



**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/24/2907**

**Property: Easter Greens Farmhouse, Lossiemouth, Moray IV31 6RX ("Property")**

**Parties:**

**Crinan Dunbar, Pitgaveny, Elgin, Moray IV30 5PQ ("Applicant")**

**Turcan Connell, Princes Exchange, 1 Earl Grey Street, Edinburgh EH3 9EE  
("Applicant's Representative")**

**Craig McKinnon, Easter Greens Farmhouse, Lossiemouth, Moray IV31 6RX  
("Respondent")**

**Citizens Advice Bureau, 6 Moss Street, Elgin IV30 1LU ("Respondent's  
Representative")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber)  
("Tribunal") determined that an order for possession of the Property should /  
should not be made.**

**Background**

1. The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E.
2. A Case Management Discussion ("CMD") took place before the Tribunal by conference call on 11 March 2025. Reference is made to the note of the CMD. The outcome of the CMD was that a Direction was issued and an evidential hearing was fixed to take place on 20 August 2025.

3. On 25 April 2025 the Respondent's Representative lodged a response to the Direction which consisted of a written submission and documents numbered 2 to 6. On 26 May 2025 the Applicant's Representative lodged a response to the Direction which consisted of a written submission, documents numbered 1 to 12 and a list of witnesses. On 2 August 2025 the Applicant's Representative lodged further productions numbered 1 to 3. On 30 July 2025 the Applicant's Representative lodged a list of authorities.

## **Documents**

4. The documents lodged on behalf of the Applicant were:
  - Short Assured Tenancy Agreement dated 9 and 10 April 2015
  - AT5 dated 9 April 2015
  - Letter from Natalie Mackillop dated 13 June 2017
  - Notice to Quit dated 4 October 2023 and Notice in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") dated 4 October 2023
  - Royal Mail proof of delivery evidencing service of the Notice to Quit and Section 33 Notice on the Respondent on 5 October 2023
  - Notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 26 April 2024
  - Copy email dated 14 November 2023 regarding a meeting that took place on 13 November 2023
  - Copies of online articles in the Press and Journal and the Northern Scot dated 13 and 14 May and 11 June 2024
  - Statements of rent arrears as at 19 May 2025 and 12 August 2025
  - Photographs titled "access track record of condition" dated 29 July 2025
  - Screenshot of Moray Council website dated 12 August 2025
5. The documents lodged on behalf of the Respondent were:
  - Rent account as at 17 February 2025

- Copy email from the Applicant dated 25 April 2024
- Copy email from the Applicant dated 13 May 2024
- Short Assured Tenancy Agreement dated 9 and 10 April 2015
- Screenshot of text message from the Respondent dated 28 April
- Copy email from Natalie Mackillop dated 25 April 2025
- Article in Northern Scot dated 11 June 2024
- Information on ADHD

### **Hearing on 20 August 2025**

6. The Tribunal noted that at the CMD the following appeared to be agreed and the Parties confirmed that remained the case :
  - A Notice to Quit and Section 33 Notice both dated 4 October 2023 were served on the Respondent on 5 October 2023.
  - A meeting took place between the Parties on or about 13 November 2023 at the office at Pitgaveny.
  - Those in attendance at the meeting were the Applicant, the Respondent, Natalie Mackillop and Susan Margach.
  - At the meeting it was agreed that the rent arrears would be paid back on the basis of the rent of £620 per month being paid plus an additional £220 per month which would result in a monthly payment of £840.
  - At the meeting it was agreed that the rent arrears for the 17 month period August 2022 to December 2023 would be reduced to £5,280.
  - In May 2024 the Respondent pled guilty to offences related to cannabis found at the Property.
7. The Tribunal asked the Parties whether the following was also agreed and the Parties confirmed that it was :
  - The Applicant and the Respondent entered into a Short Assured Tenancy Agreement dated 9 and 10 April 2015.

- Natalie Mackillop renounced her interest in the tenancy with effect from 13 June 2017 with the consent of the Applicant and the Respondent.
  - The tenancy was for the period 10 April 2015 to 9 April 2016 and month to month thereafter.
8. The Tribunal asked Mr Dunbar how long he had owned the Property and whether he owned other rental properties. He said he had owned the Property since 2022 and owns around 10 other rental properties. The Tribunal asked him which the notice to quit and section 33 notice were served in October 2023. He said they were served because of illegal activity at the Property.
  9. The Tribunal asked Mr Mckinnon if he lived in the Property alone. He said that he has two sons aged 10 and 15. He said that the older child lived with him but is now going to college. He said that he is employed as a stonemason.

### **Evidence of Crinan Dunbar**

10. Mr Dunbar confirmed his name and that he is a chartered surveyor. He confirmed he is the landlord in terms of the tenancy agreement. He was referred to the tenancy agreement and confirmed that it provided that it could be terminated on 40 days notice. He was referred to the notice to quit which stated that the tenancy expired on 9th December 2023.
11. Mr Dunbar was referred to the email to Susan Margach dated 14th November 2023 which contained Mr Dunbar's account of the meeting which took place on 13th November 2023 (production 7 in the inventory of productions for the Applicant). Mr Dunbar was referred to the final paragraph of the e-mail which referred to historic rent arrears being reduced. He was asked if the e-mail was in line with the agreed facts. Mr Dunbar confirmed that it was. It was suggested to Mr Dunbar that the Respondent will say that the e-mail did not contain a full record of what was discussed at the meeting and was asked how he would respond to that. Mr Dunbar said that the e-mail was a full record of what was discussed. It was drawn to his attention that the e-mail made no reference to the withdrawal of the notice to quit or section 33 notice nor did it refer to the eviction process being halted. He was asked why these matters were not referred to in the e-mail. Mr Dunbar said it was because those statements were not made at the meeting. He said that it was a commercial decision on his part to reduce the rent arrears. He was asked in what circumstances he would have withdrawn the notices. He said that he would have withdrawn the notices if the arrears had been paid. Mr Dunbar was referred to page 2 of the e-mail where there was a reference to cannabis

at the Property and asked if what was recorded in the e-mail was in accordance with his recollection of what was discussed at the meeting. He said that it was.

12. Mr Dunbar was referred to production 10 for the Applicant which is an online article in the Northern Scott dated 11th June 2024. It was noted that the article referred to a fine being imposed on the Respondent of £10,350. It was also noted that the article referred to 48 plants being found at the Property that belonged to the Respondent with potential value of between £11,400 and £46,170. It was noted that the article also referred to cannabis seeds being found along with a grow tent addressed to the Respondent. Mr Dunbar was referred to production 8 which was an online article in the Press and Journal dated 13th May 2024. He was referred to page 2 paragraph 2 which referred to the police finding grow tents, heat lamps, air filters and an irrigation system in an out building at the Property. Mr Dunbar was referred to production 10 which was an online article in the Northern Scott dated 11th June 2024 which contained a reference to the Sheriff stating that if there had been a shred of evidence of a commercial operation, the Respondent would have been going to jail for years.
13. Mr Dunbar was referred to the submission lodged on behalf of the Respondent on 25th April 2025 and in particular to the final paragraph which indicated that the Respondent made Mr Dunbar fully aware of the criminal proceedings. He was referred to the e-mail from Natalie Mackillop which had been lodged as production 2 for the Respondent and asked Mr Dunbar how he would respond to the claims made in the email. Mr Dunbar said that at the meeting in November 2023 the police presence at the Property was discussed but not honestly. He was asked when he discovered the extent of the criminal operation. He said that was not until the Respondent had been in Court which was after the meeting and was at some point in 2024.
14. Mr Dunbar was asked, If the Respondent had told him in November 2023 about the extent of cannabis grown at the Property, would that have had an impact on matters. Mr Dunbar said that he would not have entered into an agreement with the Respondent.
15. Mr Dunbar was referred to the second inventory of productions for the Applicant at page 14. This was a schedule of rent arrears as at 12th August 2025. It was noted that the schedule showed arrears of £18,740 with the last rental payment being made in June 2024. Mr Dunbar was asked how many payments of £840 had been made by the Respondent. Mr Dunbar said that there had been 5 payments made.

16. It was noted that at the meeting in November 2023 it was agreed that the arrears would be reduced. It was suggested that the Respondent's view was that the reduction was agreed to take account of work carried out to upgrade the Property. Mr Dunbar said that was not the case and that the decision to reduce the arrears was a commercial decision on his part.
17. Mr Dunbar was referred to the second inventory of productions for the Applicant at page 2. He said that this was a plan showing the Property and the access track. In addition he said that it contained a condition report as a 29th July 2025. He said that the report was prepared by himself and Chris Gordon. He pointed out where the Property was on the track. He said that he owns the access track which is made-up of hard core and some shingle and sand which allows for water drainage.
18. Mr Dunbar was referred to the e-mail from Natalie Mackillop which referred to the Applicant agreeing that the access track was in poor condition. Mr Dunbar said that he did not say that. It was noted that it is the Respondent's position that the access track was in a poor state in the winter of 2023 into 2024 and he was asked how he would respond to that. Mr Dunbar said that the winter of 2023 was very wet but the track was still passable. It was put to Mr Dunbar that it is the Respondent's position that he is responsible for damage to the Respondent's car. Mr Dunbar said he did not believe that was the case. He said that Geoff Anderson maintains the track and that maintenance requires to be carried out when the weather is dry. He said that the weather needs to remain dry for 1 to 2 weeks in order to regrade the track and level out the surface. Mr Dunbar was asked when he last checked the access track. He said that had been the day before and that it was in a similar condition to that shown in the photographs lodged.
19. Mr Dunbar was asked about grazing land removed from the tenancy. Mr Dunbar said that Natalie Mackillop used to keep horses on the grazing land. It was noted that she renounced her interest in the tenancy in 2017. Mr Dunbar said that the horses were removed fairly soon after she left. He was asked what use the Respondent had for that land. Mr Dunbar said that the land was not used and he resumed possession of the land around 2018. He said that at that time the land was overgrown and had weeds. He said that the weeds could pose a danger to livestock.
20. Ms Hayward then questioned Mr Dunbar. She asked him when the access track was last repaired. Mr Dunbar said that was in 2024. She noted that the Respondent's car was damaged in February 2024 and that Mr Dunbar waived one month's rent to cover the cost of repairs. Mr Dunbar said that was correct but he accepted no liability for damage to the car. It was put to him that waiving one month's rent indicated an acceptance of liability for the disrepair.

Mr Dunbar disagreed. Reference was made to the text message dated 28 April 2024 which was lodged as one of the Respondent's productions.

21. Mr Dunbar was asked whether a discussion took place regarding the withdrawal of the arable land from the tenancy. Mr Dunbar said he could not recall if he had discussed it with the Respondent or whether someone else in the office had discussed it. It was suggested to him that the Respondent had stipulated that the withdrawal of the land was a reason for rent being withheld. Mr Dunbar said that an independent valuation was being undertaken in respect of the rent. He was asked whether the rent increased. He said that it did. It was put to him that the increase in the rent took account of work carried out to the Property by the Respondent. Mr Dunbar said that it did not. He said that he agreed to the reduction in the rent arrears as a commercial decision. He said that he wanted to have a tenant in the Property paying rent. Mr Dunbar was asked what happened to the fencing that was removed from around the arable land. Mr Dunbar said that the fencing was not substantial.
22. Ms Hayward then made reference to the cannabis found at the Property. She asked Mr Dunbar what the Respondent had said about that at the meeting in November 2023. Mr Dunbar said that the Respondent told him that a court case was pending and that the police had accepted that the cannabis was for personal use. It was put to him that that was the full story. Mr Dunbar said that he was not made aware of the extent of the plants being grown. He said that the Respondent told him that only a small amount of cannabis was found at the property being 1.5 grammes. Mr Dunbar was asked what was his understanding of the police raid. Mr Dunbar said that from the meeting in November 2023 his impression was that the raid was more significant than it otherwise would have been because the police believed there may have been firearms at the Property. He said that at the meeting in November 2023 the Respondent made him aware that there were cannabis plants at the Property but that they were nothing to do with the Respondent. Mr Dunbar was asked whether the Respondent told him that he had been charged. Mr Dunbar said that he was told that a court case was spent pending. He said that he expected that the court case would relate to the possession of a small amount of cannabis.
23. The Tribunal asked Mr Dunbar why the notice to quit and section 33 notice were served in October 2023. Mr Dunbar said that he was concerned about rent arrears. The Tribunal asked Mr Dunbar why the meeting was called in November 2023. He said that he was concerned about the rent arrears and wanted to find out about the police attending the Property. The Tribunal asked Mr Dunbar why there was an independent valuation of the appropriate rent for the Property. Mr Dunbar said that was done to "clear the air". He said it was a

way to “deal with any issues”. The Tribunal asked if there was an independent valuation. Mr Dunbar said he was not sure.

24. The Tribunal noted the Google Earth map at the end of the tenancy agreement which showed the area let outlined in yellow. The Tribunal asked if the arable land removed was within the yellow boundary. Mr Dunbar said that at the time the arable land was removed from the tenancy he owned the Property jointly with his sister so she may have dealt with that aspect of matters. The Tribunal asked Mr Dunbar if there was a fence around the area outlined in yellow. Mr Dunbar said that there was in order to stop animals getting out. He said that it was not fenced when the Respondent took possession of the Property but the Respondent put up a barrier to stop the horses getting out.
25. Ms Hayward asked Mr Dunbar who arranged the meeting in November 2023. Mr Dunbar said it was mutually agreed. Ms Hayward asked if there were any rent arrears up to the point of the notices being served. Mr Dunbar said yes that was why the notices were served.

### **Evidence of Susan Margach**

26. Ms Margach told the Tribunal that she is an administrative assistant and that she worked for the Applicant until August 2024. She said that she attended the meeting in November 2023 and that those present were herself, the Applicant, the Respondent and Natalie Mackillop. Ms Margach was referred to production 7 for the Applicant which was the e-mail from Mr Dunbar containing his account of the meeting. Ms Margach said that the e-mail was the minutes of the meeting sent to her on 14th November 2023, the day after the meeting. She said that she recalled receiving the e-mail. She said that she had read it and agreed with its contents. Ms Margach was asked what reference there was in the e-mail to Mr Dunbar saying that he would withdraw the notice to quit and section 33 notice. Ms Margach said that there was no such reference. Ms Margach was asked what reference there was in the e-mail to Mr Dunbar saying that he would stop the eviction process. Ms Margach said that there was no such reference. She said that it was not discussed. Ms Margach was referred to page 2 of the e-mail which referred to cannabis at the Property and was asked whether the account in the e-mail accorded with her recollection of what was discussed at the meeting. She said that it did. She said that the Respondent said he did not grow the plants found at the Property.
27. Ms Hayward asked Ms Margach why the meeting in November 2023 was arranged. She said that it was arranged because there were rent arrears and



Mr Dunbar wished to discuss a repayment plan. She was asked who arranged the meeting. She said she did not know. She was asked if she was aware what level of rent was being paid. She said that she was. She was asked if the Respondent was consistent in paying his rent. Ms Margach said that she thought the Respondent had not paid rent for about a year and the arrears were around £10,000. She said that he had been consistent in paying his rent before that. Ms Margach was asked if the rent was paid consistently before the arable land was removed from the tenancy. She said that she did not know as that was before her time. She was asked when the arrears started to accumulate. She said she did not have a date but knew the arrears were over £10,000. Ms Margach was asked why the e-mail was sent to her. She said that Mr Dunbar asked her if the email was a correct reflection of the meeting and she agreed that it was.

### **Evidence of Geoffrey Anderson**

28. Mr. Anderson said that he is a stockman at Pitgaveny Farm. He said that he looks after the cattle. He said that he lives in Wester Greens Farmhouse.
29. Mr. Anderson was referred to the second inventory of productions for the Applicant which contains a map of the access track. He said that the document recorded the direction of travel leaving Inchbroom Road to the A941. He said that the track was inspected on the 29th July 2025. He was asked how he accesses Wester Greens Farm. He said either from the B9103 or the B941 depending on where he is going. He said he expected that the Respondent accesses his property in the same way. He said that he uses the track every day for his job. He said that he repairs the track which is made of a mix of small stones and sand. He said he repairs the track when he feels it needs it and when the weather permits.
30. Mr. Anderson was asked what repairs were carried out in May 2024. He said that at that time minimal repairs were carried out as the track was in a poor condition. He said that he put down some sub base and levelled it out with a forklift type machine. It was put to Mr. Anderson that the Respondent says that the track was not passable at that time. Mr. Anderson said that the track was passable but not in perfect condition. He said that a more substantial repair was carried out in August 2024. He said that at the end of February 2025 he put down quite a bit more sub base and carried out a substantial repair.
31. Mr. Anderson was referred to the second inventory of productions for the Applicant pages 2-12 and asked to review the photographs. He confirmed that the photographs are of the track between at the B9103 to the A941 and were

taken in July 2025. He was referred to page 6 and 7 of the photographs and said that these were photographs of Easter Greens Farm and the track leading to it. He said that he had used the track that morning and it looked the same as shown in the photographs. He said that the track is currently in as good a condition as it has been for a number of years.

32. Ms Hayward noted that Mr Anderson had said that he carried out work to the track in May 2024 and asked if the standard of the track was poor before that. Mr. Anderson said that was correct. He was asked if he had suffered damage to his vehicle. He said he had not. He was asked if he was aware of others suffering damage to their vehicles. He said he had spoken to the Respondent who said that his car had been damaged when the track was in a poor state. Mr. Anderson was asked whether he was aware that the Respondent had been given one month's rent by way of compensation. He said that he was not. Mr. Anderson was asked if he had carried out any repairs to the track before May 2024. He said that he had not. Mr. Anderson was asked whether it would be reasonable to assume that between August 2022 and May 2024 there would have been a dry period. Mr. Anderson said that he presumed that there was.
33. Mr Bauchop asked Mr Anderson why it was not possible to repair the track prior to May 2024. He said that the autumn of 2023 through to spring 2024 was particularly wet. He said there was no point in repairing the track as any repairs would be washed away.

### **Evidence of Craig McKinnon**

34. Mr McKinnon was asked why he requested a meeting with Mr Dunbar. He said that he requested the meeting to try to resolve things amicably. He said that he had not been in rent arrears for 11 years prior to that. He said that the arrears started to accumulate for several reasons. Firstly, there was a new manager who put the rent up from £580 to £620 and also took land back without discussion which should have reduced the rent. He also said that fencing was removed that had cost him around £3,000. Mr McKinnon said that he kept six horses in the field that had been fenced. He said that he did not want to lose his family home. He said that before the meeting Mr Dunbar would not answer his phone or speak to him. He said that Mr Dunbar agreed to meet if a witness was present and that was why Natalie Mackillop also attended. He said that Mr Dunbar had no idea about the plants in the shed at the Property. He said that Mr Dunbar's understanding about the police raid was that it related to illegal firearms. He said that he told Mr Dunbar about the cannabis plants at the Property. He said he told Mr Dunbar the absolute truth. He said that when the matter came to court his solicitor told him that it would

be very hard to prove that his Hungarian friend owned the plants as he had disappeared. Mr McKinnon said that he pled guilty and accepted a fine to put an end to the matter.

35. Mr McKinnon said that he paid the rent at £840. He said that Mr Dunbar accepted he had not done things properly. He said that after the story came out in the papers, Mr Dunbar served another eviction notice, so he stopped paying the rent. He said he had spent a lot of money on the Property and it was unfair that the rent was increased.
36. Mr McKinnon was asked about the state of the access track. He said it was in a bad condition. He said that after the meeting in November 2023 Mr Dunbar was going to repair the track straight away but Mr McKinnon had to remind him six months later.
37. Mr McKinnon was asked what was the purpose of the meeting in November 2023. He said that it was to put a stop to the eviction proceedings. Mr McKinnon was asked if Mr Dunbar agreed to withdraw the proceedings. Mr McKinnon said that he did. Mr McKinnon was referred to the inventory productions for the Applicant, production 10 at page 45 which referred to cannabis seeds and a grow tent at the Property. Mr McKinnon said that the package was addressed to his Hungarian friend. He said that the Hungarian friend had keys to the Property.
38. Mr Bauchop then questioned Mr McKinnon. He referred him to the inventory of productions for the Applicant document 7 which was the e-mail which summarised what happened at the meeting in November 2023. He asked if Mr McKinnon agreed that this was a full record of what was discussed and agreed at the meeting. Mr McKinnon said that it was not and that there were bits missing. He said that the note did not refer to Mr Dunbar agreeing to withdraw the notice to quit or section 33 notice. It was put to Mr McKinnon that Mr Dunbar did not agree to withdraw the notice to quit or section 33 notice or to stop the eviction process. Mr McKinnon said that Mr Dunbar did agree to each of those.
39. Mr Bauchop asked about the cannabis at the Property and noted that Mr McKinnon had said that he had been honest. Mr McKinnon said that he told Mr Dunbar that there was a court case pending and that the situation was not what it seemed. He said he told Mr Dunbar that there was a shed full of plants and no firearms at the Property. He said he told Mr Dunbar that he had been charged. He said he pled guilty at the trial as he could not prove his Hungarian friend was responsible. It was suggested to Mr McKinnon that he had lied to the Court. He said he pled guilty as he was unable to prove his innocence. Mr McKinnon was referred to the online article which referred to

cannabis seeds and a grow tent in a package addressed to Mr McKinnon. He said the package was not addressed to him but to his Hungarian friend. He said the article was incorrect. Mr McKinnon confirmed that he was fined £10,350. It was suggested to Mr McKinnon that he had acted in bad faith and any agreement reached with Mr Dunbar was void due to misrepresentation. Mr McKinnon denied acting in bad faith and said he told Mr Dunbar the truth about the cannabis.

40. Mr McKinnon was referred to the statement of rent arrears. It was noted that he had made five payments of £840. Mr McKinnon said that paid the increased amount of rent until Mr Dunbar withdrew the agreement. Mr McKinnon was asked if he was obliged to pay £620 per month in terms of the lease. He said that he did not agree to the rent of £620 as land had been removed from the tenancy. It was noted that Mr McKinnon had said that he had relied on Mr Dunbar saying he would withdraw the eviction and it was suggested to him that was not correct. Mr McKinnon said that it was correct and queried why he would pay £840 each month if there was no agreement.
41. It was suggested to Mr McKinnon it that Mr Dunbar did not undertake contractually to maintain the access track. He was referred to the e-mail from Mr Dunbar dated 14 November 2023. It was noted that the e-mail did not refer to a contractual undertaking. Mr McKinnon said that he did have emails and text messages with Mr Dunbar about the track being maintained.
42. It was suggested to Mr McKinnon that the grazing land which was removed from the tenancy had not been used by him for some time before it was taken back. Mr McKinnon said that he used it from time to time. He said that the horses were family horses. He was asked whether the land was overgrown. He said it was not.
43. It was suggested to Mr McKinnon that there was no evidence of costs of £3000 being incurred to erect fencing. Mr McKinnon said he did not expect to have someone remove the fencing when he was at work.
44. Mr McKinnon was referred to the tenancy agreement which provided that it could be terminated on 40 days notice and he was asked whether he was aware of that. Mr McKinnon said he did not remember as the lease have been entered into some 12 years ago.
45. It was noted that Mr McKinnon had had some 22 months to find alternative accommodation. Mr McKinnon said that he disputed the reason why Mr Dunbar was seeking to evict him. It was suggested to Mr McKinnon that he could be housed close by in alternative accommodation. Mr McKinnon said that he had two dogs and he was concerned that he may not be able to take

them to alternative accommodation. He said that he had been looking at alternative accommodation and was struggling to find anything.

46. Mr McKinnon said that his oldest son is now at college in Elgin and he wanted to ensure he remained in that catchment area. He said he was concerned about his children losing their family home. He said his youngest son has ADHD.
47. Ms Hayward asked Mr McKinnon to summarise what was agreed at the meeting on 13 November 2023. He said that everything was resolved, payment was agreed, the eviction notice was withdrawn and the access road was to be maintained.
48. Mr McKinnon was asked why he stopped paying the rent in June 2024. He said he received a letter from the Council saying that Mr Dunbar was going ahead with the eviction. He said Mr Dunbar would not speak to him. He said he thought everything had been resolved. He said he wants to keep the tenancy as he wants to keep his family home. He said his youngest son is unsettled very easily. He said he did not want to have to re-home his dogs.
49. The Tribunal asked Mr McKinnon the precise words used by Mr Dunbar at the meeting on 13 November 2023 which indicated the notices were being withdrawn. Mr McKinnon said he could not recall the exact words. He said that the letting agent, Belvoir, had on record that the rent was going up to £840. He said he had a letter from them confirming the payment but the letter did not refer to the eviction being withdrawn.
50. The Tribunal asked Mr McKinnon what he did in reliance on the representation that the notices were withdrawn. He said that he started paying the arrears.
51. The Tribunal asked Mr McKinnon why the arrears were reduced by £5,280. He said that Mr Dunbar did not properly deal with the situation. He referred to the rent being increased, to land being removed, to the access road not being maintained, to the fencing being removed and to Mr McKinnon having spent money on the Property. All of these things contributed to the arrears being reduced.
52. The Tribunal asked Mr McKinnon when the police raid took place. He said it was in May 2022. He was in Hungary at the time with his Hungarian friend. He said the friend did not return to the UK. The Tribunal asked if the rent withheld was put aside in a separate bank account. Mr McKinnon said it was not but that he could repay the arrears quickly.

53. Mr Bauchop asked Mr Dunbar to explain the impact on him of the rent arrears. He said that he has had to extend a loan taken from the bank and that the process has been stressful.
54. The Tribunal noted the notices were served in October 2023 and asked Mr Dunbar why he delayed making this application until June 2024. He said that what changed was his becoming aware of the amount of cannabis involved and that Mr McKinnon had pled guilty. He said that if Mr McKinnon had continued to pay £840 per month he would still have raised the application due to the criminal activity.

### **Evidence of Natalie Mackillop**

55. Ms Mackillop was asked what was agreed at the meeting in November 2023. She said that she was asked to attend the meeting as she knows Mr Dunbar. She said that the rent arrears were discussed as was maintenance of the access track. She said it was agreed that half of the rent arrears would be written off and a payment plan was put in place. She said that when she first took up the tenancy she had horses in one of the fields and around £30 was included in the monthly rent in respect of the field. She said that Mr Dunbar took the field back but did not reduce the rent. She said that Mr McKinnon had done a lot of work to the Property. She said there were no fences around the Property when they moved in and Mr McKinnon put up the fences. She said that Mr McKinnon also renewed the flooring throughout the house and the plastering. She said that the court situation regarding the cannabis was also discussed. She said that at the end of the meeting Mr Dunbar said that all proceedings would stop. She said that everyone shook hands and Mr McKinnon was very pleased that everything was resolved.
56. As regards the access track Ms Mackillop said that it was hardly ever maintained. She said she had not driven down it in a while but when she used to use the track she had constant problems with the springs on her car.
57. Ms Mackillop was asked what the impact would be if an eviction order was granted. She said that her oldest child is under supervision of social work. She said that her younger child has bad anxiety. She said that he likes to be with Mr McKinnon and needs to be outside. She said that her younger child has been diagnosed with ADHD and is being assessed for autism. She said that the day of the hearing was his first day back at school and there was an incident which meant she had to pick him up early. She said that an occupational therapist had carried out an assessment of her younger son and

had advised that he should not live in a property near a road or near water. She also said that she needs separate bedrooms for each of her sons.

58. Mr Bauchop asked Ms Mackillop to read the e-mail of 14th November 2023 and then asked her if it was a full record of what was discussed at the meeting. Ms Mackillop said that it was a full record but did not see anything about the removal of fencing, maintenance of the access track or the withdrawal of the notice to quit. She said that Mr Dunbar did agree to withdraw the notice to quit and the section 33 notice and to stop the eviction process.
59. Ms Mackillop was asked if Mr McKinnon had pled guilty in May 2024. She said he had but that he had to do that to avoid jail. It was suggested to Ms Mackillop that at the meeting Mr McKinnon only referred to a small amount of cannabis being found at the Property. Ms Mackillop said she thought that he had referred to plants. She could not recall exactly what was said about the amount of cannabis. It was suggested to her that the cannabis plants belonged to Mr McKinnon. Ms Mackillop said that was not her understanding. It was suggested to Ms Mackillop that Mr McKinnon had acted in bad faith. Ms Mackillop said that was not correct and that Mr McKinnon had been honest and had told Mr Dunbar that a court case was outstanding. She said that Mr Dunbar agreed to stop the eviction process and to enter into a payment plan.
60. Ms Mackillop was asked about the access track and whether Mr Dunbar had contractually undertaken to maintain it. Ms Mackillop said it was common sense for a landlord to maintain the access road to a let property. Ms Mackillop was asked about the grazing land. She said that she removed her horses in 2017 but only for a few months. She said that the land was used by chickens, ducks and her children. Ms Mackillop was asked about Mr McKinnon's attempts to find alternative accommodation. She said that there is a shortage of rental properties in the area. She said that the Property has 4 bedrooms (one with a dressing room) , 2 public rooms, a kitchen and a large hall.
61. The Tribunal asked Ms Mackillop what exactly was said at the meeting about the eviction process. She said that Mr McKinnon spoke about the court case, the arrears were discussed and a payment plan was agreed. She said that it was agreed that as long as the payment plan was adhered to, that was the end of the eviction.

## **Submissions**

62. Mr Bauchop said that he adopted his written submission in full. He said that the requirements of section 33 had been met. He said it was agreed that the notices had been served and that the tenancy reached its *ish* on 9th December 2023. He said that tacit relocation was not operating. He said that the only outstanding issues were the question of personal bar and reasonableness.
63. Mr Bauchop referred to the principles set out in *Gatty v MacLaine 1921 SC (HL) 1*. He said that there must be a representation and reliance thereon by the Respondent to his prejudice. He said that in this case no representation was made. He said that no such representation was referred to in the contemporaneous note of the meeting. He said this was confirmed by Mr Dunbar and Ms Margach. He said that the Respondent had said he had been honest but that was not credible. He noted that the Respondent had lied to the Sheriff Court.
64. Mr Bauchop submitted that the Respondent was not entitled to rely on personal bar if he had acted in bad faith. He said that the Respondent induced the Applicant into believing that the Hungarian owned the cannabis plants and had then pled guilty to ownership. He said that there was also no reliance on any representation other than paying the monthly £840 but the Respondent was obliged to pay that anyway.
65. As regards reasonableness, Mr Bauchop said it was reasonable to grant the order sought. He noted it was 22 months since the notices were served, that the Respondent is employed and receives a good wage. He said the Respondent had known since 2014 that the tenancy could be terminated on 40 day's notice. Mr Bauchop Submitted that the respondent had been convicted of a serious offence for which he had been fined at £10,000. He said that the Respondent now admitted lying to the Sheriff Court. He referred to the substantial rent arrears which had resulted in Mr Dunbar having to take out a bridging loan. He said that the Respondent could be housed in the area. He said the Respondent's primary concern seemed to be the catchment area for the high school but it was Natalie Mackillop's address that was used for that. He noted that no medical evidence had been lodged regarding the Respondent's children.
66. As regards the reduction in the rent arrears of £5,820, Mr Bauchop said that the reduction was applied as a commercial decision. He said this was nothing to do with work carried out to the Property. In any event he said that the agreement was void due to fraudulent misrepresentation. He noted that even if the reduction was taken into account the arrears remained high at around £12,000. As regards the access track Mr Bauchop said that the Respondent had said he was retaining rent because the Applicant is seeking to evict him.



He said that there had been no breach by the Applicant of a contractual obligation to maintain the access track. He said that the right to retain rent would only arise if there were mutual obligations. He submitted that in any event the access track was maintained when the weather permitted. Mr Bauchop submitted that the Respondent could not retain rent due to damage caused to his car. He said there was no evidence of such damage or that it was caused by the access track. Again, he indicated there was no mutual obligation to maintain the access track. Mr Bauchop noted that an illiquid claim for damage to a vehicle cannot be offset against a liquid claim for payment of rent. As regards the grazing land Mr Bauchop said that the land should not have been resumed but it had not been used for some time before it was resumed and even if that led to some abatement of rent it would be a small amount.

67. Ms Hayward noted that there was a dispute about what was agreed at the November 2023 meeting. She submitted that as it took place before the contract was due to end, it was highly unlikely that the question of eviction was not discussed. She submitted that the Respondent had fully disclosed what had happened regarding cannabis at the Property. She said that Respondent followed what was agreed at the meeting and made monthly payments of £840. She said that the Respondent stopped paying rent in protest at the eviction action being raised. She submitted that if the Respondent moved now, it would have a negative impact on the Respondent's children and he may have to re-home his dogs.

### **Findings in Fact**

1. The Tribunal made the following findings in fact:
  1. The Applicant and the Respondent entered into a short assured tenancy agreement dated 9 and 10 April 2015.
  2. Natalie Mackillop renounced her interest in the tenancy with effect from 13 June 2017 with the consent of the Applicant and the Respondent.
  3. The tenancy was for the period 10 April 2015 to 9 April 2016 and month to month thereafter.
  4. A Notice to Quit dated 4 October 2023 was served on the Respondent on 5 October 2023 stating that the tenancy would terminate on 9 December 2023.

5. A Notice in terms of Section 33 of the 1988 Act dated 4 October 2023 was served on the Respondent on 5 October 2023 stating that possession of the property was required on 9 December 2023.
6. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
7. A meeting took place between the Parties on 13 November 2023 at the office at Pitgaveny. Natalie Mackillop and Susan Margach were also in attendance.
8. At the meeting on 13 November 2023 the Parties agreed that the rent arrears would be paid back on the basis of the rent of £620 per month being paid plus an additional £220 per month which would result in a monthly payment of £840.
9. At the meeting on 13 November 2023 the Parties agreed that the rent arrears for the 17 month period August 2022 to December 2023 would be reduced to £5,280.
10. At the meeting on 13 November 2023 the Respondent told the Applicant that there were several cannabis plants in an outbuilding at the Property, that a court case was pending and that the police had accepted that the cannabis was for personal use.
11. In May 2024 the Respondent pled guilty to offences related to cannabis found at the Property. The Sheriff noted that there was no evidence of a commercial operation and fined the Respondent £10,350.
12. The Respondent is employed as a stonemason.
13. The Respondent lives in the Property and has two children aged 10 and 15 who live partly with their Mother, Natalie Mackillop, and partly with the Respondent.

### **Findings in Fact and Law**

2. The Tribunal made the following findings in fact and law :
  1. The tenancy reached its *ish* on 9 December 2023 and is not continuing by tacit relocation.

2. The Applicant gave to the Respondent notice stating that he requires possession of the Property.
3. The requirements of section 33 (1) of the 1988 Act have been met.
4. The Applicant is not personally barred from making this application.
5. It is reasonable to make an order for possession of the Property.

### **Reasons for the Decision**

68. The Tribunal requires to determine firstly, whether or not the ground for eviction relied upon has been established and secondly, if the ground is established, whether or not it is reasonable to grant an order for possession.

69. The Applicant sought an order for possession of the Property in terms of section 33 of the Housing (Scotland) Act 1988 ("1988 Act") which provides :

*"....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 ish;*

*(b) that tacit relocation is not operating;*

*(c) ...*

*(d) That the landlord ...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.*

70. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33 Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property. The service and validity of these notices was not disputed by the Respondent. The service and expiry of the Notice to Quit fulfilled the requirement in section 33 (1) (a) and (b) of the 1988 Act that the tenancy had reached its *ish* and tacit relocation was not operating. The service of the Section 33 Notice fulfilled the requirement in section 33 (1) (d) for the Applicant to have given notice stating that they required possession of the house.

71. The Respondent acknowledged that the Applicant had served a Notice to Quit and a Section 33 Notice but it was the Respondent's position that at the meeting on 13 November 2023 the Applicant agreed to withdraw the notices and agreed that no further action would be taken regarding eviction.
72. In the written submission lodged on 25 April 2025 the Respondent's Representative stated that it is the Respondent's position was that the Applicant is personally barred from relying on the notices served.
73. The classic description of the principle of personal bar is summarised in *Gatty v Maclaine* 1921 SC (HL) 1 as being : "*Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time*". Whilst the decision in *Gatty v Maclaine* remains authoritative, a more modern analysis of the law of personal bar can be found in *Personal Bar* (2006) by EC Reid and JWG Blackie in which the authors analyse personal bar by reference to two elements : inconsistency together with unfairness. The law is also summarised in *Gloag and Henderson, The Law of Scotland* (15<sup>th</sup> ed, 2022) at paragraphs 3.05 to 3.07 where reference is made to the fundamental elements of the doctrine as being inconsistency and unfairness.
74. Looking firstly at inconsistency, Gloag and Henderson refer to five elements requiring to be present as follows (as applied to this application) : (1) the Applicant must have a right which the Respondent says the Applicant is barred from asserting. (2) To the Respondent's knowledge, the Applicant must have behaved in a way which is inconsistent with the exercise of the right allegedly barred. The Respondent needs to tell the Tribunal the conduct upon which bar is allegedly based. (3) At the time of so acting, the Applicant must have known about the right. (4) The Applicant has now sought to exercise the right allegedly barred. (5) The exercise of the right must affect the Respondent.
75. Looking at unfairness, Gloag and Henderson state that a plea of personal bar is sustained only where, in addition to the person barred having acted inconsistently, there is clear evidence that it would be unfair for the right allegedly barred now to be exercised. They go on to state that in cases where a verbal representation is relied upon, as is the case here, it is normally required that the person to whom that representation was made should have relied upon it to their prejudice.
76. There is a fundamental dispute between the Parties as to what was said at the meeting on 13 November 2023. Mr Dunbar said that he did not undertake to withdraw the notices served or to halt the eviction process. His evidence

was supported by Ms Margach. Mr McKinnon's evidence was that Mr Dunbar did agree to withdraw the notices and to halt the eviction process. His evidence was supported by Ms Mackillop. There was one document produced which related to the meeting. It was described as being a note of the meeting. It was an email from Mr Dunbar to Ms Margach dated 14 November 2023. Mr Dunbar's evidence was that the email was a full record of what was discussed at the meeting. It was also his evidence that the email was in line with the agreed facts. Ms Margach's evidence was that the email did not refer to the eviction process being halted as it was not discussed. The Tribunal requires to determine, on the balance of probabilities, what was said at the meeting regarding eviction in order to determine whether a representation was made.

77. The Tribunal was referred to a number of authorities on the question of credibility and reliability. Comments made in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* 2013 EWHC 3560 were referred to with approval in *Shanley V Clydesdale Bank plc* 2019 CSOH 75 and *PW (AP) v KM* 2024 CSOH 85. Those comments were :

*"...the best approach for a judge to adopt...is in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean oral testimony serves no useful purpose, though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of witnesses, rather than in testimony of what the witness recalls of particular conversations and events. Above all it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

78. The only document lodged regarding the meeting on 13 November 2023 was the email dated 14 November 2023. This was not sent to Mr McKinnon but to Ms Margach. Mr Dunbar's evidence was that the email was in line with the agreed facts and that it contained a full record of what was discussed. Much of the email covered issues which were of no relevance to this application. There were a number of references to Mr McKinnon's relationship with other individuals at Pitgaveny. The final paragraph commenced by saying "*The proposal is that we get an independent valuation for a rent of the property minus the field area...*". This sentence suggests that the removal of a field from the scope of the property let was discussed and yet it is not referred to elsewhere in the note. There is then reference to a payment plan. The email states "*We would agree to write off 12 months rent, Susie said the arrears*

*were about £10,000 so Craig is agreeing to a new rent and paying £5,000 as part of a payment plan.*" This sentence is close to but is not in line with the agreed facts. The agreed facts were that the rent arrears for the 17 month period August 2022 to December 2023 would be reduced to £5,280 and that the Respondent would pay off the arrears by paying an increased monthly rent of £840. The inference which the Tribunal draws from this document is that there was a wide ranging discussion at the meeting on 13 November 2023, which included reference to some issues that are not fully explored in the email, and that whilst the email contains a broad record of what was discussed, it is not entirely accurate.

79. At the time of the meeting the rent had been in arrears for 16 months. Mr Dunbar's evidence was that the notices were served in October 2023 because he was concerned about rent arrears. It was also his evidence that he would have withdrawn the notices if the arrears had been paid. The meeting took place a little over a month after the notices were served and some weeks before they were due to expire. It seemed to the Tribunal that it was implausible and inherently unlikely that the notices and the threat of eviction were not discussed at the meeting on 13 November 2023. The Tribunal considered that the evidence of Mr McKinnon and Ms Mackillop was more credible and reliable in this regard than that of Mr Dunbar and Ms Margach. The Tribunal did not consider that either Mr Dunbar or Ms Margach were not telling the truth but the Tribunal formed the view that their evidence was not reliable. Mr Dunbar's evidence was, at times, vague. He could not recall whether an independent valuation had been carried out to re-assess the rent for the Property, nor could he recall whether there had been any discussion with Mr McKinnon before the arable land was removed from the subjects let. He was unsure about the number of rooms in the Property. At the beginning of his evidence he told the Tribunal that he served the notices because he was concerned about criminal activity at the Property and later in his evidence he said that the notices were served as he was concerned about rent arrears. Mr Dunbar's email of 14 November 2023 lacked detail on important matters. After the meeting Mr McKinnon started to pay rent at the rate of £840 per month. Mr Dunbar took no steps towards eviction until June 2024. The Tribunal concluded that the inference to be drawn from the known and probable facts was that the notices and the threat of eviction were discussed at the meeting on 13 November 2023. Neither Mr McKinnon or Ms Mackillop could recall the precise words used by Mr Dunbar which lead them to believe that, if steps were taken to address the arrears, no further action would be taken to evict Mr McKinnon from the Property.
80. The Tribunal formed the view that the notices and threat of eviction were discussed at the meeting on 13 November 2023 and that Mr McKinnon and Ms Mackillop left the meeting with the impression that matters had been

resolved in such a way that the threat of eviction was withdrawn. However, the Tribunal was unable to determine what was said, whether any assurance given was in some way conditional and whether the words used amounted to a representation by Mr Dunbar that the notices were withdrawn or that no further steps would be taken to evict the Respondent. In those circumstances, the first requirement for establishing personal bar has not been met.

81. The making of a representation or inconsistency as described in *Gloag and Henderson* is the first element of personal bar. The second element is unfairness. In their analysis of unfairness, *Gloag and Henderson* refer to the need for there to have been reliance. They state that in cases where a verbal representation is relied upon, as is the case here, it is normally required that the person to whom that representation was made should have relied upon it to their prejudice. They also note that there is no reliance if the actions are otherwise motivated, that when the inconsistent conduct is constituted purely by inaction, prejudice is usually required and that if the right alleged to be barred is of great value, bar is not readily imposed.
82. The authorities lodged on behalf of the Applicant included *Lousada & Co v Lesser (Properties) Ltd* 1990 SC 178. In that case the lord Justice Clerk referred to *Armia Ltd v Daejan Developments Ltd* 1979 SC (HL) 56 where the Court considered that it must be shown that the [pursuers] had altered their position in reliance upon the alleged waiver on the part of the respondents but Counsel for the defenders accepted that it was not necessary to demonstrate that the pursuers had acted to their prejudice.
83. On the evidence, the Tribunal was unable to conclude that a representation had been made by Mr Dunbar. The Tribunal does not therefore require to determine whether the second element of personal bar, unfairness, was established. Mr McKinnon's evidence was that he paid the increased monthly payments of £840 in reliance on his understanding that no further action would be taken to evict him from the Property. By the end of 2023 Mr McKinnon owed a substantial amount of rent arrears. Making payments towards those arrears would not prejudice Mr McKinnon. *Lousada & Co v Lesser (Properties) Ltd* and *Armia Ltd v Daejan Developments Ltd* indicate that, in any event, it is not necessary to demonstrate that the Respondent acted to his prejudice. The Tribunal did however recognise that the Respondent had a contractual obligation to pay rent for the Property which he occupied and it could therefore be argued that the payments of £840 per month were otherwise motivated.
84. Both Parties gave evidence regarding the maintenance of the access track and the removal of arable land from the subjects let. The Tribunal did not

regard those matters to be of relevance to the establishment of the basis on which an order for possession was sought or to the question of personal bar.

85. The Tribunal heard from both Parties about the presence of cannabis at the Property. The email of 14 November 2023 noted the presence of cannabis. Reference is made to “*a small amount of cannabis (1.5g) but also several plants...*”. The email notes that the Respondent said the plants were not his and that a court case was pending but the police had accepted the cannabis was for personal use. The email therefore makes clear that Mr McKinnon told Mr Dunbar there were cannabis plants at the Property. The online news articles lodged noted that the Court accepted there was no evidence of a commercial operation. They also note the presence of 48 cannabis plants in an outbuilding at the Property with a potential value between £11,400 and £46,170. The articles indicate a potential value for the cannabis plants and do not comment on the amount of cannabis found, other than the plants. The documents lodged do not confirm whether the amount of cannabis found (aside from the plants) was 1.5g or not.
86. Having established that the requirements of section 33 (1) (a) (b) and (d) of the 1988 Act have been met and that the Applicant is not personally barred from making this application, the Tribunal considered the question of reasonableness. When addressing the question of reasonableness, the Tribunal has a judicial duty to consider the whole circumstances in which the application is made. Some factors may have little or no weight, others may be decisive but it is wrong for the Tribunal to exclude from consideration matters which they ought to take into account. The Tribunal must objectively balance the rights and interests of both Parties.
87. The statement of rent arrears as at 12 August 2025 indicated arrears of £18,740. The Parties agreed that the rent arrears for the 17 month period August 2022 to December 2023 would be reduced to £5,280. This was not taken into account in the statement of arrears. If it was taken into account that would reduce the total arrears to £13,480 which is still a significant sum.
88. The Tribunal heard evidence from Mr McKinnon and Ms Mackillop about their sons. Ms Mackillop told the Tribunal that their youngest son has ADHD and anxiety and is being assessed for autism. Her evidence was that he had specific housing needs which had been assessed by an occupational therapist. Ms Mackillop’s home meets those needs. Ms Mackillop told the Tribunal that their older son is under supervision of social work. Mr McKinnon told the Tribunal that he was concerned that having to leave the Property would have a negative impact on his children. He was struggling to find alternative accommodation and was concerned that he would be unable to find alternative accommodation that would accept his dogs.



89. Mr Dunbar's evidence as regards reasonableness was that the rent arrears had meant he had to extend a loan and also that the situation was, at times, stressful.

90. The Tribunal is well aware of the difficulties faced by tenants seeking accommodation across Scotland. The Tribunal noted the negative impact that an order for possession may have on the Respondent's children but also noted that their housing needs are met by Ms Mackillop's accommodation.

91. Having considered all of the circumstances, the Tribunal determined that it is reasonable to issue an eviction order. In reaching its decision the Tribunal attached particular weight to the fact that the Respondent's children's housing needs are currently met when they reside with Ms Mackillop and to the significant level of rent arrears.

### **Decision**

92. The Tribunal grants an Order for possession of the Property.

93.

### **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.**

**Legal Member**

**Joan Devine**

**Date : 25 August 2025**