



**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”)**

Chamber Ref: FTS/HPC/EV/25/2904

Re: Property at 7/3 Avon Street, Hamilton, ML3 7HU (“the Property”)

Parties:

Maurice Ryan, 7 Paradise Place, Perth, PH2 8JH (“the Applicant”)

Peter Latta, 7/3 Avon Street, Hamilton, ML3 7HU (“the Respondent”)

Tribunal Members:

James Bauld (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

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 4 July 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 22 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 20 May 2026, and appropriate intimation of that hearing was given to both the landlord and the tenants.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 20 May 2026. The applicant was represented by Ms Adriana Capaldi from BKF, Solicitors, Glasgow. The respondent was neither present nor represented. He had previously been represented by the local Citizens Advice Bureau.

Discussions at CMD

5. The tribunal asked various questions of the applicant's representative with regard to the application
6. In answer to the questions posed by the tribunal, it was confirmed the respondent was the tenant of the property and that the relevant notices had been served and received. The property is a top floor flat in a tenement building. There are significant repair issues with the roof. Roof replacement works are planned. The particular flat occupied by the respondent has been affected by water ingress and also requires significant internal repair. It was indicated that the tenant had a number of health issues.
7. Initially the applicant's representative was not able to provide answers to certain questions raised by the tribunal relating to the respondent's personal situation. The tribunal briefly adjourned to allow the applicant's representative to make inquiries of the letting agent.
8. During the adjournment, the tribunal instructed the tribunal clerk to contact the local CAB to ascertain if they intended to appear at the CMD. The clerk was advised by the Team Leader at the CAB that the respondent was aware of the hearing and that he wished to consent to the order for eviction. The clerk was advised that the CAB would not be appearing at the CMD.
9. Upon resuming the CMD, the applicant's representative confirmed that the respondent was a single man, aged approximately 46 who has recently suffered some significant health issues. He was now recovering and the CAB were assisting him in his attempts to obtain alternative and more suitable accommodation.

10. 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

11. The applicant and the respondent are respectively the landlord and the tenant of the property by means of a tenancy agreement originally commencing on 22 September 2017.

12. The tenancy was a short assured tenancy in terms of the Act

13. On 5 March 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 respondent by sheriff officers. Said notices became effective on 22 May 2025.

14. The notices informed the respondent that the applicant wished to seek recovery of possession using the provisions of section 33 of the Act.

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

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

Decision and reasons

17. 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.

18. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020

19. 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 that the respondent is a single man with no known dependents. He is currently unemployed. He has expressed a wish that he does not want to remain in the property and wished to consent to the order. The property may be unsuitable for him given his current health issues and the current state of repair of the property and he extensive and disruptive works that are planned..

24. The respondent has failed to provide any representations or evidence to indicate any reason why the order sought should not be granted

25. The balance of reasonableness is weighted towards the applicant in this application

26. 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.

Jim Bauld

20.05.26

Legal Member/Chair

Date