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 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/26/2242

Re: Property at 3 Elm Park, Blackburn, EH47 7QY ("the Property")

Parties:

Alan Taylor and Alison Taylor, 35 Copplestone Close, Worlingham, Suffolk, NR34 7SF ("the Applicants")

Patricia O'Neill and Anthony O'Neill, 3 Elm Park, Blackburn, EH47 7QY; 3 Elm Park, Blackburn, EH47 7QY ("the Respondents")

Tribunal Members:

Shirley Evans (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondents for possession of the Property at 3 Elm Park, Blackburn, EH47 7QY under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicants after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents. The order will include a power to Officers of Court to eject the Respondents and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicants or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an action for recovery of possession of the Property raised in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The application was accompanied by a copy of two short assured tenancy agreements between the Applicants and the Respondents commencing 30 October 2014 and 20 October 2016 and two AT5s dated 30 October 2014 and 20 October 2016, a Notice to Quit and Section 33 Notice dated 13 January 2026, a recorded delivery bulk posting certificate dated 13 January 2026, proof of delivery dated 14 January 2026, signed Affidavits from the Applicants dated 23 March 2026 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to West Lothian Council dated 19 May 2026.

3. On 4 June 2026, the Tribunal accepted the application under Rule 9 of the Regulations.

4. On 15 August 2026, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 28 October 2026. The Respondents required to lodge written submissions by 5 September 2026. This paperwork was served on the Respondents by Alexander Horne, Sheriff Officer, Edinburgh on 18 August 2026 and the Executions of Service were received by the Tribunal administration

Case Management Discussion

5. The Tribunal proceeded with the CMD on 28 October 2026 by way of teleconference. Ms Wooley from Messrs Bannatyne Kirkwood France & Co, Solicitors appeared for the Applicants. Both Mr and Mrs O'Neill appeared with Mr O'Neill electing to speak on behalf of him and his wife.

6. The Tribunal had before it the two short assured tenancy agreements between the Applicants and the Respondents commencing 30 October 2014 and 20 October 2016 and the two AT5s dated 30 October 2014 and 20 October 2016, the Notice to Quit and Section 33 Notice dated 13 January 2026, the recorded delivery bulk posting certificate dated 13 January 2026, the proof of delivery dated 14 January 2026, the signed Affidavits from the Applicants and his wife dated 23 March 2026 and the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to West Lothian Council dated 19 May 2026. The Tribunal considered the terms of these documents.

7. Ms Wooley advised that the Applicants were seeking an Order to evict. This was a short assured tenancy and notices under Section 33 of the Housing (Scotland) Act 1988 had been served and expired on 31 March 2026. She explained the Applicants wanted to move back to the Property and referred the Tribunal to the Affidavits lodged. These explained that the Applicants had moved to Suffolk to assist Mr Taylor's parents. They now wanted to move back to the Property to be nearer their daughter who lived

near the Property. The Property was he only property they owned. They currently rent a property.

8. Mr O'Neill advise the Tribunal that the Applicants had served notice on him and his wife. Unfortunately, they were not in a position to move out. They were both 66 years of age, did not keep in good health and were registered disabled. He explained they had spoken to West Lothian Council. They needed a decision so they could move on. They wanted to be settled and advised that they could not consider the private sector as it was too expensive and they wanted more security with a Council tenancy. Neither of them would be able to cope with another upheaval with moving in the private sector. They had no support to help them as their daughter worked long hours. Mr O'Neill apologised for any inconvenience to the Applicants for the delay.

Reasons for Decision

9. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by Ms Wooley and Mr O'Neill at the CMD. The Tribunal concluded that the Applicants were entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondents. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its ish (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicants had given the Respondents notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the Property was required by 31 March 2026.

10. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicants to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicants also have to satisfy the Tribunal that it is reasonable to evict. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Applicants' wish to move back to the Property to be nearer their daughter, the Property being the only property they owned. It also gave weight to the Respondents' age and poor health. The Tribunal also considered the fact the Respondents had been linked up to the local Council and that they wanted more security in their next tenancy. The balance of reasonableness in this case weighted towards the Applicants. The Tribunal find it would be reasonable to grant the order.

11. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

Decision

12. The Tribunal granted an order for repossession. The decision of the Tribunal was unanimous.

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.

Shirley Evans

28 October 2026

Legal Member **Date**