



**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/23/4062**

**Re: Property at 9B Lugar Street, Cumnock, Ayrshire, KA18 1AD (“the  
Property”)**

**Parties:**

**Bank Of Scotland PLC, First Floor, Ettrick House, The Gyle, Edinburgh, EH1  
1EH (“the Applicant”)**

**Mr Michael McPake, 9B Lugar Street, Cumnock, Ayrshire, KA18 1AD (“the  
Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

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

**Background**

1. This was the first case management discussion to consider an application by the Applicant dated made in terms of Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (‘the Rules’).
2. The Applicant representative lodged
  - a. a copy of a short assured tenancy agreement that commenced on 3<sup>rd</sup> November 2014,
  - b. copy Form BB to the tenant dated 20<sup>th</sup> August 2021,
  - c. copy decree dated 3<sup>rd</sup> March 2022,
  - d. Copy AT6 form dated 17<sup>th</sup> July 2023
  - e. Certificate of execution of service by sheriff officer of AT6 notice dated 18<sup>th</sup> July 2023

- f. Section 11 notice and evidence of service of S11 notice.
3. The Applicant is seeking an order for possession under ground 2 of the Housing (Scotland) Act 1988 ("the 1988 Act") namely that they are a heritable creditor who has called up a standard security granted by the landlord of the Property, have obtained decree under the Conveyancing and Feudal Reform Scotland Act 1970 and are seeking to sell the property with vacant possession.

### **The Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference at 2pm on 7<sup>th</sup> March 2024. The Applicant was represented by Ms Ellen Masters, Solicitor. The Respondent attended along with his friend Ms Mary Hart as a supporter. The Respondent advised he was hard of hearing and Ms Hart would assist if he struggled to hear the parties. The Tribunal indicated they would speak more loudly and checked during the course of the teleconference CMD that the Respondent could hear them which he confirmed he could.
5. The legal member explained the purpose and order of proceedings.
6. Ms Masters confirmed that she was seeking an order for possession today. She advised that decree for repossession was granted in March 2022 and that an initial AT6 was served on the Respondent but this was not enforced as Mr McPake had sought the help and assistance of his MSP and together they had sought further time from her client the Bank of Scotland to allow the Respondent to seek alternative housing. She advised that she had been in touch regularly with the MSP but despite a year elapsing no suitable house had been found. She confirmed that a second AT6 was then served in July last year, namely the one relied upon in this application and it expired in September 2023 but the Respondent was still resident in the Property and so the Applicant raised this application.
7. With regard to the Applicant's position Ms Master's confirmed that the Applicant requires vacant possession in order to exercise their rights in terms of section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970. She advised that the Respondents has had ample notice of the position, with the Form AT6 having been served on 18<sup>th</sup> July 2023. Ms Masters in response to a direction from the Tribunal asking about whether notice that possession might be recovered on this ground had advised that Notice was given to the Respondent in terms of clause 18 of the tenancy agreement. She also confirmed that she had been advised by the landlord Mr David Logan that the Respondent had not paid his rent for some months and Mr Logan was anxious for the eviction to proceed to stop his arrears accruing.
8. The Respondent advised that he was disappointed with Ms Masters saying she had been in regular contact with him as that was not his understanding, pointing out he had tried and failed to contact her on several occasions. He indicated that he had spent considerable sums on the Property with a view to living there long term and confirmed that he had withheld rent but was

keeping it in a separate account. He advised he was 67 years old and had certain disabilities, that he had been in contact with the Council about alternative housing but there was just nothing available at the current time although he confirmed that if they could offer him a suitable house he would leave immediately. Although he advised he would miss his house and the location it was in, he confirmed that this process has made him ill, that he is now desperate to leave but he does not want to leave Cumnock.

9. He advised under questions that he had not considered sheltered housing as he did not feel he needed care and understood that he would probably have to downsize.
10. Under questions to Ms Masters regarding whether the Applicant had considered taking possession of the Property and selling with a sitting tenant she advised that they did not wish to do this. That their duty to their shareholders meant achieving the best possible sale on the open market and that would be with vacant possession.

### **Findings in Fact and Law**

11. The Property was subject to a standard security granted by the heritable proprietor, David Logan in favour of the Governor and Company of the Bank of Scotland as registered in the Land Register of Scotland on 13<sup>th</sup> February 2007.
12. The Applicant acquired right to the security on 17<sup>th</sup> September 2007 when the Governor and Company of the Bank of Scotland was registered as a public company under the Companies Act 1985 as Bank of Scotland plc.
13. The Respondent and the heritable proprietor of the Property entered into a short assured tenancy agreement commencing on 3<sup>rd</sup> November 2014 until 2<sup>nd</sup> May 2015, and continuing monthly thereafter if not brought to an end.
14. Notice was given to the Respondent before the creation of the tenancy, in terms of clause 18, of the tenancy agreement, that possession of the Property may be recovered by a lending institution where the Property is subject to a legal charge which was made before the date of the tenancy agreement and the lender is entitled to recover possession in order to sell the Property with vacant possession under a power of sale.
15. A Notice of Calling-up of a standard security (Form BB) was served upon the Respondent dated 20<sup>th</sup> August 2021
16. Decree for repossession was granted to the Applicants dated 3<sup>rd</sup> March 2022 as a result of default of payments by the heritable proprietor.
17. The Applicant has the right to sell the subjects and to enter into possession of the subjects and to exercise all powers competent to a creditor in lawful possession.
18. Form AT6 was served upon the Respondents on 18<sup>th</sup> April 2023 by sheriff officer.
19. A S11 notice was served on East Ayrshire Council.
20. The Respondent is currently withholding rent.

21. The Respondent has sought assistance and rehousing from the Council but has not been offered any properties.
22. The Respondent does not wish to leave the Cumnock area. There is a shortage of social housing in this area.
23. It is reasonable to grant an order for possession.

### **Reasons for Decision**

24. Ground 2 of schedule 5 to the 1988 Act provides that 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.”
25. The Property was subject to a heritable security in favour of the Applicant which was registered on 13<sup>th</sup> February 2007, therefore, it was granted before the creation of the tenancy.
26. Notice was given in writing within the tenancy agreement to the Respondents not later than the date of commencement of the tenancy that possession might be recovered on this ground and a decree for repossession was granted by Sheriff Court at Ayr on 3<sup>rd</sup> March 2022. The Respondent has been served with an AT6 notice advising him that the Applicant wishes possession of the Property and although willing to leave he has not been able to find another property to rent.
27. The Tribunal considered all the circumstances of both parties when considering whether it was reasonable to grant the order. The Tribunal noted that the Respondent was initially unhappy to have to leave his home where he has invested a lot of money on improvements however given the length of time it has taken to reach this stage, and the fact no suitable property has been offered he is now keen to leave the property and wishes to move to social housing as he does not wish to rent privately again. He is not opposed to the granting of the order, but is concerned about getting a suitable property in the local area. The Applicant did delay enforcement of the initial AT6 and raising this action for approximately a year to allow the Respondent time to seek other accommodation, but unfortunately there was no success. The Applicant has an order of possession and does not wish to operate as a landlord but wishes to sell and achieve the best market value with vacant possession for its shareholders.
28. In all the circumstances, for the above reasons, the Tribunal considered it was reasonable to grant the order for possession.
29. The Tribunal took into account the fact that there are significant issues in terms of supply of social housing currently and decided that in the

circumstances, to allow the tenant more time to hopefully be offered a suitable Property and to allow him time to move, it would be appropriate to delay execution of the order for a period of 3 months. Ms Masters had no objection to this.

### **Decision**

An order for possession is granted. The order is not to be executed prior to 12 noon on 7th June 2024.

### **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.**

**Legal Member/Chair:**



**Date: 7<sup>th</sup> March 2024**