



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to an application for eviction/ possession of a Rented Property in terms of Rule 66 of the Procedure Rules.

Chamber Ref: FTS/HPC/EV/24/3898

Re: 3 Ardoch Court, Stevenston, KA20 3PU ("the Property")

Parties:

John Cruickshanks, 17 Fairways, Irvine, KA12 8TE ('the Applicant')

Hayley Campbell, 3 Ardoch Court, Stevenston, KA20 3PU ('the Respondent')

Alistair Meek, CHAP, 71 Princes Street, Ardrossan ('the Respondent's Representative')

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal')

Tribunal Member: Jacqui Taylor (Legal Member) Nick Allan (Ordinary Member)

1. Background.

The Applicant applied to the Tribunal for eviction/ possession of the Rented Property under section 33 of the Housing (Scotland) Act 1988, in terms of Rule 66 of the Procedure Rules. The application was dated 22nd August 2024 and section 5 detailed the grounds of appeal in the following terms: 'Short Assured Tenancy, Tenants issued with notice to quit and section 33. Failed to vacate property on ish date. Renting to son who is returning from overseas'

2. Documents lodged with the Tribunal were:-

2.1 The Short Assured Tenancy Agreement between the parties dated 20th March 2013.

2.2 AT 5 dated 20th March 2013.

2.3 A copy of the Notice to Quit dated 14th June 2024 giving the Tenant formal notice to quit the Property by 21st August 2024.

2.4 A copy of the Section 33 Notice to the Tenant dated 14th June 2024 advising her that the Landlord requires vacant possession on or before 21st August 2024.

2.5 An email from the Applicant dated 6th October 2024 confirming that the Notice to Quit and Section 33 were served on the Respondent by hand.

2.6 A copy of the online completed Section 11 Notice.

3. By Notice of Acceptance by Josephine Bonnar, Convener of the Tribunal, dated 31st October 2024 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 23rd August 2024 and 6th October 2024) to a Tribunal.

4. Written Representations by the Applicant.

The Applicant sent the Tribunal an email dated 3rd April 2025. The email stated that the Applicant had been verbally abused by the Respondent. The Respondent has not provided access to carry out the safety inspections. The Respondent has not paid any rent top up payments other than the payments from universal credit since the rent increase came into effect on 29th November 2023 and one of the neighbours contacted him complaining about the state of the garden.

5. Case Management Discussion.

The case called for a CMD by conference call on 28th April 2025. The Tribunal members were Alan Strain (Legal Member) and Ahsan Khan (Ordinary Member). The CMD was adjourned to proceed to an in person evidential hearing. The CMD Note was dated 28th April 2025 and recorded that the Respondent opposed the application on the basis that the documentation was not signed by her and her signature had been forged and the Applicant maintained that the documents produced were genuine.

The CMD Note stated:

'The issues for determination.

As these matters could be determinative of the application and were dependent upon evidence of the parties the Tribunal had no option other than to fix an evidential hearing to consider the following issues:

(i) Whether a valid SAT was created commencing 21st September 2013.

(ii) If so, whether the SAT has been validly terminated.

(iii) If it has been validly terminated whether it is reasonable in all the circumstances to grant the order sought.'

6. Written Representations by the Respondent.

The Respondent sent the Tribunal administration an email dated 2nd May 2025 which referred to forged signatures on the documents and a witness signature of someone she has never met. She states that she attached a copy of the original paperwork with her signature on it and the document the Landlord claims is signed by her.

7. Hearing.

7.1 This case called for an in person hearing at Ardeer Community Centre, Stevenston at 10.00 am on 12th September 2025.

The Applicant and his wife Karen Cruickshanks attended.

The Respondent did not attend but she was represented by Alistair Meek of CHAP.

7.2 Preliminary Matters.

7.2.1 Mr Cruickshanks confirmed that the owners of the Property are himself, his wife and also Christopher Richards. They are also the Landlords and Mr Cruickshanks is the sole applicant.

7.2.2 Mrs Taylor referred to the late submissions lodged by Mr Cruickshanks on 8th September 2025. She explained that in terms of Procedure Rule 22 they should have been lodged no later than 7 days before the hearing. Mr Meek confirmed that he had received a copy and he was not opposed to the Tribunal receiving them late. Mrs Taylor confirmed that she would allow the documents to be considered by the Tribunal, although lodged late.

7.2.3 Mrs Taylor referred the parties to the CMD note dated 28th April 2025. Mr Cruickshanks was not sure if he had seen it. The clerk confirmed that the Applicant had been sent a copy of the CMD Note by email on 1st May 2025. Mr Meeks confirmed that he had received it. Mrs Taylor read out the CMD Note to the parties. Mr Cruickshanks seemed to recall the contents and stated that he was happy to proceed and did not require a postponement.

7.3 Both parties agreed that the lease commencement date was 21st March 2013.

7.4 Mr Cruickshanks made the following oral submissions to the Tribunal:

7.4.1 He had lodged copies of the previous tenancy agreements that show that the rent had never been less than £650 per month.

7.4.2 He met the Respondent at the Property on 20th March 2013. There were three people there. He cannot remember who they were. He gave one of them the lease agreement and AT 5. Somebody signed the lease and the AT5. He was pretty sure it was Hayley. He had met the Respondent a couple of days before for the first time. The lease had been witnessed by Elizabeth Withers. She was not called as a witness as she is ill. He does not recall properly but he would have probably taken Elizabeth Withers with him when he went to the Property. In any event he understood that leases do not have to be witnessed.

7.4.3 A second lease was signed by the Respondent on 21st March 2013 when she went into the office and met with his wife.

7.4.4 He stated that in his view the signature 'H Campbell' on the lease signed on 20th March 2013 was the same as the signature 'H Campbell' on the AT5 and the lease dated 21st March 2013. If there is a difference between the signature 'H Campbell' on the leases dated 20th March 2013 and 21st March 2013 this could be accounted for by the fact that Hayley Campbell had signed one document in the office and one outside the Property.

7.4.5 As both the Notice to Quit and the section 33 notice had been accepted by the Council he stated that this confirms that the notices are in order.

7.4.6 He stated that he has a photograph on his phone which shows his wife Karen Cruickshanks handing the Notice To Quit and section 33 notices to Hayley Campbell. He had not sent the photograph to the Tribunal in advance of the hearing.

After Mr Meek and Mrs Taylor confirmed that they were happy for Mr Cruickshanks to show the Tribunal the photograph he showed the Tribunal and Mr Meek a photograph date stamped 14th June 2024. The time the photograph was taken was 6.45pm. The photograph showed Mrs Cruickshanks handing a document to Hayley Campbell.

7.4.7 It is reasonable for the Tribunal to grant the eviction as the rent arrears now amount to £3800 and Hayley Campbell is not allowing access for the safety checks to be carried out.

7.5 Mrs Cruickshanks made the following oral submissions to the Tribunal:

7.5.1 She recalled the Respondent had called into the office on 21st March 2013. She was complaining about some problem with the Property. Mrs Cruickshanks did not

realise that the Respondent had signed the lease the previous day. She prepared a fresh lease document and wrongly detailed the rent as £550. She realised she had made a mistake and phoned the Respondent and asked her to destroy the wrong lease. The Respondent must have just kept both leases. She confirmed that the signature on the lease dated 21st March 2013 was Hayley's signature. They would definitely have given Hayley the AT5 as they lease about 40 properties and know the process.

7.5.2 She sent the Notice to Quit and section 33 notice to the Respondent by recorded delivery post on 8th May 2024. After the short adjournment she explained that this information was incorrect. She had sent rent demand letters to the Respondent by recorded delivery mail and not the notice to quit and section 33 notice. She had hand delivered the notice to quit and section 33 notice to Hayley Campbell on 14th June 2024 and her husband has a photograph confirming this.

7.5.3 She had helped Hayley Campbell in the past in relation to a covid grant to pay off her rent arrears.

7.5.4 In 2022 she had served Hayley with an incorrect Notice to Leave dated 14th January 2022. She has provided the Tribunal with a copy. She took the Notice to Leave to the Property and handed it to Hayley Campbell who took it inside. She waited on the door step and Hayley returned it to her signed 'H Campbell'.

7.6 Mr Meek made the following oral submissions to the Tribunal:

7.6.1 It is Hayley Campbell's position that the signatures 'H. Campbell' on the lease dated 20th March 2013 and the AT5 are not her signature and she never received the AT5.

7.6.2 Hayley Campbell did not attend as a witness as she did not want an argument with the Applicant as relations between them have been very strained.

7.6.3 Hayley Campbell cannot confirm when she received the Notice to Quit and Section 33 Notice.

7.6.4 Mr Meek did not object to Mr Cruickshanks showing the Tribunal the photograph of his wife handing the notice to quit and section 33 notice to Hayley Campbell on 14th June 2024 and after seeing the photograph he accepted that service of the documents took place on that date.

7.6.5 He opposes the eviction.

7.6.6 However, if the eviction is granted he asked the Tribunal for a delay of two months as Hayley Campbell's two children (ages 17 and 21) reside in the Property and they have cognitive disabilities. If she has to apply to the Local Authority for rehousing, she will need more time.

7.6.6 He explained that Hayley Campbell does not agree that the rent arrears amount to £3,800. However, he does not propose to explain the details in relation to this application.

8. Findings in Fact

8.1 The lease commencement date was 21st March 2013.

8.2 The Respondent signed the lease dated 21st March 2013.

8.3 The Respondent did not sign the lease dated 20th March 2013.

8.4 The Respondent did not sign the AT5 dated 20th March 2013.

8.5 The signature 'H Campbell' on the lease dated 21st March 2013 and the Notice to Leave dated 14th January 2022 is the same and the signatures are those of the Respondent Hayley Campbell.

8.6 The signature 'H Campbell' on the lease dated 20th March 2013 is different from the signature 'H Campbell' on the lease dated 21st March 2013.

8.7 The signature 'H Campbell' on the AT5 is different from the signature 'H Campbell' on the lease dated 21st March 2013.

9. Decision

9.1 The Tribunal acknowledges that the parties have two versions of the tenancy agreement. Both tenancy agreements are described as short assured tenancies and are between John Rankine Cruikshanks, Karen Cruikshanks and Christopher Richards, as Landlords, and Hayley Campbell as Tenant. Both agreements state that the tenancy will commence on 21st March 2013 and end on 21st September 2013.

The First version of the lease is dated 20th March 2013 and states that the rent payable is £650 per 4 weekly in advance. It is signed 'H Campbell'. The signature does not have a line running through it as part of the signature. It was witnessed by Elizabeth Withers. It is not possible to decipher the signature of the Landlord.

The Second version of the lease is dated 21st March 2013 and states that the rent payable is £550 per 4 weekly in advance. It is signed 'H Campbell'. The signature does

have a line running through it as part of the signature. It was witnessed by Sheryl McGrath. It is not possible to fully decipher the signature of the Landlord. The first initial is a 'K'.

9.2 The Tribunal accept Mrs Cruickshank's evidence that the Respondent signed the lease dated 21st March 2013 in their office.

9.3 The Tribunal acknowledge that Mrs Cruickshank's evidence was that she could not be certain that the Respondent signed the Notice to Leave as she did not see her sign it. However, the Tribunal find that on a balance of probabilities the Respondent did sign the Notice to Leave due to the following:

- (i) Mrs Cruickshank's evidence is that she handed the Notice to Leave to Hayley Campbell, she took it inside the Property and then returned it signed to Mrs Cruickshank who was waiting on the door step. The Tribunal accept this evidence.
- (ii) The signature 'H Campbell' on the Notice to Leave is the same as the signature on the tenancy agreement dated 21st March 2013.

9.4 The AT5 Notice produced is addressed to the Respondent and it relates to the tenancy of 3 Ardoch Court, Stevenston. It is dated 20th March 2013. The declaration acknowledging receipt of the AT5 has been signed 'H Campbell'. The Applicant's position is that it is valid. The Respondent's position is that she was never given an AT5.

9.5 The burden of proof is on the Applicant to prove that he served the Respondent with the AT5 before the creation of the tenancy. The standard of proof is the balance of probabilities. The Tribunal have found that signature 'H Campbell' on both the lease dated 21st March 2013 and the Notice to Leave dated 14th January 2022 is the same and that signature is the signature of the Respondent. The Tribunal have found that the signature 'H Campbell' on the AT5 is not the same as the signature 'H Campbell' on the lease dated 21st March 2013 and the Notice to Leave dated 14th January 2022. The evidence of the Applicant is that he attended at the Property on 20th March 2013, there were three adults there and he cannot be sure if it was the Respondent who signed the lease and the AT5. The Tribunal are not persuaded by Mr Cruickshanks'

suggestion that the difference between the signatures on the two leases and the AT5 is due to the fact that the AT5 and the lease dated 20th March 2013 were signed outside and the lease dated 21st March 2013 were signed in an office.

The Tribunal find that the Applicant was not served with the AT5 before the commencement of the tenancy given the uncertainty in the Applicant's recollection, the fact that the Respondent's position is that she was not given an AT5 and that the signature on the AT5 is not the same as the signature on the lease dated 21st March 2013 and the Notice to Leave dated 14th January 2022.

9.6 The ground of eviction detailed on the application is that the short-assured tenancy has reached its ish.

9.7 Section 32(1) of the Housing (Scotland) Act 1988 defines a short assured tenancy as an assured tenancy (a) which is for a term of not less than six months and (b) in respect of which an AT5 notice has been served on the tenant before the creation of the tenancy.

9.8 As the Tribunal have found that the Respondent was not served with an AT5 the lease is not a short-assured tenancy as the requirements of section 32(1) of the Housing (Scotland) Act 1988 have not been met. Accordingly, the Tribunal refuse the application.

9.9 The decision of the Tribunal was unanimous.

10. 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.

J Taylor

18th September 2025

Legal Member