



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/25/0704

Re: Property at 10 Starlaw Walk, Bathgate, EH48 1LW (“the Property”)

Parties:

Miss Fiona Stark, 14 Craigs Court, Torphichen, EH48 4NU (“the Applicant”)

**Mr Brian McAllister, Mrs Kerry McAllister, 10 Starlaw Walk, Bathgate, EH48
1LW (“the Respondent”)**

Tribunal Members:

Virgil Crawford (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

BACKGROUND

1. By lease dated 19 October 2020 the Applicant let the Property to the Respondents.
2. The start date of the tenancy was 13 October 2020 (notwithstanding the date of signing of the lease).
3. Rent is payable at a rate of £899.00 per calendar month.

4. A notice to leave dated 21 November 2024 was served upon the Respondents. This intimated that the Applicant was seeking recovery of possession as she intended to sell the Property.
5. An application was presented to the Tribunal on 18 February 2025 seeking an eviction order.
6. A Notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
7. A sole selling rights agreement between the Applicant and Turpie & Co., estate agents, was provided to the Tribunal to confirm the intention to sell.

THE CASE MANAGEMENT DISCUSSION ON 20 OCTOBER 2025

8. A Case Management Discussion was assigned to call by teleconference on 20 October 2025 at 10am. Due to an administrative error the date and time of the Case Management Discussion was not intimated to the Applicant nor the Applicant's representatives. The First Named Respondent participated in the Case Management Discussion on behalf of both Respondents. He intimated to the Tribunal that the Application was opposed. In the circumstances, the Tribunal continued the case to a Hearing as issues of reasonableness would require to be determined. The date and time of the Hearing was thereafter intimated to all parties.

THE HEARING ON 20 APRIL 2026

9. The Applicant attended the Hearing by teleconference. She was represented by Mr G Haig of Home Lettings Scotland Ltd. The First Named Respondent, Brian McAllister, attended the Hearing. The Second Named Respondent did not although her interests were represented by Mr McAllister.
10. Prior to the Hearing, Mr Haig forwarded to the Tribunal an email dated 4 March 2026 advising that rent arrears existed and, as at that date, amounted to over £6,000.00. At the Hearing he moved for an eviction order on the basis the Applicant wished to sell the Property. He advised that, as at the date of the Hearing, rent arrears had now risen to £7,321.17. Only one rental payment has been made since October 2025 (the month of the Case

Management Discussion) that being a single payment of £899.00 in December 2025.

The Respondents

11. Mr McAllister opposed the Application on the basis that it was not reasonable for an eviction order to be granted.
12. Mr McAllister accepted there were rent arrears and did not dispute the figure of £7,321.17. He advised the Tribunal that he had encountered numerous difficulties which have affected his family and himself which have given rise to the situation which now exists.
13. He advised he has suffered various mental health issues. These arose due to the passing away of a number of persons close to him within the past 18 months. As the Hearing progressed it was stated his grandfather passed away during October or November 2023, an aunt and an uncle passed away within a short time of one another, that being towards the end of January 2024 and the start of February 2024, one of his best friends during April 2024, and his two grandmothers on each side of the family during October 2024. He advised also that his daughter almost passed away and had turned blue. That had a significant effect upon him, seeing his daughter in that condition.
14. He was self employed as a bookkeeper. He was unable to undertake his work because of his health. That resulted in a loss of income and an inability to make payment of rent.
15. His wife, Mrs McAllister, works with the NHS but works on a part time basis and her income was not sufficient to cover the rent and other outgoings.
16. Mr McAllister advised that he expects to be receiving payments totalling £10,000.00 in the near future. He raised a “small claims action” against one person who owed him money for work undertaken by him and has obtained an order for payment. He has reached a separate out of court agreement with another person. One of these debts is £6,500.00, the other is £3,500.00, being a total of £10,000.00. When those funds are received, he will be able to apply them towards the arrears of rent.

17. The Tribunal enquired as to which debt was the subject of a court order. Mr McAllister advised it was the larger debt for £6,500.00. When the Legal Member queried that, in the knowledge that what is now known as a Simple Procedure action in the Sheriff Court has a maximum claim limit of £5,000.00, Mr McAllister suggested it was the smaller debt of £3,500.00 which was the subject of the court order.
18. He advised that he has now been offered employment with a fixed salary and that will assist him in paying rent on an ongoing basis.
19. The Tribunal enquired as to any engagement he had with the Applicant about the matters he had advanced before the Tribunal. There had been none. He advised that he had put his “head in the sand” and accepted that there had been a lack of communication between himself, his wife and the Applicant, stating “I totally agree communication has been terrible.”. He maintained, however, that his mental health is now better and he is in a better position to engage with the Applicant.
20. He and his wife reside at the Property with their two children aged 7 years and 4 years. One child is at a local school and they have friends locally. Moving house will cause significant disruption to the family and he would wish to avoid that.
21. In relation to the Applicant’s intention to sell, Mr McAllister did not dispute that there was an intention to sell. He pointed out, however, that there had been a verbal agreement between himself, his wife and the Applicant for the Property to be sold to the Respondents. He would still wish to honour that agreement and purchase the Property.
22. The Tribunal enquired as to whether that was a realistic possibility. Mr McAllister believes it is. He advised the Tribunal that he has had an offer in principle for a mortgage. He stated a family member – his father-in-law – has agreed to assist with payment of any deposit required and, in the circumstances, he hopes he would be in a position to purchase the Property. He explained, however, that he could not purchase it before as he was unable to obtain a home report, as he is not the owner, and that would be required to enable a mortgage to be granted.

23. The Tribunal enquired further about that. Why does he need a home report to obtain approval for a mortgage? He has advised the Tribunal he has approval in principle for a mortgage at present and that was obtained without a home report being obtained? Such an offer must be based upon a potential purchase price or a maximum purchase price? Mr McAllister advised his approval in principle was for any home and not based on the purchase of the Property he is currently renting. The value of the Property is not known at present. The Tribunal suggested that the rough value of any property can be obtained by checking property prices on popular websites such as Rightmove and viewing similar properties for sale.
24. The Tribunal enquired as to what assurance could be given that, firstly, any rental arrears would be able to be cleared and, secondly, that he would be able to proceed with a purchase? The Tribunal noted that the notice to leave was served as far back as November 2024 so the Respondents have been aware since then that the Applicant was seeking vacant possession. Have they not had ample time to enter into discussions about the purchase of the Property if that is said to be possible?
25. Mr McAllister again reiterated that he has had mental health problems, that he and his wife have put their heads in the sand and there has been a failure to communicate effectively but that things should be different now. He has “a determination to make things better”, also adding that if the Respondents need to leave the Property it will be stressful, but he is now “in a place where I can deal with that.”
26. The Respondents have not applied for alternative housing either in the private or social housing sectors.
27. The Respondents have not applied for any benefits despite Mr McAllister having no income for a significant period of time.

The Applicant

28. On behalf of the Applicant, it was accepted that there had been discussions about the Respondents purchasing the Property. Indeed, prior to the lease being entered into the intention was to sell the Property to the Respondents.

At that stage, however, they were unable to secure a mortgage. It was as a result of that a lease was entered into.

29. It was intended that the lease would be for a relatively short period of time to enable the Respondents time to make further arrangements to purchase the Property but that did not happen.
30. Around October 2024 discussions commenced about the Property again being offered for sale to the Respondents. At that stage they indicated they had an offer of mortgage in principle. The discussions, however, did not progress beyond that and, indeed, there was thereafter a lack of engagement between the Respondents and the Applicant. A notice to leave was served in November 2024 as a result.
31. Since the service of notice to leave there has been a lack of engagement and it is now being suggested again that there is an offer of mortgage in principle. There has, however, been two previous times when it was suggested there was a mortgage offer available which did not come to fruition.
32. Separately, while there are rent arrears in the amount of £7,321.17 at present, there has been a history of rent arrears throughout the tenancy. The application before the Tribunal is on the basis the Applicant intends to sell the Property rather than an eviction being sought due to rent arrears. The rent arrears, however, are a factor to be considered in determining whether it is reasonable to grant an order for eviction.
33. Mr Haig advised the Tribunal that there had, in fact, previously been an application before the Tribunal seeking an eviction order on grounds of rent arrears but that application ultimately did not proceed. Reference to that was made, however, to confirm the history of arrears and to inform a decision on reasonableness.

FINDINGS IN FACT

34. The Tribunal found the following facts to be established: -
 - a) By lease dated 19 October 2020 the Applicant let the Property to the Respondents.
 - b) The start date of the tenancy was 13 October 2020 (notwithstanding the date of signing of the lease).

- c) Rent is payable at a rate of £899.00 per calendar month.
- d) A notice to leave dated 21 November 2024 was served upon the Respondents. This intimated that the Applicant was seeking recovery of possession as she intended to sell the Property.
- e) An application was presented to the Tribunal on 18 February 2025 seeking an eviction order.
- f) A notice in terms of s11 of the Homelessness Etc. (Scotland) Act 2003 was intimated to the Local Authority.
- g) A sole selling rights agreement between the Applicant and Turpie & Co., estate agents, was provided to the Tribunal to confirm the intention to sell.
- h) The Applicant has, on two separate occasions, attempted to sell the Property to the Respondents. On each occasion the sale did not proceed due to the inability of the Respondents to complete the purchase.
- i) The Applicant wishes to sell the Property to assist financially in the support of her two daughters.
- j) The Respondents are in arrears of rent in a sum of £7,321.17
- k) The Respondents have failed to make enquiry about, or apply for, benefits which may have been available to them to alleviate any financial pressures they have been suffering and to assist in payment of rent.
- l) The Respondents have failed to engage with the Applicant in relation to the tenancy since the notice to leave was served.
- m) The Respondents have failed to make any attempts to secure alternative accommodation since the notice to leave was served, despite having ample time to do so.

REASONS FOR DECISION

35. The Tribunal, in all the circumstances, determined that it was reasonable to grant an order for eviction.

36. The Tribunal had before it an application for an eviction order on the basis the Applicant intended to sell the Property. There was evidence provided to the Tribunal of the intention to sell the Property.
37. There was no dispute by the Respondents that there was an intention to sell. Indeed, the information from Mr McAllister was to the effect that the Applicant had previously agreed to sell the Property to the Respondents and, indeed, that discussions had taken place about that on two separate occasions. That information merely confirmed that there is an intention on the part of the Applicant to sell the Property.
38. While Mr McAllister advised that he expects to be in a position to clear arrears of rent in the near future, that is based upon his expectation that two persons or organisations who owe him money for past services rendered by him will make payment to him. It appears one of those organisations has required to have a court order for payment granted. The suggestion that payments amounting to £10,000.00 will be received by Mr McAllister in the near future is speculative and no assurance could be provided that these payments will be received, nor when, assuming payment is made.
39. Separately, when enquiry was made by the Tribunal in relation to the legal proceedings raised, Mr McAllister advised that an order for payment of £6,500.00 had been made by the "Small Claims Court". The Tribunal queried this as the Simple Procedure process (as it is now called) in civil courts is for amounts of no more than £5,000.00. Mr McAllister thereafter advised that the court order was, in fact, for the £3,500.00 debt he was due. Even assuming that be correct, it indicates that, one debtor at least required to have court proceedings raised to secure an order for payment. The other debt, which would appear to be in the sum of £6,500.00 is not yet the subject of any court order and remains outstanding. In the circumstances, the Tribunal had no assurance nor confidence that these payments would be made within any reasonable timescale.
40. Separately, the confusion on the part of Mr McAllister as to which debt was the subject of court proceedings, and his swift change of opinion on that matter when challenged, caused the Tribunal to have concerns about the reliability of the information being provided.

41. While Mr McAllister advised that he hoped to purchase the Property, it was ultimately accepted that a potential purchase by the Respondents prior to the tenancy commencing did not proceed. It was also accepted that discussions had taken place about a potential purchase prior to the notice to leave being served and that information was provided at that time that a mortgage had been approved in principle. There was thereafter a lack of engagement between the Parties and the purchase did not proceed. The Tribunal is now being advised that a further offer of mortgage in principle has been received but that further information requires to be made to the mortgage company to enable that offer to be formalised. Any intention to purchase thereafter, however, is dependent upon a family member providing a sum of money as a deposit. The Tribunal, again, could have no confidence that this proposal would come to fruition, particularly against a background of two previous failed arrangements for the Property to be purchased by the Respondents and previous statements that an offer of mortgage in principle had been issued to facilitate a purchase of the Property which did not proceed.
42. Mr McAllister also advised the Tribunal there were difficulties securing an offer of mortgage to purchase the Property as the Respondents were unable to instruct a home report as they were not the owners of the Property. He also advised, however, that an offer of mortgage has been approved in principle, and the same was stated to the Applicant in October 2024. The Tribunal did not accept that a home report was required to enable discussions about the possible purchase of the Property to progress. The contradiction in the submissions made by Mr McAllister in relation to this matter again gave rise to concerns about the reliability of his position.
43. While the submissions by the Respondent indicated that there have been significant financial pressures upon the Respondents in the recent years, the Respondents have failed to apply for any benefits which may have been available to them and, as indicated, have singularly have failed to engage with the Applicants in relation to the difficulties they have been encountering. It is not the responsibility of the Applicant to assist in any alleviation of those

pressures, the Respondents having done little or nothing themselves to do so.

44. The Tribunal requires to have regard to the position of the Applicant also. The Applicant has two adult daughters being supported by her. One daughter has just completed her university studies and has secured a low paid job. The Applicant would wish to assist that child financially. Another daughter has recently started university studies, and the Applicant requires to financially support her. The rental income from this Property was previously being used for that but, as indicated previously, rent is no longer being paid. The Applicant wishes to sell the Property to assist in her ability to support her own children and to make future financial plans.

45. The Applicant has been willing to sell the Property to the Respondents. Two previous arrangements did not come to fruition. The Applicant was doubtful that any current proposed arrangement would come to fruition.

46. In all the circumstances, having regard to

- the acceptance by the Respondents that the Applicant intends to sell the Property,
- the period of time during which the Respondents have been aware of the intention to sell the Property,
- the failure to engage with the Applicant in relation to any intended purchase of the Property,
- the two previous failed attempts to purchase the Property,
- the failure to pay rent since October 2025, with one monthly exception,
- the uncertainty which exists in relation to the ability of the Respondents to clear rent arrears and thereafter proceed with any intended purchase of the Property,

the Tribunal considered it reasonable that an order for eviction be granted.

47. In granting an order for eviction the Tribunal indicated to the Respondents that, subject to any agreement by the Applicant, an offer to purchase the Property could still be made, if that is to truly possible given any recent change of circumstances. The Tribunal, however, cannot make any order in relation to the same nor in anyway bind the Applicant in relation to the same.

DECISION

The Tribunal granted an order against the Respondents for eviction of the Respondents from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016, under ground1 of Schedule 3 of said Act

Order not to be executed prior to 12 noon on 27th May 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.

Virgil Crawford

20 April 2026

Legal Member/Chair

Date