



**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/25/5061

**Re: Property at 3 Tenth Street, Newtongrange, Midlothian, EH22 4JF (“the
Property”)**

Parties:

**Burnside Properties, 29A Whitehill Village, Dalkeith, Midlothian, EH22 2QD (“the
Applicant”)**

**Mr Sidney Walker, 3 Tenth Street, Newtongrange, Midlothian, EH22 4JF (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
possession of the Property under section 18 of the Housing (Scotland) Act
1988.**

- Background
 1. An application was submitted to the Tribunal under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent under section 18 of the Housing (Scotland) Act 1988 in respect of an assured tenancy agreement.
- The Case Management Discussion
 2. A Case Management Discussion took place on 29 June 2026 at 2pm by conference call. The Applicant was represented by Mrs Burnside, who was

accompanied by her brother-in-law, Mr Wilson. There was initially no appearance by or on behalf of the Respondent. The application had been intimated on the Respondent by Sheriff Officer on 29 May 2026. The Respondent had submitted an email dated 17 June 2026 setting out his position in relation to the application. The Tribunal was satisfied that the Respondent had been duly notified of the date and time of the CMD and that the CMD could proceed in the Respondent's absence.

3. Mrs Burnside submitted that the Respondent was in breach of Grounds 11 and 12 of Schedule 5 to the 1988 Act by accruing rent arrears. The parties had entered into an assured tenancy agreement which commenced 22 September 2010. The arrears had accrued in 2024 and the Respondent had made only some sporadic payments towards same since then. The most recent payments were two payments of £50 paid in November 2025 and January 2026. The ongoing rent of £895 per month had been paid, but the arrears stood at £1,470. A Form AT6 had been served by hand on 28 October 2025 relying on Grounds 11 and 12 of the 1988 Act.
4. It was submitted that the Respondent was elderly and unable to look after the Property. The Property had fallen into disrepair, and the garden was overgrown. The Applicant has received complaints from neighbours regarding the state of the Property, which was described as being "an eyesore." It was submitted that the Property was too large for the Respondent to look after himself. It had two bedrooms and a large back garden as well as front garden. The Applicant submitted that the Respondent requires more support in a smaller house. The Applicant submitted that she had to take out a loan to cover the mortgage payments over the property for the two months that the Respondent had failed to pay rent. This loan had since been paid off. The situation was causing stress and exacerbating existing health issues. The Applicant has other properties that are rented out, but this is the only property which the Applicant manages herself.
5. The Tribunal adjourned at 2.30pm to consider the submissions made. Upon reconvening at 2.45pm, the Respondent joined the call. He was unable to clearly explain why he had not joined at 2pm. The Respondent represented himself. He submitted that he wanted to resolve the arrears, and he accepted that the arrears stood at £1470. The Respondent submitted that he was in receipt of Housing Benefit payments of £194 per fortnight. He proposed that he could have either one or both of these payments paid directly to the landlord to reduce the arrears quicker. He confirmed that his income comprised of state pension and two private pensions. He had arrears due to his gas/electricity supplier with whom he had a payment arrangement in place. He confirmed that his income remained the same, and that he did not know how would find the additional funds to meet the ongoing rent, if his Housing benefit payments were paid directly to the landlord for arrears reduction. The Respondent submitted that he would just "*see how I get on.*"
6. The Respondent submitted that he now had a strimmer to help with cutting the grass. He could ask friends to help him, as well as asking friends to help repaint

the Property. The Respondent offered no explanation as to why no payments had been made to the arrears since January 2026. He had looked into the possibility of Discretionary Housing Benefit payments but been advised that he was not entitled to same. He submitted that the Property met his needs just now as it was ground level and had no stairs. He submitted that the Property was let on an unfurnished basis and aside from two wardrobes, everything in the house belonged to him.

7. The Applicant responded advising that in August 2025 the Respondent had agreed to repay all of his arrears, but had failed to make the agreed payments to do so. There was no faith that the Respondent would meet any new payment proposal put forward. There was concern that he also had arrears due to his gas/electricity provider, as well as to the landlord. It was also submitted that the tenant was also running a car, and had insurance/fuel costs to meet (this was confirmed by the Respondent.)

- Findings in Fact

8. The Tribunal made the following findings in fact:

- (i) The parties entered into an Assured Tenancy Agreement ("the Agreement") which commenced 22 September 2010;
- (ii) A Form AT6 under section 19 of the 1988 Act were served on the Respondent on 28 October 2025 by hand;
- (iii) The Form AT6 under section 19 of the 1988 Act relied on grounds 11 and 12 under Schedule 5 to the 1988 Act;
- (iv) The Form AT6 under section 19 of the 1988 Act advised that proceedings would not be raised before 12 November 2025;
- (v) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

9. Section 18 of the 1988 Act states as follows:

18 (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 this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3).

(3A).

(4) If the First-tier Tribunal is satisfied that any of the grounds in Part I or 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 the Scottish Ministers in regulations.

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The First-tier Tribunal shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 ... in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9... Ground 10 , Ground 15 or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

(6A) Nothing in subsection (6) above affects the First-tier Tribunal 's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.

(7) Subject to the preceding provisions of this section, the First-tier Tribunal may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

(8) In subsection (4A) above—

(a) “relevant housing benefit” means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(aa) “relevant universal credit” means universal credit to which the tenant was entitled which includes an amount under section 11 of the Welfare Reform Act 2012 in respect of the rent;

(b) references to delay or failure in the payment of relevant housing benefit or relevant universal credit do not include such delay or failure so far as referable to any act or omission of the tenant.

(9) Regulations under subsection (4A)(b) may make provision about—

(a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

(b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,

(c) such other matters as the Scottish Ministers consider appropriate.

(10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).

10. Ground 11 of Schedule 5 to the 1988 Act states as follows:

“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.

11. Ground 12 of Schedule 5 to the 1988 Act states as follows:

“Some rent lawfully due from the tenant—

(a) is unpaid on the date on which the proceedings for possession are begun; and

(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.”

12. The Tribunal was satisfied that the grounds relied upon in the Form AT6 had been met. At the date of service of the AT6 on the Respondent, there were rent arrears of £1,570. The monthly rent was £895. At the date of the Case Management Discussion, the arrears stood at £1,470. Accordingly, both at the date of service of the AT6 and at the date the case called before the Tribunal, there were arrears of rent due. Further, in terms of Ground 11 the Tribunal was satisfied that the Respondent had persistently delayed paying rent which has become lawfully due. The Tribunal was satisfied that it was reasonable to grant the order sought. The Respondent had entered into payment arrangements

which he had failed to maintain. The payment proposal put forward at the CMD was not sustainable and he offered no explanation as to why he had failed to make any payments to the arrears since January. The Tribunal was not persuaded that the proposal from the Respondent was well thought out or realistic. The Tribunal was satisfied that the Respondent was struggling to maintain the garden and which was resulting in complaints from neighbours. The Property was falling into disrepair. The Tribunal hoped that the Respondent would be able to obtain assistance from the local authority to rehouse him in a more suitably sized property to meet his needs.

- Decision

13. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for possession of the Property under section 18 of the Housing (Scotland) Act 1988, with extract delayed for a period two months.

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.

Legal Member/Chair

Date: 29 June 2026