



**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/26/0399

Re: Property at 74 Farr Bettyhill, Thurso Caithness, KW14 7TA (“the Property”)

Parties:

Mr Allan Murdo Mackay, Zaaiplaats Farr Bettyhill, Thurso, KW14 7TA (“the Applicant”)

Mr Scott Penman, 74 Farr Bettyhill, Thurso Caithness, KW14 7TA (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Jane Heppenstall (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 be made in terms of section 18 and 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 whereby the Applicant seeks an order for recovery of possession of the property in terms of section 18 and grounds 11 and 12 of the 1988 Act. The application was accompanied by copies of a rent statement, notice to quit, notice in terms of section 19 of the 1988 Act (“the form AT6”) and correspondence between the parties. The application was conjoined with application reference FTS/HPC/CV/26/0400 and this decision should be read in conjunction with that issued in the conjoined application.

1.2 No written representations were received from the Respondent in advance of the Case Management Discussion.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 19 August 2026 by teleconference. The Applicant was represented by Mr Durie of Brodies LLP Solicitors. The Respondent was neither present nor represented.

2.2 The Applicant's representative confirmed that the application was insisted upon. There had been written contact from the Respondent requesting bank details to make payment to the Applicant however, there was nothing to suggest he was not aware of the applications and Case Management Discussion. The Tribunal noted that intimation had been made by sheriff officers and considered it appropriate to proceed in the Respondent's absence, as was permitted by rule 29 of the Chamber Rules.

2.3 The Applicant's representative confirmed that the Respondent remained in occupation. The tenancy began on 1 September 2008. Terms were agreed verbally between the parties. The rent payable was currently £303.00 per month, having been varied by the parties' agreement. Notice to quit had terminated the contractual tenancy as at 1 September 2025. The Form AT6 had been given to the Respondent. There had been communication from the Respondent suggesting he was seeking alternative accommodation. His letter of 19 February 2025 acknowledge the rental debt owed. Communication with the Respondent was not easy. An offer of repayment at the rate of £606.00 per month, including ongoing rent, had been made previously but had been not acted upon. The Applicant had complied with the pre-action protocol as demonstrated in the copies of letters sent to the Respondent by the Applicant. The Respondent was believed to live alone and be of working age. There was nothing to suggest any issue with benefit payments. The Applicant was not aware of any health issues on the part of the Respondent. The last payment of rent was made on 21 November 2025. At the time of making the application, the arrears were £10,250.00 and had increased.

2.4 The Tribunal indicated that it was prepared to grant the order sought.

3. Findings In Fact

3.1 The parties entered into an assured tenancy agreement which commenced on 1 September 2008.

3.2 The rent due in terms of the agreement between the parties is £303.00 per calendar month.

3.3 The Respondent has failed to make payment of the rent due since. He has been in arrears of rent since December 2019.

3.4 The Form AT6 had been served on the Respondent by sheriff officers on 17 July 2025. It gave notice of the Applicant's intention to make the present application on the basis of grounds 11 and 12 of schedule 5 of the 1988 Act.

3.5 As at 17 July 2025, the arrears outstanding were £9644.00.

3.6 Notice to quit was served on the Respondent by sheriff officers on 17 July 2026. This notice terminated the contractual tenancy between the parties as at 1 September 2025.

3.7 The Applicant wrote to the Respondent providing details of the debt, inviting proposals for payment and providing information on sources of advice on 1 November 2024, 17 January 2025 and 17 April 2025. No payment proposal has been made since February 2025 when the Respondent proposed paying £606.00 per month going forward. Payment at this rate was not maintained.

3.8 The Form AT6 provided that no application would be made before 1 September 2025. The present application was made on 26 January 2026 at which the Form AT6 was in force.

3.9 As at 26 January 2026, the rent outstanding was £10,250.00. That amount remains outstanding.

3.10 No payment has been made by the Respondent since November 2025.

3.11 The Respondent resides at the Property alone. He is of working age.

4. Reasons For Decision

4.1 Section 19 of the 1988 Act requires the Applicant to have given the Respondent a minimum of fourteen days notice of their intention to make the present application. Such notice has been given. In terms of section 18 of the 1988 Act, the Tribunal can only make an order for recovery of possession on one or more of the grounds contained within schedule 5. Furthermore, such an order can only be made if it is reasonable to do so.

4.2 Grounds 11 and 12 are in the following terms:-

Ground 11

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.

Ground 12

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.

In the present case, the Respondent has been in arrears of rent since December 2019. The arrears had only increased since then until the date of making the application. The Tribunal was, therefore, satisfied that an order for recovery of possession could be granted on both grounds.

4.3 Section 18(6) of the 1988 Act further constrains the Tribunal's ability to grant an order for possession, but only where there is an ongoing contractual tenancy between the parties. Valid notice to quit had been served and the contractual tenancy had been ended. Thus, section 18(6) did not apply in the present case.

4.4 Section 18(4) and (4A) required the Tribunal to also consider whether it was reasonable to grant the order sought, having regard to certain matters being:-

(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.

In the present case, there was nothing before the Tribunal to suggest any issues with the payment of benefits. Furthermore, given the correspondence sent to the Respondent, the Tribunal considered that the pre-action protocol had been complied with.

4.5 The Tribunal thereafter approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 and considered the whole circumstances in which the application was made. The Tribunal placed particular weight on the extraordinary length of time in which the Respondent had been in arrears and the level they had reached. Furthermore, the Respondent had no dependents and there was no explanation before the Tribunal as to how the arrears had accrued. In all of the circumstances, it was reasonable to grant the order sought.

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

19 August 2026
Date