



**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/22/3680

**Re: Property at 6 Glebe Street, Hamilton, South Lanarkshire, ML3 6PS (“the
Property”)**

Parties:

**Mr Alastair McClelland, Mrs Carol McClelland, Torikin View, Thursby, Carlisle,
CA5 6PG (“the Applicants”)**

**Mr Graeme Anderson, 6 Glebe Street, Hamilton, South Lanarkshire, ML3 6PS
 (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the order for eviction should be granted.**

Background

On 4th October 2022 the Applicants lodged an application with the Tribunal in terms of Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking an order for eviction of the Respondent in terms of section 19 of the Housing (Scotland) Act 1988.

Lodged with the Application were:

1. Copy Short Tenancy Agreement with initial period of 21st July 2016 to 21st January 2017 and monthly thereafter, with rent of £450 per month
2. AT5 Notice
3. Notice to Quit dated 16th June 2022 for 21st August 2022
4. Section 33 Notice dated 16th June 2022 for 21st August 2022
5. Proof of service of items 3 and 4

6. Section 11 Notice
7. Copy estate agency contract

The papers were served on the Respondents by Sheriff Officer on 9th January 2023.

Case Management Discussion

A Case Management Discussion (“CMD”) took place by teleconference on 20th February 2023.

The Applicant was represented by Mr Jarvie of Bannatyne, Kirkwood and France, Solicitors.

The Respondent did not dial in and was not represented.

Mr Jarvie confirmed that he was seeking an order for eviction in terms of the application. He submitted that all the requirements for eviction under Rule 66 had been met. The notices had been served correctly and timeously, bringing the tenancy to an end at its ish date, and therefor tacit relocation was not operating.

Mr Jarvie said that the Applicants are a couple in their seventies. They wish to terminate the tenancy so that they can market the property for sale. They no longer wish the obligations and responsibilities of being landlords and wish to realise the equity for their retirement.

Mr Jarvie said that the Respondent is a single man living alone in the property. He is in full time employment and should be able to secure alternative accommodation. He has no known health conditions and the property has not been adapted in any way. There is a negligible amount of rent arrears.

Findings In Fact

1. The parties entered in to a Short Assured Tenancy commencing on 21st July 2016;
2. An AT5 was in place making it a Short Assured Tenancy;
3. Notice to Quit and Section 33 Notices were served on the Respondent correctly and timeously;
4. The Short Assured Tenancy is therefore at an end and tacit relocation is not operating;
5. The Applicants wish to sell the property to realise the funds for their retirement;
6. The Respondent is single and lives alone in the property;
7. The Respondent has no known health conditions
8. The Respondent is in full time employment.

Reasons For Decision

The Tribunal were satisfied from the information put forward that the ground of eviction had been established.

Granting an application for eviction based on sections 19 and 33 of the Housing (Scotland) Act 1988 provided that the notices are correct and have been served correctly, is normally mandatory. However, in terms of Section 44 of the Coronavirus (Recovery and Reform)(Scotland) Act 2022 makes the ground discretionary and the Tribunal has to consider reasonableness. The section is as follows:

44 Assured tenancies: discretionary eviction grounds

(1) The Housing (Scotland) Act 1988 is modified as follows.

(2) In section 18 (orders for possession)—

(a) subsections (3) and (3A) are repealed,

(b) in subsection (4), for “Part II” substitute “Part I or II”,

(c) in subsection (6)(a), the words “or Ground 8” are repealed,

(d) in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.

(3) In section 19 (notice of proceedings for possession), subsection (5) is repealed.

(4) In section 20 (extended discretion of First-tier Tribunal in possession claims)—

(a) in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,

(b) subsection (6) is repealed.

(5) In section 33(1) (recovery of possession on termination of a short assured tenancy)—

(a) in the opening words, for “shall” substitute “may”,

(b) after paragraph (b), the word “and” is repealed,

(c) after paragraph (d) insert “, and

“(e) that it is reasonable to make an order for possession.”.

(6) In schedule 5 (grounds for possession of houses let on assured tenancies)—

(a) in Part I, Ground 8 is repealed,

(b) the heading of Part I becomes “Certain grounds on which First-tier Tribunal may order possession”,

(c) the heading of Part II becomes “Further grounds on which First-tier Tribunal may order possession”.

The Tribunal has to consider all the circumstances relevant when deciding on reasonableness. In this case the facts are straightforward. The Applicants wish to sell as they are in their seventies and no longer wish to be landlords. They wish to realise the equity in the property for their retirement. The Respondent is single and in full time employment. He did not join the call to put forward any defence, or to argue that eviction was not reasonable.

In all the circumstances, and balancing the two sides, the Tribunal considered that it was reasonable to grant the 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.

A Kelly

20th February 2023

Legal Member/Chair

Date