



**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/24/4996

Re: Property at 2 Castlehill Cottages, Kirkton Manor, Peebles, EH45 9JN (“the Property”)

Parties:

**Stanley Brash, Stanley Brash Construction, Cavalry Park, Peebles, EH45 9BU
 (“the Applicant”)**

Lucy Czapiewska, 2/12 Bruce Street, Edinburgh, EH10 5JE (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms A Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should not be granted.

Background

1. This is a Rule 66 application received in the period between 30th and 31st October 2024. The Applicant is seeking an order for possession. The Applicant representative lodged a copy of a short assured tenancy that commenced on 10th March 2015 to 9th September 2015 and monthly thereafter, and a notice to quit, section 33 notice and section 11 notice, all with evidence of service.
2. By email dated 25th April 2025, a representative for the Respondent provided representations that the Respondent gave notice to the Applicant to terminate the tenancy on 10th October 2016.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 8th May 2025. The Applicant was not in attendance and was represented by Mr Gray, Gilson Gray. The Respondent was in attendance. The Respondent said she moved out of the Property in 2016, giving notice to the Applicant on 10th October 2016. She has retained the notice, but has no evidence of having sent the notice, and does not remember how it was

served. The Respondent said she remembers discussions and text messages being exchanged with the Applicant's daughter. She no longer has access to the phone from which the messages were sent. The Respondent said there was a discussion regarding her ex-partner ("the Occupier") taking over the tenancy, and he remained in the Property when she left. The Respondent does not know if a formal tenancy was entered into by the Occupier. She was unaware of any issues until notice to quit was served upon her in October 2024. The Respondent is unaware of whether the Occupier is aware of this Tribunal process. The Respondent said she does not see what place she has in this process.

4. Mr Gray confirmed he is in receipt of a copy of the notice said to have been served by the Respondent, but the Applicant has no record of having received it and there is no evidence of delivery of the notice. As far as the Applicant was aware, the Respondent remained in the Property. The Applicant only became aware of the actual situation when Sheriff Officers served notice to quit at the Property in October 2024. They were informed by the Occupier that the Respondent was no longer there. Notice to quit and a section 33 notice were then served on the Respondent at her current address. It was Mr Gray's position that an order for possession should be granted. Mr Gray said no tenancy had been entered into between the Applicant and the Occupier. He was unaware that the Applicant's daughter may have been involved in discussion. The Occupier has paid rent throughout the tenancy.
5. The Tribunal was not satisfied it would be in order to make an order for possession in the circumstances. It was agreed the matter should proceed to an evidential hearing with the issue of whether the tenancy was terminated by the Respondent as a preliminary issue. Responding to questions from the Tribunal as to whether the Occupier should be added as a party to the application, Mr Gray had no objection. The Tribunal considered this matter should be raised with the Respondent's representative so that it can be discussed with the Respondent.
6. The Tribunal made a Direction to the Respondent dated 8th May 2025 in the following terms:

The Respondent is required to provide:

1. *A note of defence to the Application;*
2. *A copy of the notice to end the tenancy dated 10th October 2016;*
3. *Representations as to whether the Tribunal should make an order to add [the Occupier] as a party to the application;*
4. *Submissions regarding whether telephone conference would be a suitable format for the evidential hearing.*

The said documentation and representations should be lodged with the

Chamber no later than close of business 14 days after the issue of this Notice.

7. By email dated 9th May 2025, the Respondent representative lodged a copy of the Respondent's notice allegedly terminating the tenancy.
8. By email dated 21st May 2025, the Respondent representative lodged a response to the Direction and an inventory of productions, comprising tenancy agreements and council tax demands for three properties in which the Respondent has resided since leaving the Property. The Respondent representative lodged a copy of a non-harassment order granted against the Occupier on 8th May 2024. The Respondent opposed the adding of the Occupier as a party to the proceedings as this would expose the Respondent to significant risk and compromise her safety.
9. By email dated 21st October 2025 at 9.25am, the Tribunal received a witness list and inventory of productions from the Applicant representative.

The Hearing

10. A hearing took place by telephone conference on 21st October 2025. Both parties were in attendance. The Applicant was represented by Mr Smart, Solicitor. The Respondent was represented by Ms Serpa, Edinburgh CAB. The start of the hearing was delayed to allow Ms Serpa time to read the late submission by the Applicant.

Preliminary matters

11. Mr Smart apologised for the late submission of documents which was due to an administrative error, in that it had been believed that the documents had been submitted on 10th October 2025. It had come to the attention of Mr Smart that they had not been submitted, hence the late lodging. Mr Smart pointed out that only documents 6 to 9 were new documents, and they were not lengthy. Ms Serpa confirmed she had considered the documents and was not opposing the late lodging. The Tribunal decided to accept the documents, in terms of Rule 22(2) of the Procedural Rules, given the reasonable excuse provided by Mr Smart.
12. Responding to questions from the Tribunal, Mr Smart said the Applicant accepted the Respondent had left the Property in 2016 and that the only matter to be considered was whether the tenancy had been terminated by the Respondent.

Evidence-in-chief of the Applicant

13. The Applicant gave his personal details and said he is the director of a building company. A tenancy was entered into between the parties in 2015. The Applicant was unable to say when the tenancy commenced, as he was giving evidence from his car and did not have the productions in front of him. The Applicant confirmed that clause 18(3) of the tenancy agreement provided

that the Respondent must give one month's notice in writing to terminate the tenancy. The Applicant said he had no personal recollection of the tenancy having been terminated in the required way. The Applicant said he was not aware of notice having been given by the Respondent. The Applicant said his daughter did not bring the matter to his attention, and she was not aware of notice being given either. The Applicant said if the notice had been sent to his business address, he would have been made aware of it, and he had no recollection of being made aware of it. All correspondence is provided to him on a daily basis. The Applicant said he did not know when the Respondent left the Property as he had not been made aware of this. Asked whether the tenancy was ongoing and notice had not been received, the Applicant said that was correct.

14. The Applicant said he wishes to sell the Property. He wants to retire for health reasons, having suffered significant illness. He has been advised by a hospital consultant to stop working, as it is causing him stress to continue, and this is not good for his health. He requires the money from selling the Property to pay company redundancies and debts. The Property requires work and he wishes to get it ready for sale while he still has a building company. The Applicant employs 15 people directly. The proceeds from sale of the Property are essential. The Applicant cannot wind up the business without selling the Property. The Applicant has already sold machinery from the business. The Applicant said he would have to wind up the company if the Property was not sold. It is crucial to have a reasonable transition and he requires capital to pay off all his employees. The Applicant said he has two big contracts to finish and has taken on no further work after that. He expects the contracts to be complete in 2026.
15. The Applicant said he cannot get access to the Property as the Occupier will not allow it. There are concerns about the private water supply and the local authority have been unable to get access.

Cross-examination of the Applicant

16. The Applicant said he was made aware the Respondent and the Occupier had split up. There was a rumour that they had split up and it was clear the Respondent was not around anymore.

Questions from the Tribunal

17. The Applicant confirmed there is a group of 12 houses at the farm, including the Property, and he lives in one of the properties. He could not be sure when he became aware the Respondent had left, and said it was possibly a year after she moved in. The Applicant said it was just a rumour, and for all he knew, they could have got back together. The Applicant said he was not aware who was paying the rent. The money comes into a company account. He was not aware of any change in who paid the rent. Asked whether he became aware in the 9 years since the Respondent left that she was not there, he said he thought she was the tenant. She paid the rent. He did not

think through the implications of the Respondent not being there. Asked when he became aware of the implications, the Applicant said it was when they decided they wanted to take the house back. During discussions, he said, it became apparent there was a problem.

18. The Applicant said he had tried to gain access in relation to the private water supply around two years ago but the Occupier refused access. The Applicant said his company manages the rental of the Property. There had been no access to get any inspections or repairs done. Asked how they would contact the Occupier, the Applicant said they would write to him and say they were coming round. There had been reports the Property was in a poor state. Asked to whom the letters regarding access would be addressed, the Applicant said he would imagine they were addressed to the Respondent. He would not get involved in such a matter, which would go through his secretary.

Evidence-in-chief of Ms Lea Brash

19. The witness provided her personal details. She is the daughter of the Applicant. She provided general administrative assistance to the Applicant in managing the rental of the Property.
20. Ms Brash said she had minimal correspondence with the Respondent before the tenancy commenced. She did not receive a letter giving notice. She was not aware of a letter giving notice. Ms Brash said she had not communicated with the Respondent in 2016 regarding the matter of giving notice. Asked whether she had any recollection of communication taking place, she said no. Asked whether there was any reason the Respondent would contact Ms Brash about termination, the witness said no. Asked whether, as far as she was aware there was no communication with the Respondent in 2016 regarding the intention to terminate the tenancy, Ms Brash said no.
21. Ms Brash confirmed the Applicant was seeking to sell the Property as he is looking to retire and requires to sell the Property to assist with the process. This is part of his retirement plan. Asked whether the property requires to be sold to assist in winding up the business, the witness said yes. The witness confirmed the Applicant has health issues and had been given medical advice to quieten down his life. He works in building and has a stressful live. The Applicant requires funds to help reduce his costs. The witness said it is not really an option not to sell the Property as the Applicant has to retire. It is not sustainable for him to keep working.

Cross-examination of Ms Brash

22. The witness denied there had been any contact at all with the Respondent during 2016.

Questions by the Tribunal

23. Asked whether there had been any discussion about the Occupier taking over the tenancy of the Property in 2016, the witness said she did not recall any conversation. Asked whether she recalled any communication at any time with the Respondent, the witness said there would have been discussion when the tenancy commenced but there was no discussion about transfer of the tenancy. She would have helped with the original paperwork, but the Applicant was the contact person.

Evidence-in-chief of the Respondent

24. The Respondent said she provided the notice in writing to the Applicant in 2016. The Respondent said there was some sort of exchange of information with Ms Brash in 2016, which, as far as she could remember, was by text message. Asked whether she remembered sending text messages, the Respondent said she did not remember clearly. The Respondent did not remember how she sent the notice to the Applicant, and said it was either by email or post. The Respondent said she did not remember if she returned the keys of the Property to the Applicant.

Questions from the Tribunal

25. The Respondent said she did not remember if she received any confirmation from the Applicant following service of the notice.

Cross-examination of the Respondent

26. The Respondent said she did not remember the date of service of the notice and she did not have any confirmation of this. The Respondent reiterated that she could not remember the method of service. The Respondent said she had no vouching to show the notice had been served. The Respondent said she did not remember seeking confirmation of receipt of the notice by the Applicant. Asked whether that would have been a prudent course of action, the Respondent said she was in a very difficult relationship at the time and she does not remember a lot of the detail around that time. The Respondent said she remembered some exchange of information with Ms Brash by text message, and said she had not lodged any evidence of such communication.

Summing up by the Applicant

27. Mr Smart said there was no dispute that the tenancy agreement had been entered into by the parties or that the Respondent no longer resides at the Property. The matter in dispute is whether the tenancy was terminated in accordance with clause 18(3) of the tenancy agreement. The Applicant's position was that it was not terminated and that the short assured tenancy continues. The Applicant and Ms Brash were consistent in the fact that no notice was received. The Respondent could not confirm the method of

delivery of the notice. There was no vouching available. The Respondent took no steps to confirm that the Applicant had received the notice.

28. The Applicant and Ms Brash spoke to the matter of reasonableness confirming that the proceeds of the sale of the Property were required to wind up the company. Evidence had been lodged regarding winding up and sale. There would be no funds for redundancy payments if the Property was not sold.
29. The Respondent admits she no longer resides in the Property. There would be no prejudice to the Respondent if an order was granted. The tenancy had to be terminated in line with clause 18(3) of the tenancy agreement.
30. Mr Smart conceded there was no legal requirement that the Respondent confirm receipt of the notice by the Applicant.

Summing up for the Respondent

31. Ms Serpa said the Respondent has satisfied the terms of the tenancy agreement by giving one month's notice despite there being no proof of delivery. The tenancy agreement only provides that notice be given in writing and does not state how it must be delivered. It is nine years since notice was served. The Respondent's circumstances at that time were traumatic. The Respondent has no legal interest in the Property, and has not had possession since 2016. The Occupier has exclusive possession, has been paying the rent, and should be considered the tenant. The Respondent should be removed from the case due to her non-involvement.
32. Ms Serpa said if the order was granted, this would cause stress to the Respondent by associating her with the property in which her abusive ex-partner lives and by associating her with her ex-partner. Compounding the stress is the concern that the Respondent could be found responsible for the state of a property to which she no longer has access. The Respondent is concerned that an order for possession may affect her credit history and any subsequent tenancy.

Further comment

33. Mr Smart said an order for possession would not affect the Respondent's credit history.
34. Responding to questions from the Tribunal, Mr Smart said if the order was granted, the Applicant may have to raise a further application to remove an Occupier with no right or title to be there. Alternatively, the wording of the order for possession may allow the Applicant to remove the Occupier.
35. In response to Ms Serpa's point that the Occupier ought to be considered the tenant, Mr Smart said no communication took place between the Applicant

and the Occupier to agree a tenancy agreement. It is the Applicant's position that the tenancy with the Respondent continues

Findings in Fact

36.

- (i) The Applicant is the heritable proprietor of the Property.
- (ii) Parties entered into a short assured tenancy agreement in respect of the Property which commenced on 10th March 2015 continuing to 9th September 2015 and monthly thereafter.
- (iii) On or around 10th September 2016, the Respondent served written notice upon the Applicant that she was terminating the tenancy, giving one month's notice. This was in accordance with the terms of the tenancy agreement.
- (iv) The tenancy ended on 10th October 2016.

Reasons for Decision

37. The Respondent lodged a copy of a notice she claimed to have served upon the Applicant to terminate the tenancy. The notice appeared to be sufficient in its terms to terminate the tenancy in accordance with clause 18(3) of the tenancy agreement. The validity of the notice itself was not brought into question by or on behalf of the Applicant. The issue was whether or not the notice was served.
38. It was clear that the recollection of both parties had been affected by the passage of time, which was understandable. The Applicant stated that he had no personal recollection of the tenancy being terminated. The Respondent could not remember the method she used for sending the notice to terminate the tenancy. Furthermore, the Respondent claimed to have had the added burden of significant stress around the time of serving the notice.
39. The Tribunal considered it significant that the Respondent had kept a copy of the notice of termination. The Tribunal did not consider it unusual that the Respondent had not kept vouching to indicate the method of service. She would have had no reason to do so, and, if the notice was served by post, there may not have been any vouching available.
40. The Tribunal considered that the Applicant's failure to remember whether or not the tenancy had been terminated did not mean it had not been terminated by notice served in accordance with the tenancy agreement. The Tribunal considered it possible that the notice arrived at the building company and was not passed to the Applicant, or that it was passed to the Applicant and he simply forgot about it. The Applicant stated in evidence that he had no recollection of being made aware of the notice.

41. The Tribunal found, on the balance of probabilities, that the Respondent properly served the notice in accordance with the tenancy agreement, thus terminating the tenancy.
42. The Applicant appears to have accepted the position that the Respondent no longer lived in the Property, by his own admission from about a year after she moved in. The subsequent tenancy into which the Respondent entered commenced on 20th August 2016, which suggests the Respondent moved out in or around August 2016, one year and three months after the tenancy commenced. Although the Applicant at one point said he had only heard rumours about a split between the Respondent and the Occupier, he also stated that he was aware they had split up, and that he did not think about the implications of the Respondent not being there until he wanted to take the house back.
43. The Tribunal was struck by the lack of action on the part of the Applicant over a period of years when it would appear that he knew the Respondent was not in occupation. If he had been concerned that the Respondent had not properly terminated the tenancy, it would have been open to him to take action against the Respondent and the Occupier at a much earlier stage. His inaction suggests he was content to accept that the Respondent had left, whether or not he received notice of the termination of the tenancy, and that her ex-partner had taken over occupation and was paying the rent. The Tribunal was not persuaded that the Applicant considered that the Respondent was still the tenant for a period of eight years, before the application was raised.
44. Ms Brash, whose response to questions was brief in the extreme, stated that she did not receive a letter terminating the tenancy. She also stated that she took little to do with the tenancy. If the latter evidence is to be believed, there would be no reason for her to receive the termination notice. The Tribunal noted that Ms Brash departed once from her blanket response of denying any discussion or involvement in anything but the commencement of the tenancy to state that she did not recall any conversation about the Occupier taking over the tenancy. It may, therefore, have been the case that there was such discussion, however, the Tribunal made no findings in this regard.
45. The Tribunal observed that the representations made at the CMD on behalf of the Applicant differed significantly from the Applicant's evidence at the hearing. At the CMD it was stated that, as far as the Applicant was aware, the Respondent remained in the Property, and that he only became aware of the actual position when the Occupier made Sheriff Officers aware of this in October 2024.
46. For obvious reasons, the Tribunal made no findings in respect of reasonableness. If the Tribunal had not decided the preliminary matter as it did, it is likely that it would have considered that it was reasonable to grant an order, given the compelling circumstances put forward on behalf of the Applicant.

Decision

47. No order for possession is granted.

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

Legal Member/Chair

21 October 2025
Date