



**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/23/1925**

**Re: Property at Muir Cottage, Careston, DD9 6RX (“the Property”)**

**Parties:**

**Careston Ltd, Careston Castle, Brechin, Angus, DD9 6RT (“the Applicant”)**

**Mr Bill Rebecca, Muir Cottage, Careston, DD9 6RX (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.**

**Background**

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short-assured tenancy granted by the Applicants to the Respondents.
2. The application contained :-
  - a. A copy of the tenancy agreement,
  - b. copy letters sent to the respondent,
  - c. a copy of the AT5,

- d. a copy of the Section 33 Notice,
  - e. a copy of the Notice to Quit,
  - f. evidence of service, and
  - g. Section 11 Notice.
3. The case had called for a case management discussion on 7 September 2023. Reference is made to the case management discussion note of that date. The Respondent advised the tribunal on that date that he wished to oppose the eviction application. The tribunal determined that the application should therefore proceed to a hearing.
  4. A hearing took place on 11 December 2023. Appearing were the Applicants' agent, Mr Robertson from Gillespie Macandrew, and the Respondent. Also in attendance for part of the hearing was Mr Adamson, witness for the Applicant.
  5. Introductions were made and hearing procedures were explained. Neither party had lodged any further productions for the hearing.
  6. The applicant was calling one witness, Mr Adamson. The applicant had submitted an extract from *Evictions in Scotland* by Adrian Stalker 2<sup>nd</sup> edition and the tribunal clerk emailed it to the respondent. The respondent had a chance to read it and confirmed that he did not need a short adjournment to consider it further before we proceeded with the hearing. The respondent advised that he did not recall getting the Case Management Discussion note. The clerk was instructed to issue a copy of it by email to the respondent. The hearing then proceeded after the respondent had considered the terms of the note.

### Hearing

7. The Applicant's agent advised that he was moving for an order for eviction today. He advised that he understood that there was no point being taken on the validity of the notices or application. The Respondent confirmed that he was still opposed to the order being granted, he was not however challenging the validity of the notices served in relation to the application.
8. Mr Robertson called his witness, James Shaw Campbell Adamson.

9. Mr Adamson advised that he is 75 years old. He is retired. He had run the Careston Estate for a number of years and prior to that he worked for Hilton Hotels. When he ran the estate, it was Careston Limited. His role was as a "jack of all trades", he did everything with the estate, letting cottages and getting tenants for the farm and so forth. He controlled the main operation of Careston Limited. He advised that it had all now been sold, except for one or two properties. The estate had been 7000 acres which included hill grounds, agricultural land and cottages. There were 35 cottages on the estate. They were short-assured tenancies, except for two which were agricultural tenancies. His grandfather had bought the estate in 1868. It has now been broken up and sold.
10. He advised that the Property, Muir Cottage was leased to the respondent, Bill Rebecca. He had been the tenant for 11 years. Rent is about £600 a month.
11. He advised that he was making the application for eviction because he is the sole person running Careston Limited. It was his estate, it had been in the family for a couple of generations. He has two daughters, who live in London and they have no interest in running the family estate. He is 75 and wants to retire and decided that there was no option left except to sell everything on the estate.
12. When he made the decision to sell, he spoke to his daughters and they said they were not interested in taking it over, so he wrote to the tenants in early 2022 to advise that he was considering selling the estate. The hill ground went first, then the cottages went next, and in March 2023, the tenants were served with formal notices of eviction. He advised that many of the tenants had went elsewhere.
13. He had known the respondent for 10 years; the respondent asked him to come and speak to him about the property. The respondent said he would be interested in buying the property, and they had a conversation about this and he indicated that he would look at reorganising his pension. He said all the other cottages with tenants had been sold except for the respondent's one.

14. He advised that the plan for Careston Limited is that the company name will stand, but Careston Estate will no longer exist as a landowner, except for Mr Adamson's house and two agricultural tenancies. The two agricultural tenancies have been handed over to Savills to manage and they will take all to do with running the agricultural holdings.
15. He advised that Savills could look after Muir Cottage, but they would charge a fee and they are not "hands on". The two farming tenancies are full repairing leases and Savills will deal with those. He said he would not make any decent return if he was to keep the property, he would have to pay a management fee and the return would be very close to zero, the cottage is in good condition but it will need repairs eventually.
16. He advised that he had a recent operation for prostate cancer, but other than that he was gently aging. He advised that the impact on him, if the property is not sold, would be that he would need to put in a manager to run the tenancy. It would be a very bad commercial decision.
17. He advised that the agricultural tenancies are different, in that those tenants have different rights. The right to pass on their holding to any close relation (includes grandchildren and cousin). He advised that they were life tenancies and had been granted by his father. Those tenants cannot be removed from their tenancies unless they choose to go, this was why he had retained these two tenancies.
18. If it was not possible to evict the respondent and sell Muir Cottage, it would have to be managed. He could not increase the rent; and he thought that the rent is currently 10% less than going rate for rental of such a cottage.
19. He was asked about the other tenants who took advantage of the purchase incentive, and said there were three who bought at home report value; and 5 who took the option of £5000 and left.

20. He was referred to the applicant's Inventory of productions. These were letters, about the sale of the estate sent to tenants sent in March 2022 and in November 2022. They offered to sell the property to the tenant or pay an incentive to leave payment of £5000. The third letter referred to the tenancy coming to an end. He advised that he kept the tenants well informed. The respondent did not reply formally to the letters. Mr Rebecca had spoken to him about the proposed eviction and he had spoken to him about the tribunal procedure.
21. He advised that the other tenants all let him know on a regular basis what they planned to do. He knew basically what each tenant was doing. The respondent was in the same position as everyone else. The other tenants had all found properties in the local area in a radius of around 20 miles.
22. The Respondent advised that he was not challenging the notices. He was opposing the order. He said he disagrees with the landlord. He said that there were not a lot of suitable premises around, and that there is over subscription of the ones available.
23. He had thought about buying the property but this was too difficult due to the covid impact.
24. He thought that a letting agent could take over the property and lease it to him. He said that he was not sure of the property valuation, he thought that there was legislation coming forward which would mean that it would need major modifications. He said he would agree to take on another type of lease to accommodate this and to pay more rent. He would be prepared to take on maintenance tasks as necessary, it would still be profitable for the applicant.
25. He said that although other tenants have moved elsewhere, he had not been able to find another property. He does not think it would be reasonable to grant the order, if the reason is purely fiscal.

26. He advised that he had spoken to the local authority and housing associations. They had advised him that they would need an eviction order from the tribunal. It was put to him it might assist him to get an eviction order. He disagreed with this, he said that the local area has had a lot of flooding and there are no suitable properties available. A lot of people had to be rehoused in Brechin because of the flooding.
27. He said it had been a stressful thing to have eviction hanging over him. He did not think that the local authority would be interested in re-housing a 61-year-old man. He said he accepted that the landlord has a commercial decision to make, but he did not believe that there was any money due on the property and that having to keep renting it out would not be prejudicial financially to the applicant.
28. It was put to him he received notice that the landlord was going to sell in March 2022 and had been aware for 20 months. He said that this was not correct, the letter said it was "under consideration".
29. He accepted that a year and 8 months was a reasonable amount of time to find property, but he had had no luck. He said that he had viewed many properties, he had visited 6 properties. He had tried to accept 4 properties but had been unlucky, He was waiting to hear about a property at Brechin Castle but the estate agent not responded to his call.
30. He said he could afford rent of £700. He said rent had gone up a lot in this area rent since covid.
31. He said he had engaged with the council and housing associations and he had been looking in the wider Angus area. The property availability is very low. There is limited availability of properties with one to two bedrooms and a garage or space to put one up.

32. He said he worked in oil industry. His occupation was that he worked in hands on to managerial. He has no current income. He was living on savings. He did not get benefit, as he was above the threshold for savings. He advised that it was likely that he would work again. He has been offered jobs, he works abroad and had been offered recent work, but turned it down as he had other commitments. He had planned to get back working in January 2024.
33. He advised that he could not buy the property due to covid, it had affected his ability to do so. He also did not think at his age he could get a mortgage.
34. He agreed that he did turn down a property, as he has motor cycles and the landlord would not allow him to put a shed up.
35. He advised that he does aim to re-house himself and he wanted to be settled and not worry about security. He has not stopped looking. He will be looking to find somewhere more permanent. He didn't need any additional stress in his life.
36. The Applicant's agent proceeded to sum up his case. He said, as before at the case management discussion he invited the tribunal to grant the order for possession. The statutory requirements had been met. The only matter to decide is if it is reasonable to grant an order for possession. It is now a discretionary ground. In assessing reasonableness the tribunal needs to consider the whole of the circumstances (*Cumming v Danson [1942] 2 All ER 653*) it was the duty of the judge to take into account all relevant circumstances. He also referred to *Cresswell v Hodgson [1951] 2 KB 92*, and said that there was a need to consider the effect on each party of awarding or refusing the order.
37. We should consider the applicant's circumstances and reasons for seeking possession. The applicant had said the estate has been sold, there were 32 cottages and this is the last one left. The estate was sold and the cottages kept, to allow the tenants to raise funding if they wished. The applicant met the

respondent. The respondent was aware of the thought process in March 2022. The letters in the productions lodged show he no longer wanted to retain the property portfolio and offered the tenants steps to buy the property. He served notice on 1 March 2023. He also offered to sell or £5000 if the tenant surrendered the property.

38. The respondent could not buy the property. The applicant has retired and his daughters do not want to run the estate. It is no longer profitable to keep the tenancy going.

39. He referred to the *Stalker* extract. The whole point of action under section 33 is that it did not require to prove a ground for possession or reasonableness. In light of the amendments made, still, no need to have any ground for eviction, but maybe need a reason for eviction, he referred to footnote 38. – the example given is where the landlord wishes to sell the property. The applicant's agent submitted that the respondent's position is that he has no dependents. He is not entitled to financial support, not in employment but that may change in the future. He is not late in paying rent and gets on with the landlord. The respondent has been aware that the applicant has been moving to sell since March 2022, and since that time he has viewed a minimum number of properties. He has spoken to the local authority but they have suggested he would need an eviction order, and if order is granted it would be an option to get a local authority house.

40. In summary, the applicant intends to sell property, it is a commercial decision he is entitled to make. It is the last property to be sold. The managing director has retired and the daughters are not interested in the estate. An order granted will allow the property to be sold. The applicant has acted reasonably, he has offered the chance to buy the property. If he cannot sell it, he will need to keep it and rent it out himself or instruct a letting agent to do that and he does not want to do either option. The respondent has no dependents and he needs an eviction order before he can progress a council house application. The balance of convenience favours the applicant.



41. The respondent submitted that he is actively looking for secure premises to stay in. If the order is granted the council may try and house him but there was no certainty of this and how long it will take to do so. He will be low-priority. It would be convenient for the landlord if the eviction order is granted, but the landlord's property was not sold, and some other tenants have continued in their tenancies. He thought that a letting agent should be appointed. He did not like the insecurity of not having a permanent residence. He thought that they could still sell the property later. He advised he wanted to stay in a rural area rather than end up in a flat in town. He understood that the landlord wants to retire but there were still other leases and a management company in place. He had been a good tenant and paid rent on time. Properties are difficult to secure in this area. The eviction application is a financial decision and it is not reasonable.

#### Findings in Fact

42. We found the following facts established:-

43. That there was in place a short-assured tenancy.

44. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property, Muir Cottage, Careston.

45. The tenancy commenced on 1 October 2011 for an initial period until 3 March 2012 and it ran on a monthly term thereafter.

46. The AT5 Form was in the prescribed format and was dated 29 August 2011.

47. The notice to quit and section 33 notices contained the prescribed information, and both were dated 28 February 2023, both sought vacant possession as of 3 June 2023. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices. The notice to quit terminated the tenancy on an *ish* date.

48. There was a section 11 notice addressed to the local authority.
49. The applicant was a company. The company was a family estate, with the managing director being the person in charge of running the estate. Its managing director was 75 years of age. He had had prostate cancer. He wished to retire. The managing director's children did not want to run the estate.
50. The estate had been 7000 acres, with agricultural land, hill land, and around 35 cottages.
51. The managing director had taken the decision to split the estate up and sell it off. The only properties left, were his own home, two agricultural tenancies, and Muir Cottage.
52. The managing director did not want the responsibility of renting out a private tenancy.
53. The applicant had offered all tenants the chance to buy their tenancies at home report value, or £5000 as an incentive to give up their tenancy. All other 32 tenants had either purchased their properties or left them. The respondent was the only tenant remaining in his tenancy.
54. The respondent had no dependents.
55. The respondent worked in the oil industry, overseas.
56. The respondent wished to remain in a rural location. He wished to have a property with somewhere to put his motorbikes. He had family in the local area. He had been unable to find other suitable accommodation.
57. The respondent had paid his rent regularly. There appeared to be no issues with his tenancy of concern to the landlord.

### Reasons for Decision

58. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short-assured tenancy where: the tenancy has reached its end; tacit relocation is not

operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.

59. We were satisfied that a short-assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondents. We also noted that a section 11 notice has been sent to the local authority.

60. Having regard to the question of reasonableness, consider that would be reasonable to grant the order for eviction.

61. We found both Mr Adamson and the respondent to be credible and reliable in their evidence.

62. We considered that both had good reasons for seeking the outcome that they did.

63. Although the landlord was a company, it was in effect Mr Adamson's family estate. He had run it for a number of years. He was now 75 and wished to retire. He had also had a recent spell of ill health suffering from prostate cancer. None of his children wished to take over the estate. He decided to sell it off. He gave all tenants the chance to buy their properties or a financial incentive to leave. He gave tenants a considerable amount of time to consider their position and to find other accommodation. We place weight on the fact that this man wanted to retire from his work and to do so, he required to sell his estate. We also place weight on the fact that he appeared to have been reasonable in giving notice to his tenants and the opportunity for them to make other suitable arrangements.

64. We note that all other tenants have to date made other property arrangements. Mr Adamson said that the ones who had moved were still in a 20-mile radius of Careston. We place weight on this fact as it appears that there is suitable alternative accommodation in the local area.

65. In terms of the respondent's position we place weight on his position that he has been a good tenant for 11 years, that he pays his rent. That he will probably not be high priority to the local council in rehousing him. We also accept that if there is no mortgage over the property continuing to rent the property out may be "cost neutral" at present

to the applicant. The applicant did not appear to say that it would cost a lot to continue to rent the property out.

66. We note that the respondent wishes to remain in a rural area and wants somewhere for his motorbikes. We place little weight on these matters as we consider that they are not crucial to his living situation but would be things he would prefer to have.
67. We place some weight on the fact that his family stay nearby, however we note that he works abroad, he has his own transport, and other tenants have secured properties in a 20-mile radius, these factors reduce the weight of his family living nearby.
68. We note that Mr Adamson has retained his own home and two agricultural tenancies. We do not consider that these are matters which are weighted against the applicant seeking the order that he does. His own home is not relevant to this decision. We understand that he is effectively bound to keep the agricultural tenancies in place and they were granted on different terms, and we consider that they are distinguishable from the circumstances in this case.
69. Balancing the factors we consider that Mr Adamson should be entitled to retire and should be entitled to do so without having to retain the property Muir Cottage as a private rental. We accept that the respondent has been a good tenant and wants to remain there, however we consider that Mr Adamson should be entitled to retire with as few ongoing responsibilities as he can achieve. The respondent recognised that there will be a need for maintenance in the future. While the effect of ongoing renting may be cost neutral at present, it might not always be, and further the ongoing responsibility of being a landlord will continue for Mr Adamson, even if he appoints a letting agent, he will still be required on occasion to discharge duties as landlord. We do not think it is fair that he should have to do so.
70. We consider that while the respondent wants to remain in a rural location, he was not able to demonstrate that this was necessary for him. He works abroad, has his own transport. We consider that he would be able to travel to family members, and his transport would in fact enable him to consider properties in a wider area. The fact that he works abroad showed that there was no employment need to be located in the Careston area.

71. We find that the applicant's efforts to give early notice of his plans, the chance to purchase properties at fair prices or a financial incentive to move, was fair and demonstrated that he had tried to assist his tenants to make suitable other arrangements. We did not consider that the respondent had made strenuous efforts to find other accommodation, and we believe that may have been too exacting on what he was prepared to accept.

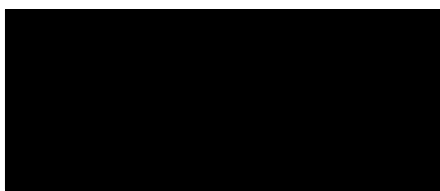
72. On balance, having regard to the papers before us and all of the oral evidence and submission, we find that it would be reasonable to grant the order giving more weight to the factors affecting the landlord than to those affecting the tenant.

73. Decision

74. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

### **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.**



**15 December 2023**

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**Legal Member/Chair**

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**Date**