



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 18(1) of the Housing
(Scotland) Act 1988 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/26/0461

**Re: Property at 4 Flat 31, Lochend Butterfly Way, Edinburgh, EH7 5BF (“the
Property”)**

Parties:

**Places for People Homes Limited as Successors to Cityscape Edinburgh LLP, 1
Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)**

**Mr Michael Ehidiamen, 4 Flat 31, Lochend Butterfly Way, Edinburgh, EH7 5BF
 (“the Respondent”)**

Tribunal Members:

Alastair Houston (Legal Member) and Robert Buchan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for recovery of possession of the property
be made in terms of grounds 11 and 12 of schedule 5 of the 1988 Act**

1. Background

- 1.1 This is an application under rule 65 of the Chamber rules, being an application for an order for recovery of possession of the property in terms of section 18 of the 1988 Act. In particular, the order was sought on the basis of grounds 11 and 12 of schedule 5 given alleged non-payment of rent by the Respondent.
- 1.2 The application was accompanied by, amongst other things, copies of the written tenancy agreement between the parties, the Form AT6 given to the Respondent, correspondence sent to the Respondent and a rent statement. The application was conjoined with a civil proceedings application seeking an order for payment of the rent arrears, reference FTS/HPC/CV/26/0467.

- 1.3 No written representations were received from the Respondent in advance of the Case Management Discussion. On 5 August 2026, the Applicant lodged an up to date rent statement.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 6 August 2026 by teleconference. The Applicant was represented by Mr Caldwell, solicitor. The Respondent appeared personally.

- 2.2 Mr Caldwell confirmed that the application was insisted upon. The short assured tenancy between the parties had commenced in 2015. Rent had been paid without issue until April 2020, coinciding with the beginning of the COVID-19 pandemic. No payment of rent was received for more than two years. At their highest, the arrears were in excess of £20000.00. Payment of rent resumed and the Respondent reduced these to around £6452.00 in November 2024. There then followed a pattern of irregular payment followed by non-payment from October 2025. Payment of £1000.00 was received in January 2026 following service of the Form AT6. Following the making of the application, there was engagement between the Applicant's letting agents and the Respondent. The Respondent offered to make payment of £4000.00 per month to encompass the ongoing rental charge and pay off the arrears. The first payment would be made by 31 July 2026. A payment of £3000.00 was received from the Respondent on 3 August 2026. Through email correspondence with Mr Caldwell, the Respondent offered to pay £9000.00 by the end of August and £4000.00 monthly thereafter. The current arrears balance was £15764.23. The Applicant had little confidence in the proposals made by the Respondent given the history of non-payment and the lack of detail about the Respondent's current circumstances.

- 2.3 The Respondent confirmed that he accepted the arrears detailed by the Applicant were due and owing. He had lost his employment in February 2020, just prior to the pandemic. He was out of work until returning to work in 2022 when he began to address the arrears that accrued. Since then, he had also experienced difficult personal circumstances including the illness and death of his father in 2025. This had placed an additional financial burden upon him. He resided with his partner and their three children, aged 5, 3 and 2. During the period when unemployed, he was claiming Universal Credit however this mainly related to costs associated with his children. He was now working as a business analyst through his own limited company. He held a contract providing services to Kingdom Housing Association which saw payment to his limited company of £435.00 per day. He had paid £3000.00 at the start of August 2026. He had been unable to pay £4000.00 by 31 July 2026 due to invoices issued being paid in arrears. He would be able to pay a further £6000.00 by the end of August 2026 and £4000.00 monthly thereafter. He anticipated clearing the arrears by the end of October 2026 when his current contract with Kingdom Housing Association would end albeit he expected further work to be forthcoming which would continue into 2028. He was in a better financial

position going forward, having obtained UK citizenship and now did not have additional costs to pay such as the NHS surcharge. He was confident the proposed payments would be made.

2.4 Mr Caldwell submitted that the proposals made by the Respondent lacked credibility. He was concerned that the Respondent may have other creditors and questioned whether any housing association would pay the level of fees being suggested. It was also thought unsatisfactory to be in a two bedroom flat with three young children. In all of the circumstances it was reasonable to grant the order, failing which, the Tribunal ought to adjourn to a further Case Management Discussion to see if the proposed payments were made. There was no need for an evidential hearing. In the event that the order sought was granted, the Applicant was prepared to offer an undertaking that, should a further £6000.00 be paid by the end of August 2026 and £4000.00 monthly thereafter until the arrears were cleared, the order for recovery of possession would not be enforced. The Respondent submitted that it was not reasonable for the order to be granted and the Tribunal ought to fix further procedure to allow him an opportunity to demonstrate that he was able to make the proposed payments. The Tribunal indicated that it would adjourn the Case Management Discussion and consider everything said by the parties and the written material accompanying the application.

3. Findings In Fact

3.1 The tenancy between the parties commenced on 16 October 2015. As at 6 August 2026, the rent payable in terms of the tenancy is £877.10 per calendar month.

3.2 The Respondent resides at the property with his partner and their three children, aged 5, 3 and 2 years.

3.3 The Respondent failed to make payment to the Applicant between April 2020 and April 2022. Since then, payments to the Applicant have been irregular. At their highest, the arrears due to the Applicant were £20124.16 in September 2022. The Respondent has never managed to clear the arrears and, as at 6 August 2026, the sum due to the Applicant is £15764.23.

3.4 The Respondent lost his employment in February 2020. He began working again in 2022. He is currently working as a business analyst and anticipates earning £435.00 per day working 20 days each month on average.

3.5 During period out of employment, the Applicant claimed Universal Credit. Originally from Nigeria, he is a UK citizen and has recourse to public funds.

3.6 The Respondent's partner is not in employment due to their childcare needs.

- 3.7 The Applicant's solicitors wrote to the Respondent on 25 October 2025. They provided details of the arrears together with a statement and a copy of the tenancy agreement between the parties. They also provided information on sources of advice for tenants and invited the Respondent to contact the Applicant's letting agent to discuss a payment arrangement in respect of the arrears.
- 3.8 The Applicant served notice in terms of section 19 of the 1988 Act on the Respondent on 9 January 2026 that an order for recovery of possession of the property would be sought on the basis of grounds 11 and 12 of schedule 5. The Applicant became entitled to make an application to the Tribunal as at 23 January 2026 and the said notice was live at the time of making the present application.
- 3.9 The Applicant also served a notice to quit on the Respondent on 9 January 2026. The said notice to quit terminated the contractual tenancy between the parties on 17 March 2026. Since that date, the Respondent has occupied the property by virtue of a statutory assured tenancy.
- 3.10 Through email correspondence with the Applicant's solicitors throughout July 2026, the Respondent offered to make payment of the ongoing rental charge and arrears at the rate of £4000.00 per calendar month. The first payment was due by 31 July 2026.
- 3.11 On 3 August 2026, the Applicant received a payment of £3000.00 from the Respondent.
- 3.12 The Respondent has offered to pay a further £6000.00 by the end of August 2026 and £4000.00 per month thereafter until the arrears are cleared. Should these payments be received by the Applicant, they would not enforce any order for recovery of possession granted by the Tribunal.

4. Reasons For Decision

- 4.1 The Applicant sought an order for recovery of possession of the property in terms of section 18 of the 1988 Act. The Applicant had given notice in terms of section 19 of the 1988 Act to the Respondent on 9 January 2026. The grounds specified in that notice were grounds 11 and 12 of schedule 5, both relating to non-payment of rent.
- 4.2 The ability of the Tribunal to make an order under section 18 of the 1988 Act is restricted by section 18(6), which is in the following terms:-
- (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.

The tenancy agreement before the Tribunal made reference to the ability of the Applicant to bring the contractual tenancy to an end on any of the grounds contained within an appendix. A copy of the appendix was not provided. In any case, the Applicant had terminated the contractual tenancy between the parties by service of notice to quit. As at 17 March 2026, the Respondent was occupying the property by virtue of a statutory assured tenancy. Accordingly, the Tribunal was entitled to make an order for recovery of possession on the grounds specified within the notice given to the Respondent.

4.3 The rent arrears were not disputed by the Respondent. It was clear from the information before the Tribunal that both grounds 11 and 12 had been established. Sections 18(4) and (4A) are in the following terms:-

(4) If the First-tier Tribunal is satisfied that any of the grounds in [Part I or II of Schedule 5]3 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.

4.4 The issue for the Tribunal was restricted to whether it was reasonable to grant the order sought by the Applicant. In considering whether it was so reasonable, the Tribunal had regard to the prescribed factors in section 18(4A) but also approached the issue in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal considered that, given the lack of factual dispute between the parties, a hearing was not required. The Tribunal accepted the Respondent's position at its highest and proceeded to make a decision on that basis.

4.5 In concluding that it was reasonable to grant an order for recovery of possession, the Tribunal placed particular weight on the following factors:-

- The arrears were extremely high and equated to around 20 months' of rent in a mid-market property. Furthermore, the Respondent had been in arrears since April 2020;

- The Applicant had provided the Respondent with information regarding the obligations of the tenancy, the arrears, the Respondent's rights and sources of advice whilst inviting proposals for a payment arrangement thus satisfying the pre-action protocol;
- There was nothing put forward by the Respondent to suggest that the arrears were in any way a result of a failure or delay in payment of relevant benefits, rather, the Respondent confirmed that he claimed Universal Credit whilst out of work. It is within the Tribunal's knowledge that such a claim ought to have contained an entitlement to at least partial housing costs yet nothing was paid to the Applicant during the period of unemployment;
- Whilst the Respondent may have experienced other financial pressures, he chose to prioritise other costs over payment of rent to the Applicant over a prolonged period of time;
- Although an offer of payment was now forthcoming, this must be measured against the history of non-payment by the Respondent and the Applicant held a reasonable concern that the proposed payments may not materialise.
- The Applicant had given an undertaking that, should payments be made as proposed, any order granted by the Tribunal would not be enforced.

4.6 The Tribunal was mindful that the Respondent occupied the property with his partner and three young dependents. The Respondent was confident that he could clear the arrears by the end of October 2026. Given the undertaking offered by the Applicant, the Tribunal considered it appropriate to delay potential enforcement of the order as was permitted by rule 16A. The delay would be until 1 November 2026. This would provide the Respondent an opportunity to make good on the proposed payments. If he did not, it would also afford the Respondent and his family an opportunity to take advice as to their housing, including presenting to the local authority for assistance, should they choose to do so.

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.

Alastair Houston

Legal Member/Chair

6 August 2026
Date