



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
Act 1988 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/26/0289

**Re: Property at 2 Clintmains Cottages, St. Boswells, Melrose, TD6 0DY (“the
Property”)**

Parties:

**Mertoun Estate Farms Ltd, Mertoun Estate Office, St. Boswells, Melrose, TD6
0EA (“the Applicant”)**

**Mr Peter Johnston, 2 Clintmains Cottages, St. Boswells, Melrose, TD6 0DY
 (“the Respondent”)**

Tribunal Members:

Fiona Stephen (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for eviction be granted but enforcement
thereof should be postponed until 31 March 2027.**

Background

1. By application dated 20 January 2026 the Applicant sought an order for repossession of the Property under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and in terms of rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the Rules”).
2. On 30 March 2026 the Application was accepted by the Tribunal.
3. A Case Management Discussion (CMD) was arranged to take place on 22 September 2026 at 10am. Appropriate intimation of that hearing was given to both parties. The Respondent was served, personally, with intimation of the CMD, together with the papers by Sheriff Officers on 13 August 2026 in

accordance with execution of service of the same date. Written representations were due to be lodged by the Respondent no later than 29 August 2026. No written representations were lodged.

4. The CMD took place on 22 September 2026. The Applicant was represented by Mrs Angela Dodds, Estate Administrator of the Applicant and was accompanied by a colleague, Mr E Brown who was observing. Mr Johnston, the Respondent, appeared on his own behalf.
5. The Tribunal had before it:
 - i. Application in Form E dated 20 January 2026;
 - ii. Short Assured Tenancy agreement dated 22 January and signed on 29 January 2007 between the Applicant and the Respondent, commencing on 1 February 2007 for a period of 12 months and continuing monthly thereafter;
 - iii. AT5 Notice dated 24 January 2007;
 - iv. Notice to Quit dated 23 June 2025 ending the tenancy on 1 October 2025;
 - v. Section 33 Notice dated 23 June 2025 stating that possession of the Property was required on 1 October 2025;
 - vi. Proof of acknowledgement of service of iv and v by the Respondent on 23 June 2025;
 - vii. Section 11 Notice dated 31 October 2025 with acknowledgement from Scottish Borders Council dated 10 November 2025; and
 - viii. Case Papers.

Case Management Discussion

6. The Tribunal explained the purpose of the CMD and the powers of the Tribunal to determine matters. The Tribunal asked various questions with regard to the application.
7. Mrs Dodds explained that a letter had been sent to Mr Johnston in March 2023 explaining that drainage works were going to be done in Clintmains village as the treatment plant had reached the end of its life. In addition, Mr Johnston was informed that Mertoun Estate ("the estate") had decided to sell all residential properties that were deemed as non-core to their business. The Property fell into that category. Another letter was sent to Mr Johnston in April 2023 advising him of the position.
8. Clintmains village is split into east and west. The works to the treatment plant for the west side of the village have been completed. Works to the treatment plant on the east side are due to start in around 7 days and will take 2-3 weeks to complete. The Property lies in the east side of the village. Mrs Dodds stated that the estate has 10 rental properties in the village and there are around 5 properties which are owned by others. Mr Johnston is the last tenant residing in his property. Of the other 9 properties, one has been sold,

one is “under offer” and the others are on the market. Mr Johnston has not made an offer for the Property. His rent is currently £518.00 per month and there has been no rent increase since 2023. If the Tribunal does not grant an order for eviction then that will prevent the sale of the Property. The Property is a three-bedroomed cottage.

9. The Tribunal asked Mrs Dodds whether the estate had given any thought to selling all of the properties to a private landlord or Housing Association. Mrs Dodds said she did not think that there was an opportunity to do that. The estate has sold other properties on the estate and at Clintmains. Mrs Dodds confirmed that the current value of the Property is around £220 000. If an eviction order is not granted then there is another issue. There is a basement from number 2 Clintmains which runs under no 3 Clintmains so no 3 could not be sold. When asked what that would mean, Mrs Dodds said the estate would lose around £500 000 (for both sales). Given the size of the estate, Mrs Dodds was asked if this would be material. She said it would be as the estate would like to move forward and bring an end to their property interests in Clintmains.
10. Mr Johnston was then asked some questions. He had not lodged any written representations as he did not have an objection to the estate selling the Property. The problem is finding somewhere else to live. Mr Johnston said he lives on the state pension. The estate has not increased the rent as Mrs Dodds said but they have carried out no maintenance to the house either. The housing situation in the Borders is chronic. Mr Johnston said he had been applying for properties on a weekly basis but 148 people are applying for the same property. It is the same in the private rental market too. He has tried on numerous occasions to get a property but thinks that the fact he is on the state pension affects his credit rating. Mr Johnston said he was a long-term tenant and had not missed any rent payments.
11. Mr Johnston said this process is making him ill and he does not want it to continue much longer. Mr Johnston is 72 years old and he lives with his son who is 27 years old. His son is not currently working and is self-employed. This situation is worse for him as he went to school in the area and this is his home. Mr Johnston said that if he could move tomorrow he would. He is on the local authority housing list (and has been for a year) and has been allocated a homelessness officer. However he has not been very helpful. He sends Mr Johnston an email every two weeks and asks if Mr Johnston has found anything. Mr Johnston has approached Shelter but they have told him that nothing will happen until this process is complete. Mr Johnston cannot afford to buy the Property although that would have been ideal.
12. The Tribunal asked Mr Johnston if he has been told what happens if he is made homeless. Mr Johnston said he had asked the homelessness officer that but he kept saying it probably would not happen. However, during the last conversation, the officer said that they need to plan for temporary accommodation. Mr Johnston said they have had so much time, he could not understand why this was only mentioned now.

13. Mr Johnston said his son has issues and he will not know how this has affected him until next year. Mr Johnston said he has his own health problems which are life limiting so it would be helpful if he could stay in the same health board area. That would be better for him and his son. His son has friends in the area. Mr Johnston has approached Eildon, Scottish Borders, Waverley and Berwickshire Housing Associations. They have different priority passes and so he has nominated Berwickshire as they are the closest. None have said anything about whether he might be offered accommodation. Mr Johnston said that the next place he moves to will probably be his last.
14. The Tribunal asked Mrs Dodds if she had anything to add. Mrs Dodds said she was aware of Mr Johnston's situation and sees him regularly. This is not a position the estate wanted to be in or wanted to do. She is also aware that Mr Johnston is unlikely to get other accommodation until the Tribunal has made a decision.
15. The Tribunal adjourned to discuss matters. On reconvening, the Tribunal thanked the parties for providing the information they had today. It appreciated this was a difficult situation. The Tribunal did not consider it was necessary to have a full hearing in the case. The Tribunal would consider its decision and issue a written decision to the parties as soon as possible.

Findings in Fact

16. The Applicant and the Respondent entered into a short assured tenancy agreement dated 22 January 2007, which was signed by both parties on 29 January 2007, and which commenced on 1 February 2007.
17. In terms of Clause 2 of the tenancy agreement, the tenancy was for an initial period from 1 February 2007 for a period of 12 months until 1 February 2008 and continued monthly thereafter, if not terminated. The Applicant could terminate the tenancy on giving two months' prior written notice and the Respondent by giving one month's prior written notice.
18. An AT5 Notice dated 24 January 2007 was given to the Respondent prior to the tenancy commencing.
19. A Notice to Quit dated 23 June 2025 was served on the Respondent and acknowledged by him on the same date. The Notice to Quit stated that the tenancy would terminate on 1 October 2025.
20. A Notice in terms of Section 33 of the 1988 Act dated 23 June 2025 was served on the Respondent, and acknowledged by him on the same date, stating that possession of the Property was required on or before 1 October 2025.
21. The tenancy reached its *ish* on 1 October 2025 and is not continuing by tacit relocation.

22. Notification was provided to Scottish Borders Council in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 31 October 2025 and acknowledged by them on 10 November 2025.
23. Clintmains village has around 15 properties in it and lies in the Borders.
24. The Property is one of 10 properties in Clintmains village which are let by the Applicant. The other 5 properties are owned by other third parties.
25. The Property is a three bedroomed cottage.
26. The current rent for the Property is £518.00 per month.
27. There has been no rent increase since 2023.
28. On 17 March 2023 the Applicant wrote to the Respondent to inform him that: (1) the drainage system for Clintmains was due for modernisation and the estate was working up plans to do so. The works would cause disruption; (2) as part of the estate's continuous review of operations across all parts of its business, it had considered whether it is in its interest to continue to retain ownership of all its residential properties. Following a recent review, the estate had decided to dispose of its residential interests at Clintmains once the new drainage works have been completed. The Respondent was told that he would be kept fully informed of the estate's plans over the next few months.
29. On 19 April 2023 the Applicant wrote to the Respondent and informed him that the plans for the upgrade of the drainage system were developing at a slower pace than hoped and it was unlikely that work would commence before autumn. That meant that the sale of Clintmains cottages would not happen before Spring/Summer 2024 and the tenants' continued occupation of the cottages was assured for at least a year. The estate stated that "it is hoped that tenants will have time to find alternative accommodation or make plans to purchase their houses."
30. The drainage works have been completed on the west side of Clintmains village.
31. The drainage works are due to start on the east side of Clintmains village in around 7 days' time and will take 2-3 weeks to complete.
32. The Property lies in the east side of the village.
33. The Property has a value of approximately £220 000.
34. A basement runs from the Property underneath number 3 Clintmains Cottage. In the event that an eviction order is not granted, the sale of no 3 Clintmains Cottage will not be able to proceed.

35. The Respondent is the last tenant in a property which is let by the Applicant in Clintmains village.
36. The Applicant has placed 9 properties on the market in Clintmains village. One property has sold and one is currently under offer.
37. The Respondent is 72 years old and lives in the Property with his adult son who is 27 years' old.
38. The Respondent has health issues and so it is important to him that he remains in the same health board area.
39. The Respondent's is not currently working and is self-employed. He went to school in the area and has friends there.
40. The Respondent lives on the state pension. He cannot afford to buy the Property which would have been the ideal solution for him.
41. The Respondent has been making efforts to find alternative accommodation in the area for around one year.
42. The Local Authority have appointed a homelessness officer to the Respondent.
43. No accommodation has been offered to him by the local authority.
44. The Respondent has tried to find alternative accommodation in the private rental market without success.
45. The Respondent has made contact with Eildon, Scottish Borders, Waverley and Berwickshire Housing Associations. They have different priority passes and so the Respondent has nominated Berwickshire Housing Association as his choice. He has not been offered any accommodation so far.
46. The Respondent has been in touch with Shelter but has been told that nothing is likely to happen until the conclusion of these Tribunal proceedings.
47. The Respondent was recently advised by his homelessness officer that the local authority will need to consider temporary accommodation for him.
48. The Respondent does not object to an order for repossession being granted in principle but cannot find anywhere to live.

Findings in Fact and Law

49. It is reasonable to grant an order for possession of the Property.

50. It is reasonable to grant an extension to the enforcement of the order for possession.

Reasons for Decision

51. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33 Notice and Notice to Quit had been served on the Respondent. The Notice to Quit had been served to an *ish* of the tenancy (1 October 2025) so that tacit relocation is not operating. The section 33 Notice gave the Respondent at least two months' notice that the Applicant required possession of the Property. The Tribunal was satisfied that the provisions of Section 33 (1) (a) (b) and (d) of the 1988 Act have been met. The Tribunal was satisfied that the tenancy agreement had been complied with.

52. In terms of Section 33 (1)(e) of the 1988 Act, the Tribunal may make an order for possession of a house if it is satisfied "that it is reasonable to make an order for possession". Accordingly, the Tribunal has a duty to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson* [1942] 2 All ER 653 at 655 in which Lord Green MR said in an often quoted passage:

"In considering reasonableness...it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad common sense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."

53. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and weigh the various factors which apply to the parties.

54. The evidence the Tribunal requires to balance is the following:

55. The Applicant determined in March 2023 that, for business reasons, it was no longer in its interest to retain ownership of the let properties in Clintmains village. It wrote to the Respondent and other tenants to advise them of this. The disposal of properties would only take place once modernisation works to the drainage system had been undertaken. In April 2023, as plans for the drainage works were taking longer than expected, the Respondent and other tenants were informed that the sale of the Clintmains properties would not happen until the following Spring/Summer 2024 so the Respondent would

have at least another year of occupation in the Property. The Applicant suggested that this time could be used by the Respondent and other tenants to find alternative accommodation and/or consider whether they wished to buy their properties.

56. Notice to Leave was served in June 2025 requiring the Respondent to remove from the Property by 1 October 2025. These proceedings were raised in January 2026. The Respondent has known about the Applicant's plans to sell the Property for a period of 3.5 years.

57. If the Applicant is unable to obtain possession of the Property then the sale of no 3 Clintmains Cottage cannot proceed due to a basement running from the Property to no 3 Clintmains Cottage. That will deprive the Applicant of a significant capital receipt which, for both properties, the Applicant has estimated at £500 000.

58. The Applicant did not consider whether all ten cottages at Clintmains could be sold to a private Landlord or Housing Association as it did not consider there would be a market to do so.

59. The Respondent has made great efforts to find alternative accommodation and candidly said that he would "move tomorrow" if he could. He has made contact with the local authority and various housing associations. So far, he has not been successful in securing alternative accommodation. The reality is that it appears that the Respondent is unlikely to secure alternative accommodation in the social housing sector unless there is an eviction order. It is only recently that the local authority homelessness officer has mentioned that they need to plan for temporary accommodation. The Respondent has tried to secure alternative accommodation in the private rental market unsuccessfully and considers that his financial circumstances do not help him in that regard.

60. The Respondent suffers from some (unspecified) health issues which he says are life limiting and stated that he thought that these proceedings are affecting his health. He does not want these proceedings to continue for any longer than necessary. Although no medical evidence has been produced, the Tribunal had no reason to disbelieve the Respondent.

61. The situation is a difficult one. The Tribunal took account of the decision in *Stainthorpe v Carruthers and Swan* UTS/AP/22/0027, a decision of the Upper Tribunal dated 25 April 2024 where the Upper Tribunal overturned the decision of the First-tier Tribunal. The Upper Tribunal determined that the appellant (the landlord) had established that eviction was justified under Ground 6 (landlord intends to reconstruct the house) of Schedule 5 to the 1988 Act and that it was reasonable to grant a possession order. The Upper Tribunal considered the issue of "reasonableness" at paras [74]-[83]. The Upper Tribunal made reference to *Cumming v Danson* [1942] 2 All ER 653 at 655 (see paragraph 52 above). It stated that the Tribunal may take into account in assessing reasonableness whether the parties' intentions are

subjectively reasonable and it must “objectively balance the rights and interests of both parties” (*Manson and Downie v Turner 2003 UT 38 at para 41 and 42*).

62. The relevant circumstances on the Applicant’s side are the legal right to use and dispose of the Property and their subjectively reasonable wish to sell the Property as part of the wider management of their property interests. Those on the Respondent’s side are his long period of occupancy of the Property, the reduced state of his health, the position of his son and the difficulties in finding a house to rent given his financial circumstances.
63. Ultimately the subjectively reasonable intention of the Applicant to sell the Property as part of a wider sale programme of the other properties in Clintmains and the position of the Respondent if he is required to remove from the Property that he lives in, deserve equal consideration. These are, as stated in *Stainthorpe* at para [81] countervailing circumstances. The Applicant’s property interests and the rights as tenant of the Respondent are no better than the other. However, the Tribunal considers that it is reasonable for the Applicant to be able to sell the Property and the proper balance between the parties’ interests, in this case, can, in the Tribunal’s view be achieved by postponing the date for possession to allow the Respondent time to find alternative accommodation, hopefully with the assistance of the local authority or housing association. The Tribunal considers a period to take the Respondent beyond winter is reasonable.
64. Having considered all of the circumstances, the Tribunal determined that it was reasonable to grant an eviction order. The Tribunal also considered that it would be reasonable in all the circumstances to postpone the enforcement of the eviction order until 31 March 2027 in terms of Section 20(2)(b) of the 1988 Act.
65. The Tribunal exercised the power within Rule 17 of the Rules and determined that a final order should be made at the CMD.

Decision

The Tribunal grants an Order for possession of the Property and determines that enforcement thereof should be postponed until 31 March 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.



Legal Member/Chair

22 September 2026
Date