



**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/26/1101

Re: Property at 5 Burte Court, Bellshill, ML4 3GB (“the Property”)

Parties:

**Mrs Zeenat Rashida and Mr Waseen Akbar, both 7 Adamson Street, Bellshill,
ML4 1DT (“the Applicants”)**

**Mr Mohammed Munir Choudary, 24 Philip Court, Bellshill, ML4 2FE and Zahida
Munir, 5 Burte Court, Bellshill, ML4 3GB (“the Respondents”)**

Tribunal Members:

George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a Hearing
and made an Order for Possession under Section 18 and Grounds 11, 12 and 13
of the Housing (Scotland) Act 1988**

Background

1. By application, dated 6 March 2026, the Applicants sought an Order for Possession of the Property in terms of Section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Grounds relied on were Grounds 11, 12 and 13 of Schedule 5 to the 1988 Act.
2. The application was accompanied by a copy of a Lease between Mr Mohammed Umran Haq as landlord and the First-named Respondent as tenant, from 1 May 2010 until 1 May 2011, a Form AT6 Notice dated 12 February 2026, specifying the Grounds under which the Applicants were seeking an Order for Possession and that proceedings would not be begun before 1 March 2026, and a Notice to Quit dated 12 December 2025, requiring the Respondents to remove from the Property no later than 1 February 2026.

3. The Applicants also provided the Tribunal with evidence from the Land Register that they had purchased the Property from the landlord named in the Lease, with a date of entry of 14 April 2025, a Rent Statement showing arrears at 6 March 2026 of £8,229.23, with no rent paid since at least 4 May 2025, when the Applicants took over the tenancy on acquiring the Property, and pre-action protocol letters dated 2 October 2025 and 1 December 2025, signposting the Respondents to sources of help and assistance.
4. In their written representations, the Applicants stated that, despite being asked to do so, the Respondents had failed to confirm who is actually occupying the Property. The First-named Respondent had been traced by sheriff officers to a different address, at which the Notice to Quit was served on him. Accordingly, whilst she is not a tenant under the Lease, they were including the Second-named Respondent in the application, as it was possible she might have occupancy rights as a non-entitled spouse under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. On 10 October 2025, someone purporting to be the First-named Respondent telephoned the Applicants' solicitors and stated his wish to pay the rent. He was asked to confirm the request in writing and to provide ID documentation but failed to do so. There were also allegations of anti-social behaviour by the Respondents' son towards the Applicants at their place of business and in telephone calls and a posted video.
5. The view of the Applicants was that it would be reasonable to make an Order for Possession as the First-named Respondent has vacated the Property, in breach of Clause Twelfth of the Lease, there has been persistent failure to pay rent and a high level of arrears and it was clear from the allegations of anti-social behaviour, some of which had been reported to Police Scotland, that the landlord/tenant relationship was fatally compromised.
6. On 15 July 2026, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 5 August 2026. The Respondents did not make any written representations to the Tribunal.
7. Following a request for a postponement on behalf of the Second-named Respondent, a Case Management Discussion scheduled for 18 August 2026 was postponed, to enable the Second-named Respondent to obtain legal advice and provide written submissions.
8. On 1 September 2026, the Tribunal directed the Second-named Respondent to provide clarification of her position in regard to the application and, in the event that she opposed the application, on what basis she opposed it, confirmation of her personal and financial circumstances including the status of her relationship with the First-named Respondent, details of the current occupants of the Property, and any proposals she might have for payment of the ongoing rent and the accrued rent arrears.

9. On 10 September 2026, the solicitors who had requested the postponement of the Case Management Discussion scheduled for 18 August 2026 confirmed that they were no longer representing the Second-named Respondent.
10. On 11 September 2026, the Applicants' solicitors made further submissions. They stated that the First-named Respondent had telephoned the Second-named Applicant on 25 August 2026 and had said that he had not lived in the Property for over three years and was not on speaking terms with the Second-named Respondent. He stated that the Property is occupied by his estranged wife and his adult son and that he had recently re-married by Islamic ceremony in Pakistan and was currently waiting to finalise his UK divorce from the Second-named Respondent. The solicitors also provided an updated Rent Statement showing arrears as at 1 September 2026 of £11,729.23.
11. On 15 September 2026, the Second-named Respondent provided written submissions to the Tribunal. She confirmed that she lives in the Property with her son and daughter, that she works part-time for her son and that he is the main earner in the household. She wished a new Lease or a 3 to 5-year extension of the existing Lease and was prepared to pay the rent monthly and to reduce the arrears by £300 per month

Case Management Discussion

12. A Case Management Discussion was held on the morning of 1 October 2026. The Applicants were represented by Ms Rosaleen Doyle of McEwan Fraser Law, Edinburgh. The Respondents were not present or represented, but their son joined the call. The Tribunal advised him, however, that he had not been mandated by either Respondent to appear on their behalf, so could not participate in the Case Management Discussion. He then left the call.
13. Ms Doyle told the Tribunal that the rent arrears are now £11,729.23, with a further payment of £700 due today. She advised that the Applicants were not prepared to accept the proposal made in the Respondents' submissions of 15 September. The Second-named Respondent is not a party to the Lease and her entitlement, if any, is as a non-entitled spouse in terms of Section 1 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 ("the 1981 Act"). The lawful tenant has been away for more than two years and his telephone conversation with the Second-named Applicant indicated that he left three years ago. Ms Doyle's view was that the rights of the Second-named Respondent as a non-entitled spouse have ended under Section 1(7(a) of the 1981 Act but she wished, as a precaution, to have her included in the Order for Possession.

Reasons for Decision

14. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.

15. Section 18(1) of the Act states that the 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 the Act. By Section 18(3) of the Act, if the Tribunal is satisfied that any of the Grounds in Part I4 of Schedule 5 is established, the Tribunal shall not make an Order for Possession unless it considers it reasonable to do so.
16. It is unclear whether the Lease constitutes a Short Assured Tenancy or an Assured Tenancy, but the distinction is not relevant to the Tribunal's Decision. The lease has continued by tacit relocation since 2 May 2011.
17. Clause Twelfth of the Lease provides "The Tenant shall not assign this Lease in whole or in part nor sub-let or part with possession of the premises or any part thereof".
18. The application was made under Grounds 11, 12 and 13 of Schedule 5 to the 1988 Act. Ground 11 applies where the tenant has persistently delayed paying rent which has become lawfully due, and Ground 12 covers the situation where some rent is unpaid on the date on which the proceedings are begun and on the date of service of the Form AT6 Notice. Ground 13 applies where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed. All Grounds are subject to the reasonability test. The view of the Tribunal was that there was clear evidence of failure or delay in payment of rent over a period of many months, satisfying the requirements of Ground 11, and that there was no doubt that some rent was due at both the relevant dates for Ground 12. It was also established that the First-named Respondent had vacated the Property some time ago, so had breached Clause Twelfth of the Tenancy Agreement. Accordingly, the Tribunal decided that the requirements of Ground 13 had also been met.
19. Having decided that Grounds 11, 12 and 13 had all been established, the Tribunal then had to decide whether it would be reasonable on account of those facts to make an Order for Possession. The Tribunal considered all the evidence before it and, taking into account in particular the very high level of rent arrears and the fact that no payments had been made since at least 7 April 2025, the Tribunal decided that it would be reasonable to make an Order for Possession under Grounds 11 and Ground 12 of Schedule 5 to the 1988 Act. The Tribunal also decided that it would be reasonable to make an Order for Possession under Ground 13, as, whilst there was no conclusive evidence of the date on which he left the Property, it was clear that the First-named Respondent had parted with possession of the property without the consent of the Applicants, leaving his wife and adult children in possession.
20. The Tribunal was unable to determine whether the Second-named Respondent is a non-entitled spouse within the meaning of the 1981 Act, as the Respondents have not provided consistent accounts of when they separated. It is clear, however, that the Property is no longer the matrimonial home of the Respondents, as the First-named Respondent has been living at a different address for many months and possibly for as long as three years. Section 1(7)

of the 1981 Act makes provision for the situation where there has been no cohabitation between an entitled spouse and a non-entitled spouse during a continuous period of two years and during that period the non-entitled spouse has not occupied the matrimonial home for a period of two years, but the Act is silent on the question of the effect, if any, of the entitled spouse leaving the matrimonial home for that period. In the former case, the non-entitled spouse loses that status. An Order for Possession requires a tenant to remove themselves and their family from the rented property, but the Tribunal accepted the argument put on behalf of the Applicants that specifically including the Second-named Respondent on the application and Order would be appropriate. It cannot have been an intended consequence of the legislation that, when a tenant separated from his wife, moved out of a rented property leaving his wife and family there and, with the full knowledge of his wife and family, paid no rent for 18 months, the landlord could not take steps which included seeking an Order to evict his wife and family. The Second-named Respondent has accepted the rent arrears and there is a suggestion that the Respondents are in the process of divorcing, with the First-named Respondent having already remarried by Islamic ceremony in Pakistan.

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.

George Clark

Legal Member/Chair

Date: 1 October 2026