



**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/21/3182**

**Re: Property at Coshbog Cottage, Stobo, By Peebles, EH45 8NY (“the Property”)**

**Parties:**

**MJ Hudson Fund Services Guernsey Limited (formerly Saffery Champness Fund Services Limited), c/o MJ Hudson Fund Services Guernsey Limited, Heritage Hall, Le Marchant Street St Peter Port, Guernsey, GY1 2JJ (“the Applicant”)**

**Mr Lloyd Ballantyne, Coshbog Cottage, Stobo, By Peebles, EH45 8NY (“the Respondent”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

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

- Background
  1. An application was submitted to the Tribunal under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a repossession order against the Respondent upon termination of a short assured tenancy agreement.
- The Case Management Discussion
  2. A Case Management Discussion (“CMD”) took place on 9 August 2022. The Applicant was represented by Mr Peoples of Turcan Connell. The Respondent was personally present and representing himself. The Respondent’s partner joined the call as a supporter. A previous CMD had been fixed for 7 April 2022 and had been postponed to allow discussions to take place between the parties

with a view to resolving matters. The Respondent had indicated that he owned a house in Peebles which he intended to move back into but required further time to enable his own tenant to remove and give him vacant possession. The correspondence between the parties had suggested that a date of 31 July 2022 had been agreed for the Respondent to take possession of his own house and remove from the Property.

3. The Applicant moved for the order for repossession to be granted as sought. The parties had entered into a Short Assured Tenancy Agreement. The Applicant had served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") on the Respondent in April 2021. The Respondent had failed to remove from the Property and continued to reside therein. The Applicant required repossession of the Property in order to sell it on the open market. It was submitted that the Respondent had had approximately 16 months' notice of the requirement for repossession of the Property. The Applicant had made reasonable efforts with the Respondent to allow extra time for him to remove and had entered into an agreement in good faith for his removal voluntarily by 31 July 2022, but that had not been adhered to by the Respondent. The Applicant now required the certainty of an Order to enable them to take back possession of the Property and market it for sale.
4. The Respondent submitted that it was not accurate to suggest that he had had 16 months to arrange removal from the property. Until a few months ago, there had been discussions with the Applicant that he would have the opportunity to purchase the Property. He had intended to sell his own house in Peebles and purchase the Property which had been his home for over 22 years, however when the Applicant obtained a valuation from Retties, they decided not to allow him the chance to purchase it privately and instead advised that they intended to market for sale on the open market. The Respondent now wished to leave the property and was taking steps to move back into his own house. He had been unable to adhere to the previously agreed deadline of 31 July 2022 because his own tenant had only removed on 7 August 2022. The house has been left in a poor state and requires work to make it habitable. It requires new carpeting and redecoration throughout. The Respondent has moved most of his belongings out of the property now, but there are still heavy items of furniture which need specialist removal, and there are also large items externally which will require the hire of a crane to remove. The Respondent is trying to organise this but finding workmen is proving difficult. The delay in his own tenant moving out of his house was out-with his control. He wants to move out as soon as he can, but needs to get specialist contractors in place to make this happen.
5. The Tribunal adjourned for a short period to enable Mr Peoples to take instructions from his clients regarding timescales for repossession and enforcement of any Order granted. Following the CMD reconvening, it was agreed between the parties that an Order should be granted with the usual timescale (30 days) for enforcement, which would be sufficient time for the Respondent to remove all internal items from the Property and move into his own house. The Applicant's representative, on behalf of the Applicant, gave an undertaking that the Applicant would not take any steps to enforce the Order

as regards removal of any items belonging to the Respondent and which may still be situated externally, until 30 September 2022.

- Findings in Fact

6. The Tribunal made the following findings in fact:

- (i) The parties entered into a Short Assured Tenancy Agreement (“the Agreement”) which commenced 19 March 1999;
- (ii) A Notice to Quit and notice under section 33 of the 1988 Act were served on the Respondent on 8 April 2021 by recorded delivery post;
- (iii) The Notice to Quit and notice under section 33 of the 1988 Act required the Respondent to remove from the Property by 9 October 2021;
- (iv) The Respondent had failed to remove from the Property and continued to reside therein.

- Reasons for Decision

7. The Tribunal was satisfied that the terms of section 33 of the 1988 Act had been met: namely that the tenancy had reached its end; tacit relocation was not operating; a notice had been served in terms of that section giving at least 6 months’ notice; and no further contractual tenancy was in existence. The Tribunal was also satisfied that under the circumstances as narrated by the parties and in face of the agreement between the parties as regards the timescales required for the Respondent to remove his belongings, and given the undertaking provided by the Applicant as regards enforcement of the Order, that it was reasonable to grant the Order.

- Decision

8. The First-tier Tribunal for Scotland (Housing and Property Chamber) 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.**



**Legal Member/Chair:** Fiona Watson

**Date:** 09 August 2022