



**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/25/1312**

**Re: Property at 16 Factory Road, Kirkcaldy, KY1 2NJ (“the Property”)**

**Parties:**

**Mr Graham Cuthill Executor of the late Joy Young, 3 Marine Parade, Saltburn-by-the-sea, North Yorkshire, TS12 1DP (“the Applicant”)**

**Mr Bogdan Swider, 16 Factory Road, Kirkcaldy, KY1 2NJ (“the Respondent”)**

**Tribunal Members:**

**Serena Weir (Legal Member) and Ann Moore (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 against the Respondent in favour of the Applicant.**

**Background**

1. By application dated 27 March 2025, the Applicant applied to the Tribunal for an Order for eviction in relation to the Property based on Grounds 11, 12 and 13 of Schedule 5 to the Housing (Scotland) Act 1988 (“**the Application**”).
2. The Application comprised the following: i) copy short assured tenancy agreement dated 09 May 2014 in respect of the Property at a monthly rent of £450.00; (ii) copy AT5; (iii) copy rent statements demonstrating that the rent had not been paid in full since December 2024; (iv) copy AT6 with proof of service; (v) correspondence to the Respondent in respect of the pre-action protocol and (vi) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003.

**Case Management Discussion**

3. A Case Management Discussion (“**CMD**”) was fixed for 12 September 2025. The Application, supporting papers and details of the date, time and location of the CMD were served on the Respondent by Sheriff Officer.
4. The note from the CMD records that the Tribunal formed the view that the Respondent was asserting that:-
  - a. The sum claimed for rent was excessive, and failed to take account of payments made;

- b. The Property was in disrepair, not habitable and rent was being withheld; and
  - c. The Property being in disrepair, and the landlord accordingly being in breach of contract, rent as claimed is not due.
5. Following on from the CMD, on 17 September 2026, a direction was issued to the Respondent. In that direction, the Respondent was ordered to provide written representations setting out, in clear terms, his proposed defence to the Application. The Respondent was ordered to comply with that direction by 07 November 2025. No such written representations were received from the Respondent.

### **Evidential Hearing**

6. The Application called for an evidential hearing on 30 June 2026 in person. Notice of the date, time and location of the evidential hearing had been competently served on the Respondent by Sheriff Officers on 03 June 2026. The Applicant was represented at the evidential hearing by Mr Gardiner of Lindsays solicitors. There was no appearance at the evidential hearing by or on behalf of the Respondent. The Tribunal delayed the start of the evidential hearing by 10 minutes to allow the Respondent an opportunity to attend. The Tribunal's clerk attempted to contact the Respondent by telephone using the telephone number which the Tribunal had for the Respondent. A recorded message stated that it was not possible to connect the telephone call. The Tribunal was satisfied that the requirements of rule 24(2) of the Rules regarding the giving of reasonable notice of the date and time of an evidential hearing had been duly complied with. The Tribunal therefore decided to proceed in the absence of the Respondent.
7. In advance of the evidential hearing, written submissions dated 22 August 2025, 10 March 2026 and 16 June 2026 had been sent to the Tribunal by the Applicant's representative. These written submissions were copied to the Respondent by the Tribunal. These written submissions were adopted by the Applicant's representative at the evidential hearing.
8. In the submission dated 22 August 2025 reference was made to allegations of the Respondent having carried out unauthorised alternations at the Property which was said by the Applicant to be a breach of Clause 10 (b) of the tenancy agreement. In the submissions dated 10 March 2026, reference was made to allegations that the Respondent had acted in an anti-social manner towards a neighbour of the Property in breach of an implied term of the tenancy agreement. The Tribunal observed that the allegations set out in the written submissions dated 22 August 2025 and 10 March 2026 were not matters outlined in the particulars of Ground 13 in the AT6. Ground 13 is that any obligation of the tenancy, other than the obligation to pay rent, has been broken by the tenant. As a preliminary matter, the Applicant's representative was asked whether the Applicant was asking the Tribunal for leave, pursuant to section 19(2) of the Housing (Scotland) Act 1988 (the "**Act**"), to add these additional allegations of unauthorised alternations and anti-social behaviour on the part of the Respondent to the particulars in the AT6 in support of Ground 13. Having considered the matter, the Applicant's representative confirmed that his client was not seeking leave to add these additional particulars to the AT6 but that they were relied upon by his client in relation to the Tribunal's assessment of whether it was reasonable to grant the order sought.

### *Grounds 11 and 12*

9. Ground 11 of Schedule 5 to the Act provides:-

*“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.”*

10. Ground 12 of Schedule 5 to the Act provides:-

*“Some rent lawfully due from the tenant—*

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

11. In support of these grounds, the Applicant's representative relied on the updated rental statement sent to the Tribunal on 16 June 2026. This statement confirmed that the sum of £7,950 was owed by the Respondent. These arrears had arisen from December 2024 onwards. The Respondent had not provided any tangible explanation for his failure to pay the sums owed for rent. At best, the Respondent has alluded to repair issues with the Property. No evidence had been provided by the Respondent. The Applicant's position was that the Property was in good condition.

*Ground 13*

12. Ground 12 of Schedule 5 to the Act provides:-

*“Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.”*

13. In support of this ground, the Applicant's representative explained that the Respondent had been advised on multiple occasions that the tenancy agreement prohibited sub-letting and was on notice of this at least from the point at which the Application was served on him. The Respondent had modified the Property to allow it to be sub-let by installing locks on internal doors. The Respondent had sub-let the Property to two separate individuals at the same time. The Respondent was not related to either of these two individuals. This put the Applicant involuntarily in breach of his obligation to obtain a HMO licence in accordance with section 124 of the Housing (Scotland) Act 2006. The Respondent had been sub-letting the Property at a rent broadly equivalent to the sum due by him to the landlord. This sub-letting had continued on until as recently as May 2026. That indicated that the Respondent did not respect the terms of the tenancy agreement and had no intention of abiding by those terms. A copy of a witness statement from the daughter of the late Joy Young was produced to the Tribunal. That statement provided details of her visit to the Property on 14 March 2026, her discussion with one of the Respondent's sub-tenants and the inspection carried out of the Property on the same day. A copy of a witness statement from another of the Respondent's sub-tenants was produced to the Tribunal. That witness statement provided details of (i) the advert which the sub-tenant had seen in a local shop from the Respondent advertising a room for rent at the Property; (ii) when he moved in to the Property, (iii) the rent paid by him to the Respondent and (iv) his discussions with the Applicant in August 2025 at which point he learned that the Respondent was not permitted to sub-let the Property.

### *Reasonableness*

14. The written submissions made reference to the Respondent having demolished and re-built an external garden wall at the Property. Photographs which bear to show the Respondent carrying out these works were included with the Application. This was also a matter referred to as having taken place in the witness statement from another of the Respondent's sub-tenants which was produced to the Tribunal. It was explained that this work was carried out without permission from the landlord or the communal owners adjacent to the Property who share the garden wall in common. There were concerns about whether the wall was structurally sound following the steps taken by the Respondent to demolish and re-build the garden wall. It was explained that the Respondent had also painted external steps at the Property without permission from the landlord.
15. The written submissions made reference to the Respondent having pursued a course of anti-social conduct against his neighbour. Details of the conduct complained of were set out in the written representations. A copy of a witness statement from the neighbour was produced to the Tribunal. That witness statement set out in some details the course of anti-social conduct complained of against the Respondent.
16. The Applicant's representative advised that the Applicant requires to sell the Property to meet legacies to beneficiaries and to meet liabilities of the late Joy Young's estate. If the Property were to be marketed for sale, the Property's value would be significantly affected by the fact that the Respondent is in rent arrears and has breached the terms of the tenancy. The estate would potentially be unable to sell what is a very desirable property.
17. In response to questions from the Tribunal, the Applicant's representative explained that it was possible that there was another unlawful sub-tenant living at the Property with the Respondent at the present time. It was not known whether the Respondent had any health conditions. It was not known whether the Respondent was presently working. Finally, it was not known whether the Respondent had taken any steps to find alternative accommodation.
18. Having heard from the Applicant's representative and considered the Application, supporting papers, written submissions and the whole facts and circumstances of the case, the Tribunal made the following findings in fact.

### **Findings in Fact**

19. The late Mrs Young was the owner and landlord of the Property.
20. Mrs Young and the Respondent entered into a tenancy agreement dated 09 May 2014 in terms of which Mrs Young let the Property to the Respondent.
21. The tenancy agreement was a short assured tenancy in terms of the Housing (Scotland) Act 1988.
22. The rent due in respect of the tenancy agreement was £450 per calendar month payable on the first day of each month.
23. The Applicant has been appointed as the executor of Mrs Young following her death.
24. The Respondent had failed to make payment of the full amount of the rent from December 2024 onwards.
25. The Respondent has accrued rent arrears of £7,950. Appropriate accounting had been provided to the Tribunal. These sums remain owed to the Applicant by the Respondent.
26. The correct statutory procedures have been carried out in relation to service of the AT6.

27. On the balance of probabilities, the Respondent has breached the terms of his tenancy agreement by allowing unauthorised persons to reside within the Property.
28. On the balance of probabilities, the Respondent had carried out unauthorised works at the Property including demolishing and re-building a communal garden wall and painting external stairs. That was done without the permission of the landlord as required by the tenancy agreement.
29. On the balance of probabilities, the Respondent had engaged in a course of anti-social conduct against his neighbour.
30. The Applicant requires to sell the Property to meet legacies to beneficiaries and to meet liabilities of the late Joy Young's estate. If the Property were to be marketed for sale, the Property's value would be significantly affected by the fact that the Respondent is in rent arrears and has breached the terms of the tenancy. The estate would potentially be unable to sell what is a very desirable property.

### **Issue for the Tribunal**

31. The Tribunal was satisfied that Grounds 11, 12 and 13 had been met. Therefore, the statutory grounds and procedure being established, the issue for the Tribunal was to determine if it is reasonable to grant the order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.
32. 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, the Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (*Barclay v Hannah* 1947 S.C. 245 at 249 per Lord Moncrieff).
33. The Tribunal took into account the application, supporting papers and the oral and written submissions on behalf of the Applicant.

### **Decision and Reasons for Decision**

#### *Grounds 11 and 12*

34. The Tribunal determined that grounds 11 and 12 were established in respect of the level and duration of rent arrears.
35. In relation to question of reasonableness the Tribunal considered whether the Applicant had complied with the pre-action protocol in rent arrears eviction applications and concluded that he had. The Applicant had produced evidence of sending an information leaflet to the Respondent with the AT6 on 13 February 2025 providing information as required in the pre-action protocol. The present application was submitted just over one month later on 27 March 2025. Whilst the Respondent had made some partial payments towards the rent due in May and June 2025, no payments were received after that date. The Tribunal took into account that the rent arrears were high and the period over which they had accrued. The Respondent had not produced any evidence to the Tribunal or attended at the evidential hearing. The Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent.

#### *Ground 13*

36. The Tribunal determined that ground 13 was established in respect of the unauthorised sub-letting of the Property by the Respondent.
37. In relation to question of reasonableness the Tribunal considered the nature of the breach by the Respondent. The Tribunal determined that the unauthorised sub-letting of the Property by the Respondent was not a trivial breach but a

serious one. The Respondent had breached this condition on multiple occasions. The Respondent appeared to have profited from the arrangement insofar as no payments had been made by him to the Applicant in relation to the rent due after June 2025. At least one of the sub-tenants was under the mistaken impression that the Respondent had permission to sub-let the Property. The unauthorised sub-letting of the Property has potential consequences for the Applicant in that he is involuntarily in breach of his obligation to obtain a HMO licence in accordance with section 124 of the Housing (Scotland) Act 2006.

38. The Respondent had not produced any evidence to the Tribunal or attended at the evidential hearing. The Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent.

*Other Conduct*

39. The Tribunal also considered the evidence which had been produced to it about the Respondent's unauthorised alternations to the Property and his anti-social conduct against his neighbour. Again, the nature of these matters were determined by the Tribunal to be serious.
40. The Respondent had not produced any evidence to the Tribunal or attended at the evidential hearing. The Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent.
41. The Tribunal finds that it is reasonable to grant the order.

## **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.**

**30<sup>th</sup> June 2026**

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**Legal Member/Chair**

Serena Weir

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**Date**