



**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/25/2900

Re: Property at The Bungalow, Clarkyhill, Burghead, IV30 5XU (“the Property”)

Parties:

**Mr Gilbert Fraser, Mrs Ann Fraser, The Brae, 56 Grant Street, Burghead, IV20
5TZ (“the Applicant”)**

**Mr Alexander Frost, The Bungalow, Clarkyhill, Burghead, IV30 5XU (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 33 of the 1988 Act are met, and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order with execution of the order suspended for a period of three months.

In terms of section 33(4) of the 1988 Act, the statutory assured tenancy between the parties will terminate on 10 December 2026.

Background

- 1 The Applicants applied for an eviction order under section 33 of the 1988 Act and rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) on the basis that the short assured tenancy between the parties had been terminated.
- 2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take

place on 12 January 2026. Notice of the CMD was given to the parties under Rule 17(2) of the Rules.

- 3 Prior to the CMD the Respondent submitted written representations in response to the application which were crossed over to the Applicants.

The CMD

- 4 The CMD took place on 12 January 2026 by teleconference. The Applicants were represented by Rebecca Nicholson of Cluny Estate Agents. Mr Fraser was personally present. The Respondent was also in attendance.
- 5 Having discussed the application with the parties, the tribunal noted three issues to be resolved:-
 - (i) Whether the tenancy between the parties was a short assured tenancy. The Respondent argued that he had not been given a valid Form AT5.
 - (ii) Whether the Respondent was the sole tenant of the property. The Respondent argued that his wife, Mrs Michelle Frost, and her mother, Mrs Beulah Frost, were also tenants of the property.
 - (iii) Whether it was reasonable for an eviction order to be granted.
- 6 The tribunal noted that the validity of the notice to quit and section 33 notice did not appear to be in dispute. As such, if the tribunal was satisfied that the tenancy between the parties was a short assured tenancy, and the Respondent was the sole tenant, the remaining issue for the tribunal would be the reasonableness of granting an eviction order.
- 7 The tribunal therefore determined to fix a hearing on the application, and directed the parties to provide any documents, submissions and details of witnesses in advance of the hearing.
- 8 Prior to the hearing the tribunal received further documents and submissions from the parties.

The hearing

- 9 The hearing took place at Inverness Civil Justice Centre on 28 August 2026. The Applicants attended and were represented by Sonya Hayward of Moray Citizens Advice Bureau ("CAB"). The Respondent was in attendance, accompanied by his wife, Mrs Frost.
- 10 As a preliminary matter, the Respondent sought to present additional documents to the tribunal for consideration. The tribunal advised that it could not consider the documents as the Applicants had not had fair notice of same, and the tribunal had directed that all documents be lodged at least fourteen days prior to the hearing.

- 11 The tribunal heard evidence from the parties on the issues to be resolved. The following is a summary of the key elements of the evidence and is not a verbatim account. Both parties were given the opportunity to cross examine the other.

The Form AT5

- 12 Ms Hayward referred to the short assured tenancy agreement and Form AT5 that had been lodged with the application. She noted that the Respondent had taken objection with the fact that the notice did not include the heading "AT5". That appeared to be the only omission in terms of the prescribed wording. The notice produced contained all the statutory information contained within section 32 of the 1988 Act. She submitted that the omission did not invalidate the document. In support of her submission, Ms Hayward referred to the decision of the Tribunal in the case *Easilet Investments v Tchialu* (FTS/HPC/EV/23/3052).
- 13 The Respondent explained that the Form AT5 had to be in the prescribed form. This means that nothing should be changed, altered or added. The Applicants' letting agent had changed the form by omitting the header and other aspects. The tribunal queried what other wording had been altered in the notice given to the Respondent, other than the heading. The Respondent advised he believed there was other text missing or added but he was unable to provide any further specification at the hearing.

Joint tenants

- 14 Ms Hayward referred to the short assured tenancy agreement and Form AT5 produced by the Applicants which confirmed the Respondent was the sole tenant of the property. She also referred to correspondence produced regarding a rent increase which was addressed to the Respondent, and the rent statement which detailed payments from the Respondent's bank account. No payments had been received from anyone else. Ms Hayward acknowledged that the deposit scheme had recorded the Respondent as a "lead tenant" however this was likely an administrative error. It did not alter any of the Respondent's rights as the sole tenant.
- 15 The Respondent explained that the property had been viewed back in 2008 by himself, his wife and her parents. They were all offered the tenancy of the property which they accepted verbally, with a start date of 3 April 2008. They were told it would be a short assured tenancy agreement. This constituted a legally binding agreement. The Respondent had signed the tenancy agreement and was the sole tenant as far as the written tenancy agreement. However, he believed the verbal agreement which included the joint tenants superseded the written agreement, albeit this may not have been the Applicants' intention. The written agreement meant that the Respondent was the only tenant who received a Form AT5 and could be evicted. The Respondent referred to the deposit documentation which designates him as lead tenant and questioned how the Applicants could know this was an administrative error. The

Respondent also referred to bank statements he had produced which showed his wife's contributions to the rent as a joint tenant.

- 16 In response to questions from the tribunal, the Respondent explained that he thought it was normal to just have his name on the Form AT5 and short assured tenancy agreement. He thought he was signing for all the tenants as their representative. Mrs Frost explained that they believed that's how the system worked. They trusted the Applicant's letting agent and accepted what the agent had given them.

Reasonableness

- 17 Mrs Fraser gave evidence on behalf of the Applicants. She explained that the Applicants were seeking an eviction order to allow them to sell the property and liquidate the asset to assist with their early retirement. Mrs Fraser has physical health issues which had impacted her employment as an early years practitioner. She had been forced to take early retirement for that reason. Mr Fraser also suffers with health issues. Mrs Frost retired in August 2026, three years before she is due to qualify for a state retirement pension. The Applicants' only income at present is Mr Fraser's state pension, his small private pension and a small joint pension. The proceeds of sale will go towards their daily living costs until they reach retirement age and contribute towards repairs to their own home.
- 18 Mrs Fraser advised that the Applicants' letting agent had sent a rent increase notice to the Respondent in July 2026 but this had been withdrawn as the Applicants did not wish to cause the Respondent and his family any upset. The Applicants require to sell the property on the open market to achieve the best possible price. They want to be able to offer it to a pool of buyers. They would not be able to do so with sitting tenants. If an eviction order is not granted, the Applicants will suffer financial hardship. They are relying on the proceeds of sale to live their lives. They have done all they can to assist the Respondent and his family to source new accommodation. The Applicants' letting agent had given the Respondent advance warning of the termination of the tenancy and had provided references for the Respondent and his family. If an eviction order was granted, the Applicants would consider a six week delay to allow the Respondent and his family time to transition into new accommodation. The eviction order will allow the Respondent and his family to make a homelessness application which would trigger the local authority's duty to provide them with rehousing.
- 19 In response to questions from the Tribunal, Mrs Fraser advised that this is the only rental property the Applicants own. It was previously their home, and they lived there for 23 years with their three sons. After Mr Fraser's mother passed away the Applicants moved into her house and decided to rent the property out. The Applicants do not know an exact valuation for the property but explained that it is a five bedroom house.
- 20 The Respondent and Mrs Frost both gave evidence. They have been trying to find a property since April 2025. Mrs Frost's mother is severely disabled and

has been in and out of hospital on several occasions. She is unable to walk or stand. As such they require a property that would suit her needs. They have had one offer from the local authority which was unsuitable. They have been unable to find a property suitable for a wheelchair in the local area, despite extensive searches. They would have left the property by now if they could. They don't want to cause the Applicants' upset. They have previously had a good relationship with the Applicants. This was the last thing they wanted. Mrs Frost's mother blames herself for their situation. The Respondent and Mrs Frost spoke to their connections in the local community with their neighbours, local GP and pharmacy.

- 21 The Respondent and his family are on the council's housing list. They referenced the letter from the council's Environmental Health within their submissions. They had made the complaint to Environmental Health having been told that it could secure them additional points for their housing application. Mrs Frost explained that the local authority has provided an occupational therapist for her mother, who is aware of the eviction proceedings and will be informed when the family are vacating the property. Mrs Frost's mother has a bed within the house along with other mobility aids which can be transferred to their new home. They will likely require a three bedroom property to accommodate an overnight carer. Mrs Frost explained that the bathroom within the property is no longer suitable for her mother.
- 22 In response to cross examination from Ms Hayward, the Respondent and Mrs Frost confirmed that they had applications for housing pending with registered social landlords and the local authority. They were not aware that the council managed three housing lists, and that they will be given priority if an eviction order is granted. They did not know that they could register their need for a carer to ensure they are provided with suitable accommodation.
- 23 Both parties were given the opportunity to make closing submissions. Ms Hayward provided brief submissions on behalf of the Applicants which largely followed her written representations. The Respondent declined to make any further submissions as Mrs Frost was keen to get home to her mother. He was content to rely on what had already been submitted to the tribunal.

Findings in fact and law

- 24 The Applicants are the owners and landlords, and the Respondent is the sole tenant, of the property in terms of a tenancy agreement between the parties. The initial term of the tenancy was for a period of six months from 3 April 2008 to 3 October 2008. In terms of the said tenancy agreement, the tenancy continued thereafter by tacit relocation from month to month.
- 25 The Respondent was given a Form AT5 prior to signing the tenancy agreement. The Form AT5 omits some wording from the prescribed form but contains all relevant statutory information.

- 26 The tenancy agreement explicitly states that the tenancy agreement being entered into by the parties is a short assured tenancy.
- 27 The tenancy between the parties is a short assured tenancy within the meaning of section 32 of the 1988 Act.
- 28 On 29 April 2025 the Applicants gave the Respondent a notice to quit terminating the contractual short assured tenancy between the parties on 3 July 2025.
- 29 On 29 April 2025 the Applicants gave the Respondent a notice under section 33(1)(d) of the 1988 Act stating their intention to recover possession of the property on 3 July 2025.
- 30 The contractual short assured tenancy between the parties terminated on 3 July 2025. Tacit relocation is no longer operating.
- 31 The Applicants both suffer from ill health. The second Applicant has recently retired and cannot yet access her state pension.
- 32 The Applicants intend to sell the property. The Applicants require to do so to release equity to fund their retirement. The Applicants require to sell the property with vacant possession to achieve the maximum sale price.
- 33 The Applicants will suffer financial hardship if they are unable to sell the property.
- 34 The Applicants have no other rental properties. The property was the Applicants' home for 23 years.
- 35 The Respondent occupies the property with his wife and her mother. They have close ties with the local community.
- 36 Mrs Frost's mother is registered disabled and has serious health conditions which have resulted in hospital admissions. She uses a wheelchair. Mrs Frost is also registered disabled and has various health issues. She is a registered carer for her mother.
- 37 The Respondent receives payments from his wife to cover the rent for the property.
- 38 The property has been fitted with aids and a bed for Mrs Frost's mother. The items are removable and are not permanent fixtures.
- 39 The bathroom in the property is no longer suitable for Mrs Frost's mother due to her decreased mobility.

- 40 The Respondent and Mrs Frost have been searching for alternative accommodation since April 2025. They been unable to find a property that suits the needs of Mrs Frost's mother.
- 41 The Respondent and his family are on the local authority's housing list. The making of an eviction order will give them increased priority on the list.
- 42 It is reasonable to make an eviction order provided execution of the order is suspended for a period of three months to give the local authority sufficient time to source suitable accommodation for the Respondent and his family.

Reasons for decision

- 43 The tribunal carefully considered all documents and submissions from the parties, and the oral evidence from the hearing, in reaching a decision on this application. The documents and submissions are referred to for their terms and incorporated into the tribunal's findings in fact and law.
- 44 The tribunal first considered who the parties to the tenancy are in this case. The tribunal did not agree with the Respondent that any verbal discussions that had taken place prior to the signing of the tenancy agreement supersede the terms of that agreement. He has not provided any legal authority to support this argument. The wording of the written agreement is clear in designating the Respondent as the sole tenant of the property. If that was not the Respondent's intention, it should have been challenged at the time of signing. Whilst the tribunal appreciates the Respondent may have been unaware of the legal implications at that time, the tenancy between the parties was created by the written agreement between the parties.
- 45 The tribunal could not identify anything in the communications between the parties since the commencement of the tenancy that would provide any person other than the Respondent with the rights of a tenant. Whilst there had been reference in communications from the Applicants' letting agent to other occupiers as tenants, that was not in the view of the tribunal sufficient to amount to a variation of the written agreement between the parties, neither was the fact that the Respondent's wife had paid him rent for the property. The tribunal considered this to be a financial arrangement between the Respondent and his wife which would not create any contractual relationship with the Applicants that would override the provisions of the written tenancy agreement. The Respondent had also sought to argue that his designation as lead tenant for the purpose of the tenancy deposit scheme supported his argument that there were other joint tenants. The tribunal disagreed. The wording used by the schemes in such matters has no legal bearing in this case, being administrative in nature.
- 46 The Respondent made reference in his written submissions to the provisions regarding qualifying occupiers in the Housing (Scotland) Act 2001. The 2001 Act applies to scottish secure tenancies within the public sector. The concept of a qualifying occupier is not contained with the 1988 Act and there are no such

provisions regarding short assured tenancies that require notice to be given to any occupiers of the property, other than the tenant. The Respondent also made reference to the omission of his wife and mother in law from the Form E application, which makes reference to occupiers. An application for an eviction order in relation to a short assured tenancy can only be made against tenants of the property. Whilst the Applicants subsequently amended the Form E to include Mrs Frost and her mother, there was no requirement for the Applicants to do so. The reference to “occupiers” in the Form E applies in circumstances where a respondent may not have the status of a tenant.

- 47 The tribunal has therefore determined to remove Mrs Frost and her mother as parties to the application under rule 32 of the Rules. In doing so, the tribunal does not seek to minimise the status of Mrs Frost and her mother as occupiers of the property. Their circumstances and views on the application have been fully taken into account in the tribunal’s decision.
- 48 The tribunal went on to consider whether the tenancy between the parties was a short assured tenancy.
- 49 Section 32 of the 1988 Act provides:-

“Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—
(a) which is for a term of not less than six months; and
(b) in respect of which a notice is served as mentioned in subsection (2) below.
(2) The notice referred to in subsection (1)(b) above is one which—
(a) is in such form as may be prescribed;
(b) is served before the creation of the assured tenancy;
(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and
(d) states that the assured tenancy to which it relates is to be a short assured tenancy.
(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—
(a) it continues by tacit relocation; ...
(b)
the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.”

- 50 The Respondent’s position is that he was not given the notice required under section 32(2), on the basis that it was not in the form prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 (“The 1988 Regulations”), otherwise known as the Form AT5.
- 51 The tribunal has considered the prescribed form in the 1988 Regulations alongside the Form AT5 produced by the Applicants. The latter has been adjusted slightly from the prescribed form, such as the removal of text boxes, and contains some minor omissions including the removal of the words

“ASSURED TENANCIES” and “AT5” from the header of the document. Nonetheless the Form AT5 contains all the statutory information required. The Respondent appeared to accept in his evidence that the tenancy he had been offered was a short assured tenancy. It is explicitly stated in the tenancy agreement he signed. The Respondent did not deny having received the Form AT5 prior to signing the tenancy agreement. The Tribunal therefore determined that any omissions or errors in the document were of a minor nature, and the Form AT5 produced by the Applicants fulfilled the statutory purpose of informing the Respondent of the nature of the short assured tenancy he was entering into with the Applicants.

- 52 The tribunal therefore concluded that the tenancy between the parties is a short assured tenancy and went on to consider the provisions of section 33 of the 1988 Act:-

“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 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.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.”

- 53 The tribunal was satisfied based on the notices submitted with the application that the Applicants had given the Respondent a notice to quit, terminating the tenancy at an ish date, along with a notice which complies with the requirements of section 33(1)(d) of the 1988 Act. In his written representations the Respondent had raised competency issues with a Form AT6 served upon him along with the aforesaid notices. As section 33 does not require the service of an AT6, such issues are not relevant to the tribunal’s determination of this application.
- 54 The issue for the tribunal to consider therefore was whether it is reasonable to make an eviction order which requires the tribunal to weigh those factors relevant to reasonableness in the circumstances of this case.
- 55 The tribunal accepted the evidence of both parties regarding their present circumstances. All gave credible and concise evidence at the hearing. It was clear this was a difficult situation for all involved, particularly where the parties have had a longstanding relationship.

- 56 The tribunal considered the Applicants' circumstances. The tribunal took into account their reasons for terminating the tenancy following early retirement due to health issues. The tribunal accepted that were they unable to sell the property it would cause them financial difficulties and gave substantial weight to that as a relevant factor. The tribunal further accepted that a sale with vacant possession was necessary to ensure they could achieve the best purchase price. They were entitled to realise their asset as they saw fit.
- 57 The tribunal also gave significant weight to the Applicants' property rights. They are not professional landlords. The property is their only rental property. It had been their family home, and at the time of renting the property, they would have had the expectation that they would have a right of mandatory repossession upon terminating the tenancy. Their rights in this respect had been altered by the Coronavirus (Scotland) Act 2020 which introduced the requirement to consider reasonableness when determining an application under section 33 of the 1988 Act.
- 58 The Respondent had made allegations of disrepair in his written submissions, providing a letter from the Council's Environmental Health department. There was however no evidence of the nature of the disrepair before the tribunal therefore the tribunal could not make a conclusive determination on these issues. The tribunal further noted the Respondent and Mrs Frost had stated in their evidence that the complaint was made to Environmental Health with a view to securing them additional points on the housing list.
- 59 The tribunal carefully consider the Respondent's circumstances, including the fragile health of Mrs Frost's mother and Mrs Frost's own health issues and caring responsibilities. Whilst the tribunal had concerns about the impact of eviction upon the household, the tribunal gave more weight to the fact that the Respondent and Mrs Frost do not wish to remain in the property. They were clear on that point in their evidence at the hearing. They have simply been unable to source suitable accommodation that will meet the needs of Mrs Frost's mother. Mrs Frost was visibly emotional in her evidence during the hearing and it was clear both she and the Respondent had been significantly affected by the deterioration in her mother's health. Whilst they have built close links in the local community, they appear to accept that they cannot stay in the property indefinitely, as is the nature of private sector housing. They have already made inquiries with the local authority and are placed on the housing list. The tribunal gave weight to the fact that the making of an eviction order would assist them by giving them greater priority and would trigger the local authority's duty to rehouse them in accommodation more suitable to their needs. As explained by Mrs Frost during the hearing, the property does not currently meet the care needs of her mother, in that it does not have an accessible bathroom. The tribunal gave significant weight to this as a relevant factor.
- 60 In his written submissions of 14 August 2026, the Respondent sought to invoke the Equality Act 2010 in respect of his mother in law's disability, stating that an eviction order would constitute both direct and indirect discrimination. His

submissions on this point constitute largely of excerpts from the 2010 Act and guidance from a housing advice service. He did not expand on this argument any further at the hearing.

- 61 The tribunal considered that the disability in question is not connected in any way with the ground for eviction. The provisions of section 33 would apply equally to all tenants and occupiers, regardless of any protected characteristics. The Respondent has not presented any arguments to suggest otherwise. It is clear from the evidence before the tribunal that the property cannot meet the needs arising from Mrs Frost's mother's disability. An eviction order would ensure an application for rehousing with the local authority can progress, and suitable accommodation identified. It is therefore a proportionate means to achieve a legitimate aim which will benefit both parties in the long term.
- 62 However, the tribunal did consider that due to the specific needs of Mrs Frost's mother, it may take some time for the local authority to secure suitable accommodation. As such the tribunal determined that it would be reasonable to allow additional time in the enforcement of any order granted to ensure that an appropriate home can be identified and any impact on Mrs Frost and her mother suitably mitigated.
- 63 Accordingly, having considered those factors relevant to reasonableness, the tribunal determined that the balance weighed in favour of making an eviction order, provided execution of the order is suspended for a period of three months.
- 64 The decision of the tribunal was 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.

R O'Hare

Legal Member/Chair

10 September 2026

Date

