



**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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/1788**

**Re: Property at 10/4, Balmwell Avenue, Edinburgh, Midlothian, EH16 6HF (“the Property”)**

**Parties:**

**Ms Mary Campbell (Penman), 5 Oliphant Way, Kirkcaldy, Fife, KY2 6TF (“the Applicant”)**

**Mr John Paton, 10/4, Balmwell Avenue, Edinburgh, Midlothian, EH16 6HF (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.**

**Background**

1. The application received on 18 April 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 28 April 2011.

2. Following initial procedure, the application was accepted by the Tribunal on 14 May 2024 and notified to the Respondent by Sheriff Officer on 16 August 2024. Representations were to be lodged by 5 September 2024.
3. On 2 September 2024, representations were received on behalf of the Respondent by email from CHAI Community Help & Advice Initiative who attached a mandate from the Respondent and advised that they would represent him. They were issued with a copy of the case papers and details of the CMD, at their request.

### **Case Management Discussion**

4. The Case Management Discussion (“CMD”) took place by telephone conference call on 17 September 2024 at 2pm and was attended by Ms Donnelly of TC Young, solicitors on behalf of the Applicant and by Mr Donegan of CHAI on behalf of the Respondent. Mr Donegan was accompanied by a colleague from CHAI, Ms Sophie Bennett, who was attending as an observer only.
5. Following introductions and introductory comments by the Legal Member, Mr Donegan advised that the Respondent suffers from mental health difficulties, including anxiety, and that this is why they are representing him today. The Respondent objects to a statement contained in the application lodged with the Tribunal concerning the condition of the Property but, other than that, he does not contest the application for eviction. The Respondent was, however, seeking a three to four month delay on the eviction order being enforceable to allow him some additional time to secure alternative accommodation. Mr Donegan explained that, after being served with notice which took effect on 2 March 2024, the Respondent has been looking into his options for alternative accommodation. Due to his circumstances, health issues and that he is in receipt of benefits, the Respondent is unable to obtain another private let in Edinburgh, due to demand and cost. The Respondent has been in contact with the local authority about social housing but he does not have any priority status and has been told that this will only progress if an order is issued by the Tribunal and he is facing homelessness. The Tribunal noted from Mr Donegan that the Respondent is 52 years old and lives alone.
6. Ms Donnelly explained the Applicant’s position and her reasons for wishing to sell the Property. This is the only property the Applicant lets out. She is 62 years old and also has some health conditions which led her to take partial retirement five years ago. The Property is mortgaged and the Applicant needs to relieve herself of the financial and other burdens of being a landlord, which are causing she and her husband difficulties and stress, and to allow her to fully retire. Ms Donnelly confirmed that she spoke to a colleague of Mr Donegan’s from CHAI last week who had indicated that a three-month extension was sought. She took the Applicant’s instructions on this and, although she is keen to sell as quickly as possible, the Applicant agreed to a three-month extension. Mr Donegan confirmed that three months is agreed.

7. The Tribunal Members, having considered the position, were in agreement that the application was in order and, given the agreed position of the parties, that the eviction order sought would be granted, subject to a three month extension from today in respect of the eviction date. Parties were thanked for their attendance.

### **Findings in Fact**

1. The Applicant is the owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 28 April 2011.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and served by Sheriff Officer on 28 December 2023, specifying the end of the notice period as 2 March 2024, an ish date in terms of the lease. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent by Sheriff Officer.
4. The Respondent has remained in possession of the Property following expiry of the notice period.
5. This application was lodged with the Tribunal on 18 April 2024, following expiry of the notice period.
6. The Respondent did not contest the application but sought an extension on the eviction date to allow his application for social housing to progress.
7. The Applicant agreed to an extension of three months on the eviction date.

### **Reasons for Decision**

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant prior to the lodging of the Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application and the oral submissions of both parties' representatives at the CMD. The Tribunal was satisfied that the Applicant's reason for wishing to

recover possession of the Property was that she required to sell the Property due to health and financial reasons. The Tribunal also took into account the health and other circumstances of the Respondent and noted, in particular, that he was already in contact with the local authority to seek re-housing and had made them aware of his circumstances. The Respondent had had the benefit of advice from CHAI, accepted that the ground for eviction was met and did not contest the eviction. Although the Applicant wished to sell as soon as possible due to her own circumstances, following discussions between the parties' representatives, she was agreeable to a three-month extension on the eviction date to assist the Respondent in securing alternative accommodation.

4. In all of the circumstances, the Tribunal considered that it was reasonable to grant the eviction order sought, subject to an extension of the implementation date of the eviction order to three months from today's date, namely 17 December 2024, to give additional time for suitable social housing to be identified for the Respondent.

### **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.**

# N Weir

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**Legal Member/Chair**

**17 September 2024**  
**Date**