

Housing and Property Chamber
First-tier Tribunal for Scotland



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/25/4435

Re: Property at 43 Glenmuir Road, Ayr, KA8 9RG (“the Property”)

Parties:

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

John McKeen, 43 Glenmuir Road, Ayr, KA8 9RG (“the Respondent”)

Tribunal Members:

Gabrielle Miller (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for recovery and possession should be granted in favour of the Applicant. The decision was made *avizandum*.

Background

1. An application was received by the Housing and Property Chamber 14th October 2025. The application was submitted under Rule 65 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on ground 2 of the Housing (Scotland)(Act) 1988 (“the Act”).
2. On 23rd April 2026, all parties were written to with the date for the Case Management Discussion (“CMD”) of 26th May 2026 at 2pm by teleconferencing. The letter also requested all written representations be submitted by 14th May 2026.
3. On 24th April 2026, sheriff officers served the letter with notice of the CMD date and documentation upon the Respondent by letterbox service. This was evidenced by Certificate of Intimation dated 24th April 2026.

4. A CMD was held on 26th May 2026 at 2pm by teleconferencing. The Respondent did not attend the CMD. The Tribunal raised that the issue raised in the preliminary paperwork concerning the validity of the application given that the Notice to Quit was not served on the ish had not been resolved. The CMD was continued to a new date for the Applicant to lodge a submission addressing this point. A direction was issued to that effect.
5. On 25th June 2026, the Applicant's solicitor emailed the Housing and Property Chamber lodging a submission with supporting legal argument and case law in terms of the Applicant's position that the application was valid. In summary this is that there is an exemption under Section 18 of the Act as it is ground 2 and that this has been detailed in the lease.
6. On 13th August 2026, all parties were written to with the date for the Case Management Discussion ("CMD") of 3rd September 2026 at 10am by teleconferencing. The letter also requested all written representations be submitted by 13th August 2026.

The Case Management Discussion

7. A CMD was held on 3rd September 2026 at 10am by teleconferencing. The Applicant was not present but was represented by Mr Steven Docherty, Solicitor, Ascent Legal Scotland. Mr Josh Kennedy, Trainee Solicitor was also present observing the Tribunal. The Respondent was not present. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make any representations in advance of the CMD.
8. Mr Docherty referred to his submission. The Tribunal noted that it was detailed in its content. In terms of the legal argument as to why this is a valid application it was contained in that submission.
9. Mr Docherty had no information about the Respondent. It is not known if he has any disabilities or vulnerabilities.
10. The Tribunal queried if there had been any communication from the Respondent. Mr Docherty said that he was not aware of any communications from the Respondent. The Applicant is not collecting rent from the Respondent as it is not the Respondent's landlord. The Tribunal then queried if the Respondent was still living in the Property. Mr Docherty said that he could not answer that. He said that he will instruct sheriff officers to undertake the appropriate investigations and report back to the Tribunal. The Tribunal said that it would make its decision *avizandum* after that report was received.
11. On 9th September 2026, the Applicant's solicitor emailed the Housing and Property Chamber to lodge a sheriff officer report. The sheriff officers have concluded that the Property is no longer occupied. However, as there were some furnishings left the Applicant's solicitor emphasised the importance of an order being granted as per his motion at the CMD.

Findings and reason for decision

12. The parties entered into a tenancy from 28th December 2011 to 27th June 2012. The Tenancy was continued by tacit relocation.
13. A decree was granted for repossession of the Property from the Landlord in favour of the Applicant on 12th September 2024 at Ayr Sheriff Court.
14. The Applicant served a Notice to Quit and a AT6 upon the Respondent. The AT6 stated that ground 2 was the eviction ground.
15. The Notice to Quit had an incorrect ish date.
16. The tenancy agreement expressly referred to ground 2 as a ground upon which recovery of possession could be sought.
17. The Tribunal has considered the effect of the incorrect ish date contained within the Notice to Quit. Ordinarily, the validity of a Notice to Quit requires compliance with the statutory requirements relating to the termination of a tenancy. However, the Tribunal must also consider the operation of section 18 of the Act and whether the circumstances disclose an exception such that the defect is not fatal to the proceedings.
18. In the present case, the application is founded upon ground 2. The Tribunal notes that ground 2 is expressly referred to within the tenancy agreement. The lease therefore provided the Respondent with prior notice that recovery of possession could be sought on that basis. The statutory purpose of notice requirements is to ensure that a tenant is aware both of the landlord's intention (or in this case the mortgage provider's intention) to recover possession and the legal basis upon which that recovery is sought.
19. The existence of the contractual reference to ground 2 within the tenancy agreement is significant. The Respondent agreed to a tenancy which expressly contemplated recovery of possession on that ground.

Decision

20. The Tribunal finds that the incorrect ish date contained within the Notice to Quit does not render the notice invalid. Having regard to section 18(6) of the Housing (Scotland) Act, the express reference to ground 2 within the tenancy agreement and the absence of prejudice to the Respondent, the Tribunal is satisfied that the Applicant is entitled to rely upon the notice and proceed upon ground 2.
21. The Tribunal has also considered the evidence regarding the Respondent's occupation of the property. The Applicant's solicitor advised that investigations had been undertaken to ascertain whether the Respondent continued to reside at the let property. Those investigations included instructing sheriff officers to attend the address. The sheriff officer who carried out those enquiries formed the view that the Respondent was not residing at the property at the time of their attendance.

22. The Tribunal notes, however, that when the Case Management Discussion notice was previously served, the sheriff officer reported that the Respondent was residing at the Property. The Tribunal observes that this attendance took place several months prior to the present proceedings and circumstances may have changed since that time but it is not confirmed and so an order is still required.
23. The Tribunal further notes that the Respondent has made no representations in respect of the application. No written response has been lodged, no challenge has been made to the evidence advanced by the Respondent and the Respondent has not attended either of the CMDs. In these circumstances, there is no evidence before the Tribunal to contradict the information obtained through the Applicant's investigations.
24. The Respondent has no known vulnerabilities or disabilities.
25. The Tribunal has also considered the basis upon which possession is sought. The Applicant relies upon ground 2 of Schedule 5 to the Housing (Scotland) Act 1988, namely that the dwelling-house is subject to a heritable security granted before the commencement of the tenancy and that possession is required by the lender in the exercise of its rights under that security. The Tribunal notes that ground 2 is expressly referred to within the tenancy agreement. Accordingly, the Respondent was given notice at the commencement of the tenancy that recovery of possession might be sought on that statutory ground.
26. The Tribunal accepts that the Notice to Quit contained an incorrect ish date. However, having regard to section 18(6) of the Housing (Scotland) Act, the Tribunal is satisfied that the error does invalidate the notice but it is not required in the particular circumstances of this case. The purpose of the statutory notice provisions is to ensure that a tenant is adequately informed of the landlord's (or in this case the mortgage provider's) intention to recover possession and the basis upon which possession is sought. The Tribunal is satisfied that the Respondent was aware or ought reasonably to have been aware that the Applicant intended to rely upon ground 2.
27. The Tribunal emphasises that its decision in this matter is based upon the particular facts and circumstances of this case. In reaching its decision to grant an eviction order, the Tribunal has had regard to the cumulative effect of a number of factors, namely: the reliance upon ground 2 of Schedule 5 of the Act; the fact that ground 2 was expressly referred to within the tenancy agreement; the operation of section 18(6) in relation to the defect in the Notice to Quit; the absence of any material prejudice arising from the incorrect ish date; the investigations undertaken by the Applicant to ascertain the Respondent's occupation of the Property; and the Respondent's failure to engage with these proceedings by either lodging representations or attending the CMDs. The Tribunal does not consider that the presence of an incorrect ish date will invariably be cured by section 18 in every case. Rather, the Tribunal is satisfied that, on the specific facts before it, the defect is not fatal to the proceedings and that it is reasonable and lawful to grant the eviction order sought.

28. The Tribunal found that ground 2 has been established and granted an order in favour of the Applicant. The Applicant is entitled to an Order of for recovery of possession.

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.

Gabrielle Miller

25th September 2026

Legal Member/Chair

Date