



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

Chamber Ref: FTS/HPC/EV/25/5497

Re: Property at Branchal, Church Road, Auchencairn, Castle Douglas, DG7 1QS (“the Property”)

Parties:

Mrs Elaine Wilson, Hallcraig, Church Road, Auchencairn, Castle Douglas, DG7 1QS (“the Applicant”)

Mr Peter Barker, Branchal, Church Road, Auchencairn, Castle Douglas, DG7 1QS (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Lorraine Charles (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory requirements for eviction and recovery of possession have been established and that it is reasonable to grant the order sought.

Background

1. By application dated 1 December 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 (“**the Rules**”).

2. On 23 January 2026, the application was accepted by the Tribunal and referred for determination by this tribunal.

3. A Case Management Discussion (“**CMD**”) was arranged to take place on 29 June 2026, and appropriate intimation of that hearing was given to all parties. The application was conjoined with an application for payment order under chamber reference CV/25/5498.

The Case Management Discussion

4. The CMD took place on 29 June 2026 by telephone conference call. The Applicant was represented by Mr Adam Turnbull solicitor, Gillespie Gifford & Brown LLP. The Respondent was present and was supported by his daughter Ms Eilidh McNaught.

5. In advance of the CMD, no written representations had been lodged by the Respondent.

Position of the Applicant

6. At the CMD, Mr Turnbull invited the tribunal to grant the order for eviction. He said that the notices were validly served and had not been challenged. There is no dispute on the merits, and the eviction order is a necessary step to source further accommodation for the Respondent.

7. In relation to the payment application, the Applicant has received no payment for 18 months (19 months later this week). Previously a rent suspension notice was issued by the local authority as the landlord registration had expired, but she did go on to renew this. This notice was issued after the period detailed in the rent statement. The Applicant has not sought an increase in the sum detailed in the payment action and has restricted this to the amount set out in her original application.

8. The Applicant is now in her 80s, and her husband is in his 90s. Managing the Property is too much for her and she is finding it increasingly stressful. She intends to sell the Property once she has vacant possession.

Position of the Respondent

9. Ms McNaught said that the Respondent had been in touch with the local authority housing team at Dumfries and Galloway Council. He had been advised that in order to obtain a house for his requirements, that an eviction order was required. They had first been in touch with the local authority when the Notice to Quit was served on the Respondent and had numerous meetings with them. The last meeting with housing officers was two weeks ago.

10. Her father has numerous long term deteriorating health conditions. He has a form of heart disease called aortic stenosis. He also has dementia, and mobility issues. He is registered as disabled. He requires housing with special adaptations. He needs handrails for any stairs and modified shower access. His needs can only be accommodated by the local authority after an eviction order is granted.

11. They have, in addition applied to Helensburgh and Lomond Council for accommodation, as well as various assisted living organisations for further options.

12. The Respondent lives at the Property with his other daughter who is 31 years of age and is the Respondent's full time carer. They have applied for 1 and 2 bedroomed properties. In the event that the Respondent were rehomed in Helensburgh and Lomond area, then Ms McNaught would step in as full time carer, as she would reside more locally.

13. In relation to the action for payment Ms McNaught said that the Respondent was advised to stop paying rent by the local authority as the landlord was no longer registered, and they had not heard anything further to state that the situation was resolved. The Respondent accepts that the sum of £5760 is due.

14. Ms McNaught read a letter of support from her sister, Ms Heather Barker who resides with the Respondent at the Property. She has lived there since February 2025. In the letter Ms Barker confirmed that due to her father's long term conditions, he required accessible housing. Local available private housing does not meet his needs. As the Property is a bungalow, this presently does meet his needs and thus the Respondent is not being treated as a high priority at the current time by the council. The eviction is required to expedite the process. They had not expected the process to take this long. Her father has been in considerable emotional stress and will be relieved to leave the Property. He is afraid to answer the door. She had only been made aware that there were outstanding rent issues on 1 June 2026, when the sheriff officer served the case papers in advance of the CMD. She had initially spoken to Citizens Advice and another local charity regarding time to pay. She had not submitted a time to pay direction application and intends to seek time to pay after the order is granted.

Findings in Fact

15. The Applicant and the Respondent, are, respectively, the landlord and the tenant, who entered into a short assured tenancy of the Property by an agreement dated 11 September 2013.

16. The tenancy is a short assured tenancy in terms of the Act.

17. The Applicant has served upon the Respondent a notice to quit and a notice in terms of section 33 (1) (d) of the Act, both notices being dated 14 and 15 May 2025. These notices were served on the Respondent by Recorded Delivery mail. Said notices became effective on 1 August 2025.

18. The notices informed the Respondent that the Applicant wished to seek recovery of possession using the provisions of section 33 of the Act.

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

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

21. A section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 was served by email upon Dumfries and Galloway Council by the Applicant, on 21 December 2025.

Reasons for Decision

22. An eviction order can only be granted if the tribunal is satisfied that it is reasonable to issue an eviction order.

23. In determining whether it is reasonable to grant the order, the tribunal is required to balance all of the evidence which has been presented and to weigh the various factors which apply to the parties.

24. In this case the tribunal finds that it is reasonable to grant the order.

25. The Respondent has confirmed that he does not wish to oppose the application. He has already approached the local authority for suitable accessible housing and will be relieved when the order is granted.

26. The tribunal has determined that, having considered all the relevant circumstances, the balance of reasonableness in this case weighs towards the Applicant.

27. The tribunal's order for eviction shall not be enforceable before 29 July 2026.

28. The tribunal also exercised the power within rule 17 of the Rules, and determined that a final order should be made at the CMD

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.

Yvonne McKenna

Yvonne McKenna

Legal Member/Chair

29 June 2026

Date

