



**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/24/3390**

**Re: Property at 13 Drum Road, Dunfermline, Fife, KY11 4NN (“the Property”)**

**Parties:**

**Beothail Property Ltd, 2 Arboretum Road, Edinburgh, EH3 5PD (“the Applicant”)**

**Mrs Stacey Shand formerly known as Stacey Lessels, 13 Drum Road,  
Dunfermline, Fife, KY11 4NN (“the Respondent”)**

**Tribunal Members:**

Ruth O’Hare – Legal Member  
Gerard Darroch – Ordinary Member

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order**

**Background**

1 By application to the Tribunal dated 25<sup>th</sup> July 2024 the Applicant sought an eviction order against the Respondent in respect of the property under Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). In support of the application the Applicant provided the following documentation:-

- (i) Short Assured Tenancy Agreement dated 16 May 2016 and Form AT5;
- (ii) Notice to Quit and Notice under section 33 of the 1988 Act dated 1 May 2024 together with proof of service by Sheriff Officers on 3 May 2024; and

- (iii) Notice under section 11 of the Homelessness (Scotland) Act 2003 to Fife Council together with proof of service by email.
- 2 By Notice of Acceptance of Application dated 13 August 2024 a Legal Member 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 8 January 2025 to take place by teleconference. Notification of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. The Respondent received service of said notification by Sheriff Officers on 19 November 2024.
- 3 Both parties were invited to make written representations in advance of the CMD. No written representations were received.

### **Case Management Discussion**

- 4 The CMD took place on 8 January 2025 by teleconference. Mr Keith Chandler represented the Applicant. The Respondent also joined the call. She confirmed that her married name was Stacey Shand.
- 5 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, only those matters relevant to the Tribunal’s determination of the application.
- 6 Mr Chandler explained that the property had previously belonged to his parents and had been his childhood home. When his mother passed away he decided to rent it out. However his children and his niece and nephew were now reaching the point where they were leaving home and he wished to sell the property in order to split the sale proceeds between them. He had gone through the correct process in terms of serving notices to the Respondent, with the assistance of his letting agency. He never intended to be a landlord and didn’t particularly like it. He would rather not have gone through the Tribunal process. However the time had come to sell the property. This was the only residential property that his company rented out. He did have other commercial properties on long term leases that did not require any day to day management.
- 7 The Respondent explained that she would have happily left the property when the notices expired. However, she wished to obtain council housing and the council had told her that she would have to wait for an eviction order before they would rehouse her. The Respondent confirmed that she resided in the property with her daughter aged 4. Both she and her daughter suffered from asthma and the Respondent also had sciatica but she didn’t consider those health issues to be relevant to the application. She confirmed that the council had told her that following the granting of an eviction order the council would offer her emergency accommodation in the first instance and then permanent accommodation after that. She was not objecting to the eviction order on that

basis. She felt it was unfair on the Applicant having to go through the Tribunal process.

- 8 The Tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the CMD and confirming its decision.

### **Relevant Legislation**

- 9 The legislation the Tribunal must apply in its determination of the application are the following provisions of the 1988 Act:-

#### ***“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 ish;*

*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.”*

**Findings in Fact and Law**

- 10 The Applicant entered into a Short Assured Tenancy Agreement with the Respondents dated 16 May 2016, the term of which was 20 May 2016 to 20 November 2016 and monthly thereafter. The Respondent was provided with a Form AT5 prior to the creation of the tenancy.
- 11 The tenancy between the parties was a short assured tenancy as defined by section 32 of the 1988 Act.
- 12 On 3 May 2024, the Applicant delivered to the Respondent a Notice under section 33 of the Housing (Scotland) Act, stating that the Applicant required the property back by 20<sup>th</sup> July 2024, and a Notice to Quit, which sought to terminate the tenancy as at that date.

- 13 The Notice to Quit contained the prescribed information required by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988.
- 14 The Notices were served upon the Respondent by Sheriff Officers.
- 15 The Notice to Quit terminates the tenancy as at 20 July 2024, which is an ish date under the terms of the tenancy agreement.
- 16 The Applicant requires vacant possession of the property in order to sell the property. The property was previously the childhood home of Keith Chandler. The Applicant is Mr Chandler's limited company. Mr Chandler wishes to split the sale proceeds amongst his children and relatives.
- 17 The property is the only residential rental property owned by the Applicant.
- 18 Mr Chandler no longer wishes to be a residential landlord.
- 19 The Respondent resides in the property with her daughter aged 4.
- 20 The Respondent and her daughter both suffer from asthma. The Respondent suffers from sciatica.
- 21 The Respondent has applied to the local authority for rehousing. The Respondent desires a secure council tenancy. The council have advised the Respondent that they will not rehouse her until the Tribunal makes an eviction order.

### **Reasons for Decision**

- 22 The Tribunal was satisfied at the CMD 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 were in agreement as to the substantive matters in this case and the Tribunal therefore concluded that it could make relevant findings in fact based on the application paperwork and the submissions at the CMD.
- 23 The Tribunal was satisfied based on the application paperwork that the tenancy in place between the parties was a short assured tenancy. The Tribunal was also satisfied that the Respondent had been served with a Notice to Quit and Notice under section 33 of the 1988 Act, terminating the tenancy as at the ish date of 20 July 2024. The issue for the Tribunal to determine therefore was whether it was reasonable in all the circumstances of this case to grant an eviction order which required the Tribunal to identify the factors in this case that are relevant to the question of reasonableness.

- 24 The Tribunal took into account the fact that the Respondent was intent on leaving the property, and was awaiting the outcome of the Tribunal proceedings in order to progress her application for housing with the council. The Tribunal applied significant weight to this as a relevant factor in terms of reasonableness. The Respondent did not object to the making of an eviction order on that basis and the Tribunal was aware that the council would have a statutory obligation to offer assistance to the Respondent in this regard. This allayed any concerns the Tribunal had about the impact of an eviction order on the Respondent and her daughter.
- 25 The Tribunal also took into account the Applicant's property rights and their entitlement as the registered owner to sell the property. The Tribunal found the reason for selling as narrated by Mr Chandler to be credible and therefore gave significant weight to this.
- 26 The Tribunal did not identify any other relevant factors that would outweigh those narrated above. Accordingly the Tribunal concluded that the balance weighed in favour of making an eviction order in this case and the provisions of section 33 of the 1988 Act had been met.
- 27 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.**

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**Ruth O'Hare**  
**Legal Member/Chair**

**8 January 2025**  
**Date**

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