



**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/25/1779

**Re: Property at Mount Cottage, Aberuthven, Auchterarder, PH3 1EF (“the
Property”)**

Parties:

Mr Marc Haggart, Tigh Na Bhég, Dunning, PH2 0RW (“the Applicant”)

**Ms Patricia Bryson, Mount Cottage, Aberuthven, Auchterarder, PH3 1EF (“the
Respondent”)**

Tribunal Members:

James Bauld (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 29 April 2025, the applicants sought an order under section 18 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and in terms of rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 2 June 2025 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion was set to take place on 11 November 2025, and appropriate intimation of that hearing was given to both the landlord and the tenant.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 11 November 2025. The applicant was represented by Mr Calvin Gordon, solicitor, Thorntons. Edinburgh. The respondent was neither present nor represented.
5. The tribunal discussed the purpose of the CMD and the powers available to the tribunal to determine matters

Discussions at CMD

6. The tribunal asked various questions of the applicant's solicitor with regard to the application

Findings in Fact

7. The applicant and the respondent are respectively the landlord and the tenant of the property by means of a tenancy agreement originally commencing on 27 September 2014.
8. The tenancy was an assured tenancy in terms of the 1988 Act.
9. The rent payable was initially £550 per month.
10. On 23 October 2024 the applicant's solicitor served upon the respondent a notice to quit and a notice in terms of section 19 of the 1988 Act, namely the Form AT6. These notices were served personally on the respondent by sheriff officer. Said notices became effective on 27 March 2025.
11. The notices informed the respondent that the applicant wished to seek recovery of possession using the provisions of section 18 and schedule 5 of the 1988 Act.

12. The notices were correctly drafted and gave appropriate periods of notice as required by law.
13. The notice form AT6 specified a ground for recovery of possession contained in schedule 5 of the 1988 Act, namely Ground 1, that the house was the landlord's only or principal home at any time before the tenancy was granted and the landlord needs the property for use as his principal home
14. The basis for the order for possession was accordingly established.

Reasons for the decision

15. The order for possession was sought by the landlord on a ground specified in the 1988 Act and properly narrated in the notice served upon the tenant.
16. The ground for eviction under which this application was made is the ground contained in paragraph 1 of schedule 5 of the 1988 Act. The ground is that that the house was the landlord's only or principal home at any time before the tenancy was granted and the landlord needs the property for use as his principal home
17. The tribunal was satisfied that the notice had been served in accordance with the terms of the 1988 Act and that the landlord was entitled to seek recovery of possession based upon that ground.
18. The tribunal accepted the unchallenged evidence of the landlord that he previously lived in the property and that he intended to do so again. An affidavit dated 31 October 2025 had been provided to the tribunal.
19. In his affidavit the applicant indicates that he lived in the property for 10 years between 2000 and 2010 and he now requires to live in the property again owing to a change in his matrimonial circumstances
20. The applicant indicates that the respondent has certain health problems and has recently received hospital treatment. He has been advised by the

respondent's son that she is frail, and it would be better for her to be living elsewhere. The respondent has carers coming to the property every day and the applicant understands that she has been looking for alternative private accommodation.

21. The applicant's solicitor confirmed to the tribunal that if they wished to use the powers open to them to delay the enforcement of any eviction order then the applicant would not be opposed to a delay of up to three months. He asked the tribunal if such a delay were to be imposed that the tribunal make an appropriate order in terms of section 20 of the 1988 Act to impose a condition upon the tenant requiring her to continue to pay rent until she removes from the property.
22. The local authority has now been made aware of the tribunal proceedings and if an order is granted, they will be under a duty to provide assistance to the respondent in obtaining alternative accommodation
23. In the application, the applicant has conceded that no formal notice was given to the tenant prior to the creation of the tenancy that the ground for eviction might be used.
24. The applicant's solicitor has requested that the tribunal use the power contained in the relevant schedule to the 1988 Act to dispense with the requirement of notice.
25. It is noted that the tenancy agreement between the parties was based on the typical standard style tenancy agreement used for an assured shorthold tenancy (of the type used in England within the meaning of the Housing Act 1988). There is a clause in the tenancy agreement which indicates that notice is given that recovery of possession might be sought under various grounds contained in the English legislation. One of these grounds is that that the landlord used to live in the property as his main home and intends to occupy the property as his main home. That ground mirrors the provision of the ground for recovery of possession being sought in this application. The tribunal having noted the terms of the tenancy agreement and noting the powers available in terms of the Housing (Scotland) Act 1988 are therefore content to dispense with the formal requirement in the 1988 Act that this notice required to be served prior to the commencement of the tenancy.
26. The ground for eviction was accordingly established.

27. When the 1988 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.

28. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact

29. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

30. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

31. In this case the tribunal finds that it is reasonable to grant the order.

32. The tribunal accepts that the applicant previously lived in the property and that he intended to do so again. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa. However, the tribunal accepts that the tenant may be willing to leave the property once she has obtained

alternative accommodation. The respondent is likely only to be fully assisted by the local council in obtaining alternative accommodation only when an eviction order is granted and she faces actual homelessness

33. The respondent requires assistance from the relevant authorities in obtaining alternative accommodation. The council's housing team are unlikely to assist the respondent unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain more suitable accommodation for herself

34. The balance of reasonableness is weighted towards the applicants in this application

35. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

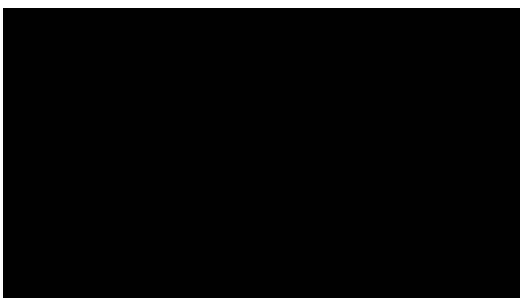
The order for recovery of possession is granted

The tribunal will delay the enforcement of the order until 30 January 2026

The tribunal also orders that the respondent continues to pay rent for the property until she ceases to occupy it.

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.



11/11/25

Date

