

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/EV/23/2181**

**Re: Property at 32 Stoneyhill Road, Musselburgh, Midlothian, EH21 6TH (“the Property”)**

**Parties:**

**Mrs Denise Carlyle, Alexander McNeill Carlyle c/o 3 Goose Green Road, Musselburgh, Midlothian, EH21 7RX (“the Applicants”)**

**Ms Mary Stewart, Ms Jacqueline Love, 32 Stoneyhill Road, Musselburgh, Midlothian, EH21 6TH (“the Respondents”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

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

**BACKGROUND**

1. By lease dated 10<sup>th</sup> June 2017 the Applicants let the Property to the Respondents.
2. Prior to the lease being signed a notice in terms of section 32 of the Housing (Scotland) Act 1988 (“the 1988 Act”) was served upon and signed by the Respondents. The lease is, accordingly, a short assured tenancy.
3. On 31<sup>st</sup> March 2023 a notice to quit and a notice in terms of s33 of the 1988 Act were served upon the Respondents.

4. A notice in terms of s11 of the Homeless Etc. (Scotland) Act 2003 was intimated to the local authority.
5. The Applicants thereafter presented an application to the Tribunal seeking an order for eviction explaining that they required possession of the Property to reside within it themselves, providing reasons for that.

## **THE CASE MANAGEMENT DISCUSSION**

6. The Applicants were represented at the case management discussion by the first named Applicant, Mrs Denise Carlyle. Both Respondents participated personally.
7. The Applicants move the Tribunal to grant an eviction order. It was explained that this was required for two reasons. Firstly, the Applicants have sold the house in which they previously resided. They were at a stage in their life where they were seeking to "downsize". Their previous property had already been sold and the Applicants were currently residing in temporary accommodation.
8. Secondly, the first named Applicant has required to undergo knee replacement surgery. Most recently, she had one of her knees replaced during July 2023. She explained that that was, in fact, her second knee replacement. While the pain she was previously suffering has abated, she does not have a full range of movement in her knees now. As a result, she requires a property which is on a single floor. The Property in question here is a ground floor flat on a single floor. Her previous property had an upstairs and downstairs which was no longer suitable.
9. The Respondents advised that they did not oppose an order for eviction being granted. Indeed, they were wishing an order for eviction as they required that to obtain assistance from the local authority to enable them to be rehoused.
10. The Respondents advised that the Property is a one bedroom flat. They, for reasons which were explained to the Tribunal and related to the health of each of the Respondents, required a two bedroomed property. They were unable to make any progress in obtaining social housing from the local authority until an order for eviction had been granted against him. They had considered obtaining alternative private rented accommodation but, again for reasons explained to the Tribunal they did not wish to do that.
11. Separately, the Respondents acknowledged the reasons for which the Applicants were seeking recovery of possession. The Respondents acknowledged the mobility issues affecting Mrs Carlyle. They were sympathetic to that. Indeed, they expressed their own concern that the process had taken so long to reach this stage.

12. In the circumstances, the Tribunal had no difficulty in concluding that it was reasonable to grant an order for eviction. Somewhat unusually, it was in the interest of both parties that such an order was granted for the reasons outlined by the parties.

## **FINDINGS IN FACT**

13. The Tribunal found the following facts to be established

- a) By lease dated 10<sup>th</sup> June 2017 the Applicants let the Property to the Respondents.
- b) Prior to the lease being signed a notice in terms of section 32 of the Housing (Scotland) Act 1988 ("the 1988 Act") was served upon and signed by the Respondents. The lease is, accordingly, a short assured tenancy.
- c) On 31<sup>st</sup> March 2023 a notice to quit and a notice in terms of s33 of the 1988 Act were served upon the Respondents.
- d) A notice in terms of s11 of the Homeless Etc. (Scotland) Act 2003 was intimated to the local authority.
- e) The Applicants intend to live in the Property. It is a ground floor flat on a single level and is needed by the Applicants due to mobility issues being encountered by the first Applicant in particular.
- f) The respondents wish to vacate the Property. They require a larger property but are unable to be offered one by the local authority until an eviction order is granted.
- g) It is reasonable in the circumstances that an order for eviction be granted.

## **DECISION**

The Tribunal granted an order against the Respondents for possession of the Property under section 33 of the Housing (Scotland) Act 1988.

### **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



26 January 2024

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Legal Member/Chair

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Date