



**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 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/25/5143

**Re: Property at 148 Mount Annan Drive, Kings Park, Glasgow, G44 4SA (“the
Property”)**

Parties:

**Santander UK, 2 Triton Square, Regents Place, London, NW1 3AN (“the
Applicant”)**

**Syed Aijaz Uddin Azad, 148 Mount Annan Drive, Kings Park, Glasgow, G44
4SA (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make no order and dismiss the application.**

Background

- 1 This is an application for an eviction order under section 18 of the Housing (Scotland) Act 1988 and rule 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant sought an eviction order on the basis that the mortgage lender intended to sell the property.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take place on 9 June 2026. Notice of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers.

- 3 On 22 June 2026 the Legal Services Agency Ltd submitted written submissions in response to the application on behalf of the Respondent. On 1 June 2026 Ascent Legal Scotland submitted written submissions on behalf of the Applicant. On 3 June 2026 the Legal Services Agency Ltd submitted a list of authorities on behalf of the Respondent.

The CMD

- 4 The CMD took place on 9 June 2026 by teleconference. Miss Fidelo of Legal Services Agency Ltd appeared on behalf of the Respondent. Mr Docherty of Ascent Legal Scotland appeared on behalf of the Applicant.
- 5 The tribunal had the following documents before it:-
 - (i) Form E application form and supporting documents including tenancy agreement, extract decree, notice to quit and Form AT6 with proof of service upon the Respondent, Form BB notice to the occupier and proof of service, section 11 notice and proof of service to the local authority.
 - (ii) The Respondent's written submissions and list of authorities; and
 - (iii) The Applicant's written submissions.
- 6 The tribunal heard oral submissions from the parties. The following is a summary of the key elements of the submissions.
- 7 It was noted that the Respondent had raised various points regarding the competency of the application, the first being that the notice to quit was invalid. Miss Fidelo explained that the notice to quit did not coincide with the ish. She noted that the Applicant's position is that there should be a special exception in mortgage lender cases. However, the case the Applicant had referred to in support of this, namely *TSB v Kerr (FTS/HPC/EV/24/2079)*, did not contain any analysis of whether a notice to quit that does not terminate a tenancy at an ish date is valid. Furthermore, that application had been unopposed. Miss Fidelo referred to a decision of the Tribunal in *Royal Bank of Scotland v Shah (FTS/HPC/EV/19/2310)* where the Tribunal had given weight to the fact that the notice to quit requires to terminate the contractual tenancy at the ish.
- 8 Mr Docherty explained that this case highlighted the unfortunate position that where the legislation is silent and the Respondent is seeking to establish a requirement that the notice to quit should coincide with the ish, the burden is on the Respondent, not the Applicant. Mr Docherty referred to the excerpt from *Evictions in Scotland* by Adrian Stalker which had been produced by the Respondent which highlighted there may be exceptions to the requirement for a notice to quit to coincide with the ish. The use of ground 2 of schedule 5 of the 1988 Act is such an exception. Mr Docherty submitted that the tribunal would have the power to waive section 18(5)(b) in view of the wording of ground 2 which permits the Tribunal to dispense with the requirement to give notice that ground 2 may be invoked. Section 18 required to be read alongside schedule 5

of the 1988 Act. The tribunal can dispense with the requirement to give notice in writing of ground 2 before section 18(6) can be triggered.

- 9 The tribunal proceeded to hear submissions on the other competency issues raised by the Respondent however those are not relevant to this decision.
- 10 The tribunal concluded the CMD, advising that it would issue its decision in writing in due course.

Findings in fact and law

- 11 The Respondent entered into an assured tenancy agreement with the registered owner of the property. The initial term of the tenancy was from 1 June 2008 to 1 June 2011. In the absence of explicit provision in the tenancy agreement the tenancy has tacitly relocated on 1 June each year.
- 12 The registered owner granted a standard security over the property to the Applicant on 18 November 2005.
- 13 On 5 December 2024 the Applicant obtained an extract decree against the registered owner which entitles them to enter in possession, and sell, the property.
- 14 On 6 August 2025 the Applicant served the Respondent with a notice to quit. The notice to quit seeks to terminate the tenancy as at 10 October 2025.
- 15 The 10 October 2025 is not an ish date. The contractual tenancy has not been terminated.
- 16 In terms of section 18(6) of the 1988 Act the tribunal cannot make an eviction order where the ground for possession is ground 2 unless the contractual tenancy has been terminated by a notice to quit, or the terms of the tenancy make provision for it to be brought to an end on the ground in question. The terms of the tenancy do not make explicit provision for the tenancy to be brought to an end on ground 2.

Reasons for decision

- 17 The tribunal took into account all documents and submissions in its determination of the application. The tribunal was satisfied it had sufficient information to reach a decision following the CMD and that to do so would not be contrary to the interests of the parties.
- 18 In this case the Applicant seeks to recover possession of the property under ground 2 of schedule 5 of the Housing (Scotland) Act 1988.
- 19 Ground 2 is in the following terms:-

“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.”

- 20 Section 18(1) of the 1988 Act states that *“The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one of more of the grounds set out in Schedule 5 to this Act”*.
- 21 Section 18(6) goes on to state that *“The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy unless – (a) the ground for possession is Ground 2 in part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9...Ground 10, Ground 15 or Ground 17; and (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question”*.
- 22 Section 16(1) of the 1988 Act states *“After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below - (a) continue to have the assured tenancy of the house”*. Section 16(3) goes on to state that *“Notwithstanding anything in the terms and conditions of tenancy of a house being a statutory assured tenancy, a landlord who obtains an order for possession of the house as against the tenant shall not be required to give him any notice to quit.”*
- 23 An assured tenancy will therefore become a statutory assured tenancy when the contractual tenancy is terminated. At page 231 of Adrian Stalker’s *Evictions in Scotland*, 2nd edition he highlights that *“Section 16(3) should not be read as indicating that it is not necessary for the landlord to serve a notice to quit under any circumstances. A valid notice to quit terminating the tenancy and bringing about a statutory assured tenancy under section 16 may be necessary preliminary to an action under section 18 or 33. However, once the tenancy is terminated and the landlord obtains an order under one of the sections, no further notice to quit is required.”*
- 24 The effect of section 18(6) is that the tribunal cannot make an eviction order in respect of an assured tenancy on ground 2 unless the contractual assured tenancy between the parties has been terminated by service of a notice to quit, or the terms of the tenancy make provision for it to be terminated on the ground relied upon. The tenancy agreement in this case is silent on the grounds for possession.

- 25 The Applicant has argued that the provisions of ground 2, which permit the tribunal to dispense with the requirement of giving notice to the Respondent that ground 2 may be invoked, provides the tribunal with the power to essentially set section 18(6)(b) aside. The tribunal does not accept the Applicant's position on this point. If it were the intention of Parliament to remove ground 2 from the requirements of section 18(6), it would not have been explicitly referred to in section 18(6)(a). The notice the landlord requires to give the tenant under the provisions of ground 2 is, in the view of the tribunal, separate from the requirement under section 18(6)(b) to include explicit provision in the terms of the tenancy that possession may be sought on that ground.
- 26 Accordingly, as the tenancy agreement does not include provision for possession to be sought on ground 2, the tribunal cannot make an eviction order unless the contractual assured tenancy between the parties has been terminated.
- 27 The Applicant submits that the Housing (Scotland) Act 1988 does not explicitly require a notice to quit to terminate the tenancy at the ish. However, the purpose of a notice to quit is primarily to prevent the contractual tenancy by continuing by tacit relocation. As such, it must terminate the tenancy at the ish, although as pointed out by Adrian Stalker (*Evictions in Scotland*, 2nd ed, page 59) a notice to quit that requires the tenant to leave the day after the ish may also be valid. The tribunal accepts there may be some exceptions, such as a breach of contract on the part of the tenant during the course of the tenancy. However, the tribunal is not satisfied that there is such an exception for applications brought under ground 2. No persuasive authority has been provided for this supposition and if it were Parliament's intention to make such an exception it would not have included ground 2 in the wording of section 18(6)(a). The case of *TSB v Kerr* can be distinguished in that the Tribunal was satisfied in that case that there was sufficient reference in the tenancy agreement that possession could be sought on ground 2. There is no such reference in the tenancy agreement in this case.
- 28 Accordingly, by virtue of section 18(6), the tribunal cannot make an eviction order as the contractual tenancy between the parties has not been terminated.
- 29 For the avoidance of doubt, having determined that the notice to quit is invalid, the tribunal did not require to determine the other competency issues raised by the Respondent.
- 30 The tribunal therefore determined to refuse the application and make no order.
- 31 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

Legal Member/Chair

25 August 2026

Date