



**Decision 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/25/1861**

**Re: Property at 5 McLauchlan Court, Darvel, KA17 0HH (“the Property”)**

**Parties:**

**Mr Colin Richmond, 54 Hutchison Drive, Darvel, KA17 0BL (“the Applicant”)**

**Miss Claire Brown, 5 McLauchlan Court, Darvel, KA17 0HH (“the Respondent”)**

**Tribunal Members:**

**Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

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

**Background**

1. By application dated 30 April 2025, the applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 10 July 2025 the application was accepted by the tribunal and referred for determination by the tribunal.
3. A Case Management Discussion was set to take place on 12 November 2025 and appropriate intimation of that hearing was given to both the landlord and the tenants.

4. The application was heard together with a conjoined application involving the same parties for a payment order under tribunal reference FTS/HPC/CV/25/1862

### **The Case Management Discussion**

5. The Case Management Discussion (CMD) took place on 12 November 2025. The applicant was not present but was represented by Ms. Millie Archibald, solicitor, Wallace and Hodge, Ayr. The respondent was not present
6. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters

### **Discussions at CMD**

7. The tribunal asked various questions of the applicant's solicitor with regard to the application and also indicated that the tribunal had read and considered written representations lodged by both parties prior to the CMD
8. The tribunal explained that the only matter which appeared to require to be determined was whether it was reasonable to grant the order

### **Findings in Fact**

9. The applicant and the respondent are respectively the landlord and the tenant of the property by means of a tenancy agreement originally commencing on 17 November 2017
10. The tenancy was a short assured tenancy in terms of the Act
11. The rent payable was initially £450 per month and was now £500 per month.
12. On 27 January 2025 the applicant's agent served upon the respondent a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondents by recorded delivery post. Said notices became effective on 17 April 2025.
13. The notices informed the respondent that the applicant wished to seek recovery of possession using the provisions of section 33 of the Act.

14. The notices were correctly drafted and gave appropriate periods of notice as required by law.

15. At the date of the CMD the respondent was in rent arrears in the amount of £6850

16. The applicant wishes to sell the property and intends to do so if they recover possession

17. The basis for the order for possession was accordingly established

### **Decision and reasons**

18. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.

19. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order

20. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

21. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

***“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to***

***call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.***

22. In this case the tribunal finds that it is reasonable to grant the order.
23. The tribunal accepts the unchallenged evidence that the respondent is in significant rent arrears and that the applicant now wishes to sell the property.
24. The respondent lodged a number of emails with the tribunal on 7 October 2025 indicating that she had stopped paying rent because of alleged issues with repairs within the property and because of alleged verbal abuse suffered from the landlord. She also indicated that she was suffering from a number of health problems. She stated that she occupied the property along with a 16-year-old son
25. The applicant's solicitor indicated that all repairs had been carried out when required and that the suggestions of verbal abuse were not accepted. The applicant's solicitor had lodged an e-mail from a plumber who had attended at the property in October 2025. In the email the plumber indicated that *“when I entered the house I could hear water running. As I made my way to the hallway there was water running and the ceiling was down and the downstairs carpet was swimming in water”*. On being questioned by the plumber, the respondent had indicated it had been in that condition for a number of months
26. It was noted that in the linked payment application that the respondent had initially sought a Time to Pay Direction and offered to pay of £5 per month towards arrears and had then increased that offer to £50 per month. Even at £50 per month, it would take 137 months ( or nearly 12 years) to clear the current arrears which stood at £6850 at the date of the CMD. That was an unacceptable length of time to the applicant who was not prepared to accept that offer.
27. The level of arrears is extremely high, and it is unlikely that the arrears will ever be repaid. There is no suggestion that the tenant is making any attempt to meet the rent. The arrears as the date of the CMD are a significant sum and there appears to be no likelihood of them being repaid by the respondent within a reasonable period of time
28. The applicant's solicitor noted that the respondent in her written representations had confirmed that she had been offered alternative accommodation by the local council in May 2025 but had refused it. It was thus

clear that the respondent had sought appropriate advice from the council relating to rehousing and that the council were willing to assist

29. The applicant's solicitor confirmed that if the tribunal was minded to grant the order but to delay enforcement of the order, that such a delay would not cause significant issues to the applicant.
30. The respondent requires assistance from the relevant authorities in obtaining alternative accommodation. It appears to be the case that many councils are now advising persons in the situation of the respondent that they will not obtain assistance unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain more suitable accommodation for herself.
31. The balance of reasonableness is weighted towards the applicant in this application. In a decision by the Upper Tribunal for Scotland, ( **David Stainthorpe against Marion Carruthers and Raymond Swan**, 2024UT30 UTS/AP/22/0027) Sheriff Jamieson stated at para 82 that in certain circumstances when considering the reasonableness of granting an eviction order, ***"the deciding factor to be that the appellant exercises a right of property, whereby he can use or dispose of the house as he thinks fit. I therefore agree with the appellant's submission that those interests must take precedence over the wishes of the respondents to continue in occupation of the property indefinitely"***. He further indicated at para 83 that a ***"proper balance between the parties' interests can in my opinion appropriately be struck in this case by postponing the date for possession to allow the respondents time to find alternative accommodation"***
32. The tribunal will delay enforcement of the order until 30 January 2026 to give some additional time to the respondent to obtain alternative housing or to seek appropriate advice relating to rehousing. The tribunal also noted that the respondent occupies the property with her 16-year-old son.
33. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD.

## **Decision**

The order for recovery of 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

**Jim Bauld**

---

Legal Member/Chair

24/11/2025

---

Date