



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 18(1) of the Housing  
(Scotland) Act 1988**

**Chamber Ref: FTS/HPC/EV/24/2187**

**Re: Property at 57 High Street, Dunbar, EH42 1EW (“the Property”)**

**Parties:**

**Mr Neil Leslie McFarlane, Mrs Raquel McFarlane or Gonzalez Rubio, 9  
Morvenside, Edinburgh, EH14 2SJ (“the Applicants”)**

**Mr Craig Duncan, Top Flat 57 High Street, Dunbar, EH42 1EW (“the  
Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicants were entitled to an order for  
possession of the property and the removal of the Respondent from the  
property but that enforcement of the order be suspended until 29 January 2025.**

**Background**

1. By application dated 10 May 2024 the Applicant’s representatives, T C Young, Solicitors, Glasgow applied to the Tribunal for an order for possession of the property in terms of Section 18(1) and Ground 1 of Schedule 5 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, Notice to Quit, Form AT6, Section 11 Notice and an Affidavit by the First Applicant together with other documents in support of the application.
2. By Notice of Acceptance dated 2 July 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 25 September 2024.

### **The Case Management Discussion**

4. A CMD was held by teleconference on 29 October 2024. The Applicants did not attend but were represented by Ms Simone Callaghan from the Applicants' representatives and the Respondent attended in person.
5. The parties were in agreement that the Respondent had commenced his tenancy of the property on 27 September 2013.
6. The Respondent confirmed that he had been served with a Notice to Quit and Form AT6 by recorded delivery post and that he had been given until 27 March 2024 to remove from the property. The Respondent advised the Tribunal that he had remained in occupation as he had been unable to find alternative accommodation and he had been advised by the Local Authority Homeless unit that they could not assist him unless and until an order for possession was granted
7. When asked if he was opposing the application the Respondent explained that he was not as he recalled being advised at the commencement of the tenancy that it could be brought to an end and that he had also been told in 2019 and again in 2022 and 2023 that the First Applicant was seriously ill and needed the property back. The Respondent said he always knew the day was coming that he would have to leave.
8. In response to a query from the Tribunal, Ms Callaghan explained that the property was jointly owned by the Applicants, the Second Applicant having obtained a one-half pro indiviso share in 2008. Ms Callaghan went on to say that both Applicants had lived in the property until they moved to Barcelona in 2013. Ms Callaghan said that although the tenancy agreement had been drawn up with only the Second Applicant as Landlord this had been an oversight as both Applicants owned the property.
9. In response to a further query from the Tribunal Ms Callaghan confirmed that although the Applicants' representatives had been primarily instructed in the proceedings by the First Applicant, they had received confirmation of the instructions directly from the Second Applicant who had recently changed her name to Raquel Gonzalez Rubio. Ms Callaghan went on to say that Ms Rubio had confirmed it was her intention to return to Scotland to live with her son in the family home but would not do so until the First Applicant moved into the Respondent's property and in the meantime was staying in Barcelona caring for her sick mother.

10. The Respondent advised the Tribunal that he had been unable to find alternative private accommodation and the local authority would not assist without an order being granted. The Respondent confirmed he lived alone with his cat. He said it was difficult to find accommodation that would allow pets. The Respondent confirmed he was in employment and had no medical issues.
11. For the Applicants, Ms Callaghan advised the Tribunal that one of the Applicants two other properties had been sold and the other was now vacant and would shortly be marketed for sale.

### **Findings in Fact**

12. The Respondent commenced an Assured Tenancy of the property on 27 September 2013.
13. A Notice to Quit and Form AT6 under Section 18 and Ground 1 of Schedule 5 of the 1988 Act was served on the Respondent on 22 December 2023.
14. A Section 11 Notice was sent to East Lothian Council on 10 May 2024.
15. The First Applicant intends to live in the property.
16. The First Applicant suffers from ill health and has decided to dispose of the Applicants' small portfolio of let properties.
17. The Applicants' marriage has broken down and they have separated.
18. The Second Applicant intends to return to live in Scotland in the current family home.
19. The Respondent is in employment.
20. The Respondent has found it difficult to obtain suitable alternative accommodation for himself and his cat.
21. The Respondent has been told that he will not receive any assistance with being rehoused by the local authority unless and until an order for possession is granted.

## Reasons for Decision

22. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into an Assured tenancy that commenced on 27 September 2013. The Tribunal was also satisfied that a valid Notice to Quit and Form AT6 had been served on the Respondent in terms of Ground 1 of Schedule 5 of the 1988 Act. Although intimation of the Ground had not been given to the Respondent at the beginning of the tenancy the Respondent had confirmed that he had been told at that time that the Applicants would need the property back at some point and in addition the Tribunal was satisfied that it could dispense with the need for notice given the Applicants circumstances and the failing health of the First Applicant. The Tribunal was also satisfied that proper intimation of the proceedings had been given to East Lothian Council by way of a Section 11 Notice. The Tribunal was also satisfied from the Affidavit produced and the Applicants' representative's oral submissions that the First Applicant intends to live in the property as his principal residence in order that the Second Applicant can return to the family home to live there with her son.
23. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that neither party took any issue with the other party's position as stated by them. The Tribunal therefore had to balance the needs of the Applicants with the needs of the Respondent in arriving at a decision. On the one hand there was the Applicants whose marriage had broken down and due to ill health the first Applicant no longer wished to continue with property letting and who also required the property to live in so that the Second Applicant was able to return to Scotland to live with her son. On the other hand, the Tribunal also had to take account of the needs of the Respondent who had found it difficult to obtain alternative accommodation due to having a cat and also because the local authority would not provide assistance unless and until an order for possession was granted. The Tribunal was told that it might take two months for the Respondent to be given accommodation by the local authority but that no firm timescale had been provided. Ms Callaghan also had limited information as regards the Second Applicants timescale for returning to Scotland other than that she would not return until the First Applicant had moved out of the family home. The Tribunal also took into account the fact that the Respondent was not opposing the order being granted.
24. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicants in this application were such that although there would undoubtedly be an adverse impact on the Respondent it was reasonable to grant the order. Given the difficulties the Respondent was experiencing in

finding another property and in obtaining assistance from the local authority the Tribunal considered it appropriate to suspend enforcement of the order for a period of three months and the Tribunal would hope that would give the Respondent sufficient time for him to obtain alternative accommodation and obtain assistance from the local authority.

### **Decision**

25. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession of the property and the removal of the Respondent from the property of the Respondent from the property but that enforcement of the order be suspended until 29 January 2025.

### **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.**

**Graham Harding  
Legal Member/Chair**

**29 October 2025  
Date**