



**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/24/2828

**Re: Property at 4 East Mains, Milne Graden, Coldstream, TD12 4HE (“the
Property”)**

Parties:

**Bilberry Ltd., Ordnance House, 31 Pier Road, St Helier, Jersey, JE4 8W (“the
Applicant”)**

**Mrs Caroline Dalglish, 4 East Mains, Milne Graden, Coldstream, TD12 4HE
(“the Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision:

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession should be granted**

Background

1. This is a Rule 66 application received in the period between 21st June and 23rd August 2024. The Applicant is seeking an order for possession of the Property. The Applicant lodged a copy of a short assured tenancy commencing on 3rd June 2002 to 2nd December 2002. The Applicant also lodged copy Notice to Quit and section 33 notice together with evidence of posting and delivery, copy section 11 notice with evidence of service, and Form AT5.
2. Both parties made written representations and lodged productions in advance of the Case Management Discussion.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 2nd April 2025. The Applicant was not in attendance and was represented by Mr Platt and Mrs Carr of FBR Seed Land Agents. The Respondent was in attendance and supported by her husband, Mr Dalglish.

4. Mr Platt explained the background to the application. The Property is a house of non-standard construction which is in poor condition due to structural issues. The Applicant has taken the view it cannot be improved. Planning permission has been sought to demolish it and an adjacent property.
5. The Respondent explained that the previous landlord had instructed works to be carried out to the Property which were helping. Some insulation had been installed and a new kitchen and bathroom. There is a builder ready to carry out further repairs. The landlord changed in October 2023. The Respondent believes the Property could be bricked around, or cracks in concrete could be filled.
6. The Respondent said she has sought social and private housing. She is on four housing lists with social housing providers. She has been told that the local authority will not assist her until she is evicted from the Property, and it is likely she will then be placed in a hotel or other temporary housing due to the housing crisis. She has applied for private rentals without success. The rent for private housing is astronomical.
7. The Respondent said she has had numerous medical conditions diagnosed in the past three years and more conditions are getting added to the list. The Respondent said she has to stay with the same GP, as she is concerned that she would have to go through tests again if she changed, and she may not find a kind, caring and considerate GP like her current GP. It would be stressful to have to go to another doctor. The local authority is aware of her medical conditions.
8. The Respondent lives with her husband. Both are self-employed. The Respondent requires a property with level access. She has a case worker from the local authority. She has been in touch with her local MP, who contacted her case worker and was told there was no housing available.
9. Mr Platt said works had been done to the Property, but it has a limited lifespan due to the type of construction, as set out in the reports submitted by the Applicant. The Applicant had an initial report updated and the conclusions were the same. Planners have agreed that it would not be possible to make substantial repairs to the Property.
10. Responding to questions from the Tribunal, Mr Platt said there had been discussions with the Respondent in March 2024 regarding compensation, although no figure had been discussed. The adjacent owner received £10000 to assist with removal and additional rent.
11. The Respondent said she had not taken housing advice but could do so. The Respondent said the offer of £10000 would be very helpful.

12. Mr Platt said a similar offer would stand, subject to the deduction of rent arrears, which were the subject of a conjoined application. The offer would stand even if an order for possession was granted.

13. The Tribunal explained that a disputed application like this would normally proceed to an evidential hearing on reasonableness, where the Respondent would be expected to lead evidence to substantiate her position, including medical evidence and local authority evidence. The Respondent said she did not wish to drag matters out and wished a decision to be made at the CMD. The Tribunal offered an opportunity for parties to adjourn and discuss matters. The Respondent said she did not see any point in doing so. The Tribunal offered an opportunity for an adjournment so the Respondent could discuss matters with her husband regarding her position. The Respondent said she did not wish to avail herself of this opportunity. The Respondent said she wanted closure on the matter. The Tribunal explained that the Applicant had made a compelling case with documentary evidence, and it was open to her to substantiate her defence at a hearing. The Respondent said she wished the Tribunal to make their decision at the CMD.

14. The Tribunal adjourned to consider matters.

Findings in Fact and Law

15.

- (i) The Applicant is the heritable proprietor of the Property.
- (ii) Parties entered into a short assured tenancy agreement commencing on 3rd June 2002 to 2nd December 2002.
- (iii) Notice to Quit and Section 33 Notice were served on the Respondent.
- (iv) The short assured tenancy has reached its ish date.
- (v) The contractual tenancy terminated on 2nd June 2024.
- (vi) Tacit relocation is not in operation.
- (vii) The Applicant has given the Respondent notice that they require possession of the Property.
- (viii) It is reasonable to grant the order for possession.

Reasons for Decision

16. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.

17. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
18. In considering reasonableness, the Tribunal took into account the circumstances of both parties.
19. The Tribunal was satisfied that the Applicant has taken advice and concluded with good reason that demolition of the Property is the best way forward, as the Property has reached the end of its lifespan due to the type of construction of the Property. The Tribunal took cognisance of the reports lodged by the Applicant, which highlighted the poor condition of the Property. It was stated in the Amos report that applying external insulation to the external wall panels would be likely to lead to a number of other issues, and that such work would not solve issues with the current structure. The Property would continue to have a limited lifespan going forward.
20. The Tribunal took into account that the Respondent has unspecified medical issues. The Respondent did not specify how her medical issues would be impacted by eviction, but stated she wished to remain with her current GP. The Tribunal took into account that there is currently a housing crisis which may impact upon social housing options. The Tribunal took into account that the Respondent did not wish to continue matters to an evidential hearing despite being given numerous opportunities to do so. The Tribunal took into account that the Respondent was keen to accept an offer of compensation, which she had stated would be very helpful indeed. The Tribunal was not persuaded that the Respondent would not be accommodated by the local authority or a social housing provider if an order was granted. No definitive evidence in this regard was provided. The Tribunal was not persuaded that it was imperative that the Respondent remain with her current GP or that tests would have to begin again with a new GP.
21. In all the circumstances, and given the Respondent's reluctance to proceed to an evidential hearing on reasonableness, the Tribunal considered it was reasonable to grant the order.

Decision

22. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 14th May 2025.

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.

Helen Forbes

Legal Member/Chair

2nd April 2025
Date