



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/EV/23/4561**

**Re: Property at 27 Millgate Avenue, Uddingston, Glasgow, G71 5QL (“the  
Property”)**

**Parties:**

**Mr Kevin Dooley, 119 Bardykes Road, Blantyre, Glasgow, G72 9UH (“the  
Applicant”)**

**Mr Ronald Mcmillan, 27 Millgate Avenue, Uddingston, Glasgow, G71 5QL (“the  
Respondent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order against the Respondent for possession of  
the Property at 27 Millgate Avenue, Uddingston, Glasgow, G71 5QL under  
Section 33 of the Housing (Scotland) Act 1988 be granted. The order will be  
issued to the Applicant after the expiry of 30 days mentioned below in the right  
of appeal section unless an application for recall, review or permission to appeal  
is lodged with the Tribunal by the Respondent. The order will include a power  
to Officers of Court to eject the Respondent and family, servants, dependants,  
employees and others together with their goods, gear and whole belongings  
furth and from the Property and to make the same void and redd that the  
Applicant or others in his name may enter thereon and peaceably possess and  
enjoy the same.**

**Background**

- 1. This is an action for recovery of possession of the Property raised in terms  
of Rule 66 of the First-tier Tribunal for Scotland Housing and Property  
Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a tenancy agreement dated 1 September 2011 between the Applicant and the Respondent, an AT5 dated 1 September 2011, a Notice to Quit and Section 33 Notice dated 10 May 2023, a Royal Mail Track and Trace receipt dated 17 May 2023, various correspondence from the Applicant to the Respondent and with North Lanarkshire Council, a Home Report, and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council dated 14 December 2023.
3. On 28 May 2024, the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 22 August 2024, the Tribunal enclosed a copy of the application and advised parties that a Case Management Discussion (“CMD”) under Rule 17 of the Regulations would proceed on 2 October 2024. The Respondent required to lodge written submissions by 12 September 2024. This paperwork was served on the Respondent by Stewart MacLaren, Sheriff Officer, Glasgow on 23 August 2024 and the Execution of Service was received by the Tribunal administration.
5. On 10 September 2024 the Applicant submitted a letter dated 15 August 2024 from North Lanarkshire Council advising that the housing benefit paid for the Property had been suspended.
6. On 26 September 2024 the Respondent requested that the CMD assigned for 2 October 2024 be postponed. This request was passed to the Applicant who intimated by email on 1 October 2024 that he was opposed to the CMD being postponed. Due to the lateness of the request the Tribunal decided to proceed with the CMD to hear parties.

### **Case Management Discussion**

7. The Tribunal proceeded with the CMD on 2 October 2024 by way of teleconference. The Applicant appeared and represented himself. His wife was also in attendance. The Respondent also appeared and represented himself.
8. The Tribunal had before it the tenancy agreement dated 1 September 2011 between the Applicant and the Respondent with AT5, the Notice to Quit and Section 33 Notice dated 10 May 2023, the Royal Mail Track and

Trace receipt dated 17 May 2023, various correspondence from the Applicant to the Respondent and with North Lanarkshire Council, the Home Report, the letter dated 15 August 2024 from North Lanarkshire Council and a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003 to North Lanarkshire Council dated 14 December 2023. The Tribunal considered the terms of these documents.

9. The Tribunal enquired of the Respondent with regards to his request to postpone the CMD. He explained he had poor mental health and had only just received the Tribunal papers. He explained that he had not been living in the Property recently as he was looking after his mother who was ill. He had gone back to the Property recently and had picked up the Tribunal papers which he was struggling to go through. He wanted to get legal advice.
  
10. The Tribunal explained to the Respondent that Mr Dooley wanted to sell the Property as the rent was not covering the mortgage he had over it and as a result Mr Dooley the Applicant had raised an eviction action to remove him from the Property. In response Mr McMillan explained he had had a good relationship with the Applicant during most of the tenancy and understood that the Applicant needed the Property back. He had spoken to the Benefits section at the Council as he understood housing benefit was no longer being paid to the Applicant. He also explained he had spoken to the Homeless Team at the Council when the notices were served on him and that he understood that before the Council could consider rehousing him there had to be an order from the Tribunal. He explained the uncertainty was making him very anxious.
  
11. Mr McMillan explained that his mother, daughter and niece all lived locally. The Tribunal enquired as to whether he would seek help if the case were to be continued. Mr McMillan explained he was not sure. He was worried that he would not have time to tidy up the garden. He had not had time to do that as he was looking after his mother. Ideally he would move back to the Property and get his benefits reinstated, but appreciated that Mr Dooley needed to sell the Property.
  
12. The Tribunal enquired as to Mr Dooley's position. Mr Dooley explained that he was receiving no income from the Property now that Housing Benefit had stopped. However, he was still having to pay the mortgage. Following a telephone conversation with North Lanarkshire Council after he received

this letter they advised him advised to speak with the tenant directly and have him contact the Council. He went to the Property, but there was no answer. Neighbours advised they had not seen the Respondent for a considerable period of time. Mr Dooley explained that he wanted the situation resolved. Both him and his wife were pensioners and this was also causing them a huge amount of stress and anxiety.

13. The Tribunal enquired as to whether Mr Dooley owned any other properties. He explained he owned three in total including the Property and that they were looking to have all their tenants move out as they no longer wanted to be landlords. He had been hoping to sell the Property which was an ex Council house back to North Lanarkshire Council with the sitting tenant after some works had been completed but this had not proceeded for reasons explained to the Tribunal.
14. In response Mr McMillan explained that he would like two months to move out of the Property if the eviction was granted. He hoped to borrow money from family to pay the rent and wanted to tidy up the garden.

### **Findings in Fact**

15. The parties entered into a Short Assured Tenancy Agreement dated 1 September 2011. The Applicant served an AT5 on the Respondent on 1 September 2011.
16. In terms of Clause 5 of the Short Assured Tenancy Agreement the tenancy commenced on 9 September 2011 and ended on 10 September 2012 and would continue monthly thereafter.
17. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the Housing (Scotland) Act 1988 both dated 10 May 2023. These were served on the Respondent by recorded delivery post on 10 May 2023. These were received by the Respondent on 17 May 2023. The Notice to Quit and the Section 33 Notice expired on 10 August 2023.
18. The Short Assured Tenancy reached its end as at 10 August 2023.
19. *Tacit relocation* is not operating. The contractual Short Assured Tenancy had been brought to an end by the Notice to Quit on 10 August 2023.
20. The monthly rent is £500 in terms of clause 5.1 of the tenancy agreement. The majority of this rent - £404 - was previously paid through Housing Benefit but there remained a monthly shortfall. By letter of 15 August 2024

North Lanarkshire Council informed the Applicant the Respondent's housing benefit had been suspended.

21. The Applicant wishes to sell the Property. The rent of £500 per month does not cover his monthly mortgage.
22. The Respondent has been living with his mother to help look after her during an illness.
23. The Applicant served a Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 on North Lanarkshire Council on 14 December 2023.

### **Reasons for Decision**

24. The Tribunal decided to proceed with the CMD as it was clear from the explanation given by Mr McMillan that he was anxious regarding the uncertainty about the future. He understood and appreciated that Mr Dooley needed to sell the Property. Having taken advice from the Council he understood the processes involved in attempting to get help in rehousing.
25. Accordingly the Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the oral submissions made by both parties at the CMD. The Tribunal concluded that the Applicant was entitled to seek repossession of the Property under Section 33 of the Housing (Scotland) Act 1988. There was a properly constituted Short Assured Tenancy with the Respondent. The Tribunal was satisfied that the statutory provisions of Section 33 of the Housing (Scotland) Act 1988 had been met namely that the Short Assured Tenancy had reached its term (termination date); the Notice to Quit brought the contractual Short Assured Tenancy to an end, and that the Applicant had given the Respondent notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 stating that possession of the property was required by 10 August 2023.
26. The terms of Section 33 of the Housing (Scotland) Act 1988 would normally entitle the Applicant to a right of mandatory repossession of the Property. In terms of Schedule 1, paragraph 3 (4) of the Coronavirus (Scotland) Act 2020 the Applicant also has to satisfy the Tribunal that it is reasonable to evict.
27. In determining whether it is reasonable to grant the order the Tribunal is required to weigh the various factors which apply and to consider the whole of the relevant circumstances of the case. In this case the Tribunal gave weight to the Respondent being in arrears and the fact that housing

benefit had been suspended. The Tribunal considered that this was material when balancing the fact that the Applicant was getting no income from the Property over which there was still a mortgage. Further the Tribunal gave weight to the Applicant's wish to sell the Property as he and his wife no longer wanted to be landlords. The Tribunal considered the stress and anxiety that both parties were under and gave some weight to the fact that an order would give the Respondent some clarity that he had to move out. The Tribunal considered that the Respondent had taken advice from the Homeless Team and had urged him to take the Tribunal's decision to them so that they could assist him in rehousing. The balance of reasonableness in this case weighted towards the Applicant. The Tribunal find it would be reasonable to grant the order.

28. In the circumstances the Tribunal considered that in terms of Section 33 of the Housing (Scotland) Act 1988 as amended it was reasonable to grant an eviction order.

### **Decision**

29. The Tribunal granted an order for repossession suspended for a period of two months. The decision of the Tribunal was unanimous.

### **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.**

# Shirley Evans

2 October 2024

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Legal Member

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Date