



**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/25/3636

Re: Property at 6 Jones Green, Livingston, EH54 8QB (“the Property”)

Parties:

Mr Norman Brown and Anna Bisset, 14 March Gait, Edinburgh, EH4 3RX (“the Applicants”)

Mr Tomasz Gorecki, 6 Jones Green, Livingston, EH54 8QB (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

At the Case Management Discussion (“CMD”), which took place by telephone conference on 23 February 2026, the Applicants were not in attendance but were represented by Mr Findlay Crofts of Harper Macleod. The Respondent was also present.

The CMD was also in respect of the related case bearing reference FTS/HPC/CV/25/3640.

By email dated 6 February 2026 the Applicants’ representative amended the application in terms of Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

By various emails dated from 16 February 2026 the Respondent lodged various documents. The Tribunal had previously extended the deadline for the lodging of submissions and documents to 16 February 2026. The Respondent did not ask the Tribunal to allow late documents and no explanation for their lateness was, in any event, provided.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that –

Background

The Tribunal noted the following background:-

- i. The Applicants are the joint heritable proprietors of the Property.

- ii. The Applicants leased the Property to the Respondent in terms of a Short Assured Tenancy Agreement ("the SAT") that commenced on 30 July 2010.
- iii. The initial term of the tenancy was for the period to 30 January 2011 and the tenancy has continued thereafter by tacit relocation.
- iv. The rent payable in terms of the SAT was initially agreed to be £425 per calendar month.
- v. On 21 March 2025, the Applicant's agent served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 requiring the Respondent remove from the Property by 30 July 2025.
- vi. The Applicant's agent served on West Lothian Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- vii. A pre-action protocol letter was issued to the Respondent by the Applicants' agent by letter dated 13 August 2025.
- viii. Rent has been in arrears since March 2024 and no rent has been paid by the Respondent from and including August 2024.

The CMD

At the CMD Mr Crofts for the Applicants made the following oral representations:-

- i. The rent was originally agreed to be £425 per month. That figure was increased to £450 per month in August 2014 and to £500 per month in August 2021. Whilst a further increase notice was issued in 2024 to increase the rent to £600 per month this was not agreed with the Respondent therefore the figure of £500 per month has been used to calculate the sums due to date.
- ii. Prior to February 2024 the Respondent paid £500 per month consistently. He has paid nothing at all since September 2024.
- iii. The Notice to Quit and section 33 Notice have been validly served and the Applicants have complied with the pre action requirements by virtue of the letter sent by Harper Macleod on 13th August 2025.
- iv. It is reasonable to grant an eviction order. There have been no payments by the Respondent since September 2024. The Applicants intend to sell the Property once they have possession of it. Relations with the Respondent have broken down.
- v. There have been issues with access for inspections of the Property and a Tribunal application required to be made for access to be obtained. That application has been granted and a date for access is being agreed.
- vi. The Applicants are not sure of the Respondent's current circumstances. He previously lived in the Property with his son and his partner.
- vii. Mr Crofts was not aware of the size of the Property.
- viii. The Applicants are retired.
- ix. The lack of payment by the Respondent is having an impact on the Applicants and they also have to bear the associated cost of these proceedings.
- x. The Applicants own other properties.

At the CMD the Respondent made the following oral representations:-

- i. The First Applicant unlawfully impersonated a landlord for 15 years. She was not registered as a landlord.
- ii. The Court action previously raised by the Applicants in Livingston Sheriff Court having been dismissed, the Applicants should be barred from pursuing these proceedings.
- iii. The Respondent accepted the rent was initially agreed to be £425 per month which was increased to £450 per month in August 2014. He said any increase in rent required that the Respondent be issued with a new contract. That was not done.

- iv. The Respondent said there are no rent arrears as he had to pay for repairs from his own funds. The Applicants' letting agent, James McDonald, did not carry out repairs on time as requested.
- v. The Tribunal looked at the Respondent's letter to the Second Applicant dated 1 October 2024 for a summary of the Respondent's position.
- vi. He stated that the carpet was replaced between 2012 and 2015. It was very worn and smelled and was causing a hazard. The Respondent accepted he had not asked the Applicants to replace the carpet before doing so himself. The flooring replaced by the Respondent was in the same location and again he accepted not having asked the Applicants first to carry out these works.
- vii. With regard to the damp said to be apparent on the living room ceiling and wall he said Mr McDonald had promised to repair but the Respondent was not prepared to wait and carried out the repairs himself by painting the area. This took place between 2011 and 2013.
- viii. The Respondent accepted whilst there were initial problems with the heating, the heating system was replaced by the Applicants between around 2011 and 2013.
- ix. With regard to the Respondent's suggestion that documents of the Respondent were used by the Applicants, he explained that between 2011 and 2013 he and his partner wanted to move. Mr McDonald was in the property each month collecting rent and said he could fix the Property so that they would stay longer. The documentation he asked for was the Respondent's family tax credit paperwork which the Respondent said was used by the Applicants to get a grant from the Council for replacing the boiler. At that time the Respondent was new to the UK. He had no time to investigate the position. The document was handed back a few days later. He is now aware that boiler grants were available for which anyone could apply.
- x. With regard to the garden works, these were carried out in around March 2014. The Respondent said he was upset that Mr McDonald had not fixed the living room ceiling and walls where the mould was. Mr MacDonald had also made no effort to secure the fence. The Respondent didn't want to wait for something to happen and therefore carried out the repairs himself.
- xi. The Respondent said there had been unlawful management of the Property and all facts were connected. He said that the Applicants failed the fit and proper persons test. Mr McDonald was only their agent. He said the Applicants were obligated to manage the Property but relied on Mr McDonald.
- xii. The Tribunal asked the Respondent whether he had taken any steps to find alternative accommodation. He made reference to physical harassment and intimidation since 2025. He referred to someone having approached the Property and kicked the front door.
- xiii. With regard to the alleged disconnection of the gas supply the Tribunal asked the Respondent what evidence he had that the Applicants undertook such an act. The Respondent said the Applicants had refused to provide him with messages. He said it was only a question of time until he got the evidence. He said it was on its way and would take a maximum of 30 days. He accepted there was no evidence in front of the Tribunal at the CMD.
- xiv. With regard to alternative accommodation the Respondent said he is looking for a mortgage in the first instance and has been advised that if he is forced to move out he would require to contact the local authority for temporary accommodation.
- xv. The Respondent said he wanted both the eviction and payment applications dismissed as they had already been dealt with by the Sheriff Court.

- xvi. The Respondent lives in the Property alone. He is 43 years of age and works as a driver at Edinburgh Airport.
- xvii. The Property has one bedroom.
- xviii. He has not yet spoken to the Council.
- xix. The Tribunal asked the Respondent why he paid the increased rent if he thought he needed a new tenancy agreement. He said that Mr MacDonald had misled him. He had not checked the landlord register and only found out later that the Second Applicant was not registered and that the rent increases were therefore unlawful.
- xx. The Tribunal asked whether the Respondent had previously asked for reimbursement of the monies that he had spent. He referred to having two visits with the Second Respondent when she demanded money despite still breaking the law.
- xxi. He said that joint landlords should be registered.

Mr Crofts for the Applicants made the following additional remarks:-

- i. He said the Applicants had not been made aware of the repairs that the Respondent had carried out.
- ii. With regard to the boiler, the Applicants have paid for the replacement boiler out of their own funds.
- iii. With regard to the garden repairs Mr McDonald had sought to engage with the neighbours of the Property for the costs involved to be split but the Respondent carried out the repairs before those discussions with the neighbours could conclude.
- iv. There is no evidence of the Applicants disconnecting the gas supply.
- v. With regard to the proceedings in Livingston Sheriff Court that these had been dismissed having been raised in the incorrect forum.

The Tribunal adjourned to consider the submissions heard.

Findings in Fact

The Tribunal made the following findings in fact –

- i. The Applicants are the joint heritable proprietors of the Property.
- ii. The Applicants leased the Property to the Respondent in terms of the SAT that commenced on 30 July 2010.
- iii. The initial term of the tenancy was for the period to 30 January 2011 and the tenancy has continued thereafter by tacit relocation.
- iv. The rent payable in terms of the SAT was initially agreed to be £425 per calendar month.
- v. The rent subsequently increased to £450 per month in August 2014 and to £500 per month in August 2021.
- vi. On 21 March 2025, the Applicant's agent served on the Respondent by Sheriff Officers a Notice to Quit and a Notice under Section 33 of the Housing (Scotland) Act 1988 requiring the Respondent remove from the Property by 30 July 2025.
- vii. The Applicant's agent served on West Lothian Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- viii. A pre-action protocol letter was issued to the Respondent by the Applicants' agent by letter dated 13 August 2025.
- ix. Rent has been in arrears since March 2024 and no rent has been paid by the Respondent from and including August 2024.
- x. The rent arrears due by the Respondent are £9350 as at the CMD.

Reasons for Decision

The application proceeds upon Section 33 of the 1988 Act.

Section 33 states:-

"Recovery of possession on termination of a short assured tenancy.

(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 ish;

(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."

The Tribunal is satisfied that the SAT has reached its ish and that tacit relocation is not operating.

The Tribunal is also satisfied that the Applicants have given proper notice to the Respondent that they require possession of the Property having regard to the terms of Section 33(2).

The Tribunal requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 1(e).

The Respondent did not dispute the Rent Statements produced in the sense that he did not suggest any payments had been made and not taken into account. He accepted he had not paid the sums claimed by the Applicants to be due and sought to justify his failure to do so on the following grounds –

i. *Failure to register as a landlord*

The Tribunal made it clear to the Respondent during the CMD that even if it was the case that the Second Respondent was not registered that did not impact on the applications before the Tribunal nor the Respondent's liability to pay rent.

Case law has established that a tenancy agreement exists and rent is due even if entered into by someone who is not registered as a landlord and who has therefore committed an offence under Section 93 of the Antisocial Behaviour etc (Scotland) Act 2004. The criminal sanction for failure to register as a landlord and civil contractual arrangements between a landlord and a tenant are distinct.

Reference is made to the case of AB v CD [2017] SAC (Civ) 32 in which the Sheriff Principal stated:-

"[20]The respondent here failed to register as a landlord and failed to give the tenant the required tenancy information. These failures both constitute statutory offences. It is also apparent from the increase in the level of the maximum fine that the Scottish Parliament considers that a failure to register as a landlord or to have communings about a lease without registration was a serious criminal offence. It is not specifically stated in the 2004 Act that failure to register will render a contract void. So it is necessary to consider the terms of the statute to discern whether the terms of the 2004 Act lead to the inference that the Scottish Parliament did not intend that the consequence of failure to register would be to render the lease invalid. Section 94(8) provides:

"(8) Except as provided in subsection (3), nothing in this Part affects the validity of any lease or occupancy arrangement under which an unconnected person has the use as a dwelling of a house during the relevant period."

The appellant falls within the definition of an unconnected person.

As the sheriff observes section 94(3) also provides:

"(3) Where a notice is served under this section, during the relevant period—

(a) no rent shall be payable under any lease or occupancy arrangement in respect of the house to which the notice relates;

(b) no other consideration shall be payable or exigible under any such lease or occupancy arrangement."

Those provisions would, as the respondent submitted and sheriff concluded, be otiose if to fail to register rendered the lease void.

[21] The statutory regime therefore establishes criminal penalties where a landlord fails to register, but operates only to restrict the liability for rent where there is a notice issued by the local authority under section 94(1). It does not render the contract void and does not entitle the appellant to avoid paying rent for her period of occupation under the lease, absent such a notice having been issued by the local authority."

The Respondent did not suggest any notice had been issued by the local authority pursuant to Section 94(3). On that basis, whether or not the Second Applicant was or was not registered as a landlord, rent remains due by the Respondent.

ii. *Livingston Sheriff Court proceedings*

The Tribunal also made it clear to the Respondent during the CMD that whilst the Tribunal had not seen the Court papers for the proceedings in Livingston Sheriff Court the Sheriff had dismissed those proceedings (as opposed to having granted decree of absolvitor) allowing the same claim to be raised again competently before

the Tribunal. This point therefore has no relevance and is no defence to these proceedings.

iii. *New Tenancy Agreements*

The Respondent sought to argue that the rent increases intimated by the Applicants were not enforceable as no new tenancy agreements were issued. New tenancy agreements are not required when rent is properly increased in terms of the legislative framework. Indeed the Respondent accepted the rent increases and paid the sums due in terms of them. This is no defence to these proceedings.

iv. *Repairs*

The Respondent sought to argue that repairs costs incurred by him many, many years ago ought to be offset against rent otherwise due. He appears not to have raised any of these issues as a reason for not paying rent until now. He accepted that a for a number of the repair costs incurred he had given no notice to the Applicants that remedial works were needed. By his own admission on other matters he was not prepared to wait for works to be effected and took these repairs into his own hands. No evidence or vouching was, in any event, produced to substantiate his position and any such claims have likely prescribed. His rent was paid up to date as at February 2024. The Tribunal did not accept these historic issues to constitute any defence to the non-payment of rent due from March 2024.

v. *Family Tax Credit Documents*

The Tribunal did not consider the Respondent's concerns about Mr McDonald's request for his family tax credit documents to be of any relevance whatsoever. Again, this was an issue that occurred many years ago, was unsubstantiated and is not remotely relevant as a defence to a claim for payment of rent arrears due.

vi. *Other matters*

The Respondent made other vague and unsubstantiated remarks about harassment, intimidation and gas supply disconnection. The Tribunal could not consider such issues absent any specification or evidence and therefore these remarks could not form the basis for a defence to non-payment of rent.

In the circumstances the Tribunal considered the rent arrears claimed by the Applicants, namely £9350, to be due by the Respondent. The sums due are significant. The Respondent has been in arrears of rent since March 2024 and has paid nothing at all since September 2024. It is reasonable to grant an eviction order.

Decision

The Tribunal grants an eviction order against the Respondent in favour of the Applicants.

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.

G Buchanan

03/03/2026

Legal Member/Chair

Date