



**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/24/1032

**Re: Property at 26 Culduthel Mains Court, Culduthel, Inverness, IV2 6RF (“the
Property”)**

Parties:

**Mr Kenneth Robertson, Mrs Sheena Robertson, 58 Holm Park, Inverness, IV2
4XU (“the Applicants”)**

**Mr Sean Kane, 26 Culduthel Mains Court, Culduthel, Inverness, IV2 6RF (“the
Respondent”)**

Tribunal Members:

Nairn Young (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

- Background

This is an application for an order for possession of the Property, which was let to the Respondent by the Applicants in terms of a short assured tenancy agreement. It called for case management discussion (‘CMD’) at 2pm, by teleconference. The Applicant was represented on the call by Mrs Alice Cochrane of Tughan & Cochrane Ltd.. The Respondent was represented on the call by his wife, Mrs Kathryn Kane.

- Findings in Fact

The facts of the case were not in dispute between the parties, as follows:

1. The Respondent let the Property from the Applicants in terms of a short assured tenancy agreement with an initial term of six months, commencing 24 February 2006, and by six-monthly terms thereafter, until terminated.
2. In terms of the agreement, termination of the lease could be effected by the landlord giving notice to quit.
3. The Applicants served notice to quit on the Respondent on 6 December 2023, terminating the tenancy on 24 February 2024, along with notice that they required possession of the Property at termination, in terms of s.33(1)(d) of the Housing (Scotland) Act 1988 ('the Act').
4. The Applicants are elderly and do not keep good health.
5. The Applicants need to sell the Property, as their interest-only mortgage deal for it has expired; they are now required to pay more in repayments than they receive in rent; and they are unable to re-mortgage due to their age and the consequent unavailability of higher loan-to-value deals.
6. The Applicants are under significant personal strain as a result of the pressure being put on them by the mortgage company in relation to the Property.
7. The Respondent and his wife live at the Property with their 11 year old son.
8. The Respondent and his family have been exemplary tenants.
9. The Respondent has been looking for alternative accommodation and, as of the date of the CMD, was hoping to be offered another private let in a matter of days.

10. Should that offer not materialise, the Respondent had been told that the local authority will not offer support unless an order for their eviction has been granted.

- Reasons for Decision

11. The tenancy has reached its end and tacit relocation is not operating. The notice required by s.33(1)(d) of the Act was served. The only question to be determined by the Tribunal is therefore whether it is reasonable for an order for possession to be granted.

12. In many respects, this is not a situation that any of the parties wished to be presented with. The Applicants have been effectively forced into the position of seeking an order for possession due to financial pressure that is to large extent out of their control. That pressure is placing them under considerable strain, when their health is already not good. On the other hand, the Respondent and his family have been happily resident at the Property for some 18 years and wish, ideally, to remain there. Due to the current pressures on availability of housing, they cannot be certain that the offer they are hoping to receive in a matter of days will indeed come to anything; although, it seems more likely than not that it will. While it is a difficult balancing exercise to determine who is placed under greater prejudice in such a situation, the Tribunal concluded that the Respondent would be in a better overall position, should the decision go against him. To refuse the order at this point would most probably only result in a similar pressure being brought to bear by the mortgage company, after repossessing the Property. It does seem likely that an alternative home will shortly become available to him and his family; but, even if that does not happen, the granting of the order will at least allow them to access support from the local authority.

- Decision

Order for possession granted.

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.

Nairn Young

22nd July 2024

Legal Member/Chair

Date