



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 (“the 1988 Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Tribunal Ref: FTS/HPC/EV/25/1830

Property Address: 45 Rotchell Road, Dumfries, DG2 7SD (the Property)

Ms Amy McFall, 43 Rotchell Road, Dumfries, (the Applicant)

Brazenell & Orr, Solicitors, 104 Irish Street, Dumfries, DG1 2PB (the Applicant’s Representative)

Mr Marcus Wyllie and Ms Kayleigh Richardson, 45 Rotchell Road, Dumfries, DG2 7SD (the First and Second Respondents)

Tribunal Members:

Ms. Susanne L M Tanner Q.C. (Legal Member)

Mrs Sara Hesp (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(i) was satisfied in terms of Section 33 of the 1988 Act that the short assured tenancy for the Property has reached its end; tacit relocation is not operating; no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and that the Applicant has given to the Respondents two months’ notice stating that they require possession of the house; and that it was reasonable to make an order for possession in the circumstances of the case; and

(ii) made an order for possession in terms of Section 33 of the 1988 Act with the date for enforcement delayed until 28 February 2026.

The decision of the tribunal was unanimous.

Statement of Reasons

1. The Applicant's Representative made an application to the tribunal on 29 April 2025, in terms of Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks the Respondent's eviction from the Property under Section 33 of the 1988 Act (possession on termination of a short assured tenancy).
3. The Applicant's Representative lodged supporting evidence for the application:
 - 3.1. Copy of a short assured tenancy agreement;
 - 3.2. Copy Notice to Quit;
 - 3.3. Copy Section 33 Notice;
 - 3.4. Copy Section 11 Notice; and
 - 3.5. AT5.
4. Further information was requested from the Applicant's Representative and provided on 16 July 2025, namely:
 - 4.1. A copy of the tenancy agreement;
 - 4.2. Copy signed notices which include Royal mail tracking for proof of delivery;
 - 4.3. Copy Section 11 notices;
 - 4.4. Response from the local authority confirming service;
 - 4.5. Information about service of AT5.
5. The tribunal's administration obtained the title sheet to the property dated 30 April 2025, which shows that the Applicant is the registered proprietor of the Property.
6. The tribunal's administration confirmed registration details for the Property with Landlord Registration Scotland which shows that the Applicant is the registered landlord.
7. The Application was accepted for determination and a Case Management Discussion (CMD) was fixed by teleconference on 13 January 2026 at 1000h.
8. On 14 November 2025, parties were notified by letter of the date, time and place of the CMD and told that they were required to attend. Parties were also advised in the same letter that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the Application, which may involve making or refusing an eviction order. If parties do not attend the CMD this will not stop a decision or order being made by the tribunal if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The

Respondent was required to submit written representations in response to the Application to the tribunal's offices by 5 December 2025.

9. The Application paperwork and notification of the date, time and place of the CMD was served on the Respondents by Sheriff Officers.
10. On 12 January 2026, the Second Respondent, Ms Richardson, sent an email to the tribunal to provide an update on re-housing, in which she stated that a new property had been identified and allocated by Dumfries and Galloway local authority homeless team and that she hoped to move mid-February, although this is subject to the current tenants of that property being able to move into their new property which is not yet ready for them to move into. She stated that Wheatley expect to have the keys for Ms Richardson's allocated property by the end of the month and there is an estimate of early to mid February 2026 for a date of entry.

Case Management Discussion (CMD): 13 January 2026 at 1000 by teleconference

11. Mrs Sarah Powell, solicitor, from the Applicant's Representative attended on behalf of the Applicant.
12. The First Respondent, Mr Marcus Wyllie attended. The Second Respondent Ms Kayleigh Richardson attended.

Second Respondent's submissions

13. Ms Richardson said that she has been offered a house, as outlined in her email sent the day before the CMD. She said that the homeless team thought that she would be out before the tribunal. They will get the keys back for the allocated property at the end of January 2026. She should be able to move a couple of weeks after. The housing team has waited until they knew this tribunal was going ahead. She said that she understands that there is a 30 day period after which an order for possession could be enforced. She said that if she has to go into temporary accommodation she will do that, if that date is the date that she has to be out. She explained that the allocated property is tenanted at the moment. They are being re-housed but their new house is not ready for them. She appreciates that she is way past her eviction date. She thought that she would give her name and details and be re-housed. She has wanted to move for the last 2.5 years and has been waiting to be housed. She said that if an extension is possible that might be helpful but whatever date is given by the tribunal she will accept that.

First Respondent's submissions

14. The First Respondent, Mr Wyllie is not opposing the eviction order being made. He has not stayed in the house for three years. He said that he does not even know why he is still on the tenancy.

Applicant's Representative's submissions

15. Mrs Powell said that she spoke with the landlord yesterday afternoon following receipt of the email from Ms Richardson. She was not aware that a property had been allocated to Ms Richardson. Ms Richardson moving out by mid February is the best case scenario. The difficulty is when the allocated property is likely to become available. She said that she did speak with the landlord about the 30 days before any order would come into effect. Her hope is that that would be sufficient time given the terms of Ms Richardson's emails as she has said that she is hoping to get the keys early or mid February. She has been told that by Wheatley homes that she does not have a definite date because there is a chain. Mrs Powell referred to Ms McFall's detailed explanation of her personal circumstances and said that Ms McFall is keen to move back to Dumfries and go to the Property herself. Likewise she did not indicate that there would be any significant difficulty if the tribunal considered granting an order with a slightly longer period of time to ensure Ms Richardson was evicted when her property is not ready yet. The Applicant is content with an order which is reasonable in all of the circumstances.

16. The tribunal adjourned to consider the parties' written and oral submissions.

17. The tribunal makes the following findings-in-fact:

- 17.1. The Applicant is the registered proprietor of the Property.
- 17.2. There was a short assured tenancy between the Applicant and the Respondents for the initial period from 1 September 2012 until 1 March 2013.
- 17.3. Thereafter the tenancy continued by tacit relocation on a monthly basis and relocated until 1 November 2024.
- 17.4. The short assured tenancy reached its end on 1 November 2024, by service on behalf of the Applicant on the Respondents of a Notice to Quit dated on 30 August 2024, notifying the Respondents that the tenancy would reach its termination date as at 1 November 2024.
- 17.5. Tacit relocation is no longer operating;
- 17.6. No further contractual tenancy is for the time being in existence.

- 17.7. A Section 33 notice was served on behalf of the Applicant on the Respondents on 30 August 2024, notifying the Respondents that the Applicant required vacant possession as at 1 November 2024.
- 17.8. The Applicant has given to the Respondent at least two months' notice stating that she requires possession of the Property.
- 17.9. The Application to the tribunal was made on 29 April 2025.
- 17.10. The first Respondent has not lived in the Property for around three years.
- 17.11. The Second Respondent resides in the Property on her own.
- 17.12. The Second Respondent is being re-housed by Wheatley Homes.
- 17.13. The property which has been identified for and allocated to the Second Respondent is not yet available but should be available from around mid-February 2026.
- 17.14. The Applicant wishes to return to live in the Property.

Discussion

18. There was no objection by either Respondent to an eviction order being made. The only matter for discussion was whether the period of 30 days would be sufficient for the Second Respondent to move out of the Property (the First Respondent no longer resides in the Property).
19. The tribunal is satisfied that the requirements of Section 33 of the 1988 Act are met.
20. The tribunal is satisfied that in all the circumstances and on the basis of the findings of fact, it is reasonable and to make an order for possession of the Property. However, having heard from both parties, the tribunal will delay the date for enforcement to 28 February 2026.
21. The tribunal made an order for possession, with the date for enforcement delayed until 28 February 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.

13 January 2026

**Ms. Susanne L M Tanner K.C.
Legal Member/Chair**