



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/24/5017

Re: Property at 18 Clashmach Terrace, Huntly, AB54 8PZ (“the Property”)

Parties:

Intrum Mortgage UK Finance Limited, Belvedere, 12 Booth Street, Manchester, M2 4AW (“the Applicant”)

Michael Wijas, 18 Clashmach Terrace, Huntly, AB54 8PZ (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for an order for possession in relation to an assured tenancy in terms of rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The tenancy in question is an Assured Tenancy of the Property granted by Calum Watt in favour of the Respondent commencing on 20th November 2007.
2. The application was dated 31st October 2024 and lodged with the Tribunal on that date. The application relied upon a notice in terms of section 19 (also known as an “AT6”) of the Housing (Scotland) Act 1988 (“the 1988 Act”) dated 15th May 2024. Evidence of service of the notice by Recorded Delivery Post on 15th May 2024 was included with the application.
3. The said AT6 relied upon ground 2 of Schedule 5 to the 1988 Act: that the



house was subject to a heritable security and the Creditor is entitled to sell and requires vacant possession. An Extract Decree of repossession dated 14th September 2023 in favour of Mars Capital Finance Limited against Claum Watt was lodged with the application papers along with further evidence of steps in the repossession process. Mars Capital Finance Limited are now known as Intrum Mortgage UK Finance Limited (being the Applicant in this application).

4. Evidence of a section 11 notice dated 31st October 2024 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Aberdeenshire Council was provided with the application.

The Case Management Discussion

5. A Case Management Discussion (“CMD”) took place by teleconference on 5th August 2025. The Applicant was represented at the CMD by Mr Mark Oswald, solicitor.
6. The Respondent did not join the CMD call. The Tribunal were satisfied that the Application, and details of the CMD, had been intimated upon the Respondent by Sheriff Officers on 16th June 2025. The Tribunal was satisfied that the Respondent had been given reasonable notice of the date, time and place of the CMD and that the requirements of rule 24(1) of the Rules had been duly complied with. In the circumstances the Tribunal proceeded with the application in accordance with rule 29 of those Rules.
7. At the CMD the Tribunal sought further information from the Applicant’s solicitor. The Tribunal was able to make findings in fact at the CMD based on the uncontested evidence which had been provided with the Application and at the CMD.

Findings in Fact

8. The owner of the Property, Calum Watt, executed a standard security over the Property on 31st October 2007 in favour of the Applicant’s predecessor in title, Edeus Mortgage Creators Limited. That security was created prior to the tenancy of the Property granted in favour of the Respondent.
9. On 29th November 2007 the said Calum Watt granted a tenancy of the Property to the Respondent. Neither the Applicant or the Respondent have been able to produce a copy of the tenancy agreement between Calum



Watt and the Respondent.

10. On 14th September 2023, the Applicant's predecessors in title received decree against the said Calum Watt for eviction and declaration that the Applicant is entitled to enter into possession and sell the Property.
11. On 15th May 2024, the Applicant served an AT6 form in correct form addressed to the Respondent, giving the Respondent notice in terms of section 19 of the 1988 Act of an intention to raise proceedings for possession in terms of Ground 2 of Schedule 5 to the 1988 Act. The AT6 gave the Respondent notice that proceedings would not be raised before 31st July 2024. The AT6 form was served by recorded delivery upon the Respondent. The Respondent was thus provided with sufficient notice that the Applicant sought to evict under the ground set out in the AT6.
12. On 31st October 2024, the notice period under the AT6 having expired, the Applicant raised proceedings for an order for possession with the Tribunal, under rule 65.
13. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Aberdeenshire Council on 31st October 2024.
14. The Respondent lives alone at the Property.
15. On or around January 2024 the Respondent advised the Applicant's solicitors that he was seeking alternative accommodation.
16. The Applicant wishes to sell the Property to allow them to recover sums due by Calum Watt in terms of the standard security granted by Calum Watt.
17. There is no reasonable prospect that the Applicant will recover the loan granted to Calum Watt by other means.
18. The Applicant's intention is to repossess and sell the Property in performance of its duties as a heritable creditor.

Reasons for Decision

19. The relevant statutory provisions in the 1988 Act relating to this application are as follows:



18.— *Orders for possession.*

- (1) *The First-tier Tribunal shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.*
- (2) *The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.*
- (4) *If the First-tier Tribunal is satisfied that any of the grounds in Part I or II of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.*

...

- (6) *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 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.*

...

19.— *Notice of proceedings for possession.*

- (1) *The First-tier Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless—*
 - (a) *the landlord ... has served on the tenant a notice in accordance with this section; or*
 - (b) *the Tribunal considers it reasonable to dispense with the requirement of such a notice.*
- (2) *The First-tier Tribunal shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the Tribunal.*
- (3) *A notice under this section is one in the prescribed form informing the tenant that—*
 - (a) *the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and*



- (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.*
- (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—*
 - (a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and*
 - (b) in any other case, two weeks.*
- ...
- (7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.*

Schedule 5: Ground 2

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.*
20. The application is in terms of rule 65, being an order for possession in relation to assured tenancies. Although no tenancy agreement has been produced, the Tribunal are satisfied, based on the application and supporting papers, and the oral submissions provided at the CMD, that a tenancy was created between Calum Watt and the Respondent on 20th November 2007. The Tribunal are further satisfied that the tenancy can only be an Assured tenancy under the 1988 Act.
21. The Application relies upon a Form AT6 served upon the Respondent on 15th May 2024. That AT6 gives notice to the Respondent that the Applicant intends to apply to the Tribunal for an Order for possession of the house, in terms of Ground 2 of Schedule 5 to the 1988 Act.
22. Ground 2 of schedule 5 to the 1988 Act requires that notification is given to the Respondent, by the date of commencement of the tenancy, that



- possession might be recovered on that ground (hereinafter referred to as “prior notification”) The Applicant concedes that they cannot produce evidence that such prior notification was given to the Respondent by the commencement of the tenancy.
23. The Applicant requested the Tribunal to exercise its discretion to dispense with the requirement for the prior notification. In support of that request the Applicant’s solicitor explained that the Respondent originally owned the Property and sold it to Calum Watt in 2007. The Respondent was aware of the security granted by Calum Watt. The Respondent had been aware of the action for repossession raised against Callum Watt and had not objected to that action. The Applicant has not attended the CMD and has not sought to argue that he has been prejudiced by the Applicant’s failure to provide evidence of the prior notification. The Tribunal determined, in all the circumstances, that it is reasonable to dispense with the requirement of prior notification.
 24. The Tribunal are satisfied that the Applicant has served a valid Notice of proceedings for possession upon the Respondent under section 19 of the 1988 Act. The Tribunal are further satisfied that a result of a default by Calum Watt, the Applicant, as 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
 25. Section 18 of the 1988 Act requires the Tribunal to consider whether it is reasonable to grant an order for eviction.
 26. The Tribunal are satisfied that it is reasonable to grant an order of eviction. The Applicant is entitled to obtain vacant possession of the Property to allow the Property to be sold. The Applicant has advised the Respondent that they wish to recover possession of the Property and to sell it. The Respondent has previously indicated that he was seeking alternative accommodation but has failed to move from the Property. The Applicant wishes to sell the Property to allow them to recover sums due by Claum Watt in terms of the standard security granted by Calum Watt. There is no reasonable prospect that the Applicant will recover their loan by other means. The Respondent has chosen not to provide written submissions or to appear at the CMD in relation to the Application. The Application is uncontested.
 27. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession relative to rule 65.



Decision

28. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988.

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.

Andrew Cowan

Andrew Cowan

Legal Member/Chair

5th August 2025

Date