

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/5497

Re: Property at 6 Garthdee Farm Lane, Aberdeen, AB10 7GG (“the Property”)

Parties:

Bank Of Scotland Plc, The Mound, Edinburgh, EH1 1YZ (“the Applicants”)

Ms Joy Obi, 6 Garthdee Farm Lane, Aberdeen, AB10 7GG (“the Respondent”)

Tribunal Members:

Rory Cowan (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be granted but that enforcement of same should be delayed by three months from the date of the order.

- **Background**

By application dated 21 November 2024 (the Application), the Applicants seek an eviction order against the Respondent under Ground 2 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act). With the Application, the Applicants lodged various supporting documents which included the following:

- 1) Lease dated 1 August 2023;
- 2) Extract decree in favour of the Applicants under the Conveyancing and Feudal Reform (Scotland) Act 1970 dated 2 March 2023.
- 3) Notice to Leave dated 4 July 2024; and
- 4) Sheriff Officer execution dated 11 July 2024.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 3 June 2025 to be heard by way of conference call. That CMD was continued to allow the Respondent to obtain legal advice on the Application and a new CMD was fixed for 25 November 2025, again to be heard by way of conference call. Reference

is made to the CMD Note dated 3 June 2025 for the full details of the issues discussed at that CMD

- The Case Management Discussion

The Applicants were represented by Miss MacDonald, solicitor and the Respondent appeared and represented herself. Miss MacDonald confirmed that the Applicants were insisting on the Application and were seeking an eviction order. The Respondent confirmed that she had had the opportunity to seek legal advice and had taken advice from various parties. She confirmed that she did not seek to resist the Application or the granting of an eviction order. She explained that it was her intention to move out of the Property and that she had been working with the local authority and registered social landlords as well as looking at private rentals to secure alternative accommodation. She indicated that she had rejected at least one property offered to her due to issues she perceived with the bathroom and that she did not qualify financially for private rentals she had looked at. When asked what sort of timescale she felt she needed to secure alternative accommodation, she indicated that she could not say how long it would take. She also indicated that she was being pursued for arrears of rent by her landlord.

Miss MacDonald indicated that there had been attempts to engage with the Respondent, but she had not initially responded. As a result, sheriff officers had been engaged to check the situation, and they had therefore become aware of the Respondent's attempts to secure alternative accommodation. Miss MacDonald thereafter indicated that, in the circumstances, the standard position of the Applicants would be that, should an eviction order be granted, that enforcement of same could be delayed for a period of 3 months. In response, the Respondent indicated that she did not know whether that would be sufficient for her to find alternative accommodation but suggested no alternative timescale.

In terms of her personal circumstances, reference is made to the CMD Note dated 3 June 2025 for details. The Respondent indicated that her children are now 11, 15 and 17 years old and that she still worked part time in care. She explained that her children were in local schools but that, at this stage, her sister's children were not now coming to stay with her.

- Findings in Fact and Law

- 1) The Respondent entered into a Private Residential Tenancy for the Property which commenced on 24 August 2023.
- 2) The landlord per that tenancy agreement is Mfon Oso James Usua.
- 3) The Applicants are the holders of a standard security over the Property granted by Mr Usua.
- 4) That the Property is subject to a standard security in favour of the Applicants.
- 5) Following default by Mr Usua, decree was granted by Aberdeen Sheriff Court on 2 March 2023 under the Conveyancing and Feudal Reform (Scotland) Act 1970 granting, *inter alia* the Applicants warrant to sell and to enter into possession of the Property.
- 6) That the Applicants are entitled to sell the Property.

- 7) That the Applicants require the tenant to vacate the Property for the purpose of selling or disposing of it with vacant possession.
- 8) By Notice to Leave dated 4 July 2024 served by way of sheriff officers on 11 July 2024, the Applicants gave notice to the Respondent of their intention to recover possession of the Property in terms of Ground 2 of the Private Housing (Tenancies)(Scotland) Act 2016 and confirmed that proceedings would not be raised before 4 October 2024.
- 9) The Notice to Leave was in the prescribed format.
- 10) That the Applicants have complied with all notice requirements in terms of the Private Housing (Tenancies)(Scotland) Act 2016 and that Ground 2 of Schedule 3 has been made out.
- 11) That the Respondent lives at the Property with her 3 children aged 11, 15 and 17 years.
- 12) That the Respondent's children are in schools local to the Property.
- 13) That the Respondent works part time.
- 14) That the Respondent intends to leave the Property.

- Reasons for Decision

The Applicants have complied with the notice requirements of the 2016 Act. Standing the terms of the supporting documents, the requirements of Ground 2 of Schedule 3 were also made out. The only issue remaining for the Tribunal was whether it was reasonable to grant an Eviction Order in the circumstances. The reason for seeking the eviction order is for the Applicants, as heritable creditors, to sell the Property in order to repay the sums due to them under the standard security granted in their favour over the Property. This had arisen as a result of the borrower's (the Respondent's landlord) default, followed by calling up and then the decree dated 2 March 2023 granted by Aberdeen Sheriff Court and the warrant to sell contained therein. The notice to leave served on the Respondent expired on 4 October 2024 and the Respondent had therefore had more than a year's notice of the Applicants' intentions. The basis for recovery was due to the Respondent's landlord's failures and not the actions of the Respondent and the Tribunal had every sympathy for the Respondent and her family for being placed in this situation. Having heard both parties and having considered the relevant circumstances as outlined above, the Tribunal was satisfied that it was reasonable to grant an Eviction Order. The Respondent made it clear that she did not dispute the basis of recovery and, despite her circumstances, did not wish to advance an argument that it was not reasonable to grant the order. Accordingly, the Applicants' rights and duties under and in terms of the standard security in default by the borrower and the Respondent's decision to not oppose the Application weighed in favour of the decision that it was reasonable to grant the order.

In addition, the Tribunal considered the question of whether or not to order a delay in the enforcement of the eviction order in terms of Rule 16A(d) of the Tribunal's rules of procedure. A delay in execution totalling 3 months was discussed. Whilst the Respondent could not specify a timescale, she would be content with, the Tribunal was of the view that a delay of 3 months was fair and reasonable to allow her to secure alternative accommodation. It was clear that she was already engaging with the appropriate authorities and was therefore some way down that process. The

Tribunal therefore resolved to delay the enforcement of the eviction order for a total period of 3 months from the date of the order.

- Decision

That an eviction order be granted, but that in terms of Rule 16A(d) of the Tribunal's rules of procedure, a delay in execution of that order for a period of 3 months will be granted.

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 Cowan

Legal Member/Chair

25 November 2025
Date