

**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/19/2750**

**Re: Property at 9 Loccard Road, Stevenston, KA20 4AR (“the Property”)**

**Parties:**

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

**Mr Robert Murphy, 9 Loccard Road, Stevenston, KA20 4AR (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.**

**Background**

On 2<sup>nd</sup> September 2019 the Applicants’ Solicitor lodged an application under Rule 65 of the Tribunal’s Rules, seeking eviction of the Respondent from the property.

Lodged with the Application were:

1. Copy Tenancy Agreement
2. Copy AT6
3. Proof of Posting of AT6
4. Copy Decree for Possession
5. Section 11 Notice

**Case Management Discussion**

The Applicant was represented by Louise McAlister, Solicitor, of Ascent Legal. The Respondent was present, and was accompanied by his sister, Ann Spence, as his supporter.

The Chairperson introduced everyone, and explained the purpose of a Case Management Discussion in terms of Rule 17 of the Tribunal's Procedural Rules. She explained that she did have the power to decide the case at the Case Management Discussion if she was satisfied that she could.

Miss McAlister presented the case for the Applicants. She said that the Applicants were heritable creditors of the property, in terms of a Standard Security granted by the owner of the property, Peter Weldon, and registered in the Land Register on 6<sup>th</sup> January 2009. Mr Weldon defaulted on the mortgage and the Applicants obtained a decree for possession of the property at Kilmarnock Sheriff Court on 18<sup>th</sup> December 2018.

Miss McAlister said that attempted to exercise their decree and discovered, in or around March 2019 that the Respondent had a Tenancy Agreement in respect of the property. He provided them with a copy. He said that he was looking for alternative accommodation.

Miss McAlister said that an AT6 was served on the Respondent on 4<sup>th</sup> May 2019, citing ground 2 of Schedule 5 of the Housing (Scotland) Act 1988. No Notice to Quit was required as the ground is fully specified in clause 12.2 of the Tenancy Agreement.

Miss McAlister said that further discussions were had with the Respondent, and the Applicants agreed to give him until the end of July 2019 to find alternative accommodation. Unfortunately he did not leave, and the Applicants instructed Miss McAlister to raise tribunal proceedings.

Miss McAlister submitted that the Ground had been met and it was mandatory to grant the order for eviction.

The Chairperson explained that Applicants' position to the Respondent, and asked him for his comments. He said that he had recently been told that he had acquired enough points to allow him to be allocated a local authority property. He was waiting for keys to view a property that had become vacant. The existing tenant had died so he could not exactly ask them to hurry up the process. He had kept in touch with the Applicants to let them know what was going on. He said that until very recently Mr Weldon had still been collecting rent from him.

The Respondent said that the Housing Department said that he needed to have been served with a Notice To Quit, and they needed to see it.

The Chairperson commented that the Respondent's behaviour was in no way being criticised, he had found himself in an impossible situation which was not of his own making. She explained that, because the Tenancy Agreement, at Clause 12.2, fully laid out that he could be evicted in relation to ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 there was no requirement on the Applicants to serve a Notice To Quit. The AT6, served on 4<sup>th</sup> May 2019, was the only document that they needed to serve. The Applicant's solicitor certified her file copy of the AT6 and gave it to the Respondent so that he could take it to the Housing Department.

The Chairperson explained that as the Applicants had adopted the correct procedure, and served all the documents that they needed to serve, it was mandatory for her to grant the order, she had no choice.

### **Findings In Fact**

1. The Applicants are heritable creditors of the property in terms of the Standard Security;
2. The Applicants have a decree for possession, granted at Kilmarnock Sheriff Court on 18<sup>th</sup> December 2018;
3. The Respondent has a Tenancy Agreement in relation to the property;
4. The Applicants have validly served an AT6 on the Respondent.

### **Reasons For Decision**

Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 state as follows:

*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 Applicants have satisfied Ground 2.

### **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.**

Alison Kelly

\_\_\_\_\_  
**Legal Member/Chair**

J

\_\_\_\_\_  
**Date**

7/11/19