



**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/24/1511**

**Re: Property at 45 Camphill Road, Broughty Ferry, Dundee, DD5 2JG (“the  
Property”)**

**Parties:**

**Mr Robert Kinnear, 3 High Street, Cheekpoint, Co Waterford, X91YN24, Ireland  
 (“the Applicant”)**

**Mr Barrie Gray, 45 Camphill Road, Broughty Ferry, Dundee, DD5 2JG (“the  
Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that it should grant an order for recovery of possession;  
but shall suspend the execution of the Order until 1 April 2025**

**Background**

1. An application was received under rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession of the property under a short assured tenancy granted by the Applicants to the Respondents.
2. The application contained :-

- a. A letter of authority to act on behalf of the landlord
  - b. Copy of the tenancy agreement
  - c. AT5 Notice
  - d. Notice to quit and section 33 notice together with evidence of service
  - e. Section 11 notice and evidence of service
  - f. A signed agency agreement to act for the landlord
  - g. Email from landlord about recovering the property
3. The case had called for a case management discussion on 26 September 2024. The applicant's agent, Jacqueline Anderson and the respondent Mr Barrie Gray both appeared. After hearing from parties, the application was continued to a hearing on 15 November 2024 on the ground of reasonableness. Reference is made to the terms of the CMD Note and Direction issued.
  4. On 25 October 2024 the applicant submitted a further letter explaining his reasons for seeking recovery of the property. The letter was emailed to the respondent on the date of the hearing.
  5. The respondent called no witnesses and submitted no evidence in support of his position.
  6. In attendance at the hearing on 15 November 2024 were the applicant's agent, Jacqueline Anderson and the respondent Mr Barrie Gray both appeared.

### Hearing

7. The Applicant's agent advised that she was asking for an order for eviction today. She also advised that the applicant was willing to extend the period of residence to the respondent until the 1st of April 2025 if the order is granted.

8. The applicant advised that the same points which were made at the case management discussion still applied in relation to the reasons why the applicant sought recovery over the property. These reasons were:-
  - a. the applicant had provided an extended period of notice to the respondent to allow him to find somewhere else, from November 2023. He had already been more than fair to the respondent.
  - b. It had been a long-term process already and it was unfair to the applicant to have to extend the recovery process further.
  - c. She advised that the respondent had only viewed 1 property with her firm, before advising it was too expensive.
  - d. Her firm had given the respondent a reference, but this had only been requested once.
  - e. The applicant is 74 years old and wishes to sort matters out with the property. While he is fit to do so.
  - f. The property was his family home. His parents had lived there. He had intended to move back there, however he was now settled in Ireland and no longer intended to move into the property.
  - g. It was fully furnished and there were two attic rooms full of furniture and they needed to be emptied. This would take some time. The applicant wished to undertake this work while he was still fit enough to do so.
  - h. He intends to sell it after that.
  - i. He has two properties that he rents out, this one and one other. He is not in the process of selling the other property.
9. She also advised that the applicant was now 75 years of age.
10. She was asked about the other second property which the applicant rents out, was not being sold. It was bought purely as an investment. This property had been the applicant's family home. He had intended to return to it one day, but he now retired to Ireland and wishes to remain there. He wants to sell the property and use the proceeds to buy a house in Ireland

11. The respondent had advised at the case management discussion his situation was as follows:-

- a. He had not spoken to any housing or legal agency regarding his rights in relation to the application. He had not spoken to the local council as he thought he would have a very long wait on the housing list. He had looked at his rights online.
- b. He had been looking for other properties, however prices had increased a lot and there were a lot of other people chasing the same properties. To date, he had not been successful in securing alternative accommodation. He does plan to move out when he can. He has no idea how long it takes to get another property.
- c. This property is a three-bedroom house. He uses one bedroom for his daughter when she stays and one as his home office, he also works from home sometimes. There are also two attic rooms which he does not have access to.
- d. He advised that he tried for several other properties but had been unsuccessful and had only got to providing a reference on one occasion.
- e. Many properties were too expensive for him.
- f. He was restricted in the properties he could seek as he required somewhere relatively close to his work.
- g. He also required to be near to his daughter as he could be called to assist in her care as her mother has health issues. His daughter is 16.
- h. There were financial constraints on what he could afford.

12. At the hearing the respondent advised that even though the applicant was offering to allow him to stay until the 1st of April 2025, he still objected to the order for eviction being granted. This was because he could not say for certain that he would find another property by that date. He advised that he had been looking for other properties but to date had been unsuccessful in securing anything.

13. He said that the property is 5 minutes from his daughter and his daughter's mother home. He said that he assists his daughter's mother, as she suffers from a number of medical conditions including fibromyalgia, social anxiety (she can't leave the house) and panic attacks. He advised that he gets their shopping. He advised that he doesn't drive and therefore it's necessary for him to live close by in order to be able to provide her with assistance. He needs to be close to his daughter's mother's house in case she needs help with anything. He needs to be able to get to her property quickly if she requires things.
  
14. He stated that in terms of suitable accommodation he requires a property with at least two bedrooms for himself and his daughter and preferably a third bedroom because he works from home. He said there had been some discussion about his daughter's mother moving in with him too however that would have an impact on their benefits.
  
15. He has had difficulty finding suitable tenancy, if a property is a similar size it has been too expensive. He advised that he has offered to take a property which required work to be done to it. He said he had been looking for somewhere.
  
16. He advised that he could understand the applicant wishes to sell the property but he doesn't believe there is an urgent requirement to do so. He advised that he would help the applicant remove property from the attic if that allowed him to stay for longer. He advised that he'd offered the applicant increased rent money to something in the region of £800 to £900 per month, if that allowed him to stay in the property for longer.
  
17. The applicant's agent advised that the applicant didn't want to take the increased rent, as he didn't want to interfere with the tribunal proceedings. He wished to sell the house.

18. The applicant's agent advised that at the end of the notice period the respondent had asked for an extension to the time period to find alternative accommodation and he'd already been provided with this.
19. The respondent advised that he had had a period of rent arrears when the company he had worked for had gone out of business and he was made redundant. That had led to rent arrears accruing but he had caught up with them and they had been repaid.
20. He advised that his daughter stays with him occasionally. His daughter is 16 years of age. She is still in school. She is not vulnerable in any way.
21. He advised that he hadn't made any application to Dundee City Council to register on their housing list as he had been advised by family members, he was unlikely to get assistance due to the lengthy waiting lists and as he was a single male. He wouldn't be seen as a priority.
22. The applicant's agent advised that the applicant wishes to sell the property and wants to purchase a house in Ireland, the sale proceeds will be used to purchase a new property for himself. The applicant's agent advised that the property is worth a good value. The one next door had sold for in the region of £400,000. Accordingly, the applicant wishes to obtain this value in order to buy himself a home. He previously worked in Thailand and on retiring, he decided he did not want to settle in Broughty Ferry.
23. The respondent advised that he understood the applicant had several other properties which he rents out. The letting agent advised that they only managed 1 other property for the applicant, and she was not aware that he had any further properties.
24. The applicant has no children or wife or other dependants.

## Findings in Fact

25. We found the following facts established:-
26. That there was in place a short assured tenancy.
27. That there was a tenancy agreement between the Applicants and the Respondents in respect of the Property.
28. The tenancy commenced on 1 March 2016 for an initial period of 12 months. It would continue on a monthly basis thereafter.
29. The AT5 Form was in the prescribed format and was dated 21 January 2016.
30. The notice to quit and section 33 notices contained the prescribed information, and both were dated 21 November 2023, both sought vacant possession as of 1 February 2024. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices. The notice to quit terminated the tenancy on an *ish* date.
31. There was a section 11 notice addressed to the local authority.
32. The applicant had retired. He wished to sell the property and to buy a property in Ireland to live in with the proceeds. The property had been his family home. He did not want to return and settle in it.
33. The respondent wished to remain in the property. The size and location suited his needs. He worked from home sometimes, he did not drive, his daughter stayed there sometimes, and it was situated close to his daughter's mother's house and he helped her out with the daughter's mother's care and support.

## Reasons for Decision

34. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its end; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.
35. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33 notice and the notice to quit. We were also satisfied that these notices had been served on the Respondent. We also noted that a section 11 notice has been sent to the local authority.
36. The tribunal considers it would be reasonable to grant the order for eviction.
37. Having regard to the question of reasonableness, we consider that reasons in favour of granting the order are as follows:- the applicant was 75 years old. He had retired from working abroad. This had been his family home however he did not wish to return to live in it. He wished to sell the property and buy a property to retire in Ireland. The notices to leave had been served in November 2023 and the applicant was prepared to allow the respondent to continue to reside within the property until the 1st of April 2025. The respondent has had 18 months to find other suitable accommodation. While the respondent has a 16 year old daughter she does not reside with the respondent, but only stays there occasionally. His daughter resides with her mother. The Respondent had no other dependents in the property.
38. Reasons against the order being granted are that the respondent assists in the care of his daughter's mother, he does not drive, and the property is situated close to his daughter's mother's house, making access easy. He has not been able to find anywhere else suitable to live.
39. We place no weight on the fact that the respondent works from home. We did not understand that he did this on a full time basis. We also place no weight on



the fact that this house size is suitable for his needs, as we understand it is a multiple bedroom property, and he is a single man.

40. While the tribunal sympathises with the respondent's position, that he is settled in the property and that the property very much suits his needs in terms of size and location, given that the landlord wishes to recover the property, which was his family home, to sell it and use the proceeds to purchase a new family home for himself, we consider that that fact outweighs the needs of the respondent. We also consider that the applicant has been reasonable in giving the respondent 18 months in which to find a property. We find therefore that the reasons for granting the order outweigh the reasons for refusing to grant the order.

41. Accordingly, we would confirm that we are satisfied that all of the requirements of section 33 have been met and that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988. We will instruct that the order for eviction cannot be implemented until 1 April 2025.

### Decision

42. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

### **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.**

Melanie Barbour

15 November 2024

---

**Legal Member/Chair**

---

**Date**