



**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/19/0727

Re: Property at 1/R 5 Ardnahoe Avenue, Glasgow, G42 0DF (“the Property”)

Parties:

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

**Mr Mohammed Riaz, 1/R 5 Ardnahoe Avenue, Glasgow, G42 0DF (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

This is an application dated 5th March 2019 brought in terms of Rule 65 (Application for order for possession in relation to assured tenancies) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant provided with its application copies of the short assured tenancy agreement, section 19 notice (form AT6), Section 11 notice, copy extract decree and relevant execution of service.

All of these documents and forms had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The form AT6 intimated to the tenant that the Applicant intended to raise proceedings for possession of the house on ground 2 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 3rd April 2019, and I was provided with the execution of service.

In response to service of the papers, the Respondent wrote to the Tribunal by letter received on 5th April 2019 requesting a postponement of the Case Management Discussion set for 26th April 2019, as he was about to depart on a pre-booked family holiday and wished time to take legal advice.

That request was granted by the Tribunal, who advised the parties of that decision by letters dated 10th April 2019.

The Tribunal then set today's date for the Case Management Discussion, and parties were advised of that date by recorded delivery letters dated 18th April 2019. The Respondent was not at the Property when delivery was attempted by the post office on 19th April 2019, and a card was left for him through the letterbox advising him of the letter and asking him to call for it. He did not do so.

Case Management Discussion

A Case Management Discussion was held on 22nd May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mrs Neep, solicitor. The Respondent did not appear, nor was he represented.

I was invited by Mrs Neep with reference to the application and papers to grant the order sought on ground 2 of Schedule 5 to the *Housing (Scotland) Act 1988*.

The landlord of the Property had defaulted on his mortgage agreement with the Applicant, who had called-up the standard security which it held over the Property.

The Applicant obtained decree on 13th January 2017 in terms of the *Conveyancing and Feudal Reform (Scotland) Act 1970*, which *inter alia* granted warrant to the Applicant to enter into possession of the Property and ordained occupiers of the Property to vacate it.

The Applicant had not been made aware of the tenancy agreement, nor had it consented to it.

The Tribunal noted that the section 11 notice was not formatted or laid out in the prescribed form provided by Regulation 6 of the *Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017*.

Mrs Neep advised that the form needed to be adapted to fit the circumstances where the party giving notice was not the original landlord in terms of the tenancy

agreement, but a heritable creditor seeking an eviction order in terms of ground 2 of Schedule 5 to the *Housing (Scotland) Act 1988*.

Statement of Reasons

In terms of Section 18(3) of the *Housing (Scotland) Act 1988* ("the Act"), if the Tribunal is satisfied that any of the grounds in Part I of Schedule 5 to the Act is established then, subject to subsection (6), the Tribunal shall make an order for possession.

Section 18(6) of the Act provides 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 or Ground 8 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.

The Tribunal is satisfied that ground 2 contained in Part 1 of Schedule 5 to the Act has been established. The Property is subject to a heritable security granted before the creation of the tenancy, and as a result of a default by the debtor the Applicant is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement. The terms of the short assured tenancy agreement make provision for it to be brought to an end on the ground in question.

Ground 2 provides that 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 Tribunal is satisfied that it is reasonable to dispense with the requirement of notice.

I consider it reasonable to dispense with the requirement of notice in this case, in circumstances where I was advised by Mrs Neep that the Property was let without the lender's consent and where the Respondent has not appeared nor made any representations against the granting of an order.

Finally, the Tribunal noted that the section 11 notice was not formatted or laid out in the prescribed form provided by Regulation 6 of the *Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017*.

However, as Mrs Neep pointed out, the prescribed form clearly envisages a notification from a landlord to a local authority. Indeed, both section 19A of the Act and section 11 of the *Homelessness (Scotland) Act 2003* both refer to the situation where a landlord raises proceedings for possession and where the landlord shall give notice to the local authority.

Clearly, for the purposes of these statutory provisions, a heritable creditor such as the Applicant can be considered to be "a landlord", and is subject to the obligation to give notice of the proceedings to the local authority.

However, it seems equally clear to the Tribunal that the terms of the prescribed form require to be altered to reflect the heritable creditor's interest in the Property and the fact that it is the heritable creditor that is bringing the application.

That being so, the Tribunal noted that the section 11 notice here broadly contained the information required in the prescribed form, together with certain additional information concerning the basis upon which the Applicant is bringing this application, albeit that it is not formatted in exactly the form prescribed and has additional content.

The Tribunal considered in these circumstances that the section 11 notice was sufficient to be treated as a valid notice in terms of the relevant legislation, and accepted it as such.

For the above reasons, the Tribunal shall make an order for possession.

Decision

In these circumstances, the Tribunal will make an order for possession of the house let on the tenancy as sought in this application.

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.

Neil Kinnear

Legal Member/Chair

22/05/19

Date