act are clear. The Tribunal cannot make an eviction order unless it considers it reasonable to do so. The question of whether it is reasonable or not to grant an eviction order is a matter of judgement for the Tribunal, having regard to the circumstances of the particular case. The Tribunal must identify those factors relevant to reasonableness and determine what weight to give them.
- 55 The Tribunal took into account the Applicant's property rights, and the extract decree which entitles them to enter into possession, and sell, the property. The Tribunal also took into account their duty to secure best value, in both their own interests and the interests of the property owner and his creditors, and the sums outstanding in terms of the mortgage balance and arrears. The Tribunal accepted that the duty to obtain best value was not only in the Applicant's interest, but the interest of the property owner.
- 56 However, Mr Holmes had conceded in his oral evidence at the hearing that a sale to a sitting tenant could be considered, if the mortgage customer was in agreement. Furthermore, in terms of his affidavit "*a sale with the tenant is not ordinarily considered as properties with vacant possession generally achieve or are expected to achieve a higher price than one with a tenant in situ*". The use of the word ordinarily suggests that such a scenario would be unusual but not impossible. The Tribunal accepted that the Applicant has a duty to advertise the property for sale, but there would appear to be nothing to prevent the Applicant from doing so whilst the Respondents remain in situ, thereby providing them with the opportunity to purchase the property. As such, the Tribunal was not persuaded that the Applicant had fully explored all options that would enable the Respondents to remain in their home at this point in time, which was a factor the Tribunal considered relevant to reasonableness. The Tribunal accepted that selling with a sitting tenant may result in a reduction in the sale value of the property of approximately £5,000, which was evidenced by the recent valuation report produced by the Applicant. However, whilst Mr Reid described this as significant when compared with the mortgage arrears, the Tribunal considered that it would be far more reasonable for the Respondents to be given the chance to remain in a property in which they had invested their time, money and care. The Tribunal also gave weight to the fact that they were offering to purchase the property at market value and had secured a mortgage agreement in principle in order to do so.

- 57 Whilst the Tribunal did not make any findings regarding any discussions that had taken place between the Respondents and the property owner, the Tribunal is of the view that the investment the Respondents have made in the property is a relevant factor when considering reasonableness in this case. The Tribunal considered that it could accept Mr Frame's evidence in respect of the works he has carried out to improve the property. He outlined at length the extent of the refurbishment, supported by the photographs produced, and came across as honest and straightforward in his evidence. The Tribunal accepted therefore that the Respondents have clearly spent time and money carrying out improvements to a house from which they now faced being evicted.
- 58 The Tribunal also took into account the fact that the Respondents have no alternative accommodation at this time, despite their efforts as outlined by Mr Frame. The Applicant submits that the availability of accommodation should only be considered in the context of suspension of the execution of any order. The Tribunal disagrees in this case. The Tribunal is aware from Mr Frame's evidence of his discussions with the local authority, and the Tribunal's own specialist knowledge, that the Respondents will require to present as homeless to the local authority and may thereafter be placed in emergency or temporary accommodation. The Tribunal could reasonably conclude that there would likely be significant disruption to their family arrangements, particularly given their childcare responsibilities. Again, it appeared unreasonable to require them to take such action in circumstances where there were options for them to remain in the property.
- 59 Accordingly, having assessed those factors the Tribunal considered relevant to the issue of reasonableness, the Tribunal concluded that the balance weighed against making an eviction order in this case in the circumstances as they exist at this time.
- 60 In reaching this decision, the Tribunal took into account the duties incumbent upon the Applicant under the 1970 Act. However, as was noted by Mr Reid, the Applicant has taken all reasonable steps to obtain the best possible price for the property by seeking an eviction order from the Tribunal. The Tribunal does not therefore consider that in reaching this decision the Applicant will be seen to have breached that duty.
- 61 The Tribunal therefore refused the application. 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.

R O'Hare

22 September 2025

Legal Member/Chair

Date