

Housing and Property Chamber
First-tier Tribunal for Scotland



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, as amended (“the 1988 Act”)

Chamber Ref: FTS/HPC/EV/26/0228

Re: Property at 411B High Street, Kirkcaldy, Fife, KY1 2SG (“the Property”)

Parties:

Mrs Irene Watt, 7 William Street, Kirkcaldy, Fife, KY1 1TW (“the Applicant”)

Ms Fiona McDill, 411B High Street, Kirkcaldy, Fife, KY1 2SG (“the Respondent”)

Tribunal Members:

Elaine Paton (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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.

Background

1. An application was received by the Housing and Property Chamber (HPC) on 16 January 2026. The application was submitted under Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The Applicant seeks an eviction order in terms of Section 18 and Grounds 11 and 12 of Schedule 5 of the 1988 Act. Submitted with the application was an explanation of the tenancy arrangement which was being treated as an assured tenancy; Notice to Quit and notice of proceedings for possession Form AT6 with evidence of service regarding both; rent account statement, section 11 notice, and copy Confirmation of Estate with disposition in favour of the Applicant and Registers of Scotland acknowledgement of application for registration of title under title number FFE143218.
2. A copy of the application and supporting documentation was served on the Respondent by Sheriff Officers on 27 July 2026. The parties were notified that

a case management discussion (“CMD”) would take place by telephone conference call on 20 August 2026 at 14.00 hours and that they were required to participate. The Respondent was invited to make written representations in advance of the CMD. No written representation or documentation was lodged by or on behalf of the Respondent prior to the CMD.

3. Prior to the CMD, on 07 August 2026, the Applicant’s solicitor lodged additional documents including Affidavit by the Applicant, EICR regarding the Property, correspondence from Fife Council, emails from the Respondent’s husband David Watt, updated rent account statement, and various letters dated 24 June 2025, 07 November 2025, 03 March 2026, 11 May 2026 and 22 June 2026 sent to the Respondent by or at the instance of the Applicant including correspondence in compliance with the pre-action protocols. The Applicant’s correspondence and enclosures were crossed over to the Respondent by the Housing and Property Chamber (“HPC”) administration.
4. The CMD on 20 August 2026 proceeded. The Applicant was present, supported by her husband, and represented by Mrs Chalmers of Robert F Macdonald, solicitors. The Respondent was present and represented herself.

Summary of Discussion

5. The Legal Member explained the Tribunal would seek to establish whether or not a resolution of matters may be possible, seek to establish those documents and facts capable of agreement between the parties and note those matters remaining in dispute, then give consideration on progression of the application.
6. The Tribunal noted that the Applicant is the owner of the Property having inherited it from her late brother who had let the Property to the Respondent a significant number of years ago. The Tribunal also noted that the Applicant had applied to the local authority in relation to landlord registration.
7. The Respondent stated she received all of the application paperwork and the recent papers sent to her. The Respondent confirmed she is still residing in the Property. She has three pet dogs that she keeps in the Property.
8. The Tribunal noted from the application paperwork that due to the absence of a tenancy agreement (and any form AT5 regarding a short assured tenancy) and that the Respondent had been residing in the Property for approximately ten years the tenancy arrangement required to and was being treated as an assured tenancy.
9. The parties were not in dispute that the Respondent occupied the Property for a significant number of years and she was obliged to pay rent of £300 per calendar month. The parties were not in dispute in relation to the Respondent’s assured tenure, that the Respondent is the tenant and the Applicant is now the landlord in terms of the tenancy arrangement for the Property. Both parties stated the Property was in poor condition.

10. The Tribunal noted from Mrs Chalmers that a Notice to Quit dated 21 August 2025 requiring the Respondent to leave the Property by 03 October 2025; and Form AT6 notice of proceedings for possession dated 22 August 2025 stating the terms of Grounds 11 and 12 and relative explanation, had both been served upon the Respondent by Sheriff Officers on 25 August 2025. Mrs Chalmers stated a Section 11 notice had been emailed to the local authority on 16 January 2026. The Tribunal noted the arrears were £300 in March 2025, £1,800 at the time the Notice to Quit and AT6 were issued in August 2025, and had increased to £3,300 in January 2026 when the application was lodged with the Tribunal. Mrs Chalmers stated a lump sum payment had been received into the account in February 2026 which had reduced the arrears to £600 and the Respondent had been maintaining the ongoing £300 calendar monthly rent with payments in March 2026 and each month thereafter to and including August 2026, therefore the current balance of arrears on the account is £600.
11. Mrs Chalmers stated that the Applicant had set out her position in her Affidavit and summarised this was: the Applicant had inherited the Property, she did not want to be a landlord but had been unable to sell with a sitting tenant, the Property was in poor condition, the Respondent's rent payments had been paid sporadically with a continuous arrears balance, the local authority wrote to her after the Respondent had reported the condition of the Property to them but getting the necessary works done to the Property was then hindered by lack of access at the instance of the Respondent, and tradesmen who had gained entry refused to carry out works due to the condition and stated they would only return if certain items were removed (e.g. carpets wet with dog urine); the Applicant does not have any other rented property. Mrs Chalmers stated the Applicant had been unable to get the necessary works done to complete her landlord registration requirements, it was the Applicant's position that she does not want the responsibility and obligation of being a landlord and wants the Tribunal to grant the eviction order.
12. The Respondent stated that she had worked alongside the Applicant's late brother, they were both taxi drivers. The Respondent had needed somewhere to stay and the Applicant's brother said she could stay at the Property. The Respondent told the Tribunal she did not have a tenancy agreement but the arrangement was that she paid £300 each calendar month, the payment had not been fixed at any particular day in the month and she had paid the rent in cash. The Respondent stated she had not paid any deposit. The Respondent said the Property was in a poor condition when she moved in, the condition now was not as a result of anything she had done to the Property. The Respondent stated there was no hot water when she moved in but the Applicant's brother got someone in to fix it within 24 hours.
13. The Respondent stated that when the Applicant's brother had passed away on 23 March 2023. the Applicant told her she would be ok. There was a passing mention of a sum of cash having been handed over by the Respondent to the Applicant at the funeral of the Applicant's late brother. The Respondent stated the Applicant then started asking her to have the rent paid on a particular day of each month, she wanted the payments to be made into a bank account then

she would tell the Respondent that the rent was late. The Respondent mentioned that in June 2024 the boiler stopped working and the Respondent messaged the Applicant but nothing was done for more than forty days. The Respondent stated she had obtained advice about her situation from the local authority and other agencies such as Frontline Fife. The Respondent said Fife Council told her the procedure that needed to be followed and she had told the Applicant what that procedure was but the Applicant could not seem to understand that. The Respondent said she told the Applicant to get the paperwork done regarding the present circumstances and when nothing was happening, she got fed up and kept the rent money in an account and did not pay the rent to the Applicant. Responding to the tribunal, the Respondent said she reported the Property conditions to the Council because the Applicant was not progressing anything. The Respondent did not leave at the date specified in the Notice to Quit. The advice places she had spoken to had all told her not to leave. In response to the Tribunal, the Respondent stated the local authority knew she had a tribunal date and she was told to stay in the Property and to wait for the Tribunal decision. The Respondent said she was not in arrears due to any benefits that were due to be paid to her. The £3,000 lump sum payment she made was to settle the rent up to the end of the year 2025. The Respondent stated she has some health issues which she believed had worsened due to the conditions in the Property but she could not say this with certainty. The Respondent stated she does not want to continue to stay in the Property but she was not going to move out when the Applicant told her to and the local authority and advice agencies had told her not to. The Respondent told the Tribunal that she is not opposed to an eviction order being granted. Responding to the Tribunal, the Respondent stated she has somewhere to stay, so long as she does not need to move out in a matter of days, she would need just a few weeks before she could move out.

14. The Tribunal gave an opportunity to the Applicant to respond to what she had heard from the Respondent. The Applicant explained she had tried to engage the services of several legal firms who had declined to take the matter on until she had found Mrs Chalmers' firm. It was stated that the Applicant's husband had gone to efforts to get tradesmen to go to the Property but the second electrician who did manage to go inside refused to go back to do the works until specified actions were carried out beforehand. Mrs Chalmers summarised the Applicant's position that she was seeking an eviction order to be granted at the CMD with the usual appeal period or such period in addition to the usual 30 days that the Tribunal would deem appropriate, the Respondent has stated she does not want to continue to reside in the Property albeit this was the first time that the Applicant was made aware of that being the Respondent's position. There were no additional points or comment from those present before the Tribunal adjourned to consider matters. The hearing re-convened. The Legal Member explained that the Tribunal had considered all oral submissions further to the application papers and the Applicant's subsequent representation with accompanying documents. The Tribunal determined that the stated grounds had been established and in all the circumstances it was reasonable to grant the application for an eviction order. The parties were advised the Tribunal's written decision and reasons would be sent to them.

Findings in Fact

15. The Tribunal made the following findings in fact:

- (1) The Applicant is the owner of the Property and holds the landlord's interest in it having inherited the Property from her late brother.
- (2) The Respondent is the tenant of the Property under a longstanding assured tenancy arrangement which commenced approaching ten years ago and on the terms that had been agreed between the Respondent and the Applicant's late brother regarding the rent due.
- (3) The calendar monthly rent is £300.
- (4) A rent account statement was produced to demonstrate a record of payments since the rent has been paid into a bank account. In terms of that statement the Respondent has been in arrears of rent since March 2025. The arrears increased to £1,800 at August 2025, and to £3,300 at January 2026. A lump sum payment of £3,000 was made to the rent account in February 2026 thereby reducing the balance of arrears on the account.
- (5) The balance of arrears shown in the rent account statement is £600 as at February 2026. The Respondent paid £300 to her rent account for March, April, May, June, July and August 2026. The balance of arrears on the rent account at the date of the CMD remains £600.
- (6) The Applicant's solicitor issued correspondence to the Respondent in compliance with the rent arrears pre-action protocol.
- (7) Notice to Quit dated 21 August 2025 and Notice of Proceedings for Possession in Form AT6 dated 22 August 2025 were served on the Respondent by Sheriff Officers on 25 August 2025.
- (8) A Section 11 Notice was sent to the local authority on 16 January 2026.
- (9) The application to the First-tier Tribunal for Scotland was made after the date stated in the Form AT6 (being the earliest date proceedings may be raised) and within six months of that date.
- (10) The Respondent resides in the Property with her three dogs. The Respondent is stated to have health issues. The Respondent works as a taxi driver and is not in receipt of benefits regarding her housing costs.
- (11) The current tenancy arrangement cannot be sustained by either party.

Reasons for Decision

16. The application was submitted with an explanation and information regarding the circumstances of the longstanding tenancy arrangement between the Respondent and the Applicant's late brother.
17. The application was also submitted with a Notice to Quit dated 21 August 2025 and AT6 notice dated 22 August 2026 in satisfaction of Section 19 of the 1988 Act, together with a copy Sheriff Officers certificate of service which establishes the Notice to Quit and AT6 were served on the Respondent on 25 August 2025. The Notice to Quit states the Respondent was to leave the Property by 03 October 2025 and the AT6 stated Ground 11 (tenant has persistently delayed paying rent lawfully due whether or not there are arrears on the date proceedings are begun) and Ground 12 (some rent due and unpaid on the date proceedings are begun, and tenant in arrears at the date of service of the notice of proceedings) with explanation regarding the delay and non-payment of rent due.
18. The application to the Tribunal was made after expiry of the notice period in the AT6 notice of proceedings for possession. The Tribunal is satisfied that the Applicant has complied with Section 19 of the 1988 Act. The Applicant also submitted a Section 11 Notice in terms of the Homelessness etc. (Scotland) Act 2023 with evidence that it was sent to the relevant Local Authority by email. The Tribunal is therefore satisfied that the Applicant has complied with Section 19A of the 1988 Act.
19. Section 18(1) of the 1988 Act states,
"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."

Ground 11 of Schedule 5 states

"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 of Schedule 5 states

"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."

Section 18 continues:

"(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." and

"(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.”

20. The Tribunal accepted the evidence of the Applicant in the form of the documents submitted and relative information referred to by her solicitor at the CMD.
21. The Tribunal is satisfied that the Respondent, by her own admission, was persistently late in meeting the calendar monthly rent of £300 during the period March 2025 to January 2026 and, in terms of the rent arrears statement, there were arrears of rent at 22 August 2025 when the AT6 was issued and rent was due and unpaid at 16 January 2026 when the present proceedings were lodged with the Tribunal. The Tribunal is also satisfied the current balance of arrears at the CMD is £600 as demonstrated in the rent arrears statement. Grounds 11 and 12 are therefore established.
22. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -
 - (a) The Tribunal is satisfied that the Applicant has complied with the Rent Arrears Pre-Action Protocol. The Applicant's solicitor produced copy correspondence issued to the Respondent in compliance with the protocol.
 - (b) The Tribunal is also satisfied the Respondent is in employment and has stated the arrears are not attributable to a delay or failure in the payment of a relevant housing benefit.
 - (c) The Tribunal is satisfied the arrears have remained at £600 since February 2026 and the Respondent is maintaining the ongoing rental payments.
 - (d) The Respondent has resided in the Property since moving into it approaching some 10 years ago and is still residing there currently with her three dogs. The Property is stated to be in poor condition and that having endured for a significant number of years.
 - (e) The Tribunal accepted the Respondent's explanation regarding the former irregularity of her rental payments; that she had been accustomed to making payments in cash, sometimes paying rent sooner in one month and later in the next and that was the position over a number of years until her former landlord passed away in March 2023, and before the Applicant regularised this regarding payments to a bank account.
 - (f) The Tribunal accepted the Respondent had provided an explanation for the periods of non-payment of rent and stated she kept the money in her bank and did not pay the Applicant as a consequence of losing patience with the Applicant's inaction as she perceived that to be: the Applicant's delay in getting a broken boiler fixed; and the Applicant's delay in following the procedures the Respondent was told by the local authority that needed to

be carried out including regarding these proceedings which she had passed on to the Applicant.

- (g) The Tribunal is satisfied that the Respondent's position is that she does not want to continue to reside in the Property due to its poor condition therefore she is not opposed to an eviction order being granted.
- (h) The Tribunal accepted that the Applicant did not seek out the role of landlord; she does not want to be a landlord but inherited the Property from her late brother. The Tribunal is satisfied that the Applicant has taken steps to formalise matters regarding the Respondent's tenure and her ownership/landlord status within the legislative framework.
- (i) The Tribunal is satisfied that the tenancy cannot be sustained by parties in the circumstances.

23. The Tribunal exercised the power within rule 17 of the 2017 rules and determined that a decision should be made at the CMD without a hearing.

The Tribunal concludes that the Applicant has complied with the requirements of Sections 18 and 19 of the 1988 Act, that grounds 11 and 12 have been established. For the reasons outlined in paragraph 22, the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

Decision

The Tribunal determined that an eviction order should be granted against the Respondent.

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.

Elaine Paton, Legal Member

Date: 20 August 2026