



**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/22/1462

**Re: Property at Nether Cairnhill Farmhouse, Newtonhill, Stonehaven, AB39
3PH (“the Property”)**

Parties:

**The Executors of the Duke of Fife, Estate Office, Haughs of Kinnaird, Brechin,
Angus, DD9 6UA (“the Applicants”)**

**Kathleen Matheson, Nether Cairnhill Farmhouse, Newtonhill, Stonehaven,
AB39 3PH (“the Respondent”)**

Tribunal Members:

Joel Conn (Legal Member) and Frances Wood (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

1. This is an application by the Applicants for an order for possession on termination of a short assured tenancy in terms of rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”). The tenancy in question was a Short Assured Tenancy of the Property by the 3rd Duke of Fife to the Respondent commencing on 3 August 2012.
2. The application was dated 17 May 2022 and lodged with the Tribunal around that date.
3. The application relied upon a Notice to Quit and notice in terms of section 33 of the Housing (Scotland) Act 1988, both dated 30 August 2021, providing the Respondent with notice (respectively) that the Applicants sought to terminate

the Short Assured Tenancy and have the Respondent vacate, each by 2 March 2022. Evidence of service of the said notices by Sheriff Officer service on 1 September 2021 was included with the application.

4. Evidence of a section 11 notice dated 22 April 2022 in terms of the Homelessness Etc. (Scotland) Act 2003 served upon Aberdeenshire Council was provided with the application.

The Hearing

5. On 8 August 2022 at 14:00, at a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, we were addressed by the Applicant’s factor, Jonathan Dymock, and by Annie Zdravkova, trainee solicitor, of the Civil Legal Assistance Office of Aberdeen for the Respondent.
6. Prior to the CMD, the Respondent’s agent had lodged an email stating that the Respondent “will not be opposing the making of the eviction order” but seeking “a delay in execution... of 10-12 weeks” under Procedure Rule 16A(d). At the commencement of the CMD, parties clarified that they were now in agreement that, if the Tribunal was minded to grant an order, that any execution be suspended until 12:00 on 3 October 2022 on the understanding that this meant an eviction could not be scheduled until 17 October 2022. On our prompting, the Applicants’ representative confirmed that he was willing to give an undertaking that any eviction scheduled would not be scheduled prior to 12:00 on 17 October 2022 (subject separately to the requirement that no service of papers would take place prior to 12:00 on 3 October 2022 under the suspension that the parties had discussed).
7. In regard to the details and merits of the application, Mr Dymock confirmed that the Executors referred to in the application were the executors of the late 3rd Duke of Fife and that they were:
 - The 4th Duke of Fife
 - Peter Landale
 - Charles Iain Robert Wolrige GordonIn regard to the question of reasonableness, the Applicants’ representative explained that the reason for the eviction was that the estate sought to sell the Property and an adjacent steading for development. This land was said to be adjacent to the new town of Chapelton and thus suitable for development.
8. In consideration of the Respondent’s consent to the order, the Respondent’s representative had no contrary submissions but highlighted the reasons for the suspension sought. She explained that the Respondent has resided at the Property for ten years with her daughter, who is now 18 years old. She continues to pay rent and has been a “model tenant”. She applied for rehousing to the local authority in 2021 but was not accepted as a priority for housing until May 2022. She is on Universal Credit and has tried, unsuccessfully, to secure alternative private accommodation. She is now assured by the local authority that all steps are being taken to rehouse her but she does not yet have new accommodation. For all these reasons, the Respondent’s representative

submitted it was reasonable to grant the suspension. As the Respondent continued to pay her rent, it was submitted that there was no material prejudice to the Applicants of such a suspension.

9. No order for expenses was sought.

Findings in Fact

10. By written lease dated 30 July and 2 August 2012, the 3rd Duke of Fife let the Property to the Respondent by lease with a start date of 3 August 2012 until 2 August 2013 to “continue thereafter on a monthly basis until ended by either party” (“the Tenancy”).
11. The Tenancy was a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988 further to the late 3rd Duke of Fife issuing the Respondent with a notice under section 32 of the 1988 Act (an “AT5”) on 30 July 2012, prior to commencement of the Tenancy.
12. The 3rd Duke of Fife passed away in 2015 and the Applicants were subsequently confirmed as executors to his estate, which included the Property.
13. On 30 August 2021, the Applicants’ factor drafted a Notice to Quit in correct form addressed to the Respondent, giving the Respondent notice that the Applicants wished her to quit the Property by 2 March 2022.
14. On 30 August 2021, the Applicants’ factor drafted a Section 33 Notice under the 1988 Act addressed to the Respondent, giving the Respondent notice that the Applicants required possession of the Property by 2 March 2022.
15. 2 March 2022 is an ish date of the Tenancy.
16. On 1 September 2021, a Sheriff Officer acting for the Applicants competently served each of the notices upon the Respondent. The Respondent was thus provided with sufficient notice of the Applicants’ intention that the Tenancy was to terminate on 2 March 2022.
17. On 17 May 2022, the notice period under the notices having expired, the Applicants raised proceedings for an order for possession with the Tribunal, under rule 66, the grounds of which being that the Tenancy had reached its ish; that tacit relocation was not operating; that no further contractual tenancy was in existence; that notice had been provided that the Applicants required possession of the Property all in terms of section 33 of the 1988 Act; and that it was reasonable to make the order.
18. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon Aberdeenshire Council on or around 20 April 2022 on the Applicants’ behalf.

19. On 30 June 2022, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 8 August 2022.
20. The Applicants seek to sell the Property as part of their realisation of the assets of the estate.
21. The Respondent lives with her 18 year old daughter at the Property.
22. The Respondent has been assessed as a priority for being rehoused by Aberdeenshire Council and is awaiting rehousing.
23. The Respondent has investigated private sector housing but has been unable to secure alternative accommodation in the private sector.

Reasons for Decision

24. The application was in terms of rule 66, being an order for possession upon termination of a short assured tenancy. We were satisfied on the basis of the application and supporting papers that the necessary notices had been served with sufficient notice (in terms of the temporary amendment of the 1988 Act), the Respondent was extending no defence or dispute to the notices, and thus the requirements of the 1988 Act had been complied with.
25. We require, in terms of the 1988 Act as temporarily amended, to consider “that it is reasonable to make an order for possession”. On this, parties were agreed that it was reasonable to grant provided the requested suspension was made. In the circumstances before us, and particularly considering the parties’ agreed position, we were satisfied that it was reasonable to grant the application with a suspension of the order in the agreed terms until noon on 3 October 2022 to allow the Respondent further time to seek alternative accommodation. We separately note the Applicants’ undertaking that any subsequent eviction that may be scheduled after that time will not be scheduled for any time prior to noon on 17 October 2022.
26. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. We were thus satisfied to grant an order for possession with the said suspension.

Decision

27. In all the circumstances, we make the decision to grant an order against the Respondent for possession of the Property under section 33 of the Housing (Scotland) Act 1988 but suspended so no enforcement may be sought prior to 12:00 on 3 October 2022.

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.



Legal Member/Chair

8 August 2022

Date