



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 (1) of the Housing
(Scotland) Act 1988**

Chamber Ref: FTS/HPC/EV/23/3226

**Re: Property at 109 North Grange Avenue, Prestonpans, EH32 9DE (“the
Property”)**

Parties:

Mr James Ewan, 29 Stafford Street, Edinburgh (“the Applicant”)

**Miss Catherine Thompson, 109 North Grange Avenue, Prestonpans, EH32 9DE
 (“the Respondent”)**

Tribunal Members:

**Martin McAllister (Legal Member) and Elizabeth Dickson (Ordinary Member)
 (“the tribunal”)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for possession of the Property be made
against the Landlord but that the effective date be postponed to 30 June 2024.**

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988
 (“the 1988 Act”) for recovery of possession of the Property. It is dated 13
September 2023.**
- 2. The application was accepted for determination on 28 September 2023.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 28
November 2023.**

4. Ms Clare Todd, property manager, of Rent Locally, letting agents of the Applicant, was in attendance.
5. The Respondent was present.

Preliminary Matters

6. The legal member explained the purpose of a case management discussion.
7. Ms Todd said that the application had been necessary because the Respondent had not removed herself from the Property by 10 September 2023 and was still residing in it.
8. Both parties submitted that they could provide sufficient information to allow the tribunal to determine the application and that there was no other evidence which they could bring before a Hearing.

9. Findings in Fact

- 9.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property dated 12 December 2012.
- 9.2 The tenancy commenced on 10 January 2013 with a termination date of 10 July 2013 (both dates inclusive).
- 9.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it was not brought to an end on 10 July 2013.
- 9.4 The Applicant served a Section 33 Notice, Notice to Quit and AT6 Form on the Respondent on 10 July 2023 requiring vacation of the Property by 10 September 2023.
- 9.5 The Respondent remains in occupation of the Property.
- 9.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

10. Findings in Fact and Law

- 10.1 The tenancy continued by tacit relocation from 10 July 2013 until it was brought to an end by service of the Notice to Quit on 10 July 2023.
- 10.2 The tenancy ended on 10 September 2023.
- 10.3 The Applicant is entitled to recover the Property because the

tenancy has been brought to an end.

10.4 It is reasonable for the order of eviction to be granted.

10.5 It is reasonable for the order of eviction to be postponed until 30 June 2024.

Documents

11. The Tribunal considered the documents which had been lodged with the application:

11.1 Copy of the short assured tenancy agreement dated 12 December 2012.

11.2 AT5 Form relating to the short assured tenancy.

11.3 Notice to Quit served on 10 July 2023 requiring the Respondent to leave the Property by 10 September 2023.

11.4 Section 33 Notice served on 10 July 2023 requiring the Respondent to leave the Property by 10 September 2023.

11.5 AT6 dated 10 July 2023 requiring the Respondent to leave the Property by 10 September 2023

11.6 Sheriff Officer's certificate of citation in respect of service of the Notice to Quit and Section 33 Notice.

11.7 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.

Applicant's Position

12. Ms Todd said that the Landlord requires to recover the property because "he has debt on it which he is struggling to pay." Ms Todd had no further information on the extent of debt or more information about the Applicant's financial situation although she was able to state that her company managed six properties for him and it had been instructed to serve the necessary documentation to recover two properties, including the Property.

Respondent's Position

- 13. Miss Thomson said that the Property is a four bedroomed house that has been her family home since January 2013. She resides in it with her three daughters. She has an eighteen year old who is doing a Modern Apprenticeship at Edinburgh University and her twin daughters are aged seventeen and they attend Preston Lodge High School, the local school for Prestonpans.**

- 14. Miss Thomson said that the twins are in sixth year at school and are studying for Highers and Advanced Highers. She said that they have preliminary examinations in January 2024 and that the SQA examinations will be from April 2024 to possibly the beginning of June 2024.**

- 15. Miss Thomson said she had tried to find alternative accommodation but that none was available within her budget in the private letting market. She said that she had registered with the local authority but that nothing would be done by it unless an order of eviction was granted. She said that, otherwise, she would be considered to have made herself intentionally homeless.**

- 16. Miss Thomson said that her daughters' mental health was not good because of the stress of them losing their home. She said that she has mental health problems and fibromyalgia. She said that she was in receipt of Adult Disability Payment.**

- 17. Miss Thomson said that she had a small amount of rent arrears caused by the timing of payment of Housing Benefit. Ms Todd said that the current arrears were £76.44 but she conceded that this could be explained by the timing of Housing Benefit and the fact that it was paid four weekly in arrears.**

The Law

Section 33 of the Housing (Scotland) Act 1988

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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.

Discussion and Determination

18. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate

period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

- 19. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit.**

- 20. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments introduced by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, the tribunal does have discretion and requires to consider reasonableness.**

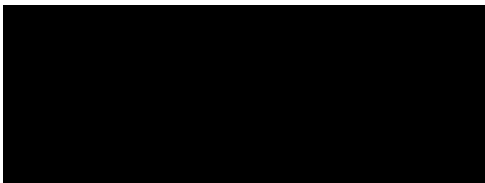
- 21. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.**

- 22. The tribunal accepted that it was reasonable to grant the order for possession. The Landlord was entitled to recover the Property and, in coming to that view, the tribunal did carried out a balancing exercise. The Respondent did have health issues and her daughters had educational needs. It was clear that eviction from the Property on 31 March 2024, which would be the default position, would be harsh given the examinations of the Respondent's twin daughters. Set against that is the entitlement of the Landlord to recover the Property in terms of Section 33 of the 1988 Act.**

- 23. Parties were asked about postponement of the date of eviction. Ms Todd said that she had no view on the matter and Miss Thomson said that it would be of assistance. The tribunal determined that it would be reasonable to postpone the date of eviction to 30 June 2024 which would be after the diet of SQA examinations and would allow the Respondent's twin daughters to complete their schooling uninterrupted.**

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
29 November 2023**