



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, as amended (“the 1988 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/2724

Re: Property at Flat 2/1, 82 Stock Street, Paisley, PA2 6NH (“the Property”)

Parties:

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

Mr Radoslaw Szapowalow, Agnieszka Jwaniwicz, Flat 2/1, 82 Stock Street, Paisley, PA2 6NH (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. By application received on 20 June 2025, the Applicant sought an eviction order under Ground 2 of the Housing (Scotland) Act 1988. The Applicant is the heritable creditor who had called up the standard security over the Property, due to mortgage default by the landlord, Mr David Barrie, in respect of this tenancy. The Applicant had notified the Respondents (the tenants in respect of this tenancy) of the situation by way of a Notice to the Occupier dated 15 January 2024. The Applicant had subsequently obtained Decree for Possession from Paisley Sheriff Court on 9 July 2024 but were unable to take physical possession of the Property, due to the tenancy with the Respondents, who were still in occupation. The tenancy had commenced on 26 January 2015 and was therefore an Assured Tenancy. Supporting documentation was lodged

with the application, including a copy of the tenancy agreement, Section 11 notification to the local authority, copies of the decree and other notices referred to above and a copy of the AT6 form served on the Respondents.

2. Following initial procedures, on 18 July 2025, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.
3. Notification of the application and details of the Case Management Discussion ("CMD") fixed for 4 December 2025 was served on the Respondent by way of Sheriff Officer on 20 October 2025. No written representations were received from the Respondent prior to the CMD, other than a request for a Polish interpreter to be arranged by the Tribunal to assist them at the CMD.

Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference call on 4 December 2025 at 2pm, attended by Miss Katie McDonald of Aberdeen Considine, the Applicant's solicitors, and both Respondents. An interpreter, Mr Milevski, was also in attendance to assist the Respondents. He interpreted for the Respondents throughout the CMD.
5. Following introductions and introductory remarks by the Legal Member, who also explained the purpose of the CMD, there was discussion regarding the eviction application and the Tribunal Members asked a number of questions.
6. Miss McDonald confirmed that the Applicant was still seeking an eviction order. She explained the background to the application and the ground on which eviction was sought. She made reference to the supporting documents already lodged and to the court decree having been granted to the Applicant on 9 July 2024, allowing the Applicant to repossess the property, as heritable creditor, due to mortgage default by the landlord. The Respondents had been formally notified of the 'calling-up' of the mortgage prior to this (15 January 2024). An AT6 was subsequently served on the Respondents notifying of the Applicant's intention to sell with vacant possession. The notice period in the AT6 had expired on 26 May 2025 and Miss McDonald submitted that the Respondents had therefore had ample time to vacate the Property. As to contact from the Respondent, the Applicant had been contacted by CAB on behalf of the Respondents in June 2024 who advised that the Respondents had to await an eviction order being granted so that they could be re-housed by Renfrewshire Council. This position was reiterated through the Sheriff Officers who had served the AT6 on the Respondents and had spoken with them. In the circumstances, Miss McDonald submitted that it was reasonable for the eviction order sought to be granted by the Tribunal.
7. It was ascertained from the Respondents that they agreed with what Miss McDonald had stated and that an eviction order was needed before they would get any offers of tenancy accommodation from Renfrewshire Council. They had no objection to the eviction and understood that the Property was not theirs.

The Tribunal enquired about their personal circumstances and were informed that the Respondents are in a civil partnership and live at the Property with their two daughters, aged 27 and 19. They had not been advised by Renfrewshire Council of any specific details as to the timescale for them being offered alternative accommodation after an eviction order was granted. The Respondents indicated that a deferral of the eviction date would be helpful to them. They explained that Mr Szapowalow was seriously ill with a number of health conditions and that Ms Jwaniwicz cared for him. He is in receipt of a pension and the Respondents were in receipt of Universal Credit as neither is in a position to work due to these circumstances. Due to some of his health conditions, Mr Szapowalow would require a bit of extra time to familiarise himself with a new tenancy property as change is not very good for him. Their two daughters are working and their eldest daughter works from home which would also be an issue with them moving, although she hopes to secure a tenancy of her own at some point. The Respondents asked for the longest possible extension on the eviction date.

8. Miss McDonald was asked about the Applicant's position regarding an extension. She indicated that, given the Respondents' circumstances and the festive period 'amnesty' generally operated by the Applicant, it would be unlikely that the eviction order would be implemented until towards the end of January 2026. Her secondary position would be that eviction is delayed for a period of around two months. The Respondents indicated that this timescale would be helpful.
9. The Tribunal Members adjourned to consider the application in private and, on re-convening, advised that the eviction order would be granted, subject to an extension until **27 February 2026**, which it was explained would be the date specified in the eviction order as the earliest date on which the eviction could take place. There was some brief discussion about the procedures to follow and the Respondents were urged to let the local authority know as soon as possible of the Tribunal's decision, to allow their housing application to be prioritised. They confirmed that they would do so. Everyone attending was thanked for their attendance and the CMD concluded.

Findings in Fact

1. The Applicant is the heritable creditor, had been granted decree for re-possession of the Property, following mortgage default by the landlord of the Property and now required to sell the Property with vacant possession.
2. The Respondent is the tenant and occupier of the Property by virtue of an Assured Tenancy which had been entered into with the landlord and had commenced on 26 January 2015.
3. There was a clause regarding Ground 2 being a ground for recovery of possession contained in the tenancy agreement between the landlord and the Respondent.

4. A Notice to Occupier (Form BB) dated 15 January 2024 was served on the Respondent, advising that their landlord's mortgage had been called-up due to mortgage default.
5. An AT6 in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 25 February 2025, stipulating the relevant date of 26 May 2025.
6. The Respondent remained in occupation following expiry of the notice period in the AT6.
7. The Tribunal application was submitted on 20 June 2025, following expiry of the notice period.
8. The Respondent did not lodge written representations but did attend the CMD and did not oppose the application.
9. The Respondent did seek an extension on the date of implementation of the eviction order due to health and other relevant family and personal circumstances.
10. The Respondent had already application for alternative social housing through the local authority but was advised that this would not be further progressed unless and until an eviction order is granted.
11. The Applicant was amenable to an extension on the eviction date of around two months, given the Respondent's circumstances.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the title deeds to the Property obtained by the Tribunal and the oral information provided at the CMD by the Applicant's representative and by the Respondents.
2. The Tribunal found that the application was in order, that the relevant notices in proper form and giving the correct periods of notice had been served on the Respondents and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 1988 Act.
3. The Tribunal considered the application having regard to Ground 2 of Schedule 5 to the 1988 Act, which states as follows:-

“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.”

The Tribunal considered that all elements of the ground for eviction were met. The Property was subject to a heritable security which had been granted before the creation of the tenancy. The security was registered in the title deeds (Land Certificate REN12074) in 2007 and the tenancy was created in 2015. The Tribunal was satisfied from the documentation produced on behalf of the Applicant that, as a result of mortgage default by the landlord, the Applicant was entitled to sell the property and required it for the purpose of disposing of it with vacant possession as they were entitled to do. The Tribunal was also satisfied from examination of the terms of the tenancy agreement that the Respondents had been given notice in writing that possession may be granted on this ground.

4. The Tribunal was also satisfied, with reference to the requirement of Section 18(4) of the 1988 Act that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had regard to both the Applicant's position and to the current family and personal circumstances of the Respondents, as narrated above. The Tribunal considered the length of the tenancy and the fact that the Respondents and their family (two adult daughters) were facing eviction through no fault of their own. It was noted, however, that the Respondent did not wish to oppose the order being granted and took no issue with the Applicant's position. Furthermore, they understood from the local authority that their social housing application would be further progressed only if an order was granted. It was also noted that they had sought advice in the matter from CAB some time ago and that their position had been communicated to the Applicant's agent by CAB in June 2024.
5. The Tribunal then considered the comments of both parties in respect of the matter of an extension of the eviction date. The Tribunal considered it reasonable to exercise its discretion in this regard and add an extension to the usual timeframe for eviction, such that the earliest date to be stated in the eviction order would be **27 February 2026**. The Tribunal considered that this would provide the Respondents with some additional time to engage with the local authority to secure suitable accommodation, given the first Respondent's ill-health and their family circumstances.
6. The Tribunal determined that an order for recovery of possession of the Property could properly be granted at the CMD, subject to the extension mentioned, as there were no facts in dispute nor any other requirement for an Evidential Hearing.

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.

Nicola Weir

Legal Member/Chair

4 December 2025
Date