

**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/24/3010

Re: Property at 21 Kaimes Avenue, Kirknewton, EH27 8AU (“the Property”)

Parties:

**Mr Fergus Middleton, Mrs Penny Middleton, 58 Main Street, Torryburn, Fife,
KY12 8LT; 58 Main Street, Torryburn, Fife, KY12 8LT (“the Applicant”)**

**Mrs Lara Hogg-Wilson, 21 Kaimes Avenue, Kirknewton, EH27 8AU (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an eviction order, with execution of said order
suspended until 28 January 2025**

Background

1 By application to the Tribunal dated 24 June 2024 the Applicants sought an eviction order against the Respondent in respect of the Property under section 33 of the Housing (Scotland) Act 1988. In support of the application the Applicants provided the following documentation:-

- (i) Short Assured Tenancy Agreement between the parties dated 6 April 2014 together with Form AT5;
- (ii) Short Assured Tenancy Agreement between the parties dated 2 and 21 November 2023;
- (iii) Notice to quit to the Respondent dated 8 February 2024;

- (iv) Notice under section 33(1)(d) of the Housing (Scotland) Act 1988 to the Respondent dated 8 February 2024;
 - (v) Proof of service of the notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 by recorded delivery mail; and
 - (vi) Notice under section 11 of the Homelessness (Scotland) Act 2003 to West Lothian Council.
- 2 By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) on 6 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure.
 - 3 Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers on 30 October 2024.
 - 4 Both parties were invited to make written representations in advance of the CMD. On 19 November 2024 the Tribunal received an email from the Applicants with a copy terms of business from Sneddon Morrison Solicitors and Estate Agents regarding the sale of the property which had been signed by the Applicants.
 - 5 On 15 November 2024 the Tribunal received an email from the Respondent confirming that she would attend the CMD with her husband as a supporter.

Case Management Discussion

- 6 The CMD took place on 6 December 2024 by teleconference. The Applicants were both personally present. The Respondent was in attendance and accompanied by her husband as a supporter.
- 7 The Tribunal explained the purpose of the Case Management Discussion and the legal test and asked for the submissions on behalf of both parties. For the avoidance of doubt the following is a summary of the submissions made and does not constitute a verbatim account of the discussion.
- 8 Mr Middleton confirmed that he would speak on behalf of the Applicants. He confirmed that they had made the application because they no longer wished to be landlords. This was their only let property and had come about following a house move. It had made sense at the time. However their eldest son was now at university and the Applicants were struggling to financially support him. Their son was working three jobs to support himself and it was taking its toll on them as parents. They wanted to support him and alleviate his stress.

- 9 Mr Middleton explained that the Applicants had been losing money on the property over the last three years due to the property costs, including repairs and maintenance. They had also had an extremely stressful and drawn out insurance claim following water damage in July 2020 which included complaints to the Ombudsman. It had caused significant stress. The Applicants had never looked at the property as a high income source. They had not increased the rent for the first seven years, and latterly the increases had been limited to 3%. It meant that the Applicants were making a financial loss year on year and that would not change any time soon. Mr Middleton confirm there was an interest only mortgage in place over the property.
- 10 The Respondent advised that she did not dispute the application. She had been trying to find another property but the private rents were not affordable. She had therefore sought advice from the council however they could not consider her for rehousing until such time as an eviction order was granted. The Respondent explained that the situation was causing her anxiety. She was just waiting to move on.
- 11 The Respondent confirmed that she resided in the property with her husband and three children, two of whom had additional support needs. One of her children was autistic and blind. The children were aged 13, 11 and 6. The Respondent confirmed that she and her family had been getting ready to move out of the property, advising that they had already packed up many of their things. It was now over to the council to help them.
- 12 In response to questions from the Tribunal the Respondent confirmed that she would prefer to have an extension of the enforcement of any eviction order to 28th January 2025 to take into account the festive period and her childrens' birthdays. Mr Middleton confirmed the Applicants would not object to this.

Relevant Legislation

- 13 The legislation the Tribunal must apply in its determination of the application are the following provisions of the Housing (Scotland) Act 1988:-

"32 Short assured tenancies.

(1)A short assured tenancy is an assured tenancy—

(a)which is for a term of not less than six months; and

(b)in respect of which a notice is served as mentioned in subsection (2) below.

(2)The notice referred to in subsection (1)(b) above is one which—

(a)is in such form as may be prescribed;

(b)is served before the creation of the assured tenancy;

(c)is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served

by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—

(a) it continues by tacit relocation;

(b).

the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 *Recovery of possession on termination of a short assured tenancy.*

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied—

(a) that the short assured tenancy has reached its end;

b) that tacit relocation is not operating; and

(c).

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and

(e) that it is reasonable to make an order for possession.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than six months, that period;

(ii) in any other case, six months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the First-tier Tribunal makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.

(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”

- 14 The following provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No.3, Amendment, Saving Provision and Revocation) Regulations 2017 are also relevant to this decision:-

6. Savings provision

Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32 and 33 of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—

(a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;

(b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and

(c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the end of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).

Findings in Fact and Law

- 15 The Applicants entered into a tenancy agreement with the Respondent dated 31 July 2015, the term of which was 28 April 2015 to 27 April 2016 and monthly thereafter. The Respondent was provided with a Form AT5 prior to signing the said Tenancy Agreement.
- 16 The tenancy between the parties was a short assured tenancy as defined by section 32 of the Housing (Scotland) Act 1988.

- 17 The Applicants and the Respondent entered into a second tenancy agreement dated 2 and 21 November 2023, the term of which was 28 October 2023 to 27 April 2024 and monthly thereafter.
- 18 On 8 February 2024 the Applicants delivered to the Respondent a notice under section 33 of the Housing (Scotland) Act, stating that the Applicants required the property back by 27 April 2024, and a notice to quit which sought to terminate the tenancy as at that date.
- 19 The notice to quit included the prescribed information required under the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- 20 The notices were delivered by recorded delivery mail.
- 21 The notice to quit terminates the tenancy as at 30 June 2024 which is an ish date under the terms of the tenancy agreement.
- 22 The Applicants require vacant possession of the property in order to sell the property. The Applicants wish to release the equity in the property to support their son during his time at university.
- 23 The Applicants are making a financial loss on the property. The Applicants are struggling financially.
- 24 The Applicants do not have any other rental properties. The Applicants wish to leave the rental market.
- 25 The Respondent resides in the property with her husband and her three children aged 13, 11 and 6. Two of the Respondent's children have additional support needs.
- 26 The Respondent cannot afford a private let. The Respondent wishes to be rehoused in social housing.
- 27 The Respondent has been advised by the council that her application for housing cannot be progressed until such time as an eviction order is granted.
- 28 The Respondent has been preparing to move out of the property.

Reasons for Decision

- 29 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Tribunal did not consider there to be any requirement to fix a hearing in the matter as there were no

issues to be resolved. Both parties had agreed to the making of an eviction order with execution suspended until 28 January 2024.

- 30 The Tribunal considered the nature of the tenancy between the parties. The Tribunal was satisfied that the tenancy agreement signed by the parties in November 2023 continued the short assured tenancy already in existence on the basis that it came into being at the ish date. The Tribunal could therefore entertain the application under section 33 of the 1988 Act.
- 31 The Tribunal was also satisfied that the Respondent had been served with a valid notice to quit and notice under section 33 of the Housing (Scotland) Act 1988, terminating the tenancy as at the ish date of 27 April 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances to grant an eviction order.
- 32 The Tribunal accepted the Applicants' reason for terminating the tenancy, namely to alleviate financial stress and put them in a position whereby they could support their son at university. The Tribunal found it credible that the deteriorating financial situation meant that the property was no longer sustainable for the Applicants in the long term. They were not professional landlords and it was clear that they had been adversely affected by the events of the last few years.
- 33 The Tribunal also had regard to the Respondent's personal circumstances, noting that she resided with her husband and her three young children. The Tribunal took into account the fact that the Respondent had resided in the property for approximately nine years and that two of her children had additional support needs. Whilst there was no medical evidence to support this, the Tribunal accepted the submissions from the Respondent at the CMD in this regard.
- 34 Whilst the Respondent's personal circumstances were a cause of concern, ultimately the overriding factor in this case was the fact that the Respondent did not object to the making of an eviction order if enforcement was suspended until 28 January 2025. She was keen for matters to be brought to a conclusion, and to be in a position whereby the council could rehouse her. The Tribunal was satisfied that the making of an eviction order would assist her in this regard, by prioritising her for rehousing in the social rented sector.
- 35 Accordingly having weighed up those factors that were relevant to the question of reasonableness the Tribunal concluded that the provisions of section 33 of the 1988 Act had been met and it would be reasonable to make an eviction order in the particular circumstances of this case, with execution of said order suspended until 28 January 2025.
- 36 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.

Ruth O'Hare

6 December 2024

Legal Member

Date