



**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**

Chamber Ref: FTS/HPC/EV/26/0426

Re: Property at 78 Caledonian Road, Inverness, IV3 5RD (“the Property”)

Parties:

**Topaz Finance Limited, The Pavillions, Bridgewater Road, Bristol, BA13 8AE
 (“the Applicant”)**

**Monika Mlynarczyk and Mr Lucasz Mlynarczyk, 78 Caledonian Road,
Inverness, IV3 5RD (“the Respondents”)**

Tribunal Members:

Lauren Rae (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

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

- (i) an order for eviction should be granted against the Respondents in favour of the Applicant in terms of section 18(1) and schedule 5, ground 2 of the Housing (Scotland) Act 1988.**
- (ii) The order for eviction shall be superseded until 12 February 2027.**

Background

1. By application dated 22 January 2026, the Applicant sought an order for eviction of the Respondents from the Property in terms of section 65 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“2017 Rules”) under schedule 5, ground 2 of the Housing (Scotland) Act 1988.
2. The application was accompanied by:-
 - (i) Copy short assured tenancy between Callum Watt (Landlord) and the Respondents dated 29 March 2010.

- (ii) Decree for repossession in favour of the Applicant (INV-B155-24) dated 17 July 2024.
 - (iii) Copy notice to quit dated 15 August 2025.
 - (iv) Copy AT6 dated 15 August 2025.
 - (v) Section 11 notice in terms of the Homelessness etc (Scotland) Act 2001 and covering email dated 2 March 2026.
3. The application was accepted by the tribunal on 7 April 2026. A case management discussion ('CMD') was fixed for the 11 September 2026 at 2pm and notice given to both parties. Notification of the CMD was given to the Respondents by Sheriff Officers on 5 August 2026 conform to a certificate of service lodged in process.

Case Management Discussion

4. The CMD took place on 11 September 2026 at 2pm via telephone conference. The Applicant was represented by Mr Mark Oswald from TLT Solicitors. The Applicant did not personally appear. Mrs Mlynarczyk appeared on behalf of both Respondents.
5. The tribunal explained the purpose of the CMD and the powers available to it.
6. Prior to the CMD, the Respondents lodged written submissions dated 17 August 2026.
7. At the CMD, Mr Oswald invited the tribunal to grant an order for eviction. The outstanding mortgage balance was £124,938.87. Mr Oswald explained that the Applicant was the secured lender of Property and had obtained a decree for possession from Inverness Sheriff Court (court reference INV-B155-24) dated 17 July 2024. The Applicant and the Respondents had been in regular contact and the Respondents were aware that the Applicant would seek to evict them. The Applicant, as heritable creditor of the Property, could not exercise their real rights without an eviction order. Mr Oswald explained that the Applicant was prepared to agree to the order being superseded for a period of time, proposing January 2027 as a reasonable amount of time. He explained that the Applicant was not agreeable to the order being superseded until early June 2027, which was the Respondents' position.
8. Mrs Mlynarczyk, on behalf of both Respondents, advised the tribunal that the order for eviction was not opposed, albeit her primary position was to seek to postpone any order until early June 2027. She explained that she had lived in the Property for 16 years with her husband and five children (aged 24, 22, 17, 13 and 4). The Respondents' youngest son (aged 17) was due to sit his final school exams in April /May 2027 and she wished to avoid disruption and upheaval to him. The Respondents had been in touch with the local authority who would not re-house them until an order was granted and she did not know where the family were likely to be re-housed. The Respondents' eldest children (aged 24 and 22) continue to reside in the Property. Mr Mlynarczyk suffered from a disability. The Property had not required to be adapted for his

needs. After questioning from the tribunal, Mrs Mlynarczyk advised that her youngest son would sit preliminary exams in January 2026.

9. The tribunal noted the absence of an AT5 in the paperwork supplied. Both parties confirmed that the tenancy was a short assured tenancy.

Findings in Fact

10. The tribunal made the following findings in facts:-

- The tenancy was a short assured tenancy between Callum Watt and the Respondents which commenced on the 29 March 2010.
- The short assured tenancy included notification concerning recovery of possession as required by schedule 5, ground 2 of the 1988 Act.
- Title to the Property is registered in the Land Register of Scotland under title number INV18974.
- Mr Callum Watt granted a standard security over the Property in favour of Edeus Mortgage Creators Limited which was assigned to the Applicant.
- The Applicant was granted a extract decree of repossession against Mr Watt by the Sheriff at Inverness Sheriff Court (INV-B155-24) dated 17 July 2024.
- The outstanding mortgage balance as at the CMD was £124,938.87.
- Following the decree of possession, the Applicant and Respondents were in regular contact.
- The Applicant issued a Notice to Quit and AT6 to the Respondents, both documents dated 15 August 2025 by recorded delivery post.
- The Applicant issued a section 11 notice in terms of the Homelessness etc (Scotland) Act 2001 to the Local Authority by email dated 2 March 2026.
- The Applicant requires an eviction order and vacant possession to sell the Property.
- The Respondents reside in the Property with their 5 children (aged 24, 22, 17, 13 and 4).
- The Property has not been adapted for the health needs of the Respondents.

- The Respondents have been in contact with the Local Authority and require an order for eviction before they can be allocated housing.
- The Respondents require additional time to vacate the Property.

Reasons for Decision

11. Parties were in agreement that, in the circumstances, an order for eviction should be granted. Where the parties diverged was in relation to the timescale for the eviction order to take effect,
12. The Respondents sought to postpone the eviction order until early June 2027 on account of their youngest son's final school exams. There appeared to be, tacit acceptance, that a postponement until early June 2027 was unlikely.
13. The Applicant was not amenable to a postponement until June 2027 and instead proposed January 2027 as being a more reasonable period.
14. The tribunal considered the submissions made by both parties both orally and in writing. The tribunal resolved that a postponement of an eviction order until June 2027 was not reasonable, particularly against the background of a decree for repossession having been issued by Inverness Sheriff Court dated 17 July 2024.

Decision

15. The tribunal granted an order for eviction against the Respondents in favour of the Applicant superseded until 12 February 2027.

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.

Lauren Rae

Legal Member/Chair

14 September 2026
Date