

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 (“1988 Act”)

Chamber Ref: FTS/HPC/EV/24/5555

Re: Flat 0/1, 21 Brisbane Street, Battlefield, Glasgow, G42 9HX (“the Property”)

Parties:

The Friel Estate Company Limited, a company incorporated under the Companies Acts (registered number SC293076) and having its registered office at 74 St. Ninians Road, Linlithgow, EH49 7BW (“the Applicant”)

Mr Desmond Friel, Flat 0/1, 21 Brisbane Street, Battlefield, Glasgow, G42 9HX (“the Respondent”)

Tribunal Members:

Pamela Woodman (Legal Member) and Frances Wood (Ordinary Member)

Present:

The case management discussion took place at 2pm on Thursday 12 June 2025 by telephone conference call (“**the CMD**”). Susan Friel, one of the directors of the Applicant, was present. Mrs Elaine Elder of Aberdeen Considine & Company represented the Applicant. The Respondent was present at the CMD. He was represented by Ms Maureen Smith of Castlemilk Law Centre and supported by Rory O’Brian of Turning Point. The clerk to the Tribunal was Susan Reidpath. Hannah Campbell, trainee at Aberdeen Considine & Company, was present as an observer.

Decision

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

BACKGROUND

1. An application was made to the Tribunal under section 33 of the 1988 Act. The application was made in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber

(Procedure) Regulations 2017, as amended. More specifically, the application was made in terms of rule 66 (*Application for order for possession upon termination of a short assured tenancy*) of the HPC Rules.

2. The order sought was an order for possession of the Property.
3. A notice of acceptance of the application was issued by the Tribunal dated 31 December 2024 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal on 4 December 2024.
4. Ms Smith, on behalf of the Respondent, provided written submissions in advance of the CMD by e-mail on 3 May 2025.
5. Mrs Elder, on behalf of the Applicant, provided written submissions in advance of the CMD by e-mail on 26 May 2025.
6. This decision arises out of the CMD.

PROCEEDINGS

7. The Legal Member explained that the application had been brought in terms of rule 66 and so the Applicant was seeking an order for possession in terms of section 33 of the 1988 Act.
8. Ms Smith confirmed that the Respondent accepted that the notices served were in order but that the Respondent’s position was that it would not be reasonable to grant an order for possession.
9. In summary, Ms Smith submitted that it was not reasonable to grant an order for possession because:
 - a. the Applicant had agreed to accept only half the rent after the Respondent’s joint tenant, Mr Harris, vacated the Property. She submitted that this was evidenced by the Applicant not having asked the Respondent to pay the full £600 per calendar month and not having taken action against the Respondent in respect of the arrears.
 - b. the Applicant should grant a new tenancy to the Respondent in his sole name to give him the opportunity to seek a greater sum in housing or related benefits and so he may be able to show that it is affordable.
 - c. the Respondent had made various attempts to secure alternative accommodation and had contacted ten housing associations, all of which had acknowledged his contact but none of them had offered any accommodation. Accordingly, the Respondent had joined the housing list. He was being supported by Turning Point.
 - d. the Respondent had made a homelessness application to the local authority in April 2025 but it would not consider the application until the Respondent

was homeless. The local authority confirmed that the Respondent needed to obtain an order for possession in order for it to be able to help him.

- e. the Respondent has a dog, which he had had for ten years, which provided him with companionship. He might not be able to take his dog into alternative accommodation.
- f. the Respondent had not been told (when the Applicant acquired the Property) that the Property would be sold in the future for the sons of the directors of the Applicant.
- g. the Respondent suffered from ill health. The Respondent confirmed that the Property had not been adapted for him but that he lived on the ground floor and stairs were difficult for him.
- h. the Respondent had lived in the Property for around 30 years.
- i. the Respondent got on well with his neighbours.
- j. the Applicant could sell one of its other buy-to-let properties instead or could transfer the ownership in the Property to their sons. The Applicant's reason for selling was an investment reason and to make a profit, which was not a reasonable factor to take into account.

10. Mrs Elder submitted that the Applicant had not agreed to reduce the rent to £300 per calendar month and the reason for not having pursued the Respondent for the arrears was because it was aware of the Respondent's financial circumstances and so it did not consider it likely that it would be able to recover the arrears even if it did so.

11. In summary, it was submitted by Mrs Elder or Mrs Friel on behalf of the Applicant that it would be reasonable to grant an order for possession because:

- a. both of the directors of the Applicant had had some health issues and these were ongoing in relation to Mr Brian Friel, Mrs Friel's husband, who was the only other director of the Applicant. Letters from the hospital in respect of Mr Brian Friel had been provided in the case papers.
- b. the requirements on buy-to-let landlords were now too onerous and this was adding stress to the directors. So far, the Applicant had been going through this process for ten months to try to get possession of the Property. The Applicant's directors were both in their 60s and wished to retire from the business of buy-to-let properties and retire fully within 5 years.
- c. the other six properties in the Applicant's buy-to-let portfolio were in the Alloa area, where the Applicant operated its business, but the intention was to sell off all of those properties and dissolve the company, likely within the next five years. Mrs Friel noted that the only reason that the Applicant had purchased the Property was to assist the Respondent (when his then landlord was selling the Property) and that it seemed to be a good use of

her then recent inheritance monies until those monies were needed by her sons. There was no agreement between the Applicant and the Respondent not to sell the Property. She also noted that the other buy-to-let properties would be sold as they became vacant and the Applicant might consider off-market deals with sitting tenants as well to speed this up.

- d. the other buy-to-let properties owned by the Applicant and which were let were all let at market rents and covering the mortgage payments. Even if the Respondent could pay more in rent, it was unlikely that he would be able to afford the market rent for the Property, which was considered to be around £1,200 per month.
- e. the other buy-to-let properties owned by the Applicant were worth less than the Property. There were mortgages on all of them and so the amount which would be realised by selling one of them would be significantly less and insufficient to support the purchase of a property for her son's time at university. There was no mortgage on the Property.
- f. an order for possession would likely assist the Respondent in seeking alternative accommodation and the Applicant would be willing to postpone the earliest date for enforcement by an additional thirty days (beyond the usual thirty days).

FINDINGS IN FACT

- 12. The application had been made under section 33 of the 1988 Act. Accordingly, the Applicant did not require to establish or prove that any of the grounds set out in schedule 5 to the 1988 Act were made out.
- 13. The sole directors of the Applicant were Mrs Susan Friel and Mr Brian Friel.
- 14. Mr Brian Friel had suffered a serious medical incident in August 2024 with some ongoing effects, as evidenced by the letters from the hospital provided.
- 15. The form AT5 dated 18 December 2015 appeared on the face of it to be valid and to have been served before the creation of the tenancy agreement. The term of the tenancy was for an initial term of at least six months (from 18 December 2015 to 18 June 2016). Therefore, the Tribunal was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy as defined in section 32 of the 1988 Act.
- 16. The notice to quit dated 10 September 2024 brought the tenancy to an end on a possible ish date (namely 18 November 2024), allowed for an adequate period of notice and contained the information prescribed in The Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. Accordingly, it met the requirements for a valid notice to quit.
- 17. The notice under section 33 dated 10 September 2024 met the requirements of section 33(1)(d) of the 1988 Act and allowed for an adequate period of notice and so met the requirements for a valid section 33 notice.

18. A notice under section 11 of the Homelessness etc (Scotland) Act 2003 had been sent to the local authority.

19. On the balance of probabilities, it was reasonable to grant an order for possession for the reasons set out below.

REASONS FOR DECISION

20. Section 33(1) of the 1988 Act provides that "...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."

21. The Tribunal was satisfied, on the balance of probabilities, that the tenancy was a short assured tenancy, that it had been brought to an end on its ish date, that tacit relocation was not operating (as a result of the service, and expiry of the period of notice under, the notice to quit) and that the Respondent had been given notice that the Applicant required possession of the house (as a result of the service, and expiry of the period of notice under, the section 33 notice). Accordingly, the only remaining factor to consider was whether or not it was reasonable to make an order for possession.

22. The Tribunal was satisfied, on the balance of probabilities, that it was reasonable to grant an order for possession because:

- a. Both the Respondent and each of the two directors of the Applicant had medical issues. In light of Mr Brian Friel's ongoing medical situation, it was understandable that the Applicant wished to start selling its buy-to-let portfolio.
- b. Whilst the Respondent had been a tenant of the Property for a very long time, the Applicant was entitled to sell it.
- c. The Applicant wished to sell the Property and had provided evidence of this intention. It was not disputed that this was the intention of the Applicant.
- d. It was logical for the Applicant to sell the Property which was the only one of the buy-to-let properties not in the Alloa area and the only one which was not subject to a mortgage. It was also stated that this was the buy-to-let property of the highest value. Therefore, this would likely realise the most

substantial capital amount, which could then be used to support one of the children of the Applicants, through the purchase of a property and so avoid him having to pay rent to a third party.

- e. There were no adaptations to the Property for the Respondent and the Respondent did not need adaptations.
- f. Based on the Tribunal's own knowledge and experience, an order for possession would likely be of assistance to the Respondent in seeking alternative accommodation through the local authority or a housing association.
- g. The requisite notices etc had been served on the Respondent in September 2024, which was more than nine months prior to the date of the CMD.

DECISION

23. The Tribunal decided that an order be granted against the Respondent for possession of the Property under section 33 of the 1988 Act, which order was not to be executed prior to 12 noon on Monday 11 August 2025.

24. The order referred to in the preceding paragraph was intimated orally during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.



P S Woodman

Chair

12 June 2025

Date