



**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/24/4618

Re: Property at 30 King Street, Elgin, IV30 6BX (“the Property”)

Parties:

**Mr William James McConachie, Mrs Margaret Corrigall McConachie, 80 Beech
Brae, Elgin, IV30 4NS (“the Applicant”)**

Bozena Dawiec, 30 King Street, Elgin, IV30 6BX (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs H Barclay (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 on 3rd October 2024. The Applicants are seeking an order for possession of the Property. The Applicants’ representative lodged a copy of a joint short assured tenancy with an initial period from 11th August 2006 to 12th February 2007 and monthly thereafter. The Applicants’ representative 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, Form AT5, and copy correspondence from the Respondent.
2. On 10th April 2025, written representations were received from the Respondent, together with a request for a Polish interpreter.
3. By email dated 11th June 2025, the Applicant representative lodged a statement from the Applicants.

The Case Management Discussion

4. A Case Management Discussion ("CMD") took place by telephone conference on 24th April 2025. The Applicants were not in attendance and were represented by Mr Whittle, Solicitor. The Respondent was not initially in attendance. Mr Milewski, Polish interpreter was in attendance. The Tribunal Clerk attempted to call the Respondent without success.
5. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent. The Tribunal asked Mr Milewski to remain in attendance to interpret if the Respondent was to join the call.
6. Mr Whittle said there had been no recent communication from the Respondent. Mr Whittle moved the Tribunal to grant the order sought. Mr Whittle confirmed there were no rent arrears.
7. Responding to the Tribunal's questions regarding the fact that there was no documentary evidence that the joint tenancy had been formally ended, Mr Whittle submitted that the joint tenant had left the Property in July 2012, as confirmed by the letter from the Respondent to that effect. There was some discussion about further representations being lodged regarding this issue. Mr Whittle submitted that the joint tenant had abandoned the tenancy 13 years ago, and there would be no prejudice to him if the order was granted.
8. The Tribunal adjourned to consider matters, and informed Mr Milewski that he was no longer required. Upon reconvening, some 40 minutes after the start of the CMD, the Respondent joined the call, along with her friend, Ms Diamond. With the agreement of the Respondent, Ms Diamond interpreted for the Respondent.
9. The Respondent's position was that the joint tenancy was formally brought to an end when the joint tenant left, and that she had been the sole tenant since that time.
10. The Respondent said she has attempted to find alternative accommodation without success. She has health problems and requires a bungalow. There are stairs in the Property and she sometimes has to sleep downstairs because of her health issues. The Respondent was informed by the local authority that she requires an order for possession in order to be treated as homeless, at which time she will be given temporary accommodation. The Respondent said she does not wish to fight to stay in the Property. She appreciates the Applicants want to sell the Property and she needs an eviction order in order to obtain social housing. Matters have been ongoing for a year now, and the Respondent has already packed up half of her belongings. She wishes matter to be brought to a conclusion and this would assist her mental health.

11. The Tribunal adjourned to consider matters.

Findings in Fact and Law

12.

- (i) The Applicants are the heritable proprietors of the Property.
- (ii) The Respondent and a third party entered into a short assured tenancy agreement with the Applicants commencing on 11th August 2006 to 12th February 2007 and monthly thereafter.
- (iii) In 2013 the joint tenant left the Property and the joint tenancy ended.
- (iv) Notice to Quit and Section 33 Notice were served on the Respondent.
- (v) The short assured tenancy has reached its ish date.
- (vi) The contractual tenancy terminated on 12th September 2024.
- (vii) Tacit relocation is not in operation.
- (viii) The Applicants have given the Respondent notice that they require possession of the Property.
- (ix) It is reasonable to grant the order for possession.

Reasons for Decision

- 13. 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.
- 14. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicants have given the Respondents notice that they require possession of the Property.
- 15. In considering reasonableness, the Tribunal took into account the circumstances of both parties.
- 16. The Tribunal took into account the representations from the Applicants that they wish to retire from letting residential properties and move into full retirement.
- 17. The Tribunal took into account that the Respondent is keen to obtain social housing, and this cannot happen unless an order for possession is granted. The Property is no longer suitable for the Respondent given her health needs. The Respondent is keen for matters to move on, to assist her health.

18. In all the circumstances, it is reasonable to grant the order sought.

Decision

19. 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 24th July 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.

Ms H Forbes

Legal Member/Chair

19th June 2025
Date