



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/25/2891

Re: Property at FLAT 10, 7 EAST PILTON FARM CRESCENT, Edinburgh, EH5 2GF (“the Property”)

Parties:

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

Mr Reece Michael Thomson, Kamila Szwemin, FLAT 10, 7 EAST PILTON FARM CRESCENT, Edinburgh, EH5 2GF (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

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 4 July 2025, the Applicant sought an eviction order under Ground 2 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant is the heritable creditor who had called up the standard security over the Property, due to mortgage default by the landlord in respect of this tenancy, Mr Richard Elby. The Applicant had notified the Respondent (the tenants in respect of this tenancy) of the situation and the Calling-up Notice, by way of a Notice to the Occupier dated 19 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 4 October 2021 and was a Private

Residential 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 Notice to Leave served on the Respondent.

2. Following initial procedures, on 27 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 13 January 2026 was served on the Respondent by way of Sheriff Officer on 17 November 2025.
4. No written representations were received from the Respondent prior to the CMD.

Case Management Discussion

5. A Case Management Discussion ("CMD") took place by telephone conference call on 13 January 2026 at 2pm, attended only by Mrs Masters Good of Aberdeen Considine solicitors on behalf of the Applicant. The Tribunal delayed the commencement of the CMD for 5 minutes to see if the Respondent would join but they did not do so.
6. Following introductions and introductory remarks by the Legal Member, Mrs Masters Good explained that they have not had any recent contact with the Respondent. However, they arranged for Sheriff Officers to visit the Property on 8 January 2026 to check that it was still occupied. There was no response at the door but the Sheriff Officers could see that the property was still furnished and that mail had been delivered there addressed to the Respondent. Mrs Masters Good explained that they last had contact from the Respondent in June 2025 when they had said that they were having difficulty finding a new flat. They had been in contact with the local authority and been advised about making a homeless application if evicted.
7. Mrs Masters Good confirmed that an eviction order was sought under Ground 2, that the Property is to be sold by the mortgage lender. She explained that a repossession decree was granted in the Sheriff Court on 9 July 2024 and that a Notice to Leave was thereafter served on the Respondent. The Respondent has resided at the Property since 2021 and are understood to live there alone as a couple. They have had ample time to vacate the Property and have known about their landlord's mortgage having been called up since January 2024 when Form BB was served on them as occupiers, advising them of the calling-up notice. Mrs Masterton Good advised that they have had no contact from the local authority but that the local authority had been aware of these proceedings since they were raised, by virtue of the Section 11 Notice served on them.

8. The Tribunal Members conferred and then confirmed that the eviction order sought would be granted. Mrs Masterton Good was advised that the decision paperwork would be issued to both parties shortly and was thanked for her attendance at the CMD.

Findings in Fact

1. The Applicant is the heritable creditor, had been granted decree for re-possession of the Property on 9 July 2024 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 a Private Residential Tenancy which had been entered into with the landlord and had commenced on 4 October 2021.
3. A Notice to Occupier (Form BB) dated 19 January 2024 was served on the Respondent, advising that their landlord's mortgage had been called-up due to mortgage default.
4. A Notice to Leave in proper form and giving the requisite period of notice was served on the Respondent by Sheriff Officer on 2 April 2025.
5. The date specified in the Notice to Leave as the earliest date an eviction application could be lodged with the Tribunal was specified as 26 June 2025.
6. The Tribunal Application was submitted on 4 July 2025.
7. The Respondent remained in occupation following expiry of the notice period in the Notice to Leave.
8. The Respondent advised the Applicant's agents in June 2025 that they were having difficulty finding alternative accommodation but had made application to the local authority for housing.
9. The Respondent did not lodge written representations, nor attend the CMD.

Reasons for Decision

1. The Tribunal considered 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 agent.
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 Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.

3. The Tribunal considered the application having regard to Ground 2 of Schedule 3 to the 2016 Act, which states as follows:-

“Property to be sold by lender

2(1) It is an eviction ground that a lender intends to sell the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the let property is subject to a heritable security,

(b) the creditor under that security is entitled to sell the property,

(c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”

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 MID99420) in 2007 and the tenancy was created in 2021. 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.

4. The Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances, to grant the eviction order sought. The Tribunal had regard to the Applicant's position and to the fact that the Respondent had been aware of the calling-up notice in respect of their landlord's mortgage for almost two years, since 19 January 2024. They had been served with the Notice to Leave on 2 April 2025. They had remained in occupation at the end of the Notice period, explaining to the Applicant's agents that they had not been able to secure alternative accommodation but had been in contact with their local authority about making a homeless application. The Respondent had been notified of the Tribunal proceedings and details of the CMD by Sheriff Officer on 17 November 2025 so was aware of these proceedings and had opted not to participate. The Tribunal did not have any information before it to contradict the information provided by the Applicant, nor to advance any 'reasonableness' arguments on behalf of the Respondent.
5. The Tribunal accordingly determined that an order for recovery of possession of the Property could properly be granted at the CMD as there were no facts in dispute nor any other requirement for an Evidential Hearing.
6. The Tribunal's decision 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.

Nicola Weir

Legal Member/Chair

13 January 2026

Date