



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 33 Housing (Scotland) Act  
1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/25/0230**

**Property at 74 Garmouth Road, Lhanbryde, Moray, IV30 8HL (“the Property”)**

**Parties:**

**Mrs Mary Whyte, 5 Cranmoss Court, Lhanbryde, Moray, IV30 8HL (“the Applicant”)**

**Mr Jeremy Wild, Ms Linda Anderson, 74 Garmouth Road, Lhanbryde, Moray, IV30 8HL (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision - in absence of the Respondents**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant.**

**Background**

1. The Applicant seeks an order for possession of the property in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, and Section 11 Notice were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer. The parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 29 August 2025 at 2pm and that they were required to participate.
3. The CMD took place on 29 August 2025. The Applicant was represented by her husband, Mr Whyte, and her niece, Ms Sanderson. The Respondents did not participate or contact the Tribunal in advance of the CMD.

## **The Case Management Discussion**

4. Ms Sanderson told the Tribunal that the Respondents are still living at the property. She had a text from them recently.
5. The Legal Member advised that there were two issues in relation to the documents lodged with the application. Firstly, there is no evidence of service of the Notices on the Respondents, although it had been stated that they were hand delivered. Ms Sanderson said that she delivered the notices to the Respondents personally at the property on 9 November 2024. The second issue concerns the Section 33 notice. The Tribunal had noted that the date specified in the Notice is 10 December 2024. If it was not delivered until 9 November, the Respondents had not received the required period of notice. Ms Sanderson said that this date is a typographical error. Earlier in the Notice it is stated that the tenants require to vacate by 10 January 2025. This is also the date specified in the Notice to quit which accompanied the Section 33 notice. She also said that the Respondents understood that the relevant date was 10 January 2025 as there had been discussions about the fact that they would be able to stay in the house until after the Christmas holiday period.
6. In response to questions from the Tribunal, Ms Sanderson said that the Applicant has decided to sell the property to fund her retirement. She is 68 years of age and retired. The property is her only rental property. She inherited it from her mother and now wishes to sell it. In relation to the Respondents, Ms Sanderson said that they have lived in the property for some time and would probably like to stay. However, they understand that it has to be sold at some point. They previously indicated that they have applied to the Local Authority and seem to want to obtain housing in the social rented sector rather than looking for a private let. However, she has not received a recent update from them about their housing application. Ms Sanderson said that the Respondents are in their early sixties, both in employment and there are no dependants living with them at the property. The rent is up to date and there are no tenancy related issues.

## **Findings in Fact**

7. The Applicant is the owner and landlord of the property.
8. The Respondents are the tenants of the property in terms of a short assured tenancy agreement.
9. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 9 November 2024.

10. The Applicant wants to recover possession of the property in order to sell it to fund her retirement.
11. The Respondents are in employment and have applied to the Local Authority for re-housing.

### **Reasons for Decision**

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 10 August 2016 to 10 February 2017 with a provision that it would continue on a month to month basis after the initial term.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit on the Respondents on 9 November 2024. The Notice to Quit called upon the Respondents to vacate the property on 10 January 2025 an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated.
16. The Tribunal is also satisfied that the Applicant served a Section 33 notice on the Respondents, also on 9 November 2024. The Section 33 notice states “we require vacant possession as at 10 January 2025. The tenancy will reach its termination date as at that date and we now give you notice that you are required to remove from the property on or before 10 December 2024.” Having regard to the contents of both notices, and the additional information provided at the CMD, the Tribunal is satisfied that the date of 10 December 2024 was a typographical error and that the Respondents would have been aware that the date that the Applicant wanted possession of the property was the first date, 10

January 2025.

17. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
18. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e ) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.
19. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
20. The Tribunal had regard to the following: -
  - (a) The Respondents did not contact the Tribunal or indicate that the application is opposed.
  - (b) The Applicant is 68 years of age and retired. She intends to sell the property to help fund her retirement.
  - (c) The Respondents are in employment and have been in contact with the Local Authority regarding re-housing
21. For the reasons outlined, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.

## **Decision**

22. The Tribunal determines that an order for possession of the property should be granted against the Respondents.

## **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.

# Josephine Bonnar

Josephine Bonnar, Legal Member

30 August 2025