



**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 1988 Act”)**

Chamber Ref: FTS/HPC/EV/25/5550

Re: Property at 20 St Leonards Court, Kinghorn, Fife, KY3 9TS (“the Property”)

Parties:

Mr Paul Kerr, 83 Dalmahoy Crescent, Kirkcaldy, Fife, KY2 6TA (“the Applicant”)

Mrs Birute Frankaityte, 20 St Leonards Court, Kinghorn, Fife, KY3 9TS (“the Respondent”)

Tribunal Members:

Alastair Houston (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession be made in favour of the Applicant.

1. Background

- 1.1 This is an application under rule 66 of the Chamber Rules whereby the Applicant sought an order for recovery of possession of the property. The application was accompanied by, amongst other things, copies of the written tenancy agreement between the parties, the notice to quit and notice in terms of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”).
- 1.2 No written representations had been received from the Respondent in advance of the Case Management Discussion.

2. The Case Management Discussion

2.1 The Case Management Discussion took place on 31 July 2026 by teleconference. The Applicant was represented by Ms Carmichael, solicitor. The Respondent appeared personally.

2.2 The Tribunal heard firstly from the Applicant's representative. The application was insisted upon. The Applicant wished to recover possession of and sell the property. This had been first attempted in 2024 but an application had been rejected by the Tribunal. The property was no longer financially viable for the Applicant to let. He owned no other rental properties. The Applicant's representative believed the rent charged to be £385.00 per month as reflected by the tenancy agreement. She did not have any information regarding the Applicant's main source of income or other financial circumstances. He was 52 years of age. There was finance outstanding on the property but the exact sum was not known.

2.3 The Respondent confirmed that she was 49 years of age and she lived with her 59 year old partner and 19 year old daughter. She worked as a cleaner and an interpreter, earning around £1200.00 per month but this was variable month to month. The Respondent's partner was currently unemployed but seeking work. Her daughter was a full time student. The family also received around £600.00 per month in Universal Credit, including a contribution to their housing costs. The property was a two bedroom property. The rent had been increased on three occasions, most recently around four months ago when it increased from £486.00 per month to £800.00 per month. This was unaffordable for the Respondent given her income. She had sought advice from the local authority but had been advised the rent was comparable to other private sector properties in the area. She had applied for rehousing to the local authority but the points initially awarded in respect of receiving a notice to quit had been removed. She had sought advice from Citizens Advice and was awaiting appointments with Frontline Fife and Fife Law Centre. She had attempted to make a homeless application to the local authority but had been told no priority would be given without an eviction order. If she required to move from the property without accommodation in the area this would be detrimental to her employment. If the Tribunal were to grant an eviction order, she would require a further two or three months.

2.4 The Applicant's representative confirmed that she did not have any details of the rent increases. There was no other information she could provide as to why the Applicant would require possession of the property as a matter of urgency beyond that already stated. The Tribunal adjourned the Case Management Discussion to allow an opportunity to consider the parties' positions.

3. Reasons For Decision

3.1 This application relates to a short assured tenancy agreement. Recovery of possession of the property was sought in terms of section 33 of the 1988 Act, which states:-

33Recovery 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 finish;

(b)that tacit relocation is not operating; ...

(c).

(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.

In the present case, valid notice to quit had been served. Accordingly, the contractual tenancy had come to its end. Notice in terms of section 33 of the 1988 Act had been given.

3.2 The only live issue for the Tribunal to determine was whether it was reasonable to make the order. There was no factual dispute between the parties. The Tribunal did not consider that any further evidence was required and, taking each party's position at its highest, the application could be decided without a hearing. The Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made. The Tribunal placed particular weight on the following factors in determining it reasonable to grant the order sought:-

- The Applicant owned no other rental properties and was seeking to exit the market for financial reasons;
- The Respondent considered the property unaffordable given the recent rental increase;
- The Respondent had applied for rehousing and was to make a homeless application to the local authority;
- The Respondent was to obtain assistance from various local organisations who could provide advice on her right to housing;
- The local authority would owe duties to the Respondent in terms of the Housing (Scotland) Act 1987 to make alternative accommodation available.

3.3 The Tribunal noted the position of the Respondent insofar as eviction may interfere with her employment. The Tribunal was mindful of the local authority's obligations under the Housing (Scotland) Act 1987 and

considered it appropriate that the order issued should not be enforced earlier than 1 November 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.

Alastair Houston

Legal Member/Chair

31 July 2026

Date