



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/EV/23/2320

**Re: Property at 6 Kenmure Steading, New Galloway, Castle Douglas, DG7 3RX
("the Property")**

Parties:

**Kenmure Fisheries Ltd, Kenmure Kennels, New Galloway, Castle Douglas, DG7
3RZ ("the Applicant")**

**Mr Stephen Petch, 6 Kenmure Steading, New Galloway, Castle Douglas, DG7
3RX ("the Respondent")**

Tribunal Members:

Shirley Evans (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent for possession of the Property at 6 Kenmure Steading, New Galloway, Castle Douglas, DG7 3RX under Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be issued to the Applicant 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 Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with his goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in her name may enter thereon and peaceably possess and enjoy the same.

Background

1. By application dated 12 July 2023, the Applicant's agent applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for recovery of possession the Property in terms of Rule 66 the First-

tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).

2. The application was accompanied by a copy of a Short Assured tenancy dated 8 August 2009, an AT5 dated 21 July 2009, a Notice to Quit and Section 33 Notice dated 4 May 2023 together with a signed proof of delivery dated 5 May 2023 and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with an email to Dumfries and Galloway Council dated 12 July 2023.
3. On 5 September 2023 the Tribunal accepted the application under Rule 9 of the Regulations 2017.
4. On 19 October 2023, 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 29 November 2023. The Respondent required to lodge written submissions by 9 November 2023. This paperwork was served on the Respondent by Dale G Barrett, Sheriff Officer, Edinburgh on 25 October 2023 and the Execution of Service was received by the Tribunal administration.
5. On 15 November 2023 the Respondent emailed the Tribunal with a document headed “Self-Written Representations”. On 16 November 2023 the Tribunal emailed the Respondent seeking confirmation that as the information also related to a third party that he consented to this information being crossed to the Applicant in its current format. On 16 November 2023 the Respondent confirmed he consented to the information being crossed in that format.
6. Further emails were received from the Respondent on 21 November 2023 and from the Applicant’s agent on 22 November 2023.

Case Management Discussion

7. The Tribunal proceeded with the CMD on 29 November 2023 by way of teleconference. Ms Tibbetts from G M Thomson & Co, Letting Agents appeared for the Applicant. Mr Petch the Respondent appeared on his own behalf.
8. The Tribunal had before it the Short-Assured tenancy dated 8 August 2009, the AT5 dated 21 July 2009, a Notice to Quit and Section 33 Notice dated 4 May 2023 together with a signed proof of delivery dated 5 May 2023 and the Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 with an email to Dumfries and Galloway Council dated 12 July 2023. Ms Tibbett also lodged a copy letter dated 27 January 2023 from Galbraith’s addressed to the Applicant. The Tribunal noted the terms of these documents.

9. Ms Tibbetts advised the Tribunal the Applicant wished to sell the Property at the steading. She submitted it had been agreed by the Applicant that Galbraiths would sell 6 properties at the steading. She explained four of these properties were now vacant. She explained the Applicant owned one other property nearby and that the Applicant's Mr Gordon lived in his own property near the steadings.
10. The Tribunal enquired as to why the Applicant wished to sell the Property. Ms Tibbett explained that the steadings required a lot of upgrading work to be done to them e.g. in terms of upgrading then for energy performance. The Applicant did not have the funds to carry out these works. She explained the rent level of the Property was low and that the Applicant had not been able to invest in the Property. It would take between £45 000 - £70 000 per property to bring them up standard. After advice the only way to move forward was for the Applicant to sell the properties as a whole with vacant possession.
11. In response Mr Petch submitted the tenants had heard in January 2023 that the Applicant wanted to evict them. There was no warning and it came as a bolt out of the blue. Mr Petch explained that he had spoken to Mr Gordon, The Applicant's Director, personally in August 2022 about putting a kitchen into the Property. Mr Petch explained he had spent thousands of pounds doing that and felt aggrieved that Mr Gordon had not said anything to him in August 2022 about his long term plans for the Property. Mr Petch submitted Mr Gordon must have known in August 2022 that he was planning to sell the Property. Mr Petch explained that plans were well under way for there to be a tenant community buy out of the steadings including the Property. If Mr Gordon had been more forthcoming and engaged with them, they would have been further down the line in progressing the community led acquisition. This would be done by setting up a Housing Co-Operative. There was a lack of affordable and social housing locally.
12. Mr Petch advised he lived in the Property with his wife and adult son. They had lived there for a long time and had settled into the area where they were part of the community. He explained he was a painter and decorator by trade so could work anywhere. However, they would prefer to stay in the Property.

Reasons for Decision

13. 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 both parties at the CMD. The Tribunal concluded that the Applicant was 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 Respondent. 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 Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the Property was required by 9 July 2023.

14. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has 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 Applicant's position that the Property and the other steadings required expensive works to bring them up to standard and that the Applicant did not have the funds to do so. The Tribunal considered that the Respondent had sensibly sought help with exploring the option of a community led buy out. The granting of an order would not prevent that option progressing and would give Mr Petch some time to explore with the appropriate bodies whether there was the possibility of getting financial backing to make the option feasible. However the Applicant could not be expected to bear the substantial expense of bringing the Property to standard when he was not in a financial position to do so. The Respondent appeared confident that his trade could be carried out elsewhere. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

15. 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

16. 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.

S Evans

Legal Chair

29 November 2023

Date