

**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/24/3427

**Re: Property at Cranham Cottage, 1 The Steading, Nigg Mains, Nigg, IV19 1QR
("the Property")**

Parties:

**Mr David Moore, Mrs Jane Moore, 111 Leckhampton Court, Cheltnam,
Gloustershire, GL53 0DQ; 111 Leckhampton Court, Cheltenham,
Gloucestershire, GL53 0DQ ("the Applicants")**

**Mr Derek Morrison, Mrs Veronica Morrison, Cranham Cottage, 1 The Steading,
Nigg Mains, Nigg, IV19 1QR; Cranham Cottage, 1 The Steading, Nigg Mains,
Nigg, IV19 1QR ("the Respondents")**

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the provisions of section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") had been met. The Tribunal therefore made an eviction order.

Background

- 1 The Applicants applied to the Tribunal for an eviction order under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 ("the Rules") and section 33 of the 1988 Act.
- 2 The application was referred to a Case Management Discussion ("CMD") to take place by teleconference on 4 March 2025. Notification of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 23 January 2025.

- 3 On 26 February 2025 the Applicants' representative, Miss Di Carlo of Harper McLeod Solicitors, emailed an updated rent statement to the Tribunal. On 4 March 2025 the Tribunal received a further email from Miss Di Carlo with a list of authorities.
- 4 No written representations were received from the Respondents.

The CMD

- 5 The CMD took place on 5 March 2025 by teleconference. The Applicants both joined the call and were represented by Miss Di Carlo. The Respondents did not join the call. The Tribunal allowed a delay in the start time of the CMD before determining to proceed in their absence.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form dated 6 September 2024 and paper apart;
 - (ii) Title Sheet WLN36486 confirming the Applicants as the registered owner of the property;
 - (iii) Proof of the Applicants' landlord registration in the form of an excerpt from the online landlord register;
 - (iv) Short Assured Tenancy agreement dated 15 June 2010;
 - (v) Notice to quit and notice under section 33(1)(d) of the 1988 Act both dated 11 March 2024 together with proof of service on the Respondents by recorded delivery mail;
 - (vi) Section 11 notice to Highland Council together with proof of delivery by email;
 - (vii) Rent statement and redacted bank statements;
 - (viii) Affidavit from Benjamin Jamieson;
 - (ix) Affidavit from Alasdair Gow;
 - (x) Updated rent statement submitted by the Applicants on 26 February 2025; and
 - (xi) List of authorities which included excerpts from Rules 2 and 3 of the Rules and Evictions in Scotland (2nd Edition) by Adrian Stalker.
- 7 The Tribunal explained the purpose of the CMD and asked Miss Di Carlo for her submissions on the application. For the avoidance of doubt the following is a summary of those submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 8 Miss Di Carlo addressed two preliminary points regarding the competency of the application, which had been highlighted by the Tribunal in correspondence prior to the CMD. She noted that the Form AT5 had been misplaced. She referred however to the affidavits from Benjamin Jamieson and Alasdair Gow that had been submitted with the application. Benjamin Davidson had managed the tenancy at the time of its creation. Mr Gow had subsequently taken over the management on behalf of the Applicants. Mr Gow had spoken with the Respondents, who had confirmed they had the Form AT5 and would produce this. They had failed to do so. Miss Di Carlo also referred the Tribunal to the terms of the tenancy agreement that had been signed by the Respondents, in

which they had acknowledged receipt of the Form AT5. She submitted that the evidence before the Tribunal was sufficient to show that a short assured tenancy had been created. She referred to Rule 3.1 of the Rules, which provides that the Tribunal must seek to give effect to the overriding objective to deal with the proceedings justly when exercising its powers.

- 9 The second point pertained to the term of the tenancy. Miss Di Carlo submitted that the Tribunal could accept that the initial term of the tenancy was six months. She referred to the wording in Clause 2 of the tenancy agreement which stated *“The date of entry will be 15th June 2010. The Let will run from that date for six months until 14th December 2010”*. Miss Di Carlo referred to an excerpt from Evictions in Scotland as relevant authority. She explained that where a tenancy agreement states that the term will be six months, it can be taken that the two dates are inclusive.
- 10 Miss Di Carlo went on to address the application which had been made under section 33 of the 1988 Act. She referred the Tribunal to the written submissions on this point which were contained within the paper apart to the Form E application form. A notice to quit terminating the tenancy at the end of the tenancy term had been sent to the Respondents, together with a notice under section 33(1)(d) of the 1988 Act. It was reasonable to make the order. Miss Di Carlo explained that the Respondents had accrued rent arrears in the sum of £8,800. Notwithstanding this, the Applicants had continued to maintain the property. They were continuing to comply with their obligations as landlords. There had been no payments of rent since 1 November 2023. There was no suggestion that the Respondents were in receipt of benefits. The Applicants wished to retire and sell the property to fund their pension pot. Due to the level of arrears, their retirement plans had been put on hold. In response to a question from the Tribunal Mrs Moore confirmed that the Respondents were both in their 50s.

Relevant Legislation

- 11 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988:-

“32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b)in respect of which a notice is served as mentioned in subsection (2) below.

(2)The notice referred to in subsection (1)(b) above is one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

(b)

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 *Recovery of possession on termination of a short assured tenancy.*

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its ish;

b) that tacit relocation is not operating; and

(c)

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

Findings in Fact

- 12 The Applicants are the owners and landlords of the property.
- 13 The Applicants and Respondents entered into a tenancy agreement in respect of the property dated 15 June 2010.
- 14 The Applicants’ letting agent, Hannah Lets, gave the Respondents a Form AT5 notice that the tenancy was a short assured tenancy under section 32 of the 1988 Act prior to signing the said tenancy agreement.
- 15 The Applicants have since misplaced the Form AT5.
- 16 In terms of Clause 10 of the said tenancy agreement the Respondents acknowledged that the tenancy was a short assured tenancy, and that they had received a Form AT5.
- 17 Clause 2 of the tenancy agreement states “*The date of entry will be 15th June 2010. The Let will run from that date for six months until 14th December 2010*”.
- 18 The parties agreed that the initial term of the tenancy would be six months, and that both the 15th June 2010 and the 14th December 2010 were inclusive.
- 19 The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.
- 20 Clause 3 of the said tenancy agreement states “*unless terminated by either party, the lease will continue monthly thereafter until terminated by the tenant giving one months written notice or by the landlord on giving two months written notice*”.
- 21 On 11 March 2024 the Applicants sent the Respondents a notice to quit and a notice under section 33(1)(d) of the 1988 Act. The notices were sent by recorded delivery mail.
- 22 The notice to quit terminated the tenancy as at 14 May 2024.

- 23 The Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Highland Council at the date of raising this application.
- 24 In terms of Clause 5 of the said tenancy agreement the Respondents undertook to pay rent at the rate of £475 per month.
- 25 As at the date of this decision the Respondents have accrued rent arrears in the sum of £8,800.
- 26 The arrears are not known to be due to any failure or delay in the payment of a relevant benefit.
- 27 The Respondents are believed to reside at the property with a family member and a dog. The Respondents have not been given consent by the Applicants to take in a lodger or keep a pet as is required under the terms of Clause 6 of the said tenancy agreement.
- 28 The Applicants are aged 67 and 59. The Applicants are both in full time employment.
- 29 The Applicants require to sell the property. The Applicants are due to retire and wish to use the sale proceeds to fund their retirement.
- 30 The Applicants' retirement plans have been put on hold as a result of the rent arrears. The Applicants have continued to incur costs in repairing and maintaining the property.

Reasons for Decision

- 31 The Tribunal was satisfied it had sufficient information upon which to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. The Respondents had been given the opportunity to participate in the proceedings but had chosen not to do so.
- 32 Having considered the evidence before it, the Tribunal was ultimately satisfied that the tenancy between the parties was a short assured tenancy under section 32 of the 1988 Act. Whilst the Applicants had been unable to produce a Form AT5, they had produced affidavit evidence from Benjamin Jamieson of Hannah Lets who was dealing with the tenancy at the time of its creation. Mr Jamieson's affidavit demonstrated a clear recall of the AT5 having been given to the Respondents prior to the creation of the tenancy. The Tribunal also took into account the affidavit evidence from Mr Gow who had received confirmation from the Respondents that they were in receipt of the Form AT5. The Tribunal was therefore able to reasonably conclude based on the affidavit evidence and

the signed acknowledgement from the Respondents at Clause 10 of the tenancy agreement that the Respondents had received the Form AT5 and had been given proper notification that the tenancy was a short assured tenancy.

- 33 The Tribunal was also satisfied that the initial term of the tenancy was for a period of not less than six months. The Tribunal considered the excerpt from *Evictions in Scotland*, which had been produced by the Applicants. In particular the Tribunal had regard to the decision of the sheriff in *McCabe v Wilson* (2006 HousLR 86). In that case the parties to the lease had agreed that “*the lease shall be for a period of six months, commencing on the 7th April 2005 and terminating on 6th October 2005*”. The sheriff concluded that it was open to the parties to contract on the basis that the entire of the 7 April would be included, and by expressly agreeing that the initial term would be 6 months they had done so. The Tribunal considered that it could apply the decision in *McCabe v Wilson* to the circumstances of this application. The parties had been explicit in stating at Clause 2 of the tenancy agreement that the initial term of the lease would be for 6 months.
- 34 Accordingly, having accepted that the tenancy between the parties was a short assured tenancy the Tribunal went on to consider the provisions of section 33 of the 1988 Act.
- 35 The Tribunal accepted that the contractual tenancy had been brought to an end by the service of a notice to quit, and that the Respondents had been given notice in accordance with the provisions of section 33(1)(d) of the 1988 Act. The issue for the Tribunal to determine therefore was whether it was reasonable in the particular circumstances of this case for an eviction order to be granted. This required the Tribunal to identify the relevant factors pertaining to an assessment of reasonableness and determine what weight to give to each of them.
- 36 The Tribunal took into account the Applicants’ reasons for making the application, namely to sell the property in order to fund their retirement. The Tribunal gave significant weight to this as a relevant factor. The Tribunal also gave great weight to the Applicant’s property rights as the registered owner of the property, which would entitle them to possession, were an assured tenancy not in place.
- 37 The Tribunal took into account the rent arrears in this case which were significant. There had been no payments to the rent account since November 2023 and the Respondents had not provided any reasonable explanation as to why this was the case. There was no evidence to indicate that the arrears were due to any delay or failure in the payment of a relevant benefit. The Tribunal also noted the impact of the arrears on the Applicants. Their retirement plans had been delayed. They were continuing to incur costs in complying with their landlord obligations. These were all factors to which the Tribunal gave significant weight.

- 38 The Tribunal had regard to the Respondents' circumstances. The information before the Tribunal was limited in this regard, as the Respondents had not participated in the proceedings. However, based on the submissions from the Applicants, and in the absence of any evidence to the contrary, the Tribunal accepted that the Respondents were in their 50s, and resided in the property with a family member. Whilst the general impact of eviction on the Respondents was a cause for concern, the Tribunal considered that it did not outweigh the other factors the Tribunal had identified as relevant to reasonableness.
- 39 Accordingly having considered the above factors as relevant to the issue of reasonableness the Tribunal concluded that the balance weighed in favour of granting an eviction order in this case.
- 40 The Tribunal therefore determined that section 33 of the 1988 Act had been met and made an eviction order. 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.

Ruth O'Hare

Ruth O'Hare

5 March 2025

Legal Member/Chair

Date