



**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/24/1989**

**Re: Property at 21 Cleeves Avenue, Dalry, KA24 4DT (“the Property”)**

**Parties:**

**Mr Richard Caplan, Office 2 Room 8, Kirkhill House, Broom Road East, Newton Mearns (“the Applicant”)**

**Ms Anne McKinnon, 21 Cleeves Avenue, Dalry, KA24 4DT (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Sandra Brydon (Ordinary Member)**

**Decision (in absence of the Respondent)**

**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 1 May 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 19 October 2015.
2. Following initial procedure, the application was accepted by the Tribunal on 11 June 2024 and notified to the Respondent by Sheriff Officer on 19 September 2024. Representations were to be lodged by 9 October 2024. No representations were received prior to the CMD.

## Case Management Discussion

3. The Case Management Discussion (“CMD”) took place by telephone conference call on 22 October 2024 at 2pm. In attendance was Mr James McMillen of Ecosse Estates Ltd on behalf of the Applicant. The commencement of the CMD was delayed by 5 minutes to give the Respondent an opportunity to join late but she did not do so.
4. Following introductions and introductory comments by the Legal Member, Mr McMillan was asked to address the Tribunal on the application. He confirmed that the Property had been owned by the Applicant for over 15 years and that it has been let out to the Respondent all this time. However, the Respondent previously lived there with her partner who subsequently vacated and a new tenancy agreement was entered into in her sole name. Due to the fact that the Respondent was a long-term tenant, the Applicant had discussed the circumstances with her direct and had also put his reasons in writing when notice was served on 31 October 2023. The Applicant also gave the Respondent an extended notice period of 6 months. The reasons for the Applicant wishing to recover possession was that he wished to sell and that this was for financial reasons. Due to the rises in mortgage interest rates and the rent controls introduced, it was no longer viable for the Property to be let out and the Applicant’s company was losing money every month. Mr McMillan further explained that the Applicant originally had a portfolio of forty rented properties, ten of which have already been sold. This process started about three years ago. Of the remaining thirty properties, twenty-five are currently being kept on but the remaining five, including this one, are now being sold and are at the Tribunal stage. The reason that these five properties were chosen is to do with the rents that these particular properties can attract, compared to their respective monthly mortgage costs.
5. Mr McMillan stated that the rent in relation to this Property is £485 per calendar month and, although £390 of the rent is paid by the Respondent’s Housing Benefit, the Respondent is due to pay the remaining top-up of £95 every month. There is a history of rent arrears over the years which have increased from around £500 when notice was served in October 2023, to currently £2,100. The Respondent had stopped paying the top-up amount altogether when notice was served. Mr McMillan explained that the Respondent did not really communicate with them much regarding the tenancy and did not respond in relation to notice being served. It was noted by the Tribunal that the Applicant had offered to sell the Property to the Respondent when he served notice. Mr McMillen confirmed that she had responded to this offer but that the Applicant knew from prior discussions with her that it would be unlikely that she would be able to consider this. Mr McMillan stated that the Respondent is in her mid-40s and has two children, one of whom is an age whereby the Respondent’s benefits were reduced and is therefore no longer a dependant. He does not know whether either of the

children continue to reside with the Respondent or not. He is aware that she is unemployed and in receipt of some benefits. She has not communicated with he or the Applicant so they are unaware as to whether the Respondent has taken any steps to secure alternative housing. He is aware from dealing with another tenant who was being evicted in the North Ayrshire Council area, that the Council would not really do anything with housing applications unless and until an eviction order is granted by the Tribunal. The Applicant advised the Respondent to contact the local authority but they do not know whether she did so, or not.

6. The Tribunal Members adjourned to discuss the application in private and, on re-convening, it was stated that the Tribunal was satisfied that it was reasonable, in the circumstances, for the eviction order sought to be granted. Mr McMillan was informed that the decision paperwork would be issued shortly and he was thanked for his 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 19 October 2015, although has occupied the property under a previous tenancy for around fifteen years.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and posted on 31 October 2023 by recorded delivery and delivered/signed for by the Respondent on 1 November 2023.
4. The end of the tenancy and notice period in terms of the notices was specified as 19 April 2024, an ish date in terms of the tenancy.
5. Both notices were in the correct form, provided sufficient notice (6 months as opposed to the statutory minimum of 2 months) and were served validly on the Respondent by Recorded Delivery/'signed for' post.
6. The first-named Respondent has remained in possession of the Property following expiry of the notice period.
7. This application was lodged with the Tribunal on 1 May 2024, following expiry of the notice period.
8. The Respondent did not lodge any written representations or attend the CMD.

## 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, the supporting documentation lodged and the oral submissions of Mr McMillan at the CMD on behalf of the Applicant. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was for financial reasons and that he had sought to treat the Respondent very fairly, given that she was a long-term tenant, by explaining his reasons in advance of serving formal notice, both verbally and in writing, and providing the Respondent with an extended notice period of six months to give her more time to find alternative accommodation. The Applicant had also offered to sell the Property to the Respondent. The Tribunal also took into account the circumstances of the Respondent, as far as known to the Tribunal from the information provided by the Applicant. It was noted that she had occupied this Property for around 15 years and may still live there with her two children, one of whom is now likely to be an adult. It was also noted that the Respondent is thought to be unemployed and is in receipt of Housing Benefit. However, it was also noted that the benefits did not cover the Respondent's full monthly rent and that she had not paid her share of the rent at all since notice was served and therefore, for almost a year, resulting in arrears of over £2,000. The Tribunal noted that the Respondent had not particularly engaged with the Applicant or his agent and had not communicated at all since notice was served.
4. The Respondent had not entered into the Tribunal process which had been ongoing for some time and the Tribunal therefore had no material before it either to contradict the Applicant's position nor to advance any reasonableness arguments on behalf of the Respondent. Accordingly, the Tribunal determined, on balance, that it was reasonable for an order for recovery of possession of the Property to be granted at this stage and that there was no need for an Evidential Hearing.

## 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.**

**Nicola Weir**

**Legal Member/Chair**

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**22 October 2024**

**Date**