



**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/25/1022**

**Re: Property at 12e Market Street, Musselburgh, EH21 6PT (“the Property”)**

**Parties:**

**Acrepoint Limited, 16 Barnes Green, Livingston, EH54 8PP (“the Applicant”)**

**James Louttit, 12e Market Street, Musselburgh, EH21 6PT (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mrs M Lyden (Ordinary Member)**

**Decision**

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

**Background**

1. This is a Rule 66 application whereby the Applicant is seeking an order for possession in terms of section 33 of the Housing (Scotland) Act 1988 (“the Act”). The Applicant representative lodged a short assured tenancy agreement commencing on 14<sup>th</sup> November 2012 to 14<sup>th</sup> November 2013 and continuing on a monthly basis thereafter, Form AT5, rent statement, section 11 notice with evidence of service, Form AT6 with evidence of service, correspondence between the parties, and notice to quit and section 33 notice with evidence of service.
2. The Application and notification of a Case Management Discussion were served on the Respondent by Sheriff Officer on 27<sup>th</sup> August 2024
3. By email dated 26<sup>th</sup> September 2025, the Applicant representative lodged a submission on reasonableness.

## **Case Management Discussion**

4. A Case Management Discussion ("CMD") took place by telephone conference on 13<sup>th</sup> October 2025. The Applicant was not in attendance and was represented by Mr David Gray of Gilson Gray. The Respondent was in attendance.

### **The Applicant's position**

5. Mr Gray said the rent arrears are now £7854. A payment of £2142 was made on 2<sup>nd</sup> April 2025 and a payment of £714 was made on 9<sup>th</sup> October 2025, the latter being the current monthly rent. The Applicant is seeking an order for possession. The Respondent has failed to prioritise their monthly rent. The Respondent is making no attempt to make payment towards the arrears. The Applicant has eight properties and there are financial obligations to be met with monthly outgoings for their properties. The absence of rent from this tenancy had placed financial strain on the Applicant's ability to manage their portfolio.
6. Responding to questions from the Tribunal as to any prejudice to the Applicant if no order was granted, and the monthly rent was covered, Mr Gray said the Applicant would be able to let the Property at a higher rent if the order was granted. Mr Gray emphasised this was not the reason for making the application. The Applicant may be minded to serve a rent increase notice on the Respondent if no order is granted.
7. The Tribunal raised an issue in that the Form AT5 appeared to have been signed on 14<sup>th</sup> January 2011, which did not accord with the start date of the tenancy. During the CMD, Mr Gray obtained a previous tenancy agreement from the Applicant which commenced on 14<sup>th</sup> January 2011 to 14<sup>th</sup> July 2011 and monthly thereafter. The monthly rent was £560. The Tribunal adjourned to allow Mr Gray to lodge the tenancy agreement. Thereafter, Mr Gray submitted no further Form AT5 was required, as the statutory terms of the tenancy had not changed when the second tenancy was put in place. The Tribunal accepted Mr Gray's position.
8. Responding to questions from the Tribunal, Mr Gray said the letting agent handles pre-action requirement correspondence and has a system for issuing the same.
9. Following representations from the Respondent, Mr Gray said the Applicant would not be averse to an extended period for execution of the order to two months. Mr Gray said the local authority may be in a position to assist the Respondent with moving from the Property.

### **The Respondent's position**

10. The Respondent said he was unable to pay his rent after retiring from employment. He has been in receipt of an occupational pension which did not allow him to make payment of his rent. He will begin to receive his state pension

this month and will then be in a position to make payment of the monthly rent. The Respondent said he did not know how he would find money to make payment towards the rent arrears, but the rent would now be covered. The Respondent said he received a lump sum payment four years ago. He has been assisted by the local authority and the CAB to investigate whether he is due any benefits, but he has not been eligible for benefits. He has tried to secure employment with his previous employer with no success. The Respondent has been in discussion with the local authority homelessness department. The Respondent is concerned that no housing will be available for him, given his circumstances and the current housing crisis.

11. The Respondent said he has a heart condition. He took a heart attack six years ago. He is on several medications. The Respondent lives alone in the Property, which has three bedrooms and is on the second floor. The Respondent has looked at other private residential tenancies, but has found the rent for a one-bedroom property is as high as that for the Property. The Respondent said he was able to make the payment towards the arrears in April 2025 due to a gift from a friend.
12. Responding to questions from the Tribunal as to any impact upon him of eviction due to his heart condition, the Respondent said he would be concerned if an order was granted and he was evicted, in case he could no longer access his prescriptions, which would have a huge impact on his health. The Respondent said he would find it difficult physically to move from the Property due to his heart condition. The Respondent said there may be high levels of stress involved in moving, which could impact his condition.

### **Further procedure**

13. The Tribunal discussed the options open to it, including fixing a hearing on reasonableness. The Tribunal explained what would be required, including medical evidence of the effect of an eviction order upon the Respondent. The Respondent said he did not think a hearing would be necessary, and that he would ask for a decision to be made at the CMD. The Respondent said he would ask for an extended period for any order to allow him more time to arrange alternative accommodation. The Respondent said he would continue making payment of the rent.

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

14.
  - (i) The Applicant is the heritable proprietor of the Property.
  - (ii) Parties entered into a short assured tenancy commencing on 14<sup>th</sup> January 2012 to 14<sup>th</sup> July 2012, and monthly thereafter.
  - (iii) Parties entered into a further short assured tenancy commencing on 14<sup>th</sup> November 2012 to 14<sup>th</sup> November 2013, and monthly thereafter.

- (iv) Notice to Quit and Section 33 Notice were served on the Respondent.
- (v) The short assured tenancy has reached its finish date.
- (vi) The contractual tenancy terminated on 14<sup>th</sup> December 2024.
- (vii) Tacit relocation is not in operation.
- (viii) The Applicant has given the Respondent notice that they require possession of the Property.
- (ix) It is reasonable to grant the order for possession.

### **Reasons for Decision**

15. Section 33 of the Act provides that the Tribunal may make an order for possession if satisfied that the short assured tenancy has reached its finish, tacit relocation is not operating, the landlord has given notice to the tenant that they require possession, and it is reasonable to make the order.
16. The contractual tenancy has been terminated and tacit relocation is not in operation. The Applicant has given the Respondent notice that they require possession of the Property.
17. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
18. The Applicant is suffering financially as a result of the non-payment of rent and the substantial arrears. The Applicant has a portfolio of properties to maintain and the non-payment of rent has an impact upon their ability to maintain their properties. The Applicant has issued pre-action correspondence to the Respondent and has made contact in an attempt to assist the Respondent to make payment. The Applicant has shown patience and understanding towards the Respondent's position.
19. The Respondent failed to make payment of rent for a considerable period, leading to substantial arrears. The Respondent has made one payment of rent this month, after a long period of non-payment. The Respondent has not engaged with the Applicant to make any effort to make payment of the arrears. The Respondent has said that he does not know if he can make any payment towards the arrears. The Respondent has a heart condition that may be affected by the granting of an order, however, he did not wish the opportunity to submit medical evidence in this regard, and argue reasonableness at a hearing. The Tribunal was not persuaded that granting an order would affect the Respondent's ability to receive his medications. The Tribunal appreciated there may be physical difficulties in removing from the Property, but sources of assistance are at hand to assist the Respondent.

20. In all the circumstances, the Tribunal considered that it was reasonable to grant the order. The Tribunal considered it was reasonable to grant an extended period of three months before which the order could be executed, particularly given the Respondent's health conditions. This will assist him in continuing his efforts to work with the local authority to address the homelessness issue and to secure alternative housing.

## **Decision**

21. An order for possession of the Property is granted under section 33 of the Housing (Scotland) Act 1988. The order is not to be executed prior to 12 noon on 13<sup>th</sup> January 2026.

## **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.**

# H Forbes

Helen Forbes

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**Legal Member/Chair**

**13<sup>th</sup> October 2025**  
**Date**