



**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 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/24/4666

**Re: Property at Bridge Cottage, Dall, Rannoch, Pitlochry, PH17 2QH (“the
Property”)**

Parties:

Oscar McBurney-Cowell, 9 Atholl Road, Pitlochry, PH16 5BX (“the Applicant”)

**Mr Frank Leyland, Bridge Cottage, Dall, Rannoch, Pitlochry, PH17 2QH (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

1. An application was received on behalf of Mr Chris Cowell from his solicitor, Mr Fraser Crofts of Harper McLeod, on 7 October 2024 under rule 66 of Schedule 1 to 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 by Mr Cowell against the Respondent.
2. Attached to the application form were:
 - (i) A paper apart setting out additional information relating to the application
 - (ii) The short-assured tenancy agreement between Mr Cowell and the Respondent which commenced on 21 February 2016.

- (iii) Form AT5 relating to the tenancy dated 20 February 2016 and signed by Mr Cowell and the Respondent on the same date.
 - (iv) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 12 July 2024 and addressed to the Respondent.
 - (v) Copy Notice to Quit dated 12 July 2024 addressed to the Respondent, requiring him to remove from the property on or before 22 September 2024.
 - (vi) Certificate of service by Walker Love Sheriff Officers confirming that the Notice to Quit and section 33 notice had been served on the Respondent on 12 July 2024.
 - (vii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Perth and Kinross Council with proof of sending by email on 7 October 2024.
 - (viii) Rent statement showing outstanding rent arrears owed by the Respondent to Mr Cowell totalling £2500 as at September 2024.
3. On 30 January 2025, an email was received from Mr Crofts on behalf of Mr Cowell, advising that Mr Cowell had transferred the title to the property to the Applicant, who is Mr Cowell's son. Attached to the email was a copy of Title Sheet PTH7416 in respect of the Property, showing that the Applicant was registered in the Land Register for Scotland as the proprietor of the property on 15 January 2025.
4. Mr Crofts confirmed that as part of this transfer, Mr Chris Cowell had transferred his rights in respect of both the application and the accompanying civil proceedings application (reference no: FTS/HPC/CV/24/5077) to the Applicant. Mr Crofts accordingly sought to amend the application to substitute the Applicant's name for that of Mr Cowell. An email from Mr Cowell to the Respondent dated 29 January 2025, advising him of the transfer of the ownership and the assignation of his right to seek recovery of outstanding rent arrears was also attached to Mr Crofts' email.
5. The application was accepted on 3 February 2025.
6. Notice of the case management discussion scheduled for 22 April 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the Tribunal on 25 February 2025.
7. The Respondent was invited to submit written representations to the Tribunal by 15 March 2025. It became apparent during the CMD that an email had been sent to the Tribunal by the Respondent on 20 April 2025, which was Easter Sunday. This was referred to briefly by the Respondent during the CMD but was not received by the Tribunal until after the CMD. It was not therefore taken into account by the Tribunal in its consideration of the application.

8. A request to amend the application was received from Mr Crofts on behalf of the Applicant on 8 April 2025. This sought to amend the application to increase the amount of the outstanding rent arrears from £2500 to £5500 and was accompanied by an updated rent statement showing that sum to be due as at the date of the CMD.
9. A further email was received from Mr Crofts on 16 April 2025 seeking to lodge two further documents in advance of the CMD.

The case management discussion

10. A case management discussion (CMD) was held by teleconference call on 22 April 2025 to consider both the present application and the accompanying civil proceedings application. The Applicant was represented on the teleconference call by Mr Crofts. The Respondent was present on the teleconference call and represented himself.

Preliminary issues

11. The Tribunal was made aware by the Tribunal clerk shortly before the CMD was due to begin that an email had been received from Mr Crofts on 16 April 2025, advising that both Mr Chris Cowell and the Applicant's partner, Ms Amber Maslen, wished to attend the CMD. In the email, Mr Crofts asked for confirmation as to whether there was any difficulty with them attending. As the email had not been seen by the Tribunal before the date of the CMD, no response had been sent to Mr Crofts.
12. Both Mr Chris Cowell and Ms Maslen were present at the start of the CMD. The Legal Member of the Tribunal noted that the request regarding their attendance had been received at very short notice before the CMD, particularly given that the date of the CMD was immediately after the Easter bank holiday weekend. The Legal Member asked in what capacity Mr Cowell and Ms Maslen wished to attend the CMD. Mr Crofts said that Mr Cowell wished to attend as the Applicant's agent. Ms Maslen wished to hear the discussion, and may be able to assist with any questions that arose during the CMD, in the Applicant's absence. Ms Maslen explained that the Applicant was unable to attend himself as he was currently overseas. Mr Crofts explained that neither party was present as a representative of the Applicant or to give evidence as a witness.
13. The legal member asked the Respondent whether he had any objection to Mr Cowell and Ms Maslen being present at the CMD. He said that he was happy for Ms Maslen to be present, but that he would be very uncomfortable about Mr Cowell being present to hear the discussion and listen to his evidence. The Respondent indicated that he strongly objected to Mr Cowell being present at the CMD, given Mr Cowell's past behaviour towards him.

14. Following a brief adjournment, the Tribunal advised the parties that given the strength of the objection expressed by the Respondent, it was the Tribunal's opinion that the presence of Mr Cowell at the CMD was likely to make it difficult for the Respondent to make representations or present evidence necessary for the proper conduct of the CMD. It had therefore decided to exclude Mr Cowell from the CMD on that basis, in terms of rule 34 (1) (b) of the 2017 rules. In any case, Mr Cowell could only have been an observer, as the Applicant was legally represented by Mr Crofts. Mr Cowell then left the teleconference call.
15. The Tribunal was content for Ms Maslen to remain present, as an observer only, should she wish to do so. She would be unable to take any active part in the proceedings. Ms Maslen indicated that she wished to do so, and remained on the call in an observer capacity.
16. With regard to Mr Crofts' amendment request of 8 April 2025, the Tribunal consented to this. Regarding the further documents which Mr Crofts sought to lodge with the Tribunal on 16 April 2025, the Tribunal noted that the first of these, an email from Mr Cowell to the Respondent dated 29 January 2025 had already been submitted and formed part of the application paperwork. The second document was a two page letter from Mr Crofts to the Respondent dated 3 March 2025 regarding the transfer of the property into the Applicant's name and the Respondent's obligations to pay rent. While this had been submitted late, the Tribunal accepted it in evidence, as it had already been sent to the Respondent.

Submissions on behalf of the Applicant

17. Mr Crofts asked the Tribunal to grant an order in favour of the Applicant against the Respondent for recovery of possession of the property. He noted that the Applicant was now the owner and landlord of the property. The Applicant and Ms Maslen were currently living in another rented property nearby at a cost of £900 per month. Now that the property had been transferred to the Applicant by his father, he and Ms Maslen wished to live in the property themselves.
18. Mr Crofts noted that the Respondent now owed £5500 in rent arrears, totalling 11 months' rent, as shown in the updated rent statement which he had submitted on 8 April 2024. The Respondent had an obligation to pay his rent under his tenancy agreement, but had failed to do so for almost a year.

The Respondent's submissions

19. The Respondent said that he did not wish to oppose the eviction application. He said that he had been clearing out the property over the past few weeks. He would have left sooner had another home become available. He was very upset about Mr Chris Cowell's previous behaviour towards him. He said that he had

found the matter very stressful, which had made him mentally and physically unwell.

20. The Respondent said that he had been very happy living in the property and had previously had discussions with Mr Cowell about the possibility of buying it from him. He said that he had been a model tenant and had always paid his rent up until May 2024, when he had received an earlier Notice to Quit from Mr Cowell. Since then, he had stopped paying his rent. He told the Tribunal that he had been withholding the rent, because Mr Cowell had promised to pay him for the improvements that he had made to the property, but had not done so.
21. He had been unaware that Mr Cowell intended to transfer the property to the Applicant prior to the transfer occurring and this had come as a shock to him.
22. The Respondent said that he had no issues with the Applicant and Ms Maslen, and had been painting the property to leave it in good condition for them. He wished to move out as soon as possible, and intended to leave the property by the end of April. There was a new affordable housing development being built in the area, and he was at the top of the list for a home there once completed. He had also been in touch with the Council about alternative accommodation. He has a gardening business and had received offers of accommodation from a number of his customers who own second homes in the area. He has bought a bus to live in meantime, which he plans to convert.

Further submissions on behalf of the Applicant

23. Mr Crofts noted what the Respondent had said with regard to his intention to move out of the property imminently, but confirmed that the Applicant still wished to seek an eviction order in case this did not happen for any reason.

Findings in fact

24. The Tribunal made the following findings in fact:
 - i. The Applicant has owned the property, which was formerly owned by his father, Mr Chris Cowell, since January 2025.
 - ii. The tenancy between Mr Chris Cowell and the Respondent commenced on 21 February 2016 and was initially for a period of 6 months until 21 August 2016 (both dated inclusive). It had then continued by tacit relocation on a monthly basis after the end of the initial term.
 - iii. There is now a short-assured tenancy in place between the Applicant, as the current owner and landlord, and the Respondent.
 - iv. The rent payable under the tenancy is £500 per month.
 - v. The form AT5 was in the prescribed format and the short-assured tenancy agreement between Mr Chris Cowell and the Respondent was validly constituted.

- vi. The tenancy agreement provided that either party could terminate the tenancy by providing two months' notice.
- vii. The Notice to Quit and the section 33 notice dated 12 July 2024 stated that Mr Cowell required vacant possession of the property on or before 22 September 2024. These provided more than two months' notice of vacant possession.
- viii. The notices dated 12 July 2024 were served on the Respondent by sheriff officer on 12 July 2024.
- ix. The tenancy reached its end on 22 September 2024.
- x. The Respondent is currently resident in the property and lives there alone.
- xi. The Respondent has not paid any rent since May 2024, and owed rent arrears of £5500 as at the date of the CMD.

Reasons for decision

- 25. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.
- 26. The Tribunal was satisfied that the Applicant was now the landlord of the property following the transfer of the title to the property into his name, noting that in terms of section 55 of the 1988 Act, "landlord" includes any person from time to time deriving title from the original landlord.
- 27. The Tribunal noted that section 33 (1) of the 1988 Act as amended states:

(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 finish;*
 - (b) that tacit relocation is not operating;*
 - (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.*
- 28. The Tribunal was satisfied that the short-assured tenancy agreement between Mr Chris Cowell and the Respondent had been validly constituted. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the Notice to Quit and section 33 notice dated 12

July 2024 had been validly served on the Respondent, for the reasons set out above.

29. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
30. The Tribunal noted that at the start of the short assured tenancy, given the rules that were in place at that time, Mr Chris Cowell might have expected to be granted an eviction order automatically if the Tribunal was satisfied that he had followed the correct rules in terms of creating the tenancy and serving the various notices correctly. The Notice to Quit had been served on the Respondent more than 9 months ago. He had therefore been aware for some time that the Applicant sought to repossess the property.
31. The Tribunal also noted that it was the intention of the Applicant and Ms Maslen to move into the property themselves when it was vacant, now that the Applicant owns the property.
32. The Respondent has been living in the property for more than 9 years, and said that he had carried out various major improvements to it.
33. At the date of the CMD, the Respondent owed 11 months' rent arrears, which he was contractually obliged to pay. The Respondent did not deny that he owed the rent arrears, although he said that this was because he had been withholding the rent as Mr Chris Cowell had promised to pay him for the improvements that he had made to the property, but had not done so.
34. The Respondent told the Tribunal that he did not oppose the application and planned to move out by the end of April 2025.
35. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondent had not opposed the application, and intended to vacate the property in the near future.
36. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

Decision

37. The Tribunal granted 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.

S O'Neill

22 April 2025

Legal Member/Chair

Date