



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

**Chamber Ref: FTS/HPC/EV/25/4202**

**Re: Property at 42 Torwood Avenue, Grangemouth, FK3 0DN (“the Property”)**

**Parties:**

**Mr Sebastian Zwierzchowski, Mrs Aneta Zwierzchowska, 30 Hillside Grove, Bo'ness, EH51 9RN (“the Applicants”) Northwood Central, 9-11 Bank Street, Falkirk FK1 1NB (“the Applicants’ Representatives”)**

**Mr Stewart Burnett, 42 Torwood Avenue, Grangemouth, FK3 0DN (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory procedure having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order.**

**Background**

1. By application received on 1 October 2025 (“the Application”), the Applicants’ Representatives applied to the Tribunal for an Order for eviction and possession of the Property based on Section 33 of the Act.

2. The Application comprised the following:
  - i) copy short assured tenancy agreement between the Parties and an entry date of 7 September 2012;
  - ii) copy Notice to Quit and copy Section 33 Notice both dated 20 June 2025 with proof of service;
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Falkirk Council being the relevant local authority;
  - iv) copy correspondence from the Applicants' Representatives to the Respondent regarding matters relating to the tenancy;
  - v) copy rent statement showing arrears of £5,980.00 at the date of the Application and the last rental payment made on 18 October 2024;
  - vi) copy pre-action requirement letters sent to the Respondent.
  
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion ("CMD") was fixed for 13 April 2026 at 10.00 by telephone conference and intimated to the Parties, and, in particular, to the Respondent by Sheriff Officer on 24 February 2026.
  
4. Prior to the CMD, the Applicant's Representatives lodged an updated rent statement showing that the rent due and owing had increased to £9,460.00 as at 7 March 2026 with a further instalment due on 7 April 2026 which would bring the rent due to £10,040.00. The statement also noted penalty costs of £1,850.00 and other expenses of £805.00 claimed to be due in terms of the tenancy agreement.

#### **CMD**

1. The CMD took place on 13 April 2026 at 10.00 by telephone. The Applicants were not present and were represented by Mrs. Johnstone of the Applicants' Representatives. The Respondent was not present and was not represented. He did not submit written representations. The Tribunal was satisfied that the Respondent had been made aware of the CMD and that he ought to attend and so proceeded in his absence.

2. The Application was heard alongside application FTS/HPC/CV/25/4204 between the same Parties seeking an Order for payment of the rent and other expenses due and owing.
3. Mrs. Johnstone confirmed that an Order for eviction is sought. The Tribunal explained that it required to be satisfied that the correct statutory process had been carried out and that it is reasonable to grant the Order.
4. The Tribunal noted that information in respect of the Applicants' finances had been set out in the Application and noted that the Respondent's failure to pay in almost a year and a half has had a significant detrimental effect on the Applicants' finances.
5. With regard to the Respondent, Mrs. Johnstone stated that there has been minimal contact from him and that there has been no response to the pre-action letters. Mrs. Johnstone confirmed the position, as set out in the Application and written submissions, that the Respondent has refused the Applicants' contractors and agents access to the Property and that he has not engaged with the Applicants' Representatives in respect of the eviction process. She stated that she was aware that the Respondent had made contact with Falkirk Council. Mrs. Johnstone advised that she was not aware of why the Respondent stopped paying rent in November 2024 and that she understood that he had a poor payment record prior to the Applicants' Representatives taking over the management of the Property.
6. With regard to the Respondent's personal circumstances, Mrs. Johnstone understood him to be in employment from time to time and stated that he lived alone.

### **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a short assured tenancy of the Property between the Parties commencing on 7 September 2012;

- ii) The correct statutory procedure bringing the tenancy to an end has been carried out and the Respondent remains in occupation of the Property;
- iii) A mortgage is secured against the Property;
- iv) The current rent arrears owed by the Respondent to the Applicants amount to £9, 460.00, with the current month's rent also being unpaid;
- v) The Respondent has not engaged with the Applicants and the Applicants' Representatives during the eviction process and
- vi) The Respondent is in employment from time to time and resides alone.

### **Rule 17 (4) of the Rules**

8. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". The Tribunal took the view that it had sufficient information to make a decision.

### **Issue for the Tribunal**

9. The statutory procedure being established and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order. The Tribunal took the view that it had sufficient information to make a decision on reasonableness.

### **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.

11. The Tribunal then had regard to the circumstances of the Parties.

12. The Tribunal must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

13. The Tribunal then looked to balance the rights and interests of both parties.

14. The Tribunal had regard to the fact that the Respondent had stopped paying rent without cause or reason to do so and has failed to pay rent in over a year. The Tribunal took into account the extent of the negative financial impact which the Respondent's actions have had on the Applicants. The Tribunal took the view that, regardless of the fact that the Applicants are entitled to terminate the tenancy without reason, the level of rent arrears and pattern of non-payment is not tenable for either Party.

15. With regard to alternative accommodation, the Tribunal had regard to the fact that, if evicted and made homeless, the Respondent would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.

16. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

17. This decision is unanimous.

### **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.**

# Karen Moore

13 April 2026

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Legal Member/Chair

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Date