



**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/24/4689

**Re: Property at Craigieview, Barnbarroch, Dalbeattie, DG5 4QR (“the
Property”)**

Parties:

**J B Roan & Son, Woodside, Barnbarroch Farm, Dalbeattie, DG5 4QS (“the
Applicant”)**

**Mr Neil Corrigan, Mrs Emma Corrigan, Craigieview, Barnbarroch, Dalbeattie,
DG5 4QR (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Tony Cain (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”) have been met and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 33 of the 1988 Act.

Background

- 1** This is an application 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. The Applicant sought an eviction order on the grounds that the short assured tenancy between the parties had been terminated and notice had been given to the Respondents under section 33(1)(d) of the 1988 Act.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 5 June 2025. The Tribunal gave notice of the CMD

to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondents by sheriff officers on 27 March 2025.

- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

The CMD

- 4 The CMD took place on 5 June 2025 by teleconference. Mr Stuart Roan represented the Applicant. His wife accompanied him as a supporter. The Respondents did not join the call. The Tribunal delayed the start time of the CMD for a short period, before determining to proceed in their absence, having been satisfied that the Tribunal had given them proper notice of the CMD.
- 5 The Tribunal had the following documents before it:-
 - (a) Form E application form dated 28 October 2024;
 - (b) Title sheet confirming the Applicant's ownership of the property;
 - (c) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (d) Short assured tenancy agreement between the parties;
 - (e) Notice to quit and notice under section 33(1)(d) of the 1988 Act to the Respondents, both dated 27 February 2024;
 - (f) Certificate of service of the aforementioned notices;
 - (g) Written mandate authorising Mr Stuart Roan to represent the Applicants; and
 - (h) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 and proof of delivery by email to Dumfries and Galloway Council on 8 October 2024.
- 6 The Tribunal heard submissions from Mr Roan on the application. For the avoidance of doubt the following is a summary of the discussion and does not constitute a verbatim account of the proceedings.
- 7 Mr Roan confirmed that he had spoken with Mr Corrigan around three weeks ago. Mr Corrigan had referred to the Tribunal proceedings, therefore it appeared the Respondents were aware of the CMD. Mr Roan explained that the Applicant had instructed solicitors to create the tenancy between the parties back in 2016. A short assured tenancy agreement had been drawn up. Mr Roan referred to the agreement that had been produced with the application. Mr Roan explained that his father had passed away three years ago. The signed lease and AT5 was retained by the solicitors within his father's paperwork and the documents had since been lost. However, the solicitors were clear that the tenancy that had been created was a short assured tenancy.
- 8 Mr Roan explained that the Applicant was seeking an eviction order. He referred to the notices that the Applicant had given to them in accordance with the provisions of section 33 of the 1988 Act. The Respondents continued to

occupy the property. They were in rent arrears of around £1700. They had failed to maintain the property in a reasonable condition. It was a mess. They regularly parked vehicles in unauthorised places, preventing the Applicant for undertaking their farm work. They kept a dog in the property without permission. The lease was clear that they were not allowed to keep pets. The dog was aggressive. The Respondents were refusing to engage with the Applicant. They had been verbally abusive. In those circumstances the Applicant believed it was reasonable for an eviction order to be granted.

- 9 In response to questions from the Tribunal, Mr Roan confirmed that the Respondents did have children, however the children had now left school and Mr Roan believed they were no longer living in the property. The Respondents were both in employment. They appeared to be fit and well with no identifiable health conditions or vulnerabilities.
- 10 The Tribunal adjourned the CMD, at which point Mr Roan left the call, before resuming the discussion and confirming the outcome.

Findings in fact

- 11 The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 12 The Applicant and Respondents entered into a tenancy agreement on or around 1 March 2016 in respect of the property. The term of the tenancy was 1 March 2016 to 2 September 2016, and monthly thereafter.
- 13 The tenancy between the parties was a short assured tenancy as defined by section 32 of the 1988 Act.
- 14 On 28 February 2025 the Applicant delivered a notice to quit and a notice under section 33(1)(d) of the 1988 Act to the Respondents. The notice to quit terminated the tenancy as at 2 May 2024. The notice under section 33(1)(d) of the 1988 Act stated that the Applicant required possession of the property on that same date.
- 15 On 8 October 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 by email to Dumfries and Galloway Council.
- 16 The Respondents are in rent arrears. The Respondents undertook to pay rent under clause 3 of the said tenancy agreement.
- 17 The Respondents have failed to maintain the property in a reasonable condition. The Respondents undertook to keep the property in a reasonable state of cleanliness under clause 16 of the said tenancy agreement.

- 18 The Respondents are keeping a dog within the property without the consent of the Applicant. The Respondents agreed that the keeping of pets was expressly forbidden under clause 19 of the said tenancy agreement.
- 19 The Respondents have parked vehicles in unauthorised locations, which has prevented the Applicant from undertaking their farming work. The Respondents undertook not to do anything to cause nuisance or annoyance to any person under clause 11 of the said tenancy agreement.
- 20 The Respondents are both in employment. They have no known health issues or vulnerabilities.
- 21 The Respondents have children who appear to no longer reside with them. The Respondents' children have left school.

Reasons for decision

- 22 The Tribunal considered that it could make relevant findings in fact and reach a decision on the application following the CMD based on the information before it. The Tribunal did not identify any issues to be resolved that would require a hearing and therefore concluded it could determine the application without a hearing in terms of Rule 18 as to do so would not be contrary to the interests of the parties in this case. The Tribunal had given the Respondents the opportunity to make written representations, and attend the CMD, but they had chosen not to do so. The Tribunal was satisfied that they were aware of the proceedings based on the comments Mr Corrigan had made to Mr Roan.
- 23 The relevant legislation the Tribunal must have regard to when considering an application under Rule 66 of the Rules are sections 32 and 33 of the 1988 Act:-

“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 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.

(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 two months, that period;

(ii) in any other case, two 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.”

- 24** The Applicant had been unable to produce a signed version of the tenancy agreement and Form AT5 as the documents had been misplaced by the firm of solicitors who had dealt with the creation of the tenancy on the Applicant's behalf. This was understandable given the passage of time. The Applicant had, however, provided detailed submissions on this point at the CMD. He was clear that the tenancy was a short assured tenancy, having been assured by the solicitors that the statutory requirements had been met. The Tribunal also noted the wording of clause 7 of the tenancy agreement which stated “*Both parties agree that this Lease constitutes a Short Assured Tenancy in terms of section*

32 of the Housing (Scotland) Act 1988...The Tenants hereby acknowledge prior receipt of the Notice (AT5) required". The Respondents had not provided any contradictory evidence regarding the nature of the tenancy between the parties. The Tribunal was therefore satisfied it could accept, based on the Applicant's submissions, that the provisions of section 32 had been met and the tenancy between the parties was a short assured tenancy. The Tribunal found Mr Roan to be credible on this point. His submissions at the CMD were clear and consistent.

- 25 The Tribunal was further satisfied that the Applicant had terminated the tenancy between the parties by giving the Respondents a notice to quit, and had also given them notice under section 33(1)(d) of the 1988 Act. The Tribunal therefore considered whether it would be reasonable to make an eviction order in this case.
- 26 The Tribunal took into account the Applicant's submissions regarding the Respondents' conduct of the tenancy and accepted these as fact, there being no evidence to the contrary. The Tribunal accepted that they had breached various obligations under the terms of the tenancy agreement between the parties. The Tribunal also had regard to the Respondents' circumstances as outlined by Mr Roan. There were no young children in the property who would be at risk if the Tribunal made an eviction order. The Respondents did not appear to have any health issues or vulnerabilities, and both were in employment.
- 27 Accordingly, having assessed those factors relevant to reasonableness in this case, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 28 The Tribunal therefore made an eviction order under section 33 of the 1988 Act. 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.

R.O'Hare

Date: 5th June 2025