Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section under Section 33 of the Housing (Scotland) Act 1988 and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/EV/25/4544

Re: Property at Willow Cottage, Balcathie, Arbroath, DD11 2PD ("the Property")

Parties:

Messrs J G Henderson, Mrs Louise Gray, Balcathie, Arbroath, United Kingdom, DD11 2PD; Messrs J.G. Henderson, Balcathie, Arbroath, DD11 2PD ("the Applicant")

Mr Gilbert Mackie, Willow Cottage, Balcathie, Arbroath, DD11 2PD ("the Respondent")

Tribunal Members:

Martin McAllister (Legal Member) and Ann Moore (Ordinary Member) ("the tribunal")

Decision

I. **The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determines that an order of eviction should be granted in respect of the Property.**

II. **The tribunal determines that enforcement of the order of eviction be postponed to 12 February 2026.**

History

1. **This is an application under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") for recovery of possession of the Property. It is dated 21 October 2025.**

2. **The application was accepted for determination on 19 December 2025.**

Case Management Discussion

3. **A case management discussion was held by teleconference on 20 May 2026.**

4. **The Applicant was not present and was represented by Miss Rachel Boyle of Direct Lettings. The Respondent was present.**

5. **The tribunal adjourned determination of the application to an in- person hearing.**

Hearing 3 November 2026

6. **A hearing was held in Dundee Justice Hub on 3 November 2026.**

7. **The Applicant was present and was represented by Ms Laura Weir of Direct Lettings. The Respondent was present.**

8. **The legal member explained the purpose of the hearing.**

Submissions

9. **At the conclusion of the hearing, Ms Weir said that the application had been necessary because a Notice to Quit had been served which required the Respondent to remove himself from the Property by 12 October 2025 and was still residing in it.**

10. **Ms Weir invited the tribunal to find that the Notice to Quit was in order and that the necessary Section 11 notice had been served on the local authority.**

11. **Ms Weir said that the order of eviction should be granted because a Notice to Quit had been served on the Respondent and he had not removed himself from the Property. She said that, for the reasons outlined in the application and on the basis of the evidence of the Applicant, it is reasonable for the order to be granted.**

12. **Ms Weir said that there had been no issue with the Respondent as a tenant.**

13. **At the conclusion of the hearing, Mr Mackie accepted that he had been served with a Notice to Quit. He said that it was not reasonable to evict him because he had resided in the Property for some time and that, despite efforts, he had not been able to find alternative accommodation. He also questioned the Respondent's need to recover the Property.**

14. **Findings in Fact**

14.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 26 February 2016.

14.2 The term of the tenancy was 13 March 2016 to 12 October 2016 (both dates inclusive).

14.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 12 October 2016.

14.4 The tenancy continued by tacit relocation from 12 October 2026.

14.5 Prior to commencement of the tenancy on 13 March 2016, the Respondent had been a joint tenant in the Property since 13 April 2015.

14.6 The Applicant served a Notice on the Respondent under Section 33 of the 1988 Act on the Respondent dated 1 August 2025 requiring vacation of the Property by 12 October 2025.

14.7 The Respondent remains in occupation of the Property.

14.8 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 was given to the local authority.

14.9 The Property is situated at Balcathie Farm which is an arable farm.

14.10 Balcathie Farm is owned and worked by the Applicant.

14.11 The Property is a two -bedroom detached house.

14.12 The Applicant intends to stay in the Property to enable her to be close to Balcathie farm.

14.13 At certain times of the year, the Applicant requires to be in close proximity to the farm to enable her to carry out her work in an efficient manner.

14.14 The Applicant currently lives around five miles from Balcathie Farm.

14.15 The Applicant has two teenage sons, and the Applicant intends that they will live with her.

14.16 The Respondent is 85 years of age and resides in the Property on his own.

14.17 The Respondent has some health issues which require him to be close to the hospital in Arbroath.

14.18 The Respondent has not found alternative accommodation, and is seeking a detached or semi -detached property.

14.19 The Respondent does not want to live in a flat.

14.20 The Respondent has not approached the local authority or a housing association for assistance with housing.

14.21 The Respondent is not willing to live in social housing.

Evidence

Applicant's Position

15. **The Applicant said that she is a farmer and trades under the entity J G Henderson from Balcathie Farm. She said that she worked the farm with her father until he died the previous year and that she now does so on her own. She said that she has no employees and, at harvest time, she has the assistance of a contractor.**

16. **The Applicant said that she lives with her husband and two teenage sons, some 5 miles from Balcathie Farm. She said that, at certain times of the year, she is very busy on the farm and said that sometimes she could be there from 6am to after midnight. She said that she has to be in close attendance at harvest time when the grain drier is in operation. She said that she wants to recover the Property to occupy it.**

17. **The Applicant said that the Property is detached and has two bedrooms. There is also the farm steading where her mother lives, and four other cottages.**

18. **The Applicant said that she rents part of the farm's ground to an agricultural tenant for fruit production. She said that three of the cottages are included in the lease and that they are occupied by employees of her tenant. She did not accept that any of these workers carried out work in respect of her farming operations.**

19. **The Applicant said that one cottage is let to another tenant and that, prior to the tenancy commencing, it had been refurbished. The Applicant was asked if that cottage had been offered to the Respondent. She said that she had not offered it to him and did not think that she was required to do so.**

20. **The Applicant's representative said at the case management discussion that the Applicant would be amenable for the order of eviction to be deferred for six months to allow the Respondent more time to obtain alternative accommodation. The Applicant said that her circumstances had changed and that things had moved on from May 2026. She said that she was no longer prepared to have the order of eviction postponed.**

21. **The Applicant said that she took no pleasure in taking action to evict the Respondent.**

Respondent's Position

22. **The Respondent said that he was eighty -five years old and that he enjoyed living in the Property. He said that he had anticipated that it**

would be his home until he died. He said it was a nice property with a good view. He said it was one and a half miles from Arbroath and was convenient for the harbour and the shops.

23. **The Respondent said that he had some health issues and needed to be close to the hospital in Arbroath.**

24. **The Respondent said that there had been a suggestion from the Applicant's letting agent, some three years previously, that the Applicant may want to recover the Property, but that he heard nothing further until the Notice to Quit was served on him. He said that, when the information had been given to him by the letting agent, he had started to sell some of his furniture.**

25. **The Respondent said that, since receiving the Notice to Quit, he had looked for alternative accommodation but had been unable to find anything suitable. He said that he did not want to apply for housing from his local council because he did not think that a local authority property would be suitable for him. He said that he could not stand having neighbours who might make a noise.**

26. **The Respondent said that he had been looking for a home in the private rental market and that he checked the websites of letting agents and had recently called at an office of a local one which deals with many properties in Angus.**

27. **The Respondent said that he would not live in a flat and that he would like a detached or semi-detached property.**

28. **The Respondent said that he had been disappointed that the Applicant had not offered him the tenancy of the cottage which had been refurbished.**

29. **The Respondent said that he was not as able as he had been when he was younger and that he would need time to get organised if he was required to move.**

30. **The Respondent accepted that there would be a need for the Applicant, at certain times of the year, to have someone close to Balcathie Farm to attend to such matters as the grain drier but that, as far as he was concerned, the Applicant had farm workers in the other cottages who could deal with things on her behalf and that there was no need for her to occupy the Property.**

31. **The Respondent said that he was not convinced that the Applicant intended to live in the Property.**

The Law

Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its finish;

(b) that tacit relocation is not operating;

(c). . . . . .

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section

Reasons

32. The Tribunal considered the documents which had been lodged with the application:

32.1 Copy of the short assured tenancy agreement dated 26 February 2016
32.2 AT5 Form relating to the short assured tenancy.
32.3 Notice to Quit served on 4 August 2025 requiring the Respondent to leave the Property by 12 October 2025
32.4 Section 33 Notice served on 4 August 2025.
32.5 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.
32.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.
32.7 Title Sheet ANG13756 in respect of Balcathie Farm.

33. The tribunal was satisfied that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate period of notice and that the appropriate intimation had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

34. The tribunal was satisfied that the tenancy had reached its finish dated and that tacit relocation is not operating.

35. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments to the legislation, the tribunal does have discretion and requires to consider reasonableness.

36. The tribunal required to consider whether or not the granting of an order of eviction was reasonable. It is a matter of judicial discretion and, in considering reasonableness, a balancing exercise requires to be undertaken.

37. The position of each party was clear. The tribunal found the oral evidence of the Applicant and the Respondent to be helpful. They were credible. There was only one aspect where there was an inconsistency in their respective positions and that was in relation to

whether the Applicant had workers who resided in cottages on the farm. On balance, the tribunal preferred the evidence of the Applicant who was clear in her detailed explanation of the agricultural lease and that three of the cottages were occupied by employees of the agricultural tenant who had a lease of ground for fruit production.

38. **The tribunal had sympathy with the Respondent's position. He is eighty five years of age and has lived in the Property for more than ten years and it was clear from his evidence that he enjoyed living there. He has health issues and the Property is relatively near to the hospital in Arbroath.**

39. **The tribunal did not consider the Property's proximity to the hospital to be relevant, given that Arbroath is a significant town which has properties which could be rented by the Respondent.**

40. **The Respondent conceded that the Applicant's farming operations would, at certain times of the year, require someone to be at the farm for long periods. He made specific reference to the need for someone to attend to the grain drier when it was in operation.**

41. **The Respondent was clear that he would not live in a flat or social housing and he accepted that his search for alternative accommodation had been limited to detached and semi-detached properties.**

42. **The tribunal, whilst understanding the Respondent's reasons for restricting his search to certain properties, did not consider it reasonable for him to do so.**

43. **On balance, the tribunal considered that it would be reasonable for the order of eviction to be granted. In coming to its views, the tribunal balanced the Applicant's reasons for recovery of the Property with the age of the Respondent, his health issues and the length of his occupation of the Property.**

44. **Notwithstanding the Applicant's position, the tribunal decided to defer enforcement of the eviction to 12 February 2027. It accepted the Respondent's position that it would take some time for him to organise his vacation of the Property. The tribunal also had regard to the time of year, and that the Respondent may face difficulties in obtaining alternative accommodation and arranging his removal as the festive season approaches.**

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.

Martin McAllister
Legal Member
6 November 2026