



**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/23/2627

**Re: Property at 2 Kenmure Steading, New Galloway, Castle Douglas, DG7 3RX
("the Property")**

Parties:

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

**Sir Andrew Fletcher, 2 Kenmure Steading, New Galloway, Castle Douglas, DG7
3RX ("the Respondent")**

Tribunal Members:

George Clark (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the application should be determined without a
Hearing and made an Order for Possession of the Property.**

Background

1. By application, received by the Tribunal on 3 August 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 1 October 2005 and, if not brought to an end on 2 April 2006, continuing on a monthly basis thereafter until terminated by at least two months' notice given by either party to the other party. The Applicants also supplied copies of an AT5 Notice dated 27 September 2005, and of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 24 May 2023, and both requiring the Respondent

to vacate the Property by 2 August 2023, with evidence of delivery of both Notices on 25 May 2023.

3. On 19 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 9 November 2023.
4. On 17 November 2023, the Respondent made written representations to the Tribunal. He disputed the Applicant's assertion, apparently made in a press article, that he was finding management of the Steading quite difficult and that it was becoming too expensive for him to provide the standard of accommodation required by law. The Respondent said that the Applicant had ignored email attempts to contact him from groups and people trying to help the tenants at the Steading and saw them as an obstacle. His family had over the decades received thousands of pounds in rent from the tenants at the Steading but had put back so little that the Property now needs a fair bit of work. He might fulfil legal obligations, but ethical or moral considerations were beyond him. The Applicant had stated that he is open to all ideas in the sale of the Property and would happily go down the "community buy out" route and the tenants had made significant efforts to form a co-operative to save Kenmure Steadings as social housing. The proposed group would likely be a Fully Mutual Housing Co-operative. The Respondent was prepared to spend his personal money on the project which, he believed had value and merit far beyond his own personal needs.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 27 November 2023. The Applicant was represented by Mr Allan McMillan of G M Thomson & Co, chartered surveyors, land and estate agents, Dumfries. The Respondent was present.
6. The Applicant's representative told the Tribunal that the decision to sell the 6 properties comprising the Steading had been made in late 2022, and that the Applicant had signed an agreement with CKD Galbraith, chartered surveyors, who had recommended selling all the properties together. The properties are in need of substantial modernisation and upgrading, Four of the 6 are now vacant. The Respondent had been advised in January 2023 of the Applicant's intentions. Selling with a tenant in occupation was not an option, given the discount on price that would be involved. When new regulations relating to Energy Performance come into force, the properties in The Steading will not comply without significant modernisation, which the Applicant does not have the ability to fund. Mr McMillan accepted that little work had been carried out in recent years, but stated that the level of rents was very low, meaning that, in effect, only emergency repairs could be afforded. He indicated that the cost of upgrading would be between £45,000 and £70,000 per property. The Applicant does not have the funds to renovate the properties and bring them up to a reasonable condition. The only practicable way forward is to sell them as a whole. It might take 12, 24 or 36 months to set up a co-operative and, even if it had the funds to purchase the properties at the level recommended by CKD Galbraith, there would still be the issue of raising the funds for

refurbishment. It would be reasonable to make an Order for Possession for a landlord who had let out the Property as a Short Assured Tenancy.

7. The Respondent confirmed that he lives in the Property on his own. He told the Tribunal that he understood the legal position but, in the current climate, there is a serious shortage of affordable housing, and the Steading should become a co-operative. The tenants are at the early stages of sorting out finance. He contended that the Applicant has no interest in the local community. He suspected the properties would be developed to become holiday lets and his view was that having affordable housing was preferable to a rich person turning the properties into holiday lettings. The Applicant had indicated that he was open to a community buy-out but that he thought it would not happen. The Respondent felt that the co-operative idea should be given a chance. The reason that the properties require so much work is that so little has been spent on them for decades. He accepted that the rents are very low.

Reasons for Decision

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
9. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
10. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
11. The Tribunal considered carefully all the evidence before it and noted in particular that the Applicant states that the very low level of rents means that he does not have the funds to maintain and upgrade the properties at the Steading. The Respondent already has vacant possession of four of the six properties and there is no obligation on him to accept an offer from a co-operative venture which has not yet even been established. The Tribunal accepted the Applicant's statement that he has to sell the Property and that doing so with a sitting tenant would involve a significant reduction in the sale price he might achieve, as well as potentially compromising his ability to sell

the 6 properties together. There was no certainty that a co-operative, if established, would have the funds to pay the market value of the Property and no way of estimating any timescale for the position to be clarified. Accordingly, the Tribunal decided that, in all the circumstances, it would be reasonable to make an Order for Possession, to enable the Applicant to market the Property as he intends.

12. The application is affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022, and it is, therefore, unlikely that the Tribunal's Order will be enforceable before 31 March 2024. This will give the Applicant the opportunity to progress the establishment of a co-operative to the point that he and others may be able to put a concrete proposal for the Applicant to consider as an alternative to enforcement of the Order and an open market sale.

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

27 November 2023
Date