



**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/24/0352

**Re: Property at Torshee, Glen Urquhart, Inverness-shire, IV63 6XT (“the
Property”)**

Parties:

**Richard Davies, 62 Rue De La Calebasse, La Batarelle Haute, 13013 Marseille,
France, France (“the Applicant”)**

**Dr Ralphe Frede, Mrs Daniella Frede, Torshee, Drumnadrochit, Inverness-shire,
IV63 6XT; Torshee, Drumnadrochit, Inverness-shire, IV63 6XT (“the
Respondents”)**

Tribunal Members:

Graham Harding (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for possession
of the property and the removal of the Respondents from the property
suspended until 15 November 2024.**

Background

1. By application dated 22 January 2024 the Applicant’s representatives, South Forrest, Solicitors, Inverness, applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant’s representatives submitted a copy of a Short Assured Tenancy agreement, Form AT5, Notice to Quit and Section 33 Notice and a Section 11 Notice sent to Highland Council on 22 January 2024 in support of the application.

2. By Notice of Acceptance dated 22 February 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 8 May 2024.
4. A CMD was held by teleconference on 13 June 2024. The Applicant did not attend but was represented by Mr Martin Smith from the Applicant’s representatives. The Respondents attended in person. Due to the Respondents lack of English attempts were made to obtain the services of a German interpreter without success and the CMD was adjourned to a further CMD when an interpreter would be available.

The Case Management Discussion

5. A CMD was held by teleconference on 2 August 2024. The Applicant did not attend but was represented by Mr Martin Smith from the Applicant’s representatives. The Respondents attended in person. Also in attendance was a German interpreter Ms Agnieszka Musko.
6. After explaining the purpose of a CMD the Tribunal obtained confirmation from the Respondents that they agreed that the parties entered into a Short Assured tenancy that commenced on 1 February 2016 and that the Respondents had been served with a Notice to Quit and Section 33 Notice dated 6 July 2023 and delivered on 7 July 2023.
7. Dr Frede advised the Tribunal that there had been a verbal agreement between himself and the Applicant that the Respondents would be given at least a year’s notice if the tenancy was to be brought to an end. Mr Smith said that the Applicant did not recognise such an agreement. The Tribunal pointed out to the Respondents that it was now more than a year since the Notice to Quit and Section 33 Notice had been served and asked if the Respondents were intending to oppose the application or if they were intending to leave the property.
8. For the Respondents Dr Frede said that it was their intention to vacate the property but that they needed time. Dr Frede explained that his wife had to look after her elderly parents who were aged 83 and 76 and that he himself was suffering from end stage cancer and needed time to sort out his family affairs. Dr Frede also explained that he had hoped to purchase the property from the Applicant but that a lawyer in London who had been dealing with his affairs had kept between £500000 and £600000 of his money and he had been unable to proceed with the purchase. After some further discussion Dr Frede said that he would be in a position to move out of the property by the end of November and asked that the Respondents be allowed to remain in the property until then.
9. For the Applicant Mr Smith explained that the Applicant who lived in France wished to return to live in the UK and the property was his UK home and he

intended to live there. Mr Smith went on to explain that the Applicant had previously understood from the Respondents that they would move out of the property at the end of May this year and as a result had sold his property in France and was now living in rented accommodation there. Mr Smith went on to say that although the Applicant felt that the Respondents had been given sufficient time to find alternative accommodation, he did have the Applicant's authority to agree to enforcement of any order for possession being suspended until 1 November 2024.

10. After some further discussion with both Dr Frede and Mr Smith both parties agreed that an order for possession could be granted by the Tribunal today but that enforcement of the order would be suspended until 15 November 2024.

Findings in Fact

11. The parties entered into a Short Assured Tenancy that commenced on 1 February 2016 for a period of six months and continued thereafter until either party gave the other two months' notice in writing.
12. The Respondents were served with a Notice to Quit and Section 33 Notice dated 6 July 2023 by recorded delivery post on 7 July 2023.
13. The said notices provided that the Respondents should remove from the property by 1 December 2023.
14. Intimation of the proceedings was sent to Highland Council by way of a Section 11 Notice on 22 January 2024.
15. The Applicant intends to return to live in the property having sold his property in France.
16. The Respondent Dr Frede is suffering from end stage cancer and requires time to put his affairs in order.
17. The Respondent Mrs Frede cares for her elderly parents and requires time to find alternative accommodation.
18. The parties have agreed that the Respondents will remove from the property not later than 15 November 2024.

Reasons for Decision

19. The Tribunal was satisfied from the documents submitted and the oral submissions of both parties that the parties entered into a Short Assured tenancy that commenced on 1 February 2016. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent in terms of the 1988 Act and that proper intimation of the proceedings had been given to Highland Council by way of a Section 11 Notice.

20. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for the eviction of the Respondent from the property had been met subject to it being reasonable for such an order to be made. In reaching its decision the Tribunal took account of the intention of the Applicant to return to the UK and to resume living in the property which had previously been his home. The Tribunal also took account of the Respondent, Dr Frede's failing health and the fact that the Respondent Mrs Frede was the carer for her elderly parents. The Tribunal noted that it was the intention of the Respondents to vacate the property by the end of November and accepted that it was reasonable in the circumstances that they be given some additional time and in light of the agreement reached between the parties found the Applicant entitled to an order for possession of the property but that enforcement of the order should be suspended until 15 November 2024.

Decision

21. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession of the property the removal of the Respondents from the property but that enforcement of the order be suspended until 15 November 2024.

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**

**2 August 2024
Date**