



**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/24/0033**

**Re: Property at 120 Alloway Drive, Kirkintilloch, Glasgow, G66 2RN (“the Property”)**

**Parties:**

**Mr James Mckechnie, 15 Hayston Road, Carrickstone, Cumbernauld, G68 0BS (“the Applicant”)**

**Ms Roseanne McNally, 120 Alloway Drive, Kirkintilloch, Glasgow, G66 2RN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction. The Tribunal further determined that the order shall not be executed prior to 1<sup>st</sup> August 2024.**

**Background**

1. By application dated 4<sup>th</sup> January 2024 the applicant seeks an order for eviction, relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
  - Copy tenancy agreement
  - Notice to quit with proof of service
  - Section 33 notice with proof of service
  - Letter from estate agent re sale of the property
  - Tenant information pack acknowledging receipt of AT5

- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2003

### **Case management discussion – teleconference – 20<sup>th</sup> May 2024**

3. The applicant appeared on his own behalf. The respondent was in attendance and was represented by Mr Heath from East Dunbartonshire Citizens Advice Bureau.
4. **Evidence of Mr McKechnie:** Mr McKechnie asked the Tribunal to grant an eviction order. He explained that he is 71 years old. His wife is 76 years old. They had reached an age where they wished to retire. Mr McKechnie stated that although he had not been able to produce the AT5 for the tenancy, the respondent acknowledged receipt of the AT5 in the tenancy agreement itself and also by ticking the box on the tenant information pack document which had been produced and which was signed by the respondent. Mr McKechnie also stated that he specifically recollected having an AT5 signed at the commencement of the tenancy. He explained that he had not used letting agents and was not aware that he should have retained the document. His position was that the requirements of section 33 had been met in full.
5. In respect of the reasonableness of granting an order, Mr McKechnie explained that he found the role of landlord to be a stressful one, and one which he did not wish to continue. He explained that he had been a landlord of 9 properties and he was selling all the properties. He wanted to realise his capital so that he could retire. Mr McKechnie advised that he did not like to put tenants out of their homes and he had no fault with the respondent's conduct during the tenancy. He stated that he had owned the property for 16 years, however there was still an outstanding mortgage of £60000. He advised that the rent on the property had barely increased and the constraints on rent increases together with increased mortgage interest rates had impacted the profitability of the rental property. He stated that he also had to pay for items such as gas safety certificates and landlord registration which meant that there was little profit from the rental. Mr McKechnie stated that he intended to sell the property. He did not think it was feasible to sell the property with a sitting tenant. He had attempted to sell another property with a sitting tenant and to do so would have meant a price of more than £10000 less than that without a sitting tenant.

- 6. Evidence of Ms McNally:** Mr Heath advised that Ms McNally accepted that she had received an AT5 although she could not specifically recollect that. She accepted that she acknowledged receipt on the tenants information pack document and also in the tenancy agreement itself. On that basis did not seek to defend the action on the basis that the tenancy was not a short assured tenancy to which section 33 applied.
- 7.** In relation to reasonableness, Ms McNally stated that she wished to defend the action primarily so that she could have more time to find alternative accommodation. The property was a 2 bedroom property on first floor. Ms McNally explained that she is 68 years old. She had retired from her employment as an NHS psychiatric nurse aged 55. She was impacted by a number of health conditions including type 2 diabetes, arthritis, high blood pressure, angina and epilepsy. Mr Heath advised that Ms McNally had applied for housing assistance from the local authority and had been awarded medical points due to her conditions. She had also been advised that she was eligible for a ground floor property. Ms McNally explained that she had limited mobility and used walking aids, principally as a result of her arthritis.
- 8.** Ms McNally confirmed that she had not had any issues with paying the rent in the property. She advised that at present her income from pensions and benefits amounted to £2924 per month. The rent payable at present was £475 per month which was lower than other private rented tenancies in the local area.
- 9.** Mr Heath confirmed that Ms McNally had made an application as a homeless person to East Dunbartonshire Council however, no action would be taken in relation to that until after an eviction order was granted. He explained that there was a shortage of council properties and temporary accommodation which meant that if evicted Ms McNally could face an extended period in bed and breakfast accommodation before being offered a permanent home.
- 10.** Ms McNally confirmed that she had been looking for private rented property but hadn't found anywhere as yet. She explained that she would prefer to have a council house so she would have greater protection from eviction in the future. She explained that she wished to stay in Kirkintilloch as she had support in the area, particularly from her ex-husband.

### **Findings in fact**

11. Parties entered into a Short Assured Tenancy agreement with a commencement date of 30<sup>th</sup> November 2015.
12. The monthly rent due is £475.
13. A section 33 notice and a notice to quit was served on 13<sup>th</sup> October 2023 specifying the 30<sup>th</sup> December 2023 as the date the respondent required to leave the property.
14. It is reasonable to grant an order for eviction.
15. It is reasonable to extend the period prior to executing the order by 10 weeks.

### **Reasons for the decision**

16. The Tribunal had regard to the application and the documents lodged by the applicant. The Tribunal also took into account oral submissions at the cmd.
17. The Tribunal was satisfied that the tenancy was a short assured tenancy taking into account the representations of parties and the lease and tenant information pack which had been lodged in which the respondent acknowledged receipt of an AT5.
18. The Tribunal gave weight to the applicants representations that the role of landlord was a source of great stress to him and he wished to retire from that position as he had reached the age of 71. The Tribunal gave weight to the applicant's evidence that he had not increased the rent in the property which was now much lower than the market rate for the local area and that his good conduct as a landlord was not in question. The Tribunal accepted the applicant's evidence that it was not a feasible route for him to sell the property with a sitting tenant as this would result in financial loss.
19. The Tribunal gave weight to the fact that the respondent suffered from multiple health conditions which impacted on her wellbeing. The respondent had commenced steps to apply for a local authority house and said on a number of occasions that she sought more time so she could find somewhere else to live. The Tribunal did seek to clarify the respondents position that she sought to defend the action however, she continued to refer to a primary goal of getting more time to find somewhere else to live. The Tribunal took into account the

information from Mr Heath that there was a scarcity of council properties in the locality and also that there was a lack of private rented property.

20. The Tribunal gave weight to the fact that the respondent's income was at a level that she would be able to afford private rented accommodation in the area.
21. The Tribunal also gave weight to the evidence from the respondent and her representative that she was actively seeking a homeless property but would not receive with that unless an eviction order was granted.
22. The Tribunal had sympathy with both parties. The primary concern of the respondent centred around the lack of socially rented and private sector property in the local area. The applicant's primary concern was the stress of being a landlord as he moved into retirement and the financial issues which had arisen due to increased mortgage payments, difficulties in increasing rent and the other costs associated with being a landlord.
23. Taking all the above factors into account the Tribunal determined to grant an order for eviction with an extended period prior to service of a charge of 10 weeks. The Tribunal was satisfied that it was reasonable to grant an order however, sought to allow time for the respondent to source alternative accommodation particularly taking into account her medical conditions.

## Decision

The Tribunal determined to grant an order for eviction. The order shall not be executed prior to 1<sup>st</sup> August 2024.

## 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.**

Mary Claire Kelly

  
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Legal Member/Chair

20<sup>th</sup> May 2024  
\_\_\_\_\_  
Date

