



**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/25/2124**

**Re: Property at 8 Flat 2 Tudsbery Avenue, Greendykes, Edinburgh, EH16 4GX  
("the Property")**

**Parties:**

**CASTLE ROCK EDINVAR HOUSING ASSOCIATION LTD in association with  
PLACES FOR PEOPLE SCOTLAND, 1 Hay Avenue, Edinburgh, EH16 4RW ("the  
Applicant")**

**Ms Katarzyna Kwiatkowska, Mr Andrzej Lopaszynski, 8 Flat 2 Tudsbery  
Avenue, Greendykes, Edinburgh, EH16 4GX ("the Respondent")**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that it was not reasonable to grant an order for eviction  
and dismissed the application.**

**Background**

1. By application dated 19 May 2025 the applicant seeks an order for eviction, relying on ground 11 (persistent delay in paying rent) and ground 12 (rent arrears) both in schedule 5 of the Housing (Scotland) Act 1988. The application was conjoined with application FTS/HPC/CV/25/2138 in terms of which the applicant sought an order for payment in respect of rent arrears.
2. A case management discussion ("cmd) took place via teleconference on 21 October 2025. The cmd was adjourned to allow information to be provided to

the Tribunal in relation to an application made by the respondents to the Tenant Hardship Fund.

3. A cmd was scheduled to take place on 26 March 2026 via teleconference.
4. Prior to the cmd the applicant had submitted *inter alia* the following documents:
  - Tenancy agreement
  - Pre action correspondence
  - Form AT6
  - Section 33 notice
  - Notice to quit
  - Rent statement
  - Section 11 notice
  - Rent increase notices
5. On 25 March 2026 the applicant's representative submitted:
  - Email correspondence with City of Edinburgh Council regarding Tenant Hardship Fund application
  - Updated rent statement to 3 March 2026
6. The respondents submitted:
  - Correspondence regarding Tenant Hardship Fund application
  - Details of Universal Credit payment
  - Correspondence with the applicants
  - Written submissions

**Case management discussion – 26 March 2026 – teleconference**

7. The applicant was represented by Mr Caldwell, Patten & Prentice. Both respondents were in attendance.
8. Mr Caldwell sought an order for eviction. He stated that the respondents occupied the property under a short assured tenancy with a commencement

date of 9 November 2016. The arrears in the tenancy began to amass from March 2020. Mr Caldwell stated that until that date the tenancy had been maintained in a responsible manner. However, from March 2020 until November 2022 significant arrears had built up. By November 2022 the arrears had increased to £18,102. Mr Caldwell stated that since that date there had been a commitment on the part of the respondent's to reducing the arrears however there had been payments that had not been maintained.

9. Mr Caldwell referred to the application for a time to pay direction in the conjoined payment action. The respondents were offering £400 per month towards the arrears. Mr Caldwell questioned whether the level of payment offered was realistic.
10. In relation to the application for assistance to the Tenant Hardship Fund, Mr Caldwell referred to the correspondence that had been submitted. This showed that an application had been submitted however due to a missed payment by the respondents, the property managers, Touchstone Property Management had required to advise the Fund and no payment was received. He stated that it was not the case that Touchstone, who acted on behalf of the applicant had not cooperated with the Fund.
11. Mr Caldwell stated that the current rent arrears figure was £7,971.18. He stated that the respondents had been maintaining payments of rent plus £400 per month however there had been a default in February when £300 in total had been paid. Mr Caldwell acknowledged that the respondents had almost halved the rent arrears balance since 2022 however stated that since the previous cmd they had failed to maintain payments at the offered rate of £400 per month.
12. Mr Caldwell stated that against that background it was reasonable to grant an order for eviction. He stated that in the event an order was granted the applicant undertook not to enforce the order if payments at the rate of £400 per month were maintained. Mr Caldwell stated that he did not dispute the facts relating to the respondents' personal circumstances.

13. Mr Caldwell stated that it had taken 10 months to bring the present application forward. He stated that it was not the function of the Tribunal to adjourn applications to monitor payments and therefore an order should be granted. He stated that if the application was dismissed, in the event of another default it would take a further 10 months to obtain an order.
14. Mr Lopaszynski spoke on behalf of both respondents. He disputed that there had been a default in the offered arrangement since the previous cmd. He stated that whilst the rent fell due at the start of the month, he made payments at the end of the month after he received his pay. He stated that the rent account showed payments made for February under the month of March. Those payments were for February and taken together amounted to rent plus £400 for February. He stated that a further payment would be made before the end of March which would be the payment due for March of rent plus £400.
15. Mr Lopanszynski stated that he is currently employed as a delivery driver. His income from employment is £1300 per month. In addition the household receives £500 per month universal credit, £200 per month child benefits and statutory of sick pay of £475 per month for Ms Kwiatkowska.
16. Mr Lopanszynski stated that his partner had been affected by ill health for the past 4 years. She had surgery on her left leg and is on a waiting list for further surgery. On a day to day basis her mobility is affected.
17. Mr Lopanszynski stated that before the pandemic he had been employed as a driver. His partner had worked as a housekeeper in a hotel. When the first lockdown commenced in March 2020 they were both placed on furlough. Mr Lopanszynski's employer then ceased to trade, so his employment was terminated. He stated that the respondents were unable to afford the rent during the time when they were both not working. After he had resumed employment he began making efforts to clear the arrears that had built during the pandemic.
18. Mr Lopansznski stated that the respondents reside with their 11 year old son. He has been diagnosed with autism and attends the local primary school. Mr

Lopansznski stated that the respondents want to keep their home as their son would be severely impacted if they had to move. Due to his diagnosis he struggles with change. He receives special attention at his school who have been working with him to ensure a smooth transition to high school which he is due to start in August. Mr Lopansznski stated that his son has been visiting the high school regularly in preparation for attending later in the year.

19. Mr Lopansznski stated that he intends to clear the rent arrears but that he needed more time. He wishes to continue with his payments of £400 towards the arrears on a monthly basis.

### **Findings in fact**

20. Parties entered into a tenancy agreement with a commencement date of 9 November 2016.

21. Monthly rent due in terms of the agreement is £777.90.

22. Rent arrears began to amass on the rent account from March 2020.

23. Due to the coronavirus pandemic in March 2020 both respondents were placed on furlough and were unable to work.

24. Arrears continued to build up on the rent account until November 2022 when they peaked at £18,102.07.

25. Since November 2022 the respondents have maintained monthly rental payments and made efforts to reduce the outstanding arrears balance.

26. Rent arrears outstanding at 26 March 2026 amount to £7,971.18.

27. Since November 2022 the respondents have reduced the level of arrears by £10,130.89.

28. A valid notice to quit and form AT6 were served on the respondents on 9 April 2025.

29. The first respondent is employed as a delivery driver.
30. The second respondent is unable to work due to ill health.
31. The monthly household income from earnings and benefits amounts to approximately £2475.
32. The applicant is a registered social landlord.
33. The property is managed on behalf of the applicant by Touchstone Property Management.
34. The respondents reside with their 11 year old son who has been diagnosed with autism. He attends the local primary school where he receives special attention due to his diagnosis and is being prepared for transition to the local high school in the next academic year.
35. The respondents submitted an application to the Tenant Hardship Fund in 2022. The application was unsuccessful.

### **Reasons for the decision**

36. Rule 17 (4) states:

*The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.*

37. Rule 18 states:

*Power to determine the proceedings without a hearing*

*18.—(1) Subject to paragraph (2), the First-tier Tribunal—*

*(a) may make a decision without a hearing if the First-tier Tribunal considers that—*

*(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

*(ii) to do so will not be contrary to the interests of the parties; and  
(b) must make a decision without a hearing where the decision relates to—*

*(i) correcting; or*

*(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.*

*(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

38. The Tribunal was satisfied that it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

39. Ground 11 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession:

*whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

40. Ground 12 in schedule 5 of the Housing (Scotland) Act 1988 states that it is a ground for recovery of possession if:

*i. Some rent lawfully due from the tenant—*

*ii. (a) is unpaid on the date on which the proceedings for possession are begun; and*

*iii. (b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

41. Section 18 of the 1988 Act further specifies:

*(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.*

*(4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard, in particular, to]—*

*(a) the extent to which any delay or failure to pay rent taken into account by the Tribunal in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and*

*(b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.*

42. The Tribunal determined that grounds 11 and 12 were established in respect of the level and duration of rent arrears. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against. The Tribunal took into account the oral and written submissions on behalf of both parties.

43. In relation to question of reasonableness the Tribunal considered whether the applicant had complied with the pre-action protocol in rent arrears eviction applications. The applicant had produced evidence of sending an information leaflet to the respondents with the notice to quit and AT6 on 9 April 2025 providing information as required in the pre-action protocol. From that date the respondents had been maintaining regular payments towards the arrears. The present application was submitted one month later on 19 May 2025. At the date the application had been submitted arrears had decreased to £11,198.74. Payments were being made regularly towards the rent and arrears. No

information was provided to show what reasonable efforts had been made by the applicant or their property management company to reach agreement in relation to the repayment plan or that the applicant had given reasonable consideration to the steps the respondent was taking.

44. The Tribunal took into account that the rent arrears were high and that there had been arrears since the start of the pandemic in March 2020. The Tribunal took into account that for a period from March 2020 until November 2022 the arrears had continued to increase to a peak figure of £18,102.07 which was a very high level of arrears. Against that the Tribunal took into account that at the respondents had maintained full payment of their monthly rental liability for an extended period and had decreased the outstanding rent arrears by £10,130.89. This demonstrated a significant commitment on the part of the respondents to reduce the arrears given their household income. The Tribunal accepted the respondents submissions that they had a genuine intention to repay the debt in full. This was supported by the efforts already made.

45. The Tribunal took into account the evidence from the respondents that the arrears had begun to build up directly as a result of the impact of the coronavirus pandemic and not as a result of fault on the part of the respondents. Both respondents had been furloughed at the time of the first lockdown. It was not disputed that up until that point for the first 4 years of the tenancy there had been no issues with the conduct of the tenants. The Tribunal was not provided with information as to why the respondents had not managed to commence payments towards the arrears at an earlier point than November 2022, other than the pandemic. The Tribunal took into account Mr Caldwell's submission that the pandemic had negatively impacted many people but that could not justify the level of arrears that had built up.

46. The Tribunal gave weight to the current level of arrears. Whilst the applicant was a social landlord with a large volume of properties, the arrears figure remained high and had an impact on the applicant's financial circumstances

and required administrative resources to manage. The present application had also taken time and resources from the applicant.

47. The Tribunal took into account the unopposed submissions relating to the respondents' son's personal circumstances. As an 11 year old with autism preparing for the transition to the local high school the Tribunal accepted that eviction from his home and a likely change of school would be disruptive and have a negative impact on the child particularly in light of his diagnosis.

48. The Tribunal took into account the information that had been provided relating to the Tenant Hardship Fund. The Tribunal noted that the respondents application had been accepted for consideration by the Fund. The Tribunal took into account that the respondents missed a payment in December 2022 which resulted in Touchstone Property Management Ltd contacting the Fund. This appeared to have led to the application not proceeding.

49. The Tribunal took into account that the applicant sought an eviction order which they stated would not be enforced unless there was a default in the repayment arrangement. Mr Caldwell stated that he opposed any adjournment to monitor payments.

50. The Tribunal considered Mr Caldwell's submissions that the respondents had defaulted on the arrangement in respect of February's payment. This was not accepted by Mr Lopansznski who stated that payments made in February were showing as payments in March on the rent statement. The rent statement had been produced shortly before the cmd. The Tribunal determined that taken together the payments showing on the rent statement for the end of February and start of March amounted to rent plus £400. The respondent stated that he made payments at the end of the month and was therefore due to make March's payment after the cmd. The Tribunal determined that it could not be certain that there had been a default and taking into account the respondents' extended period of regular payments was inclined to accept their stated position. It was

also noted that the end of February was at the weekend which would provide an explanation for when the payments showed on the rent statement.

51. The Tribunal considered that in most cases, arrears at the level in the present application would be an overwhelming factor in favour of granting an order. However in the present case the fact that the arrears arose in a confined period as a direct result of the coronavirus pandemic was a weighty factor. The Tribunal gave significant weight to the fact that there had been consistent payment of the rent and arrears in the period since November 2022 which decreased the arrears by £10,130.89. The Tribunal gave significant weight to the fact that in light of the respondents' household income this showed a commitment on their part to addressing the arrears and keeping their home.

52. Taking all the foregoing factors into account the Tribunal was not satisfied that it was reasonable in the circumstances to grant an order for eviction.

### **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.**

**Mary-Claire Kelly**

**Legal Member/Chair**

**26 March 2026** \_\_\_\_\_

**Date**