



**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/24/1817

**Re: Property at 8 (GFL) CHANCELOT GROVE, EDINBURGH, EH5 3AA (“the
Property”)**

Parties:

**Mr Clive Andrew, Susan Andrew, 3 THE PROMENADE, MUSSELBURGH, EH21
6DE (“the Applicants”)**

**Mr Daniel MacLean, Julia MacLean, 8 (GFL) CHANCELOT GROVE,
EDINBURGH, EH5 3AA (“the Respondents”)**

Tribunal Members:

Nicola Irvine (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant is entitled to the Order sought for
recovery of possession of the property.**

Background

1. The Applicant submitted an application under Rule 66 for an order to evict the Respondent from the property.
2. On 14 May 2024, a Convenor of HPC having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Tribunal intimated the application to the parties and advised them of the date, time and conference call details of today’s CMD. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair.

4. On 3 July 2024, the Tribunal received an email from the Applicants' representative which attached a statement of the Applicants.

The case management discussion

5. The CMD took place by conference call. The Applicants were represented by Mr Raphael Bar. The Respondents joined the conference call and the Second Respondent spoke on behalf of both Respondents. The Respondents opposed the application on the basis that they do not have anywhere else to live. The First Respondent is in full time employment and the Second Respondent is a student. The Respondents have 3 children of school age. The Respondents agree that the notices were served appropriately. The Applicants offered an extension of 4 weeks to the Respondents to remain in the Property to enable them to find alternative accommodation. The Respondents accepted that offer and made enquiries about alternative accommodation. However, they have not found somewhere else to live. The Respondents have been in touch with the private rented section of the local authority in relation to mid market rental properties. There have been no suitable properties identified in the same area. The Second Respondent does not drive and the Respondents need another property in the same area so that she can walk the children to school. The Respondents have also looked at the private rental market but there is nothing available which is affordable. The local authority has not indicated what level of priority the family might be given.
6. The Applicants' representative referred to the statement lodged on behalf of the Applicants and relied upon that statement in relation to the issue of reasonableness. The Applicants' representative advised that the First Applicant requires medical treatment. This is the only Property which the Applicants now rent out and they wish to cease their activities as landlords. It was submitted that the indefinite nature of the Respondents' search for alternative accommodation is such that continuing this tenancy is unreasonable.
7. The Tribunal adjourned briefly to consider the information provided by both parties. The Tribunal explained that it found that the tenancy had been brought to an end by the operation of section 33 and that it was reasonable to grant the order. The Tribunal also explained that it exercised its discretion in terms of section 216(4) of the Bankruptcy and Diligence Etc (Scotland) Act 2007 and extended the period of charge specified in section 216(1) of the Act by a period of 3 months.

Findings in Fact

8. The parties entered into a short assured tenancy which commenced 9 May 2016.
9. The Applicants served Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 on the Respondents by sheriff officer on 2 February 2024.

10. The short assured tenancy had reached its end.
11. Tacit relocation was not operating.
12. No further contractual tenancy is in operation.

Reason for Decision

13. The Tribunal proceeded on the basis of the documents and the submissions made at the CMD. Although the application was opposed, there was no factual dispute between the parties. The Tribunal decided that there was no requirement for a Hearing. Both parties advised the Tribunal about their respective personal circumstances. The Tribunal observed that when the parties entered into the short assured tenancy, the legal position at that point was that the Applicants could terminate the tenancy by service of the notices and there was no discretion available at that time. Parties were therefore aware that the tenancy could be terminated by operation of section 33. The law has of course changed and the Tribunal needs to be satisfied that it is reasonable to grant an eviction order before doing so. The issue of reasonableness was finely balanced. The Applicants are elderly and wish to cease their activities as landlords. The basis of opposition was that the Respondents do not have alternative accommodation to go to. The Respondents have been given no timescale as to when alternative accommodation might be made available. The Tribunal considered that it would not be reasonable to continue the tenancy indefinitely and that the balance of reasonableness favoured the Applicants. The Tribunal was satisfied that the conditions of section 33 had been met and that it was reasonable in the circumstances to grant the order evicting the Respondent from the property. In light of the Respondents' circumstances, the Tribunal considered that it was appropriate to extend the period of charge by 3 months.

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/Chair:

Nicola Irvine

Date: 13 August 2024

