

Housing and Property Chamber
First-tier Tribunal for Scotland



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/25/0581

Re: Property at Garden Cottage, Walton Park, Castle Douglas, DG7 3DD (“the Property”)

Parties:

Robert Malcolm Hunter Brown, Glenbogie, Rhynie, Huntly, AB54 4JA (“the Applicant”)

Elizabeth Biberian, Garden Cottage, Walton Park, Castle Douglas, DG7 3DD (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order for recovery of possession but postpone the period of enforcement by 60 days.

Background

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for recovery of possession in relation to a short assured tenancy under the Housing (Scotland) Act 1988 by the Applicant against the Respondents in relation to the property.
2. The application included,
 - a copy of the tenancy agreement.
 - section 33 notice
 - notice to quit
 - execution of service by sheriff officers for the section 33 notice and the notice to quit.

- section 11 notice to local authority
 - docquet of transfer of the property
 - sale and marketing correspondence from Savills regarding the sale of the property
3. The case called for a case management discussion on 5 August 2025. Appearing was the Applicant's agent, Jackson Dean, Bannatyne Kirkwood France & Co and the respondent, with her supporter, Marcus Wright, from Turning Point.

Discussion

4. The Applicant's agent confirmed that he was seeking an order for eviction. He confirmed that this is a short assured tenancy. The tenancy had reached its *ish* and that tacit relocation was not operating. A section 11 notice has been sent to the local authority. It would be reasonable to grant the order. One of the reasons that it would be reasonable to grant the order is to the fact the landlord wished to sell the property.
5. The respondent's supporter spoke on her behalf. Mr Wright confirmed that the respondent was not opposing the order being granted. However, the respondent suffered from various physical health difficulties, which impacted her mobility and sight. She also had a dog, which she required to care for. She had contacted the local authority and applied for housing. Given her physical circumstances, they anticipated that it may take longer than usual for the local authority to identify suitable accommodation for her. She currently has a care package in place, and she will need supported accommodation going forward. She will also have to have a package in place to assist her in caring for her dog. Given these matters, they asked the tribunal to take this into account when making an order.
6. The tribunal clarified what they were asking for, and it was for a period of time before the order becomes enforceable. Mr Wright suggested that 6 to 12 months was the usual period before suitable accommodation was identified in these cases. He was, however, unable to advise when the local authority in this case may have available property, as he had only been engaged in this case for around two weeks. He confirmed that he had already prepared a plan for supporting the pet, which addressed one of the matters that affected the respondent in finding new suitable accommodation. The respondent confirmed that she was continuing to pay rent for the property.
7. The applicants' agent advised that the applicant wished to obtain an order for recovery of possession. He advised that the applicant had inherited the property from his uncle. The applicant wishes to sell the estate. The applicant had already tried to market the property

for sale during the course of the last year with the respondent as a sitting tenant however, he did not secure any offers to purchase. He had been advised that he would be required to sell it with vacant possession. The applicant is not a landlord through choice, but as he had inherited the property. This is the only property on the estate which is inhabited. If he requires to retain this property, he will be required to undertake repairs to the private water supply, which have been estimated to cost in the region £50,000. He does not live within the local area. Given all the reasons, the applicant is keen to progress with the sale of the property. And in relation to the question of delaying the enforcement of any eviction order the landlord would be opposed to a delay, the agent submitted that a period of six months would be excessive. If the tribunal intends to make such an order, then the applicant would leave it to the tribunal to determine. The applicant's agent highlighted that the notices to quit were served in November 2024 and the respondent has had almost a year to address her housing situation.

Findings in Fact

8. We found the following facts established:-
9. That there was in place a short assured tenancy.
10. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.
11. The property was Garden Cottage, Walton Park, Castle Douglas.
12. The landlord was Robert Malcolm Hunter Brow
13. The tenant was Elizabeth Biberian.
14. The tenancy commenced on 1 March 2002 until 1 September 2002 and continues month to month thereafter.
15. The tenancy was signed on 22 February 2002.

16. The AT5 Form was in the prescribed format and was dated 22 and 25 February 2002.
17. The notice to quit contained the prescribed information, and was dated 25 November 2024, it sought vacant possession as of 1 February 2025. It provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notice on 26 November 2024. The notice to quit terminated the tenancy on an *ish* date.
18. The section 33 notice contained the prescribed information and was dated 25 November 2024; it sought vacant possession as of 1 February 2025. It provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices on 26 November 2024.
19. There was a section 11 notice addressed to the local authority.
20. The landlord had inherited the property. It is part of a larger estate. He wishes to sell the property as part of the estate.
21. The landlord had attempted to sell the property with the respondent as a sitting tenant. He had been unsuccessful in doing so.
22. The landlord does not rent out any other properties and is only a landlord for this property due to inheriting the estate.
23. The landlord does not reside on the estate.
24. All other properties on the estate are vacant.
25. The respondent continues to pay rent.
26. The respondent has a number of physical health issues which she needs to deal with.
27. The respondent will require to obtain supported accommodation, which has been adapted for her needs, and which will allow her to bring her pet dog with her. The respondent believes that given her needs, it will take her longer to secure suitable other accommodation.

Reasons for Decision

28. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its *ish*; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenants that they require possession of the house; and where it is reasonable to do so.
29. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondent. We were therefore satisfied that the tenancy had reached its *ish* and that tacit relocation was not operating. We also noted that a section 11 notice has been sent to the local authority.
30. Having regard to the question of reasonableness, we have taken into account the following matters. The respondent does not oppose the order being granted. She appeared to have considered her position and had already taken steps to secure suitable other accommodation. Given these facts, we are prepared to grant the order for eviction.
31. The respondent does seek some further time to secure suitable alternative accommodation. We consider it would be reasonable to grant the respondent a period of two months in addition to the appeal period. This would assist the respondent in securing suitable accommodation for herself and her pet dog.
32. The respondent sought a period of six months. The tribunal considers that that period would be too long, balancing up the rights of both the respondent and the landlord.
33. In deciding on the fair period, we take into account that the landlord is a landlord by default having inherited the property as part of the larger estate. This is the only property which is not currently vacant on the estate. The landlord wishes to sell the whole estate. The landlord has already attempted to sell the property with the respondent as a sitting tenant however, he was unable to secure an offer of purchase. We understand that the landlord does not live locally to the estate. If he has to retain the property, he will have to address the private water supply, which would incur additional costs for him. These matters weigh in favour of no additional time being awarded before the order is enforced.

34. Against these matters, we note that the respondent has resided in the property for over 20 years. We assume that the respondent has been a good tenant. We understand the respondent continues to pay her rent. We appreciate that the respondent has a number of physical health issues, which means that she will require adapted accommodation when she moves. We were also advised that she will require supported accommodation and further, that she will require a support package to care for her pet to be in place when she moves.
35. We agree that finding the respondent suitable accommodation may take longer than in ordinary cases, although given the respondent's assessed need, we also presume that the local authority will seek to ensure that they discharge any legal duties they have towards this adult, and securing suitable accommodation for her will be part of those duties. We have no evidence before us on how much longer it may take to secure accommodation for the respondent.
36. We consider that a period of six months before the order can be enforced would not be reasonable, having regard to the interests of the landlord; however providing no additional time for the respondent would not be reasonable to her, taking into account the time she resided in the property and her physical health needs. We consider that a period of two months before the order can be enforced, together with the appeal period, will provide this respondent with a period of around three months before she has to leave the property. We consider that such a period would be a fair and reasonable balance, having regard to the interests of both parties. We will therefore make an order for eviction but postpone enforcement of the order for a period of two months.

Decision

37. We grant an order in favour of the Applicant against the Respondents for the 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.

Melanie Barbour

6 August 2025

Legal Member/Chair

Date