



**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/25/0903

Re: Property at Top Left, 14 Bellefield Avenue, Dundee, DD1 4NJ (“the Property”)

Parties:

**Miss Nicola Dye, 346 West Queen Street, Broughty Ferry, Dundee, DD5 2HQ
 (“the Applicant”)**

**Mr Ian Finan, Top Left, 14 Bellefield Avenue, Dundee, DD1 4NJ (“the
Respondent”)**

Tribunal Members:

Rory Cowan (Legal Member) and Melanie Booth (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted.**

- Background

By application dated 4 February 2025 (the Application), the Applicant sought an order for possession relative to the Property in terms of section 18 of the Housing (Scotland) Act 1988 (1988 Act). With the Application, the Applicant, lodged various supporting documents which include the following:

- 1) Lease which commenced on 14 May 2014 (along with associated tenancy paperwork);
- 2) Copy Form AT6 along with sheriff officer certificate of service;
- 3) Section 11 Notice;
- 4) Rent Schedule detailing arrears as at 28 February 2025; and
- 5) Pre-action correspondence.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 4 July 2025 to be heard by way of conference call. Notwithstanding, the

Applicant sought a postponement of same, which was granted and a new CMD was fixed in lieu of same for 15 August 2025.

- The Case Management Discussion

At that CMD a Mrs Thomson of IB Murray and Sons appeared and represented the Applicant. The Respondent also appeared and represented himself.

Mrs Thomson confirmed that the Applicant was still seeking an order for possession based on Grounds 11 and 12 of schedule 5 to the 1988 Act. She indicated that the arrears had now increased to £6,100 and that no payment towards rent or arrears had been received from the Respondent since May 2025. She also stated that, whilst the Respondent had made some payments in the past, they were inconsistent, and the arrears were substantial and that the Respondent had been in some arrears persistently since April 2018 and were increasing. The arrears as at the date of service of the Form AT6 were £4,905 and the Respondent had had years to address those arrears but had failed to do so. Payment was also due for additional rent and the Respondent would likely fall into further arrears. The rent was £395 per month as an increase on the original rent had been imposed some years ago.

In response, the Respondent accepted that he was in arrears of rent to the extent of £6,100. He accepted that he had been in arrears since April 2018. He confirmed the current rent was £395 per month. He confirmed that he was 59 years old, lived alone and was unemployed. He confirmed that he was in receipt of Universal Credit which included a housing element to cover his rent. When asked about why the arrears accrued, he indicated that he had been in employment until 4 or 5 years ago (just before COVID hit) and whilst he had some difficulties paying rent whilst employed, he had generally managed to keep on top of things. He stated that the current arrears had run up initially due to the cost of living, but that latterly he had run up the extensive arrears due to his lifestyle in that he had often spent the housing element of his universal credit on what he described as "overeating" and his "chronic cigarette addiction". He indicated that he had certain mental health issues, in that he suffered from depression, and he had social anxiety. He openly and candidly stated that he had "no excuses" and that he had used the housing element of his universal credit to fund his lifestyle. Beyond that he indicated he had no addiction problems in terms of alcohol or drugs but did say that it had been suggested that he may also be suffering from ADHD albeit this has not been diagnosed. He candidly admitted that there had been no issues of delays in the payment of his benefits that had cause any or part of the arrears. He did say that he had, on occasion, been sanctioned for failing to attend meetings but this was not the cause of the arrears.

In relation to the arrears, he indicated that should an order for possession not be granted, that his two brothers had indicated that they would pay £4,900 towards his arrears "within a matter of days". This, however, was conditional on no eviction order being granted. The choice of the £4,900 figure was to get things down to three months arrears which the Respondent appeared to be of the view would mean he could not be evicted. In relation to the ongoing rent and the remaining arrears, he indicated that he was prepared to set up a standing order of £500 per month. This would result in payments of the remaining arrears of £105 per month. This was again

subject to an order for possession not being granted. He also indicated that he could pay £400 now towards his arrears but had not done so as yet.

When asked about what his view on the question of whether it was reasonable to evict him, the Respondent, again with unusual candour, indicated that “it was not unreasonable” and that if he were in the Applicant’s position “he would feel the same”. He indicated that he had been in the property for a total of 27 years with 5 years being with the previous owner and 22 years with the Applicant. The Tribunal has not had sight of any earlier tenancy agreements.

Under questioning by the Ordinary member of the Tribunal, the Respondent indicated that, whilst he had sought some therapy and support, he had only had about “half a dozen consultations”. He also confirmed that, whilst he had received a letter from the local authority about the Application, he had not sought any advice from them, and he did not know what he would do if an order for possession were granted. When asked what would be different in the future if an order for possession was not granted, he indicated that this would be down to “self-discipline” on his part due to him “knowing this situation was a reality”. He indicated that he would give up smoking and “try and get healthy” and “be more disciplined”.

In relation to the offer presented today, Mrs Thomson on behalf of the Applicant indicated that she would still be seeking an order for possession. She indicated that, even when the Form AT6 was served, the Respondent had not made regular payments and had paid nothing since the “end of May”. She indicated that there was no consistency in his payments even though some payments had been received from his brothers in the past. She indicated that he had many years to address things and resolve his arrears.

- Findings in Fact

- 1) That the Applicant is the heritable proprietor of the Property.
- 2) That the Respondent and the Applicant entered into a tenancy for the Property that most recently commenced on 14 May 2014.
- 3) That the original rent for the tenancy was £385 per calendar month.
- 4) That the rent was increase to £395 per calendar month at some point prior to 2018.
- 5) That the Respondent has been in persistent arrears since 28 April 2018.
- 6) That the arrears as at 6 September 2024 were £4,905 and have increased to £6,100 as at 15 August 2025.
- 7) That the Respondent has made some payments to account of rent, but no payments have been received from him since May 2025.
- 8) By Form AT6 dated 6 September 2024 intimated by way of sheriff officers the Applicant gave notice to the Respondent of her intention to recover possession of the Property in terms of Grounds 11 and 12 of schedule 5 to the Housing (Scotland) Act 1988 which confirmed that proceedings would not be raised before 22 September 2024.
- 9) That the Applicant has issued correspondence under the Pre-action Requirements dated 19 July 2024, 26 July 2024 and 22 August 2024 along with other correspondence regarding the arrears.
- 10) That the Respondent is 59 and is not in employment.

- 11) That the Respondent lives in the Property alone.
- 12) That the Respondent is in receipt of universal credit with a housing element.
- 13) That the arrears have not accrued as a result of any failure or delays in the payment of benefits.
- 14) That the arrears have accrued as a result of the Respondent's lifestyle and him spending the housing element of his benefits on food and cigarettes.
- 15) That the Respondent has failed to engage with the Applicant regarding the arrears or sought to address them.

- Reasons for Decision

The Applicant has complied with the notice requirements under the 1988 Act. Standing the arrears as at the date of the service of the AT6 and the period over which they had existed, the requirements of grounds 11 and 12 had been made out.

The only issue remaining for the Tribunal was whether it was reasonable to grant an order for possession in the circumstances. Having heard from Mrs Thomson and the Respondent, the Tribunal decided that it was reasonable to grant such an order.

There appears to at least have been some compliance with the Pre-action Requirements applicable to rent arrears recoveries (PARs). However, the Tribunal was unable to assess the full extent of that compliance due to some attachments sent with some of the PARs letters not being made available to them. However, the lack of these attachments was not considered material and would not have affected the ultimate decision, and their omission did not warrant a continuation of the CMD for them to be produced.

The arrears in this case are substantial and have accrued over a period of approximately 7 years. It appears that the Respondent has made little or no attempt to either maintain his rental payments or address the significant arrears. He also candidly admitted that he had used funds given to him to pay his rent to fund his lifestyle and to, in his own words "overeate" and to pay for his "cigarette addiction". He therefore has chosen to prioritise such matters over payment of his rent.

Whilst it was noted that there was an offer to settle a large proportion of the arrears and thereafter pay the sum of £500 on a monthly basis as well as pay another £400 immediately, the offer to make the larger payment was conditional on no order for possession being granted. In other words, if the Applicant insisted on the Application, that payment would not be made. It also seemed to the Tribunal that the Respondent was trying to reduce the arrears down to a level that would mean he was not subject to eviction rather than addressing the arrears in full.

The Tribunal also took into account what the Respondent said about his mental health and his personal circumstances as well as his desire to be more disciplined, however, this was not sufficient to outweigh factors that pointed to it being reasonable to evict.

The main factors that weighed against the Respondent were the scale of the arrears, that they continue to accrue and that they had arisen over a significant period of time meaning that the Respondent had plenty of opportunity to address same. Rather

than doing so, he appears to have prioritise his lifestyle over the payment of his rent and use funds provided to him to pay his rent for such lifestyle matters. The offer of payment towards arrears being conditional on no possession order being granted (and therefore sought) again did not assist the Respondent greatly in that in order to find out whether the payment would be made, the Application would have to be refused or withdrawn by the Applicant. Standing the long history of non-payment, the substantial arrears and the inconsistent nature of historic payments, it was not unreasonable of the Applicant's representative to refuse that offer. The Tribunal did consider whether it would be appropriate to order a delay in enforcement of the order for possession but decided that such a delay would not be appropriate. In short, the likely consequence of such a delay would be that the arrears accrued further, which would not be in the interests of the Applicant or the Respondent.

- Decision

An order for possession should be granted.

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.

Rory Cowan

Legal Member/Chair

_____**15 August 2025**_____
Date