



**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/18/1276

Re: Property at 10A Shorehead, Portsoy, Banff, AB45 2PB (“the Property”)

Parties:

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

**Anderson Strathern LLP, 1 Rutland Court, Edinburgh, EH3 8EY (“the
 Applicant’s Representative”)**

**Mr Matthew Gillic, 10A Shorehead, Portsoy, Banff, AB45 2PB (“the
 Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined to make an order for repossession of the property.**

Background

1 By application dated 23 May 2018 the Applicant sought an order for recovery of possession of the property under section 18 of the Housing (Scotland) Act 1988 and Paragraph 2 of Schedule 5 of the said Act. In support of the application, the Applicant submitted the following documentation:-

- (a) Copy Tenancy Agreement between John and Sandra Scrudis and the Respondent dated 27 July 2017;
- (b) Copy AT6 dated 10 January 2018;

- (c) Copy Extract Decree from Banff Sheriff Court against John and Sandra Scudis dated 29 September 2014;
- (d) Notice to Local Authority under section 11 of the Homelessness etc (Scotland) Act 2003
- 2 By Notice of Acceptance of Application dated 15 June 2018, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 28th August 2018.
 - 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on the Respondent by Sheriff Officers on 30th July 2018.
 - 4 On 20 August 2018 the Respondent emailed the Tribunal to request a postponement of the Case Management Discussion to enable him to accompany his father to a hospital appointment. In support of his request the Respondent provided correspondence from the NHS. The Respondent further provided a full response setting out his position regarding to the application. On 22 August 2018 the Respondent emailed again to reiterate the request for a postponement and submitted further evidence in the form of correspondence with the Bank of Scotland dated 21st August 2018 together with an income schedule and a list of property assets. The Applicant opposed the request. Having considered the Respondent's circumstances the Tribunal considered it would be reasonable to allow a postponement of the Case Management Discussion.
 - 5 A further Case Management Discussion was scheduled for 28th September 2018. The Applicant's Representative subsequently contacted the Tribunal to advise that she was unable to attend on that date and it was the Applicant's preference for her to be there given her historic involvement with the case. The Tribunal considered it would be reasonable to allow the postponement as there would be no prejudice to the Respondent and therefore agreed to reschedule the Case Management Discussion for 13th November 2018. Notification of the new date and time was sent to both the Applicant and the Respondent by recorded delivery mail on 23rd October 2018.
 - 6 On 9th November 2018 the Respondent contacted the Tribunal to advise that he had been unaware of the rescheduled date for the Case Management Discussion and would not be able to attend as he would be accompanying his father to a special event at Aberdeen Hospital which was scheduled to start at 12.30. The Tribunal considered its overriding objective to avoid delay so far as compatible with proper consideration of the issues. The Tribunal noted the Respondent had submitted a full and comprehensive response which set out his position regarding the application. The Tribunal further noted that notification of the hearing had been sent to the Respondent by recorded delivery mail. He had not collected the letter. However he had been made aware of the Case Management Discussion the week prior in a conversation

with the Applicant's Agent and in subsequent discussions with the Tribunal administration. The Tribunal therefore considered that the Respondent had been given the opportunity to attend the Case Management Discussion. Having postponed already on two separate occasions, the Tribunal considered it would be contrary to the interests of the parties to incur any further delay and therefore determined to refuse the request for a further postponement.

The Case Management Discussion

- 7 The Case Management Discussion took place on 13th November 2018. The Applicant's Representative attended on behalf of the Applicant. The Respondent did not attend.
- 8 The Applicant's Representative explained that there was confusion on the part of the Respondent between the proceedings before the Tribunal which related to the Short Assured Tenancy he had entered into with his parents, and the ongoing discussions regarding enforcement of an eviction order by the Applicant which had been obtained against the Respondent's parents in 2014 following their default on a business loan secured against the property. The Applicant's Representative confirmed that there had been ongoing negotiations regarding enforcement of the 2014 eviction order which had been alluded to in the Respondent's written submissions and there was hope that a resolution could be agreed that would involve the sale of property owned by the Respondent's parents, both heritable and moveable. However insofar as the application before the Tribunal, this was a separate matter.
- 9 The Applicant's Representative advised that she had sympathy for the position the Respondent and his parents were in and in particular the health issues they were suffering. However the Respondent's parents had entered into the Assured Tenancy without the consent of the Applicant. The Applicant had therefore sought to terminate the tenancy and obtain an eviction order to protect its position. The Applicant's Representative was clear that the negotiations ongoing regarding the 2014 eviction order would also apply if the Tribunal was minded to grant an order in respect of the tenancy, in that the Applicant would hold off enforcing the order in the event that a resolution was achieved between the parties.
- 10 The Applicant's Representative advised that the Respondent and his parents owned other property in the area. The Tribunal noted these had been set out in the Respondent's submissions to the Tribunal and it appeared that some of the properties had been put up for sale in order to settle the outstanding loan with the Applicant. The Respondent himself owned a property in Milton Keynes that had been put on the market. The Applicant's Representative was therefore unclear as to whether alternative accommodation would be available to the Respondent and his parents.

- 11 The Applicant's Representative concluded that the Applicant had maintained their position from the outset. Whilst there had been agreements regarding pending enforcement of the 2014 eviction order to allow payment arrangements to be agreed, in respect of the application before the Tribunal it had always been the Applicant's intention to seek an order to terminate the tenancy in order to protect its position. Applying the provisions of the Housing (Scotland) Act 1988, there was no stateable defence to the action. Notice had been given to the Respondent that the property was subject to a security and the heritable creditor could seek to recover possession. Accordingly the Applicant's Representative sought an order for repossession.

Findings in Fact

- 12 The Applicant holds a secured loan over the property at 10A Shorehead, Banff. The owners are the Respondent's parents John and Sandra Scudie. Following default by the Respondent's parents, the Applicant served Calling Up Notices and obtained a decree for recovery of possession of the property from Banff Sheriff Court on 12 September 2014.
- 13 The Respondent entered into an Assured Tenancy Agreement with his parents dated 27th July 2017. The Respondent was given notice that the property was subject to a heritable security and was aware that possession may be recovered under ground 2 of Schedule 5 of the Housing (Scotland) Act 1988.
- 14 On 10th January 2018, the Applicant as heritable creditor served an AT6 notice upon the Respondent stating that possession may be recovered in terms of ground 2 of Schedule 5 of the Housing (Scotland) Act 1988 and that the Applicant required possession in terms of the decree granted against the Respondent's parents dated 12 September 2014.
- 15 The Respondent's parents both suffer from health issues which have been outlined in the Respondent's written representations.
- 16 There are ongoing settlement negotiations between the Applicant, the Respondent and his parents. All parties are willing to seek a positive resolution to the matter.

Reasons for Decision

- 17 The Tribunal was satisfied that the Respondent had been given the opportunity to attend the Case Management Discussion and had been given the opportunity to submit full representations in response. The Tribunal therefore considered it was able to make a determination of the application on

the basis of the information before it at the Case Management Discussion and that it would be in the interests of the parties to do so.

- 18 In this case the Applicant seeks an order for repossession of an assured tenancy under section 18 of the Housing (Scotland) Act 1988 and ground 2 of Schedule 5 of the said Act. The Applicant is the heritable creditor of the property. The owners are the Respondent's parents.
- 19 The Applicant obtained an order for repossession in September 2014 following the owner's default in payments relating to a secured business loan. The Respondent let the property from his parents in terms of an Assured Tenancy Agreement dated 27th July 2017.
- 20 Ground 2 of Schedule 5 of the 1988 Act is a mandatory ground for repossession. If the Tribunal is satisfied that the ground has been met and that the required notice has been given under section 19 of the Act it must make an order for repossession.
- 21 Ground 2 provides in order to rely upon this ground the Respondent must be given notice that the property is subject to a security prior to the commencement of the tenancy and therefore aware that possession could be sought by the heritable creditor. The Tribunal may however dispense with such notice if it considers reasonable to do so. The Tribunal considered the Tenancy Agreement entered into between the Respondent and his parents contained the required notice. Even if such notice had not been included, the Respondent would clearly have been aware when entering into the tenancy that an eviction order had been granted against his parents and the right was therefore available to the Applicant as heritable proprietor to seek repossession of the property. The Tribunal would therefore have been minded to dispense with such notice given the particular circumstances of the case before it.
- 22 In terms of section 18 of the Housing (Scotland) Act 1988, prior to granting an order for repossession the Tribunal must also be satisfied that a valid AT6 notice under section 19 of the Act stating the ground to be relied upon has been given to the Respondent. The Tribunal was satisfied having regard to the copy AT6 submitted by the Applicant that the relevant notice had been given.
- 23 Accordingly the Tribunal was satisfied that the relevant provisions of sections 18, 19 and ground 2 of Schedule 5 of the Act had been met. It was therefore obliged to make the order for repossession.
- 24 The Tribunal noted that reference had been made in the Respondent's response to the application to alleged discrimination on the basis of his parent's health issues. The Respondent therefore sought to rely on a defence that the eviction order would equate to disability discrimination. The Tribunal

was conscious that the order against the Respondent's parents had been granted in 2014. It was clear that the Applicant was not being disingenuous in their efforts to reach a resolution and had taken into account the ongoing health issues suffered by the Respondent's parents in their conduct of the matter. The Tribunal could see no evidence in any of the Respondent's representations that would point to the eviction being a direct consequence of his parent's health problems and therefore discriminatory. The Tribunal considered therefore that a defence under the Equality Act 2010 would be without merit and it would not be in the interests of the parties to delay proceedings further.

- 25 Even if the Tribunal had considered the eviction proceedings before it to equate to disability discrimination, having regard to the history of the Applicant's efforts to resolve matters with the Respondent's parents, the Tribunal could only conclude that eviction would be a proportionate measure in all the circumstances. The Applicant was in possession of an eviction order against the Respondent's parents in respect of the property when the property was let to the Respondent. The proceedings before the Tribunal were a direct result of the actions of the Respondent's parents in letting the property to him. The Tribunal had to question why it was considered necessary for the Respondent to enter such formal arrangements with his parents, against the background of the Applicant's repossession action in respect of the secured loan.
- 26 Furthermore the Tribunal noted that the Applicant's Representative have given an undertaking to suspend enforcement of the eviction order granted by the Tribunal in the event that a settlement was reached. The Tribunal is therefore confident that parties will continue to engage with each other in order to obtain a positive outcome to this matter.
- 27 For the reasons stated above the Tribunal determined to make an order for repossession.

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.

R O'Hare

13 November 2018

 **Legal Member/Chair**

Date