



**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/18/0683

**Re: Property at The Mill House, Cluny Castle, Laggan, Newtonmore, Inverness-
shire, PH20 1BS (“the Property”)**

Parties:

**Cluny Estates Limited, c/o Peter Graham Associates LLP, Coneloch,
Longmorn, Elgin, IV30 8SN (“the Applicant”)**

**Mr Gary Pounder, The Ark, Laggan Bridge, Newtonmore, PH20 1AN (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the applicant be granted an Order against the
Respondent for possession of the Property under Section 33 of the Housing
(Scotland) Act 1988.**

Background

1. By application dated 21 March 2018 the Applicant’s representative R&R Urquhart LLP applied to the Tribunal seeking recovery of possession of the property in terms of Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations on the ground that the a short assured tenancy between the Applicant and the Respondent had been terminated.
2. In support of the application the Applicant’s representative provided the Tribunal with copies of the Tenancy Agreement, an AT5 signed by the Landlord dated 10 December 2009, AT6 and Notice to Quit dated 16 February 2017, Proof of delivery of Notice to Quit and Form AT6 dated 18 February

2017, Section 11 Notice to Highland Council dated 21 March 2018, Letter from Savills to Respondent dated 17 August 2017 and further representations regarding the grounds for recovering possession.

3. Following a request by the Tribunal for further information regarding service of the AT5 a Convenor with delegated powers considered that there were no grounds for rejecting the application and a Case Management Discussion was assigned to take place on 3 August 2018 in The Inveralmond Business Centre, Auld Bond Road, Perth.
4. Intimation of the Case Management Discussion was given to the Respondent by Sheriff Officers on 4 July 2018.

Case Management Discussion

5. The Case Management Discussion took place on 3 August 2018. The Applicant was represented by Mr Jamie Whittle of R&R Urquhart, Solicitors. The Respondent did not attend nor was he represented.
6. The Tribunal enquired if the Applicant had any further information as to the existence of evidence to confirm that the Form AT5 had been served prior to the commencement of the tenancy. For the Applicant, Mr Whittle advised that despite making further efforts to obtain information from Mr Jamie Watson of Savills he had been unable to obtain any more information beyond what was contained in his letter of 4 May 2018.
7. The Tribunal noted that it appeared that the Respondent was no longer living in the property and asked if the motor vehicle and caravan belonging to the Respondent had been removed. Mr Whittle sought a short adjournment to check the position with the land agent, Peter Graham.
8. After a short adjournment Mr Whittle advised the Tribunal that the caravan had been removed. The motor vehicle was still there but had no wheels and appeared to be abandoned. He also said that farm workers on the estate had confirmed that the curtains at the property were drawn and there were no signs of anyone occupying the property. There was only rubbish lying about the property.
9. The Tribunal noted that the Respondent had not attended the Case Management Discussion and had not made any written representations. The Tribunal also noted that the Respondent had not paid any rent for the property since the date of the expiry of the tenancy and he had queried with Highland Council why he was being assessed for Council Tax on the property.
10. Mr Whittle explained that as far as the Applicant was concerned it was unable to recover possession of the property as the Respondent had failed to engage with the Applicant or its agents and in the circumstances an Order for possession was necessary.

Findings in Fact

11. The parties entered into a Short Assured Tenancy Agreement for a period of one year commencing on 14 December 2009.
12. The tenancy continued thereafter on a month to month basis until it was terminated on 14 May 2017.
13. On a date unknown the Respondent removed himself from the property but did not advise the Applicant and did not return the keys to the property.
14. The Respondent ceased to pay rent prior to August 2017.
15. The Respondent abandoned a motor vehicle at the property.
16. The Respondent queried with Highland Council why he was being assessed for Council tax on the property.
17. The Respondent is now residing at The Ark, Laggan Bridge, Newtonmore PH 20 1AN.
18. The applicant is entitled to an Order for possession of the property.

Reasons for Decision

19. Although it is not entirely clear from the documents provided it does appear that the Form AT5 was sent to the Respondent prior to the formation of the tenancy as it is dated by the landlord 10 December 2009. Furthermore the Respondent when signing an acknowledgement of the terms of the agreement that he had received the AT5 prior to the commencement of the lease.
20. From the information provided by the Applicant's agent it appeared that the Respondent was no longer living in the property and had effectively abandoned it. He was not paying rent and was querying why he was being assessed for council tax.
21. The Respondent had shown no interest in lodging any representations or attending the Case management Discussion.
22. In all the circumstances it was reasonable to grant the Order sought by the Applicant.

Decision

23. The Applicant is granted an Order against the Respondent for possession of the property under Section 33 of the Housing (Scotland) Act 1988

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.

Graham Harding

Legal Member/Chair

Date

3 August 2018