Housing and Property Chamber
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/EV/24/2813**

**Property at 13A Viewforth Avenue, Kirkcaldy, KY1 3BL ("the Property")**

**Parties:**

**Mrs Christina Gibb, Mr Terence Gibb, 44 Mid Street, Kirkcaldy, KY1 2PN ("the Applicants")**

**Mr Brian Scobie, Miss Hulya Scobie, Miss Seniha Canko, 13A Viewforth Avenue, Kirkcaldy, KY1 3BL ("the Respondents")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be refused and that an order for possession should not be granted against the Respondents in favour of the Applicants.**

**Background**

1. The Applicants seek an order for possession of the property in terms of Rule 65 and Section 18 of the 1988 Act. A tenancy agreement, Notice to Quit, AT 6 and section 11 notice were lodged with the application. The application is based on grounds 11 and 13 of schedule 5 of the 1988 Act.

2. The application was served on the Respondents and parties were notified that a case management discussion ("CMD") would take place by telephone conference call on 4 April 2025 at 10am. Prior to the CMD both parties lodged submissions and documents.

3. The CMD took place on 4 April 2025. The Applicants were represented by Mr Webber. Mr Scobie participated, representing himself and the other two Respondents. He did not join the call until 10.25am, having mistaken the time.

4. The Tribunal advised Mr Webber that no issues had been identified with the paperwork that had been lodged, including the notices. In relation to ground 11, Mr Webber told the Tribunal that the Applicants had taken over the management of the property themselves from the letting agent, as they had a good relationship with the Respondents. When that changed, Martin and Co were re-instructed. The Applicants position is that the rent was never paid on time, even at the start. This is evidenced in the documents that have been lodged. This may have been a relatively minor matter but since the relationship between the parties has broken down, it has become more significant. In relation to ground 13, it is the Applicants position that the Respondents reside in Turkey and spend little time at the property. Mr Scobie had been seen at the property the day before the CMD, for the first time this year. The Legal Member asked for clarification of the term of the tenancy which had been breached, as there does not appear to be a clause which requires the tenant to occupy the property full time. There is a clause which requires the tenant to notify the landlord when they will be absent for more than 2 weeks. Mr Webber said that he would have to check the agreement and confirm this. However, the Respondents do not give notice of absences, and the neighbours have confirmed that they only visit occasionally and that their son occasionally attends to collect mail. Mr Webber also said that Mr Gibb has had some health issues, and they intend to sell the property if they are successful in recovering possession of the property.

5. When Mr Scobie joined the call, the Legal Member summarised the discussion that had taken place so far. He confirmed that he had no issues to raise with the documents. However, he disputed the grounds because Martin and Co had told him that they could choose which day suited them for paying the rent, as long as they paid within a day or so of that date. He had to change the date when the Applicants asked for rent to be paid to them instead of the agent and that is the reason for the later payments. In relation to absences from the property, he met with the letting agent who said that if there was adequate security and someone checking the property, absences were not an issue. In response to a question from the Tribunal, Mr Scobie said that in the last 12 months they have spent at least 7 living at the property.

6. The parties were told that the case would proceed to an evidential hearing. Mr Scobie said that he might take advice. The parties were also told that a direction would be issued in relation to documents and witnesses.

7. The parties were notified that a hearing would take place at Fife Voluntary Action, Kirkcaldy on 6 October 2025 at 10.30am. In response to the direction issued by the Tribunal, both parties lodged further documents.

8. The Hearing took place on 6 October 2025. The Applicants were represented by Ms Seaward. Only the first Applicant, Mr Gibb, attended and gave evidence. The Tribunal also heard evidence from his son, Gordon Gibb. Mr Scobie also attended and gave evidence. He also represented the other Respondents.

**The Hearing**

Mr Gibb's evidence – in response to questions from Ms Seaward

***9.*** Mr Gibb confirmed that the tenancy agreement lodged with the application is his agreement with the Respondents. He was referred to various clauses which relate to insurance, changing locks, absences from the property and maintenance of the garden. He stated that Martin and Co dealt with the property for the first 8 months of the tenancy. After that everything was done through himself. The letting agent took it upon themselves to issue letters to the Respondents in 2022 and he had asked them for advice. He was unable to remember when the agent Myra Blake last visited the property – two or three years ago – as they shut the office about two or three years ago. The Respondents knew that they had to start paying the rent to him because Myra Blake told them in 2017. Prior to that, he received the monthly rent from the agent on the 24th or 25th of the month. Since he took over, he is never sure when it will be paid. Sometimes payments are missed, and he has to email them. However, he accepts that he did not raise the matter with them as often as he should. The last time he discussed it with them was when he asked them when they were leaving. The discussion took place in person. He stated that the late payments have caused sleepless nights. He was not aware that Martin and Co were making changes, they were not in charge. If they did agree to change the date, no one told him.

***10.*** Mr Gibb told the Tribunal that the rental income supplements his pension. It's a substantial part of his income. His wife has a small pension, less than he does. He has his old age pension and a small works pension. When asked about the insurance for the property, Mr Gibb said that he has been aware for several years that the Respondents are not occupying the house. They vacate for long periods without advising him. Myra Blake did not ask for details of the insurance, but he spoke to her about it once or twice over the years. When asked about the last time he saw Mr Scobie's mother-in-law at the property, Mr Gibb said not very often, two or three years ago. He confirmed that he has been aware of the absences for years, but it's become more frequent. However, he is not always aware that they are away. Unless the car has not moved. The neighbours told him, and his son works in the street and passes daily. The curtains never move. Mr Gibb only passes occasionally; he doesn't like to do so. A neighbour has mentioned about them not being there and is concerned about the garden. Although the front hedge is Brian's responsibility, the neighbour is getting the work done. He doesn't know is she is paying for it. The neighbours across the road have also expressed concern about it being empty. The last time he saw Brian was about 6 weeks ago, but he hasn't seen the ladies for a year or two. He last inspected about 6 weeks ago. Brian was there in May, after the last Tribunal hearing. Mr Gibb has been there since, but Brian was not there. He worries about the state of the property and it not being used.

***11.*** In response to questions about the locks Mr Gibbs said that they have been changed twice. They said it was because the lock was faulty but did not tell him that this was the case. He is not sure how long they took to provide him with keys the first time. He turned up with a contractor, and the neighbour gave him a key. Then they had the lock changed again, maybe in August. Mr Gibbs said that he had to cut the hedge himself a year ago. In response to a question about the photographs he said that these were taken after the neighbour had the work done recently. In relation to changes made to the property by the Respondents, he said that they have made minor changes – a temporary ramp, a minor change to the toilet to allow disabled access. He had no objection.

***12.*** Mr Gibb said that he is 78 years of age, and his wife is 73. His wife has a rare medical condition and requires special medication. It restricts what she can do. Her mobility is affected, and she walks with a stick. Recently she fell and broke her arm. He has to do everything for her. In relation to plans for the property, Mr Gibb said that at one time he had planned for his son to live there but now he thinks he might sell it. He is finding it hard to be a landlord with all the paperwork that is required.

Mr Gibb's evidence – in response to questions from the Tribunal.

***13.*** Mr Gibb said that the shower room at the property has always been there, but the ramp was installed by the Respondents. He confirmed that there are no arrears of rent. He said that the garage is not included in the tenancy. The rent has not increased because the Respondents refused to pay it although they did not go to the rent tribunal.

***14.*** Mr Gibb said that he spoke to the Respondents about the late rent as soon as it happened and he mentioned it again in 2018 and 2019 but then there was COVID. When asked whether he had spoken to the tenants about his insurance policy he said that his recollection is that he had brought it up once. He is not sure when that was, not recently. It was raised verbally. He has not made a final decision about what is to happen with the house. His son will be home in a year or so. He has one other property. In relation to the garage, he said that it was never part of the tenancy as there is too much stuff in it. He did not know that it was mentioned in the tenancy agreement.

Mr Gibb's evidence – in response to questions from Mr Scobie

***15.*** Mr Gibb denied that he visited and told Mr Scobie that the rent was to be paid to Mr Gibb, not the agent. He said that Myra told him that she had told the Respondent. He said that did not have a written contract with Martin and Co. He said that he had mentioned that the property being left empty might cause insurance complications. He said that he did not recall a meeting when late payments and the garage were discussed in April 2022. He denied that he had stormed off during a meeting. He said that he could not remember stating that his wife would want to sell if they had to empty the garage. He confirmed that he had tried to get an eviction order before on the basis that his son wanted to occupy the property. He denied that the neighbours had confirmed that he was at the property and that the car does move, saying the neighbour does not want to be involved. He denied that he had failed to give notice about the engineer coming, he had emailed 5 days before but agreed that he had not confirmed the date and time until the evening before.

Mr Gordon Gibb's evidence

***16.*** Mr Gordon Gibb said that he had last visited the property two weeks ago. The garage alarm was ringing due to a problem with the roller door. The Respondents were not there. They had not informed the Applicants that they were away, they never do. He said that he had been at the property from time to time over the years, his dad likes him to go with him. He passes the property regularly as he lives locally and walks past the property on his way to work at the primary school. He has never seen the Respondents when he has been passing. There is a silver Honda at the front of their drive which never seems to move, and which has its wheels turned at an angle. He said that there are ramps at the property – one in the garden and one in the conservatory. It has been years since he saw Mrs Scobie or her mother. When asked whether anyone had expressed concern about this, Mr Gibb said that neighbours had not expressed concern but had highlighted the situation. He had been told that the Respondents appear to arrive at the property late at night and leave very early in the morning. But not in the car. A neighbour has been dealing with the garden – not sure if this is on behalf of Brian. She wanted to tidy it up. The garden had become very overgrown, and you couldn't get to the greenhouse. In addition, trees had been planted at the front without permission.

***17.*** Mr Gordon Gibb told the Tribunal that the Respondents have changed the locks two or three times, but he can't remember the dates. He said that he inspected the property with his dad and there was ant powder in every corner of the conservatory. He thinks that was a year or two ago. The house was crowded with furniture and did not look lived in. He confirmed that he remembers Myra Blake who used to manage the property but does not recall being at the property when she was there. After she had stopped managing the property she kept interfering and trying to give advice. He also owns properties, and he would be speaking to her but not usually about this property. In response to questions about the rent, Mr Gibb said that the issues started after the first 8 months. Payments became sporadic and it was stressful. He said that his parents have reached a stage in life where it has become difficult. They are bogged down in paperwork.

***18.*** In response to a question from Mr Scobie Mr Gibb confirmed that there had been a meeting at the property on 28 April 2025 when various things were discussed. He denied that he had said that the neighbour had expressed concerns about the garden. He confirmed that he was aware that the neighbour had the same gardener as Mr Scobie. He said that he could not comment on the contract, it is nothing to do with him, when he was asked about the lack of access to the garage for storage. He confirmed that the additional trees were planted at the start of the tenancy and said that they are now mature.

Mr Scobie's evidence

***19.*** In response to questions about absences from the property, Mr Scobie said that the Respondents are not always at the property together. His wife and mother-in-law spend more time in Turkey than he does. This is often for health/medical reasons, and they might not be fit to travel back. However, he works so has to be here. He is an electrician and also fits bathrooms. He is currently renovating his son's house in Edinburgh. His mother-in-law has health issues. Currently she and his wife are staying in a relative's house in Turkey. As he not a Turkish citizen, he cannot stay there for more than 90 days a year. His mother-in-law has been there since March. His wife has been back and forward. In the last 6 months she has probably spent half of the time here. His mother-in-law spent time in hospital in Edinburgh and Kirkcaldy before going to Turkey.

***20.*** Mr Scobie said that he does use his car. He cannot recall Mr Gibb ever telling him about his insurance or saying that it could be affected by their absences. He said that his son lived at the property with them when he was a student. One of the rooms still has his belongings. He said that he does not think that he has ever been absent from the property for more than 45 days at a time. Absences were discussed with Myra when the tenancy started and she is still involved. The locks were changed due to damage. He did not report the damage but carried out the repairs himself and he has always done at the property because that is his trade. Mr Scobie told the Tribunal that he and his neighbour have both used the same gardener for 6 or 7 years. Recently, when the trees were getting a bit high, they got someone to cut them down. His wife speaks to the neighbour to arrange these things. Mr Scobie said that he paid for the work although the neighbour arranged it. Mr Scobie said that he met with Mr Gibb in April 2022 to discuss the rent payments. Mr Gibb had raised the issue once before in 2021. There were a series of communications which led to the meeting. They discussed the reasons for the later payment date. For the first 8 months they had paid on the 24$^{th}$. When they had to start making payments to Mr Gibb they had to cancel the direct debit. The meeting did not resolve matters because he raised the issue of the garage. This was not raised as a negotiating point. But as soon as he did mention it, the meeting was over. The 5$^{th}$ of the month is better for the Respondents because they receive money from investments and other sources at the beginning of the month.

***21.*** Mr Scobie told the Tribunal that there was a recent meeting on 28 April 2025. Mr Gibb and his son were there. The payment arrangements were not discussed. They had come to inspect, by arrangement. Mr Scobie said that he works part time and is 61 years of age. He mostly works in Edinburgh and stays at his son's flat some of the time. He stated that he built the ramps at the property and got permission from Mr Gibb to do so. The Council would have installed metal ones which he did not think would look good. However, the Council did some other adaptations. Mr Scobie said that his wife works as a interpreter when she is in Scotland and is also involved in the Turkish/Scottish Chamber of commerce. He said that he has looked for alternative accommodation, but it's not been easy. They need somewhere suitable for his mother-in-law with a bedroom and bathroom on the ground floor. That is the reason they rented this house. The property is the family's principal home. Their mail comes to the property. While it might be possible for him to find an alternative home for himself, they need something for the whole family unit. The house is suitable. There is a shower cubicle with a seat and handles. The property is suitable for wheelchair access. During COVID they had to shield, and all stayed there full time, getting food delivered. They did not go to Turkey throughout the pandemic. Following a stay in hospital in Edinburgh, his mother-in-law went to Turkey for treatment as the Edinburgh hospital would not do the procedure. It is hoped that she will be able to travel back to Scotland soon. When he discussed absences from the property with Myra, she told them that it was fine as long as reasonable measures were in place to look after the property.

Mr Scobie's evidence in response to questions from Ms Seaward

***22.*** Mr Scobie confirmed that the emails he lodged between himself, and Myra do not state that he can be absent without notice but said that he had discussed this with her. He said that he had never given notice to Mr Gibb because it was not required.

***23.*** Mr Scobie said that the last time he saw Myra Blake was when she came with Mr Gibb. He said that he was aware that Martin and Co in Kirkcaldy has closed but she still works for them elsewhere. He said that he can't recall when he last told Myra that he was going to be away from the property. He did not tell Mr Gibbs because he raised an eviction application. He believes that he has complied with the lease. He stated that it was agreed that the date could be changed to the $5^{th}$ of the month and that he usually pays around that date. It has only occasionally been much later. Sometimes that's because it falls at a weekend. He said that until recently, the last time it had been mentioned by the Applicant was April 2022. He denied that he was unreliable and had not been aware it was causing a problem as it had not been mentioned since 2022.

***24.*** Mr Scobie was asked about his statement at the CMD that he had spent 7 out of the last 12 months at the property as this seemed at odds with his evidence at the hearing. He said that he had not broken it down and meant 5 months away over the course of the year. He had not thought it necessary to provide flight records. The house is always looked after and there has never been a problem with burst pipes etc. He said that his mother-in-law had been here for 3 or 4 weeks in March. However, it is her intention to return to reside in Scotland. All her stuff is here, and she regards the property as her home. He is currently making preparations for their return although his wife had to have an operation for a broken knee. When asked why Mr Gibb and his son say that they have not seen her in years, Mr Scobie said that she is mainly in her room.

***25.*** In relation to questions about how often he stays in Edinburgh, Mr Scobie said that he currently spends about 10 nights a month in Edinburgh and 20 In Kirkcaldy. He was asked about how long it took him to provide the Applicants with keys after the lock changes. He said that on the last occasion it was only one day, the time before it might have been a couple of weeks. The locks were changed due to defects. In response to questions about the garden Mr Scobie said that he has a gardener and that the trees have been cut recently and once before that. Recently it was because the neighbour wanted it. He said that the garden is not overgrown. He said that the property is the Respondents principal residence. They have looked but it has not been possible to find somewhere else to live. The Council won't help because they have a tenancy. The need somewhere for all three of them. Turkish people look after their parents.

The Applicant's submissions

***26.*** The Applicant's representative made the following submissions: -

(a) Mr Gibb and Mr Gordon Gibb were credible and reliable witnesses, and their evidence should be preferred.

(b) Ground 11 – Martin and Co only managed the property for 8 months. The Applicants later asked them for advice, but they took it upon themselves to write letters to the Respondents. Mr Gibb repeatedly raised the issue of late payments with the Respondents The correspondence lodged shows this. He was not aware that Martin and Co had agreed a different date. The Applicants rely on the rental income to supplement their limited pension income.

(c) Ground 13 – Clause 7.4 of the lease prohibits the Respondents from doing anything which will invalidate the landlord's insurance policy. Clause 7.15 requires the Respondents to notify Martin and Co if they will be absent from more than 14 days. Both Mr Scobie and Myra Blake were aware of the terms of the policy in relation to absences. Mr Gibb spoke to Mr Scobie about this and expressed concern about the property being left unoccupied. The Respondents are at the property infrequently, the car never moves, the curtains never move. Neighbours have confirmed that they are rarely there. The Respondents have never told Mr Gibb when they will be absent.

(d) Ground 13 – Clause 7.22 requires the Respondents to maintain the garden and clause 7.12 prohibits them from changing the locks. The locks have twice been changed, and neighbours have complained about the garden.

(e) Reasonableness – the adaptions to the property are minor and temporary. Mr and Mrs Gibb are in their 70's. Mrs Gibb has medical issues which affect her mobility. Their son is in the army and may want to live in the property when he leaves the army. If not, the Applicants want to sell. The do not want to be landlords anymore.

(f) Mr Scobie admitted that the Respondents spend time abroad and are not always together. Mrs Canko was last at the property in March 2025, for a few weeks. Prior to March, she had not been there since September 2024. Both Mrs Canko and Mrs Scobie spent a large part of 2024 in Turkey. Mr Scobie conceded that insurance may have been discussed. He works in various locations, mostly in Edinburgh, and often stays with his son in Edinburgh. He conceded that he does not notify the Applicants when he is going to be absent.

(g) Mr Scobie has a gardener for the property and admitted to changing the locks. In relation to the rent there was no evidence that late payments were due to financial hardship. The only factors relevant to reasonableness are the health issues.

(h) The grounds are established, and it would be reasonable to grant the order.

The Respondent’s submissions

***27.*** Mr Scobie made the following submissions:-

(a) Mr Gibb was an unreliable witness. His denial of a contract with Martin and Co is not credible as the evidence showed that they managed the property until recently. Mr Gordon Gibb was also not reliable. Both made statements about the neighbours which contradict the neighbours’ statements to the Respondents.

(b) Ground 11. Martin and Co managed the property until after the first eviction application. The change in payment arrangement was 2 years after the start of the tenancy, not 8 months. The Respondents have paid around the 5th since that date, and no issue was raised after the April 2022 meeting. There are no arrears.

(c) Ground 13 – insurance. Mr Scobie has no recollection of the insurance being mentioned. In any event the property has never been left vacant for more than 45 days.

(d) Ground 13 – notice of absence. Martin and Co were notified of absences over 14 days and additional security measures were put in place. The neighbours do not support the Applicant’s claims. There are no curtains in the house, only blinds.

(e) Ground 13 – locks. Locks were changed only when damaged and new keys provided to the Applicants.

(f) Ground 13 – garden. The garden is maintained by a gardener, the neighbours have not complained and the trees were not cut down because Mr Gibb would not give consent.

(g) Grounds 11 and 13 are not established.

(h) Reasonableness. The reasons for the eviction application are not the stated grounds. Mr Gibb does not want them to have use of the garage and attic. He also wants to sell the house or have his son move in. Mrs Canko is 98 and is in ill health. A change of house would result in significant stress. It may be possible to move the electric bed, bathroom adaptations etc but this can take time. Mrs Canko is a British citizen, and her permanent address is the property. She has no other home.

(i) If the order is to be granted, the Respondents seek a delay in enforcement of one year.

**Findings in Fact**

28. The Applicants are the owners and landlords of the property.

29. The Respondents are the tenants of the property in terms of an assured tenancy agreement. They have lived at the property since September 2016.

30. The Respondents are due to pay rent at the rate of £850 per month.

31. In terms of the tenancy agreement, the rent is due to be paid on the 24th of each month.

32. The tenancy was initially managed by Martin and Co on behalf of the Applicants. At some point between May 2017 and September 2019, the Respondents were told by Mr Gibb that the rent had to be paid to him and not to the letting agent.

33. Between 2021 and 2023, Martin and Co assisted the Applicants to manage the property.

34. When the rent was paid to Martin and Co, it was paid by direct debit on or about the 24th of each month.

35. Since they started paying the rent to Mr Gibb, the Respondents have usually paid between the 5th and 10th of the month by bank transfer.

36. In December 2022, Martin and Company wrote to the Respondents about a number of tenancy related issues. The letter stated that the Respondents could choose the date of payment of the rent which suited them best but that they had to pay within a day or two of that date each month.

37. In July and December 2021 and January and February 2022, Mr Gibb sent messages to Mr Scobie about tenancy matters and reminded him that the rent was due on 24th of each month.

38. The Applicants did not issue letters to the respondents in terms of the Rent Arrears Pre-action Protocol.

39. In a message to Mr Gibb in July 2021, Mr Scobie said that he had received communications from Martin and Co and asked if they were managing the property again. Mr Gibb responded stating that the communication from Martin and Co had been sent on his behalf.

40. On 19 April 2022, the Respondents received an email from Mr Gibb which stated that "Myra" had his full authority in relation to the property.

41. On two occasions since the start of the tenancy the Respondents have changed a lock at the property because the lock was damaged. On both occasions the Applicants were provided with a key for the new lock.

42. The Respondents employ a gardener to maintain the garden at the property.

43. The Respondents recently paid for trees to be cut back at the property.

44. Mrs Scobie and Mrs Canko currently spend significant periods of time in Turkey. They do not have a house there and stay with relatives when they are in Turkey.

45. Mr Scobie also spends time in Turkey but is restricted to 90 days each year as he is not a citizen.

46. Mr Scobie currently spends some nights each month at his son's house in Edinburgh.

47. The property is the Respondents' principal home.

48. The Applicant's current insurance policy for the property states that the property is not to be left unoccupied for more than 45 days at a time.

49. Neither the Applicant nor the letting agent advised the Respondents about the terms of the insurance policy.

50. The Applicant served an AT6 Notice on the Respondent on 15 March 2024

51. The Applicants are aged 78 and 73. Mrs Gibb has health and mobility problems

52. Mr Scobie is aged 61 and works part time as a electrician and bathroom fitter. When she is in the UK, Mrs Scobie works as an interpreter.

53. Mrs Canko is 98 years of age and has serious health and mobility issues. Some adaptations, including a ramp and bath rails, have been installed at the property.

**Reasons for Decision**

54. The application is based on grounds 11 and 13 of schedule 5 of the 1988 Act. The application was submitted with a copy of a tenancy agreement, Notice to Quit, AT6 notice and three Royal Mail track and trace reports confirming delivery of the Notices on 13 March 2024. The Notice to quit calls upon the Respondents to vacate the property on 24 May 2024, an ish date. The AT6 Notice is in the prescribed format and specifies grounds 11 and 13 of schedule 5. It states that the earliest date that proceedings can be taken is 24 May 2024, giving the Respondents more than two weeks' notice, as required by Section 19(4) of the 1988 Act. A copy of a section 11 Notice was also lodged, with evidence that it was sent by email to the Local Authority. The Tribunal is satisfied that the Applicant has complied with Sections 19 and 19A of the 1988 Act.

55. Section 18 of the 1988 Act (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022 states: -

(1) The First-tier 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.

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part i or Part ii of Schedule 5 to this Act is established, the Tribunal shall not make an order for possession unless the Tribunal considers it reasonable to do so.

(4A) In considering, for the purposes of subsection (4) above, whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the First-tier Tribunal shall have regard in particular to-

(a) The extent to which any delay or failure to pay rent taken into account by the tribunal in determining that the ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit or relevant universal credit, and,

(b) The extent to which the Landlord has complied with the pre-action protocol specified by Scottish Ministers in regulations.

56. Ground 11 of Schedule 5 states, “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.”

57. Ground 13 states, “Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.”

Credibility and reliability

(a) The Tribunal did not find Mr Gibbs to be either credible or reliable. His evidence was vague and inconsistent on a number of key issues. At the CMD, the Tribunal was told by the Applicant’s representative that Martin and Co had initially managed the property and had taken over again later, when the relationship between the parties had broken down. Mr Gibb told the Tribunal that there had never been a contract with Martin and Co, although he accepted that they had initially collected the rent. He said that when he took over the rent collection, Martin and Co were no longer involved and took it upon themselves to write to the tenants and deal with tenancy matters. He then conceded that he had gone to them for advice when problems developed. Based on the evidence, the Tribunal is satisfied that Martin and Co continued to have a role in the management of the property until recently. Both parties lodged a copy of a letter from 2022 which advised the Respondents that they could choose a payment date, as long as they consistently paid on or about that date. The Respondents also lodged a copy of an email from Mr Gibb to Mr Scobie dated 19 April 2022 which states that Martin and Co had his full authority. In their first submission to the Tribunal, The Applicants lodged a series of text messages between the parties. In the exchange, Mr Scobie asked if Martin and Co were managing the property again as he had received a letter from them. In his reply dated 28 July 2021, Mr Gibb stated that the letter had been sent on his behalf. Mr Gibb’s claim that the letting agent were interfering and acting without his permission is therefore not supported by the evidence. There were also inconsistencies in his evidence about the Respondents occupation of the property. He said that when he passes the property it looks unoccupied.

However, he also said that he rarely goes near the property as he does not like to do so. His evidence about the neighbour's alleged concerns was very vague. He provided no specifics about what had exactly been said, by whom, to whom and the circumstances.

58. The Tribunal found Mr Gordon Gibbs to be generally credible and reliable. However, his evidence added little to the case as his involvement with the property and the Respondents has been limited.

59. The Tribunal found Mr Scobie to be generally credible reliable. He appeared to have a better recollection of events. However, he was clearly uncomfortable with questions about how much time the Respondents actually spend in the house and some of his answers on this issue were vague and hesitant. However, he was candid about his reasons for changing to the payment date and he did not deny that all three Respondents are regularly absent from the property, to differing degrees. He was also able to explain the reasons for these absences.

Ground 11

60. There is no doubt that the Respondents have failed to comply with the terms of the written tenancy agreement in relation to the date that rent is paid. Although the evidence supports their claim that the letting agent told them that they could choose a date that suited them best, if they adhered to it, the agents' email was not received until December 2022. The Applicants lodged copies of messages sent by Mr Gibb to Mr Scobie in August and December 2021 and January 2022, when Mr Gibb reminded the Respondents of the date that rent is due in terms of the tenancy and asked them to honour that date. However, these messages were sent years after the Respondents stopped paying on the 24th of the months and started paying between the 3rd and 10th of the month. Furthermore, there was no credible evidence before the Tribunal that the issue had been raised with them before 2021. The Tribunal also notes that the Applicant's messages did not only raise issues with the payments date. They also related to an attempt by the Applicants to increase the rent. This appeared to be the main concern. It appears that the correct legal process was not followed. Either Mr Gibb or his agent simply told the Respondents that the rent was going up. The Respondents did not pay the increased sum. In his evidence Mr Gibb said that they should have gone to the "rent tribunal" if they were unhappy. However, this would only have been required if the Applicants had followed the process laid down in the legislation. As the rent statement lodged by the Applicant states that the rent is £850, it appears to be accepted that they did not do so. Given the apparent conflict between the messages sent by the Applicant and the letter issued by the agent, the Tribunal is not satisfied that the Applicants agreed to vary the terms of the tenancy. The Respondents may have assumed that Mr Gibb had accepted the new arrangement, since he did not take issue with it for some time. However, he made it clear in 2021 and 2022 that this was not the case.

61. The rent statement lodged by the Applicants does not cover the whole period of the tenancy. It starts in December 2021 and shows the rent being paid most

months between the 3rd and the 10th of the month. According to the statement, the rent due in December 2023 and January 2024 were not paid until the 23rd of the following month, the rent due on 24 February 2024 was not paid until 8 April, the March 2024 rent was not paid until 5 May, and the April rent was then paid on 13 May. This suggests that there were rent arrears for a brief period in early 2024. The statement also indicates that the payment due on 24 October 2024 was not made until 5 December 2024 with the rent due on 24 November being paid four days later. In September 2025, the Respondents paid £950 and not £850. As a result, the rent account is currently £100 in credit.

62. In their final submission, the Respondents state that they were not asked to start paying Mr Gibb until 2 years (not 8 months) after the start of the tenancy. This was not raised during the hearing, and no evidence was produced. However, the rent statements lodged with the Tribunal do not start until December 2021 and the Tribunal was not provided with evidence of the pattern of payments before that date. The Tribunal also noted another discrepancy. The Applicants lodged screenshots from a banking app showing payments made to Mr Gibb by Mrs Scobie, although these do not cover the whole period. Most of the payments are consistent with the rent statements. However, the statement indicates that the payment in February 2024 was made on the 23rd of the month. The transaction record shows a payment being received on 2 February 2024. The statement shows no payment in March 2024. The transaction record shows a payment on 5 March 2024. In the circumstances, the Tribunal is not persuaded that the Respondents were in arrears of rent in early 2024, as the rent statement suggests.

63. The Tribunal is satisfied that ground 11 is established for the following reasons.

(a) There is no evidence that the Applicant or his agent agreed to vary the terms of the tenancy contract in relation to the payment date from 24th of the month to the 5th of the following month when Mr Gibb became the payee. This was either in May 2017 (the Applicant's position) or September 2019 (the Respondent's position). In 2022 the agent told the Respondents that they could pick a date, but the messages sent by the Applicant himself contradicted this suggestion.

(b) When the Respondents started paying on or about the 5th of the month, as opposed to the 24th of the previous month, they did not make provision for the requirement in the contract that the rent is to be paid a month in advance (Clause 3). If the new arrangement started in May 2017, with the payment being made on 5 June instead of 24 May, the sum that should have been paid was the rent for the period 24 May 2017 to 4 July 2017. Instead, the Respondents simply paid the usual monthly rent two weeks late.

(c) Since 2021, the Respondents have been aware that the Applicants wanted the rent to be paid on the 24th as originally contracted.

(d) Even if it was accepted that the letting agent agreed to the change of date, and had the authority to do so, the payments were often late. There may have been some months when the 5th fell on a Saturday or Sunday, but that does not explain why so many of the payments were made on the 8th, 9th 10th of the month or later. Although there is a question mark over the reliability of the rent statement, Mr Scobie did not challenge it or claim that payments were always made on time.

64. Although the Tribunal is satisfied that ground 11 is technically established, the Tribunal noted that the Respondents failure to pay according to the terms of the tenancy is a minor breach. The rent account is not in arrears, and the full rent charge has been met throughout the tenancy.

Ground 13

65. In their submission dated 22 September 2025, the Applicants set out four alleged breaches of tenancy; - causing the landlords insurance to be void or voidable (Clause 7.4), changing the locks without prior consent (Clause 7.12), leaving the premises vacant for 14 or more days without notifying the Applicant or his agent (clause 7.15.1) and failing to maintain the garden ( clause 7.22). The Tribunal notes that only one of these alleged breaches is mentioned in the application form and AT6 notice served on the Respondents. This is the complaint that the property is regularly left empty for long periods of time. The others were not mentioned by the Applicant until a written submission lodged shortly before the hearing.

66. Clause 7.4 prohibits the tenant from doing "anything which might cause the landlord's policy of insurance….to become void or voidable or causes the rate of premium on any such policy to be increased." The clause goes on to state that the tenant would be liable for any increased costs. The Applicants referred the Tribunal to the insurance policies for 2024 and 2025, which state that the property must not be unoccupied for more than 45 days at a time. In addition to the fact that this alleged breach was not raised until a few weeks before the hearing the Tribunal noted the following-

(a) There was no credible evidence before the Tribunal that the Respondents had ever been told about the terms of the insurance policy. The evidence established that there were discussions and messages which related to absences but none of the messages mention insurance. Mr Scobie said that he had no recollection of the matter ever being raised. Mr Gibb stated that he had mentioned it, but he provided no details of how and when and his evidence on the matter was not convincing. The Tribunal is not satisfied that the Respondents could be in breach of this clause without knowing what the insurance policy required of them.

(b) It was not conclusively established that the property is left unoccupied for periods in excess of 45 days. Mr Scobie did not dispute that his wife and mother-in-law currently spend large periods of time in Turkey, and it seems evident that they are sometimes out of the country for periods in excess of 45 days. However, as Mr Scobie is still working and is unable to be in Turkey for more than 90 days out of the year, it seems reasonable to conclude that he resides in Scotland most of the time. Even if he is spending some nights each month in Edinburgh, he has no permanent base there. The Applicants' evidence on this issue was far from convincing. There were references to concerns expressed by neighbours. However, the precise nature of the concerns was not fully articulated, and the Tribunal did not hear evidence from the neighbours and were not provided with any statements or affidavits. Both parties confirmed that the neighbours did not want to be involved in the dispute, which suggests that they have no serious concerns. This was acknowledged by Mr Gordon Gibb who also stated that one of the neighbours said that the Respondents arrive at the property late at night and leave early in the morning, which would be consistent with Mr Scobie working in Edinburgh. The fact that neither Mr Gibbs nor his son see the Respondents at the property is not significant. They would only see them if the Respondents were entering the property, leaving the property or sitting outside the property when they passed by.

67. The Tribunal is therefore not persuaded that the Applicants have established that this clause of the tenancy has been breached.

68. Clause 7.12 state that the tenants are prohibited from installing or changing locks without the prior written consent of the landlord or Martin and co. In the event that locks are changed, the tenants must "promptly provide" the landlord with a set of keys. The Tribunal is satisfied that the first part of this clause was breached. Mr Scobie told the Tribunal that he had changed the locks twice because the lock was broken. This was not disputed by Mr Gibb. However, the Tribunal is not persuaded that the Respondents failed to comply with the second part of the clause. Mr Gibb confirmed that a key was provided both times, although later than he thought reasonable. In his final submission, Mr Scobie said that the reason the new key was handed over by a neighbour on one occasion was because Mr Gibb arrived at the property late, after Mr Scobie had to leave for work. In any event, promptly is not defined and a delay of a few days or even a week or two does not seem to be unreasonable The Tribunal also noted that Mr Gibb appeared to be under the impression that he is free to come and go to the property whenever it suits him, without having regard to his contractual and statutory obligations to provide proper notice and to have a valid reason for his visit.

69. Clause 7.15 states that "before leaving the premises for any continuous period of 14 days or more during the term to notify the Landlord or Martin and co local office in advance and to fully cooperate and comply (and bear the fair cost of such compliance) with any reasonable requirement or conditions relating to the security or safety of the premises and its contents whilst being left unoccupied".

70. The evidence established that Mr Scobie discussed the issue of absences with Martin and Co and that he arranged for appropriate measures to be taken to secure the property and have it checked when he was absent. He was told that, that, as long as he took reasonable steps, there was no issue. The tenancy agreement does not prohibit absences. However, it specifically states that the tenants must notify the Applicant or his agent of all absences over 14 days. Mr Scobie conceded during the hearing that he does not notify the Applicant when he is going away. The Tribunal is therefore satisfied that a breach is established. As there is no stipulation in the contract which limits the number of

absences or the length of any absence, the breach appears to be a minor one.

71. Clause 7.22 states that the tenants must keep the garden in good order, cut the grass at regular intervals and not allow the garden to deteriorate. Again, the alleged breach of this section was not notified in advance of the application being made and was not mentioned until September 2025.

72. The Applicant's evidence in relation to the garden was not convincing. The only photographs which were lodged were taken recently, after work had been carried out. They show the garden to be in reasonable order. Mr Gibb and his son spoke vaguely about the garden becoming overgrown and concerns raised by neighbours but there were no specifics and Mr Gibb acknowledged that the Respondents employ a gardener. The Tribunal is not satisfied that this breach is established.

73. The Tribunal is therefore satisfied that grounds 11 and ground 13 (in relation to the lock change and the absences without notification) have been established. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession and noted the following: -

(a) As previously indicated, the facts which establish the grounds are relatively minor matters. The Respondents pay their rent, albeit two weeks or so late each month. During the tenancy, they have twice changed a lock without notifying the landlord. When they leave the property, they don't notify the landlord that they will be absent. In relation to the lock changes, they provided the Applicants with a replacement key on both occasions. In relation to the absences, the property is secured, checked and no adverse consequences have arisen.

(b) There are no arrears of rent, and the monthly rent charge has been met throughout the tenancy.

(c) Although the Respondents have been aware since 2021 that the Applicants wanted them to honour the rent payment date in the tenancy contract, they have failed to change back. The new date suits them better, due to fluctuations in income, but they have benefited from the later payment date as they do not pay monthly in advance, as required. Some months they have effectively paid monthly in arrears.

(d) The Applicants did not comply with the Rent Arrears Pre Action-Protocol. In fact, prior to service of the AT6 there was little communication about the rent payments. The situation was ignored for years, raised on a few occasions in 2021/2022 and then not raised again until service of the AT6.

(e) The delayed payments are not attributable to issues with benefits.

(f) The breaches of tenancy are minor. When the locks were changed it was because of damage, and the Applicants were provided with a replacement key. The absence without notification has not resulted in any loss or damage to the property and the Respondents discussed the issue of absences at the start of the tenancy.

(g) There was no prior warning that the lock changes were being founded upon in the application for the order for possession. Furthermore, the Respondents took the view that their actions benefited of the Applicants who did not have to incur the cost of replacement locks when these were required.

(h) Although two of the three Respondents have recently been away from the property for significant periods of time, this has not always been the case and will not necessarily be the case in the future. Mr Scobie told the Tribunal that during the pandemic they had to shield and did not leave the property, even for shopping. Mrs Scobie and Mrs Canko have travelled to Turkey for medical reasons as well as to see family, but they do not have any settled accommodation there. Mr Scobie cannot live there. He is not a citizen and must therefore spend at least three quarters of each year in the UK. Although he spends time in Edinburgh, he has no accommodation of his own. The family's principal home is the property and if this was lost, they would require to find alternative accommodation for the whole family to live in.

(i) Although some adaptations have been carried out, these are relatively minor. Similar adaptations could be arranged at another property. However, as Mr Scobie explained, the problem is finding a suitable property. Mr Canko is disabled and in a wheelchair. The family requires a property with a bedroom and bathroom on the ground floor. Mr Scobie said that he might be able to find something for himself, but not something for the family unit.

(j) The Applicants are now in their 70's and find the management and responsibility of being landlords stressful and difficult.

74. In his submissions, Mr Scobie said that this application is not about the rent payments or breaches of tenancy. He said that the Applicants want the property back because there has been a fall out over the use of the garage. The Tribunal is persuaded that the Applicants' motivation for making the application has little to do with grounds 11 and 13. Their lack of action in relation to these matters for years supports that conclusion. However, it seems unlikely that the argument over the garage is the reason that they want the house back. The Applicants previously made an application to the Tribunal which was rejected because the paperwork was defective and the ground relied upon was not a valid ground under the 1988 Act. Although the Applicants' plans for the property are not settled, Mr Gibb said that they may want to sell or allow their son to live there. They don't want to continue to rent it out. This seems to be the result of what they perceive to have been a bad experience as well as their age and health issues.

75. When assessing whether it would be reasonable to grant the order, the Tribunal must have regard to all the circumstances as they exist at the date of the hearing. The assessment is not just about the facts which establish the eviction grounds, but to other relevant factors. In this case, the facts which establish the grounds carry almost no weight in the assessment of reasonableness. They are minor breaches which would not justify an order being granted, if they were

the only considerations. The parties' respective personal circumstances are much more significant. On the one hand, the Applicants are in their 70's and want to stop renting out the property. However, the 1988 Act does not permit a landlord to seek recovery of possession because they want to sell or move in a family member. Furthermore, there was no evidence that the property needs to be sold for financial reasons or because their son might otherwise be homeless. The Applicants are struggling with the responsibility of being a landlord and their relationship with the Respondents is strained. However, Mr Gibb said that he still has another rental property and he could appoint a suitable agent to manage the property on his behalf. The Tribunal notes that the rent has not increased in 9 years. A letting agent could assist with this, as it seems likely that the current market rent will be much higher than is currently being paid.

76. If it had been established, the Applicant's strongest argument might have been that the Respondents are not living at the property. However, for the reasons previously stated, the Tribunal is not satisfied that this is the case. The Respondents furniture and possessions remain within the property. Mr Scobie works mostly in Edinburgh, which is within travelling distance of the property. His son lived in the property with his parents when he was at university. They lived in the property full time during the pandemic, as they had to shield. The other Respondents intend to return to live at the property when circumstances allow. If an order for possession was granted, the Respondents would have considerable difficulty finding accommodation which they could occupy as a family unit, and which would be suitable for the needs of all of all of them. The impact on them outweighs any detriment likely to be experienced by the Applicants if the tenancy continues. In the circumstances, the Tribunal is satisfied that it would not be reasonable to grant the order.

**Decision**

**77.** The Tribunal determines that the application should be refused.

**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.**

**Josephine Bonnar, Legal Member** **06 October 2025**