



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/25/1993

Re: Property at 9 Girdle Toll, Irvine, KA11 1AW (“the Property”)

Parties:

Mr Angus McAinsh and Mrs Mary McAinsh, 17 Fallside Road, Bothwell, G71 8HE; 36 Mains Avenue, Beith, KA15 2AT (“the Applicants”)

Mr Peter Barr and Mrs Ann Barr, 9 Girdle Toll, Irvine, KA11 1AW; 9 Girdle Toll, Irvine, KA11 1AW (“the Respondents”)

Tribunal Members:

Serena Weir (Legal Member) and Eileen Shand (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents shall be evicted from the Property, it being reasonable in all of the circumstances that the eviction be granted. The Order is superseded until 24 June 2026.

Background

1. The application dated 09 May 2025 sought an eviction order under Rule 66 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 and section 33 of the Housing (Scotland) Act 1988 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, notice to quit, section 33 notice and section 11 notice to the local authority together with proof of delivery. The Tribunal also had before it paperwork confirming that the Applicants were appointed as executors of the estate of the landlord of the Property. The Short Assured Tenancy began on 24 July 2014.
2. Following initial procedure including requests by the Tribunal to the Applicants for further information and documentation, the application was accepted by the Tribunal on 03 November 2025. The application was notified to the Respondents by Sheriff Officer on 11 February 2026, together with details regarding the case management discussion, which was scheduled to take place on 24 March 2026.

Case Management Discussion

3. The Case Management Discussion (“**CMD**”) took place by telephone conference call on 24 March 2026, commencing at 2pm. The Applicants were represented by Mr Scott of Rentlease. The Respondents were represented by Mr Meek of CHAP.
4. The Respondents lodged written representations in advance of the CMD. In those submissions, it was explained that the Respondents did not have any objection to an eviction order being made but that they were seeking a delay to the order coming into effect.
5. Following introductions and introductory comments by the Legal Member, Mr Scott was asked to confirm his clients’ position in respect of the application. Mr Scott confirmed on behalf of the Applicants that this was the last of the landlord’s properties to be dealt with by the Applicants and that they were seeking an eviction order to be granted today.
6. Mr Meek was asked what period of time was sought to delay any possession order coming into effect. Mr Meek confirmed that this was a period of two months in addition to the 30 day appeal period.
7. In response to questions from the Tribunal Members, Mr Meek explained that one of the Respondents, Mr Barr, suffers from a health related condition which means that he requires to live in a ground floor property. The Respondents approached their local authority for alternative accommodation back in 2025 when they received notice to quit the Property from the Applicants. The Respondents were advised by the Council that they would not be given highest priority until an eviction order was made against them. The Council advised the Respondents that it could take several months to find them suitable permanent accommodation. The Respondents were advised by the Council that if they are not able to find permanent accommodation by the eviction date, they would be offered temporary accommodation. The Respondents are keen to avoid that. Their preference was to move directly into their permanent tenancy. The Respondents do not have the means to explore alternative accommodation in the private rented sector. Mr Barr is not in employment at the present as a result of his health. Mrs Barr is his full time carer. Both are in receipt of benefits. They live in the Property with their nine year old son.
8. The Tribunal Members adjourned to discuss the application in private and, on re-convening, confirmed that the eviction order sought would be granted with the earliest eviction date being stated as 24 June 2026, as agreed between the parties.

Findings in Fact

9. Fergus Alexander McAinsh (the “**Landlord**”) is the owner of the Property.
10. The Applicants were appointed as the executors of the estate of the Landlord following his death.
11. The Landlord and Respondents entered into a Short Assured Tenancy agreement on 24 July 2014. The tenancy continued until 24 January 2015 and from month to month thereafter. The terms of the tenancy require two months’ notice by either party to end the tenancy.

12. An AT5 notice under section 32 of the 1988 Act was served on the Respondents prior to the creation of the tenancy.
13. The Respondents were served with a valid notice to quit by letter dated 05 February 2025. In the said notice to quit, the Applicants gave notice to the Respondents that they would require to remove from the Property on or before 24 April 2025.
14. Further, on the same date, the Applicants served upon the Respondents Notice under Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession was required of the Property as at 24 April 2025.
15. The tenancy has come to an end.
16. Tacit relocation is not occurring.
17. Notification was provided by the Applicants to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.
18. The Landlord had a number of rental properties and this is the last remaining property with which the Applicants are dealing. The Applicants have been appointed as the executors of the Landlord. The Applicants wish to sell the Property.
19. Mr Barr has a health related condition which means that he needs to live in a ground floor property.
20. The Respondents live at the Property with their nine year old son.

Reasons for Decision

21. 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 end;

(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.”

22. The Tribunal was satisfied that it has sufficient information before it to make a decision and the procedure had been fair. The Tribunal considered the notice to quit and section 33 notice provided and the terms of the tenancy agreement. The tenancy was brought to an end by the combination of the section 33 notice and notice to quit served on the Respondents by letter dated 05 February 2025 where the notice to quit had an end of 24 April 2025.
23. The Tribunal was satisfied that pre-action requirements including the service of the notice to quit and section 33 notice in terms of the 1988 Act had been properly and timeously carried out by the Applicants in connection with this application.
24. Section 33(1) of the 1988 Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its end; that tacit relocation is not operating; that the landlord has given to

the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.

25. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged by the Applicants and the oral submissions on behalf of the Applicants and the oral and written submissions on behalf of the Respondents at the CMD, specifically that the request for a possession order was not opposed. Accordingly, the Tribunal was satisfied that it was reasonable in all of the circumstances to grant the eviction order. The Applicants accepted that it was reasonable in the circumstances for the order for eviction to be superceded until 24 June 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.

S Weir

29/03/2026

Legal Member/Chair

Date