

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**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”) and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/0612**

**Re: Property at 38 Townhead Road, Inverurie, AB51 4RZ (“the Property”)**

**Parties:**

**Mr Kevin Christopher Bannister and Mrs Judith Bannister, 55 Coxford Close, Southampton, Hampshire, SO16 6DD (“the Applicants”) per their agents Aberdein Considine & Company 5-9 Bon Accord Crescent, Aberdeen, AB11 6DN (“the Applicants’ Agents”)**

**Mr Andrew Gordon Moores, 38 Townhead Road, Inverurie, AB51 4RZ (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

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

1. By application received between 27 February 2023 and 4 May 2023 (“the Application”), the Applicants’ Agents applied to the Tribunal for an Order for possession of the Property based on the service of statutory notices to bring the tenancy to an end. The Application comprised copy Notice to Quit and copy Section 33 Notice with proof of service, copy short assured tenancy agreement with relevant AT5 between the Parties and copy notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Aberdeenshire Council, being the relevant local authority. The Application explained that the Applicants required to terminate the tenancy in order to sell the Property. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 16 October 2023 at 10.00 by telephone conference. The CMD was intimated to the Parties and to the Respondent, in particular, by Sheriff Officer.

## **CMD**

2. The CMD took place on 16 October 2023 at 10.00 by telephone. The Applicants did not take part and was represented by Mr. E. Forbes of the Applicants' Agents. The Respondent, Mr. A. Moores, took part and was not represented. The CMD was heard along with a CMD for a civil payment application between the Parties.
3. The Tribunal explained to the Parties that the present eviction action was based on the short assured tenancy being terminated in terms of Section 33 of the Act. The Tribunal advised that it was satisfied that the statutory procedure for the Application had been carried out correctly. The Tribunal asked the Mr. Moores if he opposed the Application and he advised that he did not, but he wished to make an offer to pay arrears which had accrued in order to try to prevent an eviction.
4. Mr. Forbes explained that his firm instructions are to seek the eviction order but indicated that if the arrears were paid, the Applicants might consider entering into a new private residential tenancy with Mr. Moores. Mr. Forbes advised that the rent due by Mr. Moores had risen to around £30,000.00.
5. Mr. Moores agree the level of rent arrears and advised that he intended to clear these within three months. He advised that he is in employment and lives alone. Mr. Forbes advised that previous payment plans and offers to pay the rent due had not come to fruition.

## **Issue for the Tribunal**

6. The issue for the Tribunal is to determine if the statutory ground is established and if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". The Tribunal took the view that it had sufficient information to make a decision. Therefore, the Tribunal proceeded to determine the Application.

## **Findings in Fact**

7. From the Application and the CMD, the Tribunal made the following findings in fact: -
  - i) There is a short assured tenancy of the Property between the Parties;
  - ii) A valid Section 33 Notice and a valid Notice to Quit were served;
  - iii) The Respondent has not vacated the Property;
  - iv) The Respondent does not oppose the Application but wishes an opportunity to pay the rent due;
  - v) The rent and arrears due by the Respondent is around £30,000.00

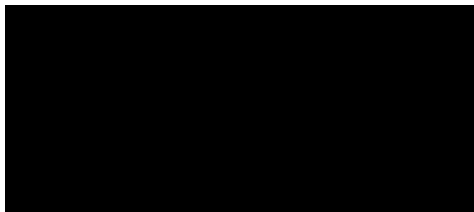
## **Decision and Reasons for Decision**

8. The Tribunal had regard to all the information before it and to its Findings in Fact.

9. The Tribunal took the view that the statutory procedure to end the tenancy had been followed.
  
10. The Tribunal then considered if it could be satisfied that it is reasonable to issue an eviction order. The Tribunal had regard to the extremely high level of rent arrears and the financial burden which this has on the Applicants. The Tribunal had regard to the fact that when the tenancy commenced, the Applicants had had an absolute right to terminate it on the proper statutory notice. The Tribunal noted that the Respondent accepts the amount of rent arrears and intends to make payment but had regard to the fact that previous payment plans have broken down. The Tribunal noted that the Respondent is a single man in employment and so could reasonably be expected to secure alternative accommodation, if needed. The Tribunal took the view that continuing the tenancy is not in the interests of either the Applicants or the Respondent. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

### **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.**



16 October 2023

**Legal Member/Chair**

---

**Date**