

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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/23/1312

**Re: 9 Broom Wynd, Shotts, ML7 4HP
 (“the Property”)**

Parties:

National Westminster Bank Public Limited Company, a company registered under the Companies Acts with registered number 00929027 and having its registered office at 250 Bishopsgate, London, EC2M 4AA (“the Applicant”)

Mr Darren Goldie, 9 Broom Wynd, Shotts, ML7 4HP (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Helen Barclay (Ordinary Member)

Present:

The case management discussion in relation to case reference FTS/HPC/EV/23/1312 took place at 10am on Friday 22 September 2023 by teleconference call (“**the CMD**”). The Applicant was not present at the CMD but was represented by Ms Chloe Imrie of Aberdeen Considine (“**Applicant’s Representatives**”). The Respondent was not present and was not represented at the CMD (but had informed the Tribunal of this in advance). The clerk to the Tribunal was Rachael Pender.

DECISION

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

BACKGROUND

1. An application was made to the Tribunal under section 18 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 65 (*Application for order for possession in relation to assured tenancies*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. The application was submitted by the Applicant's Representatives and was dated 21 April 2023. An updated application form was later provided dated 9 June 2023 which updated the property address. The possession/eviction grounds were stated to be:

"The property known as 9 Broom Wynd, Shotts, ML7 4HD (the property) is to be sold by the mortgage lender and heritable creditor, National Westminster Bank plc ('the Applicant'), which holds a court order entitling it to take possession of and sell the said property in terms of enforcement of its Standard Security. The Applicant obtained the said court order on 3rd February 2020. The Applicant's agent was made aware of a tenant residing in the property on or around 30th November 2021. The Applicant arranged to take possession of the property on 10th December 2021. However, the Applicant was not able to do so due to the occupation of the property by the tenant, Mr Darren Goldie ('the tenant'). The said tenant entered into a short assured tenancy agreement with James Francis Kennedy, ('the proprietor'), without the knowledge or consent of the Bank. The Applicant was provided with a copy of the tenancy agreement between the proprietor and the tenant stating a commencement date of 21st November 2014. The Applicant served an AT6 Notice on the tenant by Sheriff Officers on 1st November 2022; the tenancy agreement referring to the Applicant's heritable security and Ground 2 of Schedule 5 of the Housing (Scotland) Act 1988. Following expiry of the AT6 Notice, the Applicant received confirmation that the tenant continues to reside in the property."

4. The Applicant's Representatives provided copy documentation to the Tribunal, including (but not limited to):
 - a. Section 11 notice to North Lanarkshire Council dated 21 April 2023, with covering e-mail;
 - b. Form BB notice to the occupier dated 3 July 2019;
 - c. Form AT6 addressed to the Respondent at the Property issued on behalf of the Applicant in respect of ground 2 of schedule 5 to the 1988 Act dated 28 October 2022, noting that proceedings would not be raised before 4 January 2023;
 - d. Certificate of intimation of service personally on the Respondent from sheriff officers of the Form AT6 on 1 November 2022;
 - e. Two pages which purported to be the first and last pages from a "tenancy agreement minute of lease" between James Francis Kennedy and Darren Goldie in respect of the Property with a commencement date of some date in November 2014 and signed on 21 November 2014;
 - f. Extract decree under the Conveyancing and Feudal Reform (Scotland) Act 1970 (court reference number HAM-B863-19) relating to a decree issued at the Sheriff Court Hamilton dated 3 February 2020 in favour of the Applicant against James Kennedy in respect of the Property ("**Decree**").

5. The Applicant's Representatives had confirmed to the Tribunal by e-mail that "the copy of the tenancy agreement has been provided to [them] by the citizens advice bureau on behalf of the tenant. [They] do not have access to a further copy of the agreement to lodge with the Tribunal..." and referred to "clause 2 of the tenancy agreement which makes reference to Ground 2 of Schedule 5 of the 1988 Act and the possession of the property may be taken by a mortgage lender under this ground."
6. A notice of acceptance of the application was issued by the Tribunal dated 29 June 2023 under rule 9 of the HPC Rules ("**Notice of Acceptance**"), which confirmed that the application paperwork had been received by the Tribunal between 21 April and 9 June 2023.
7. The Tribunal noted that James Kennedy was the registered proprietor of the Property (title number LAN184717) and that the Applicant was registered as the holder of a standard security over the Property.
8. A case management discussion had been scheduled for 28 August 2023 but was postponed by agreement between the Applicant's Representatives and the Respondent.
9. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had been notified of the date, time and details of the CMD and that it may proceed in the absence of the Respondent.
10. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had appointed Jim Melvin, Senior Housing Advice Network Officer of Coatbridge Citizens Advice Bureau to represent him. Mr Melvin had confirmed in an e-mail sent to the Tribunal in advance of the CMD that neither he nor the Respondent would be able to attend the CMD but provided information on the Respondent's personal circumstances and noted (amongst other things) that:

"Mr. Goldie was unaware that his landlord had defaulted on secured lending on Mr. Goldie's home until he was informed that the Applicant had obtained possession of his home and had scheduled for Mr. Goldie's landlord to be evicted. Mr. Goldie contacted the applicant's solicitor through the CAB, sending the applicants copies of the remnants of his tenancy agreement still available to him. The existing arrangements for eviction were cancelled.

Mr. Goldie does not wish to object to the applicant's request for permission to evict him."

11. This decision arises out of the CMD.

PROCEEDINGS

12. Ms Imrie confirmed that she was seeking an order for possession on behalf of the Applicant and that it would be reasonable to grant such an order given that the Respondent did not object, if the Respondent were to be evicted the local authority would owe him duties and an order for possession was the only way in which he

would be prioritised by the local authority. She also confirmed that the Applicant was relying on section 18(6) of the 1988 Act with regard to no separate notice to quit having been served.

FINDINGS IN FACT

13. Ground 2 of schedule 5 to the 1988 Act 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.”

14. The Property was subject to a heritable security in favour of the Applicant which was registered on 20 January 2014 and so which had been granted before the creation of the tenancy.

15. The Decree, amongst other things, (i) granted warrant to the Applicant to sell the Property and enter into possession of the Property and, where it had entered into possession, exercise all the rights of the debtor (James Kennedy) in relation to the granting of leases and the management and maintenance of the Property, and (ii) ordained James Kennedy “and any other persons occupying the subjects to vacate the said subjects and Granted for their summary ejection therefrom”.

16. The Tribunal was satisfied, on the balance of probabilities, that the Respondent was the tenant of the Property under an assured tenancy which had commenced in November 2014 and that clause 2 of the tenancy agreement provided that “...the Tenant accepts notice that...the premises are subject to a heritable security granted before the creation of the tenancy and the provisions for recovery of possession by a creditor in Ground 2 of Part 1 of Schedule V of the Housing (Scotland) Act 1988 and section 18(6) if [sic] the Housing (Scotland) Act 1988 apply accordingly.”

17. The Tribunal was satisfied, on the balance of probabilities, that a notice under section 19(1) of the 1988 Act (the Form AT6) had been served on the Respondent, that that notice set out the ground for possession (ground 2) and particulars of it and informed the Respondent that proceedings would not be raised before 4 January 2023, which was a full two months after the date of service of the notice. The Tribunal noted that proceedings had been raised within 6 months of 4 January 2023 (as required in terms of section 19(7) of the 1988 Act).

REASONS FOR DECISION

18. The Tribunal was satisfied, on the balance of probabilities, that:

- a. the requirements of rule 65 of the HPC Rules had been met;
- b. the terms of the tenancy agreement made provision for it to be brought to an end on the basis of ground 2 of schedule 5 to the 1988 Act;
- c. the requirements of ground 2 of schedule 5 to the 1988 Act had been established; and
- d. it was reasonable to grant an order for possession for the following reasons:
 - i. the Respondent had confirmed, through his representative, that he did not object to the grant;
 - ii. the order for possession would enable the Respondent to make a homeless application to the local authority;
 - iii. the Decree was granted in February 2020, over 2.5 years prior to the CMD;
 - iv. based on the information available to the Tribunal, the Applicant had acted reasonably towards the Respondent since being granted Decree, which included agreeing to a postponement of the originally scheduled case management discussion in order to allow the Respondent to obtain representation and advice.

19. Accordingly, in accordance with section 18(4) of the 1988 Act, the Tribunal was satisfied that an order for possession should be granted.

DECISION

20. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 18 of the 1988 on the basis of ground 2 of schedule 5 to the 1988 Act.

21. The order referred to in the preceding paragraph was intimated orally to Ms Imrie of the Applicant's Representatives during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P Woodman

22 September 2023

Legal Member (chair)

Date