



**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 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/25/3659

Re: Property at 4B Marryat Terrace, Dundee, DD3 8AP (“the Property”)

Parties:

Kenneth Property Limited, 4 Valentine Court, Dunsinane Industrial Estate, Dundee, DD2 3QB (“the Applicant”)

Ms Zoe Henry, 4B Marryat Terrace, Dundee, DD3 8AP (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant against the Respondent. The Tribunal delayed execution of the order until 7 April 2026.

Background

1. An application was received on 27 August 2025 from the Applicant’s solicitor under rule 65 of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under Grounds 11 and 12 as set out in schedule 5 of the 1988 Act.

2. Attached to the application form were:
 - (i) Copy assured tenancy agreement between Ms Elaine Petrie and the Respondent in relation to the property, which commenced on 1 May 2012.
 - (ii) Letter dated 17 June 2025 from the Applicant’s solicitor to the Respondent
 - (iii) Copy notice to quit dated 17 June 2025 requiring the Respondent to leave the property by 31 July 2025.

- (iv) Copy form AT6 addressed to the Respondent dated 17 June 2025, citing grounds 11 and 12.
- (v) Copy certificate of service of the notice to quit and form AT6 on the Respondent by sheriff officer on behalf of the Applicant on 18 June 2025.
- (vi) Rent statement showing the Respondent's outstanding rent arrears to be £18826.53 as at 11 August 2025.
- (vii) Copy notice to Dundee City Council under section 11 of the Homelessness etc. (Scotland) Act 2003 with proof of sending by email on 27 August 2025.

3. The Applicant had also submitted a civil proceedings application (reference no: FTS/HPC/CV/25/3377) for a payment order under rule 70 of the 2017 rules in respect of outstanding rent arrears. A further civil proceedings application (reference no: FTS/HPC/CV/25/3376) under rule 70 of the 2017 rules was also submitted by the Applicant's solicitor seeking a payment order against the Respondent in favour of Mrs Elaine Kenneth, who is the previous landlord of the property and a director of the Applicant company.

4. Notice of the case management discussion (CMD) scheduled for 29 January 2026, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 8 December 2025. The Respondent was invited to submit written representations by 26 December 2025.

5. The Tribunal issued a direction to the Applicant on 9 January 2026, directing it to provide evidence of compliance with the pre-action requirements set out in Regulation 4 of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020. A response was received from the Applicant's solicitor on 22 January 2026.

6. No written representations were received from the Respondent prior to the CMD.

The case management discussion

7. A CMD was held by teleconference call on 29 January 2026 to consider the present application and the two accompanying civil proceedings applications. The Applicant was represented on the teleconference call by Ms Alison Fitzgerald of Lindsays solicitors.

8. The Respondent was not present or represented on the teleconference call. The Tribunal delayed the start of the CMD by 10 minutes, in case the Respondent had been detained. She did not join the teleconference call, however, and no telephone calls, messages or emails had been received from her.

9. The Tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a case management discussion had been duly complied with. It also noted that the Tribunal administration had received a phone call from the Respondent the previous day, which indicated that she was aware of the CMD. The Tribunal therefore proceeded with the CMD in the absence of the Respondent.

Submissions on behalf of the Applicant

10. Ms Fitzgerald asked the Tribunal to grant an eviction order in favour of the Applicant against the Respondent on grounds 11 and 12. The Respondent owes significant rent arrears, which amounted to £18990.13 as at the date of the CMD. She has been in rent arrears continuously since the start of her tenancy in 2012, despite the very reasonable rent. It would therefore be reasonable to grant an eviction order.

11. The Applicant is a property company run by its directors, Mr and Mrs Kenneth. The company has 19 rental properties. There is a mortgage over the property, which costs £342 per month. Were the Tribunal to grant an eviction order, the Applicant wished to take stock of the property and was likely either to sell it or use it to provide a home for one of the directors' children.

12. As could be seen from the rent statement submitted with the application, the Respondent has been in receipt of housing benefit throughout the entire tenancy. Only part of the rent has been paid in most months during that time, due to a shortfall between the housing benefit payments and the rent due. This has led to the current significant rent arrears. There had been some months during the past few years when the amount paid made by the Respondent had not covered the Applicant's mortgage payment. The Applicant had submitted various text messages between Mrs Kenneth and the Respondent regarding the arrears going back as far as 2015.

13. Ms Fitzgerald was unable to tell the Tribunal much about the Respondent's personal circumstances. Following an adjournment during which she spoke to Mr Kenneth, she confirmed that the Applicant believed that the Respondent lives alone in the property. The Respondent has a daughter whom the Applicant believes now lives with her father. The Applicant did not think that the Respondent was in employment. Otherwise her financial situation, including whether she was in receipt of other benefits, was unclear. She may have some health issues, but again this was unclear.

14. The Applicant had paid the rent in full in each of the months from September 2025 to January 2026. She had not, however, made any offer to the Applicant to repay her outstanding arrears. The Applicant was unaware as to whether the Respondent had been in touch with the council or made any other attempts to find alternative housing. When the Applicant had unsuccessfully tried to take eviction action against the Respondent on a previous occasion, however, she had made it clear that she would like to be rehoused.

15. Miss Fitzgerald confirmed that to the Applicant's knowledge, there had been no delay or failure in the payment of a relevant benefit which may have led to the Respondent's failure to pay rent. She said that the Applicant had in fact tried on a number of occasions over the years to encourage the Respondent to contact the council regarding her housing benefit. There may previously have been some difficulties relating to under-occupation of the property, which is a two bedroom flat, because the Applicant was living in it on her own.

16. She said that the Applicant had been unaware of the pre-action requirements. The text messages between the parties which she had submitted in response to the Tribunal's direction constituted the only pre-action communications sent by the Applicant to the Respondent prior to the service of the Notice to Quit and form AT6.

Findings in fact

17. The Tribunal made the following findings in fact:

- The previous owner, Elaine Kenneth (formerly Elaine Petrie), now a director of the Applicant company, and the Respondent entered into an assured tenancy with regard to the property on 1 May 2012.
- The Applicant has owned the property since 24 August 2022 and is the registered landlord for the property.
- The rent payable under the tenancy has been £450 per month, due on the first of each month, since its commencement.
- The Notice to Quit and form AT6 met the necessary statutory requirements. They were validly served on the Respondent by sheriff officer on behalf of the Applicant on 18 June 2025.
- The Applicant sent a notice to Dundee City Council under section 11 of the Homelessness etc. (Scotland) Act 2003 on 27 August 2025
- The Respondent has been in rent arrears continuously since May 2012.
- As at the date of the CMD, the Respondent's total rent arrears totalled £18990.13.
- The Applicant owns 19 rental properties, including the property.

- The Respondent is currently residing alone in the property.
- The Applicant has a mortgage over the property.

Reasons for decision

18. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
19. The Tribunal was satisfied that the Applicant was now the landlord of the property following the transfer of the title to the property into its name. In terms of section 55 of the 1988 Act, “landlord” includes any person from time to time deriving title from the original landlord.
20. The Tribunal was satisfied that the requirements of both Grounds 11 and 12, as set out in Schedule 5 of the 1988 Act had been met. In terms of Ground 11, the Respondent has persistently delayed paying rent which has become lawfully due since very early in her tenancy. Ground 12 also applies as some rent lawfully due from the Respondent was (a) unpaid on the date on which the proceedings for possession were begun; and (b) was in arrears at the date of the service of the form AT6 relating to those proceedings.
21. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the available information about the circumstances of the case.
22. Firstly, the Tribunal considered the terms of section 18 (4A) of the 1988 Act, which states:

(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 the Scottish Ministers in regulations.

23. The Tribunal noted that, while it appeared from the text messages provided that there had been some ongoing discussions between the parties regarding discretionary housing payments, there was no indication that the Respondent's rent arrears were due to any delay or failure in the payment of relevant housing benefit or relevant universal credit.

24. The Tribunal noted that the text messages which had been provided did not comply with the pre-action requirements set out in the [Rent Arrears Pre-Action Requirements \(Coronavirus\) \(Scotland\) Regulations 2020](#). It was clear, however, that there had been ongoing dialogue between Mrs Kenneth and the Respondent over a period of years between at least 2015 and 2025 regarding her rent arrears, and suggestions that the Respondent may wish to seek advice.

25. The Tribunal took into account the fact that the Respondent had accrued a significant level of rent arrears over a period of more than 13 years, and that this was having a financial impact on the Applicant.

26. The Respondent had been continuously in arrears since very early in her tenancy. The shortfall each month had varied over time, ranging from more than half the rent (£233.44) for several years early in the tenancy to £81.80 per month from around mid-2024 onwards. She had paid the rent in full each month since September 2025, but the arrears remained significant, and there had been no payments towards the arrears.

27. The Tribunal noted that the Respondent was in receipt of housing benefit and that, in the absence of any appearance or representations from her, it was unclear why this had never covered her full rent. It also noted that the Respondent may have some health issues and that she had been living in the property for more than 13 and a half years. She had not opposed the eviction application, however.

28. The Tribunal gave particular weight to the fact that the Respondent had accrued a very significant level of rent arrears over a period of almost 14 years. Nothing had been received from the Respondent to indicate that she opposed the application, and it appeared that in fact she may find that an eviction order would assist her to find social housing.

29. The Tribunal therefore determined that it would be reasonable to grant an order for recovery of possession in favour of the Applicant.

30. Before deciding to grant the order, the Tribunal sought the Applicant's views on the possibility of delaying execution of the eviction order in terms of rule 16A of

the 2017 rules, to give the Respondent more time to find suitable alternative accommodation.

31. Ms Fitzgerald said that the Applicant understood that the Respondent may need some additional time to move out, given how long she had been living in the property, and to give her more time to find suitable alternative accommodation.
32. Having taken into account the Applicant's views, the Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order for a month beyond the standard period until 7 April 2026.

Decision

The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the property. The Tribunal delayed execution of the order until 7 April 2026.

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.

Sarah O'Neill

29 January 2026

Legal Member/Chair

Date