



**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/24/4257

**Re: Property at 52 Loch Trool Way, Whitburn, West Lothian, EH47 0RL (“the
Property”)**

Parties:

Mr Robert Gillies, 7/42 Murieston Road, Edinburgh, EH11 2JJ (“the Applicant”)

**Ms Rosemary Whitehurst, 52 Loch Trool Way, Whitburn, West Lothian, EH47
0RL (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met. The Tribunal therefore made an eviction order with execution of the order suspended for a period of two weeks.

Background

- 1 On 6 September 2024 the Applicant applied to the Tribunal for an eviction order under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 33 of the 1988 Act.
- 2 By Notice of Acceptance of Application dated 10 October 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion (“CMD”) to take place by teleconference on 10 February 2025. Notification of the CMD was given to the parties in accordance with Rule 17(2) of the Rules. Said notification was served upon the Respondent by sheriff officers on 7 January 2025.

- 3 On 20 January 2025 the Tribunal received written submissions from the Respondent by email. In summary, the Respondent confirmed that the Applicant had been a fair landlord and she understood he wished to retire due to ill health. She had been to the council to seek assistance. The council were struggling to find her a property. She could not afford a private let. She was concerned about going into emergency accommodation. The Respondent was therefore seeking a delay on any eviction order to give the council time to rehouse her.

The CMD

- 4 The CMD took place on 10 February 2025 by teleconference. The Applicant and the Respondent both joined the call.
- 5 The Tribunal had the following documents before it:-
 - (i) Application form dated 6 September 2024;
 - (ii) Title Sheet WLN36486 confirming the Applicant as the registered owner of the property;
 - (iii) Proof of the Applicant's landlord registration in the form of an excerpt from the online landlord register;
 - (iv) Short Assured Tenancy agreement and Form AT5, both dated 1 July 2015;
 - (v) Notice to quit and notice under section 33(1)(d) of the 1988 Act both dated 12 June 2024 together with proof of service on the Respondent by recorded delivery mail;
 - (vi) Section 11 notice to West Lothian Council together with proof of delivery by email; and
 - (vii) The Respondent's written representations dated 20 January 2025.
- 6 The Tribunal explained the purpose of the CMD and asked the parties for their submissions on the application. For the avoidance of doubt the following is a summary of those submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 7 The Applicant confirmed that he sought an eviction order. It was his intention to sell the property. He was seriously ill with cancer and other associated illnesses. He was no longer physically fit to be a landlord. He wished to retire and sell off his property portfolio. He was 64 years old. The Applicant confirmed that he was selling two other properties this year, with a view to selling the remainder thereafter. One of the reasons he had chosen to sell the property that was the subject of the application was due to rent arrears that had accrued in the sum of £774. The Respondent required to pay a shortfall of £45 per month between the rent and universal credit but had failed to do so. This was damaging his mental health and he could no longer cope with the situation.
- 8 The Respondent explained that she did not fault the Applicant in any way. She had lived in the property for 12 years and was struggling to obtain rehousing.

She had applied to the council but they did not have anything available at present. They would have to put her and her four children into emergency accommodation. She did not want that. She understood the seriousness of the situation and would try and pay the rent arrears. She was hoping to get back into full time employment following the covid-19 pandemic. She could not afford a private let. She acknowledged it was a horrible situation for both parties. The Respondent confirmed that she had been phoning the council every week. She was stuck in limbo at present. Her housing application had been marked as priority but there was simply no suitable housing available for the size of her family. The Respondent explained that she was looking for the eviction to be delayed to give her time to get a council house. She was looking for three to four months. The Respondent confirmed that her eldest daughter had also applied for a council house. Neither she nor her children suffered from any health issues.

- 9 The Respondent opposed any delay. His understanding was that the council would not step in and provide housing until an eviction takes place. Until then they would consider the Respondent to be adequately housed. The Applicant explained that if his cancer got worse or terminal, the property would be transferred to his son who did not have experience of being a landlord and lived overseas. If an eviction order was granted it would be around six weeks before it could be enforced, taking into account the period for service of the charge. If there were any further delay it would simply lead to the same situation later down the line.

Relevant Legislation

- 10 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 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

- 11 The Applicant is the owner and landlord of the property.
- 12 The Applicant and Respondents entered into a tenancy agreement in respect of the property dated 1 July 2015.
- 13 The Applicant gave the Respondent a Form AT5 notice that the tenancy was a short assured tenancy under section 32 of the 1988 Act prior to signing the said tenancy agreement.
- 14 The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.
- 15 On 12 June 2024 the Applicant sent the Respondent a notice to quit and a notice under section 33(1)(d) of the 1988 Act. The notices were sent by recorded delivery mail.
- 16 The notice to quit terminated the tenancy as at 1 September 2024 which is a valid ish date of the tenancy.
- 17 The Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to West Lothian Council at the date of raising this application.
- 18 The Applicant is 64 years old. The Applicant has been diagnosed with cancer, which has led to other associated illnesses. The Applicant can no longer manage the property. The Applicant intends to leave the rental market and retire.
- 19 The Applicant owns other rental properties. The Applicant is in the process of selling off his rental portfolio on a staggered basis.
- 20 The Applicant and the Respondent have an amicable relationship.
- 21 The Respondent resides in the property with her four children aged 18, 17, 10 and 9.
- 22 The Respondent is hoping to resume full time employment in the near future.

- 23 Both the Respondent and her daughter have applied for housing with the local authority. The council has advised the Respondent that there are no suitable properties currently available for her family.
- 24 The Respondent cannot afford a private let.
- 25 The Respondent has accrued arrears on the rent account, which amount to £774.

Reasons for Decision

- 26 The Tribunal was satisfied it had sufficient information upon which to reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing and the Tribunal was satisfied that to make a decision would not be contrary to the interests of the parties. It was clear from the submissions at the CMD that the substantive facts in this case were not in dispute therefore the Tribunal concluded that it could make relevant findings in fact based on the application paperwork and the submissions from the parties at the CMD.
- 27 The Tribunal was satisfied that the tenancy between the parties was a short assured tenancy under section 32 of the 1988 Act having considered the tenancy agreement and Form AT5 produced by the Applicant. The Tribunal therefore considered the provisions of section 33 of the 1988 Act, which provides a framework under which landlords can recover possession of a short assured tenancy.
- 28 The Tribunal accepted that the contractual tenancy had been brought to an end by the service of a notice to quit, and that the Respondents had been given notice in accordance with the provisions of section 33(1)(d) of the 1988 Act. The issue for the Tribunal to determine therefore was whether it was reasonable in the particular circumstances of this case for an eviction order to be granted. This required the Tribunal to identify the relevant factors pertaining to an assessment of reasonableness and determine what weight to give to each of them.
- 29 The Tribunal took into account the Applicant's reasons for selling the property. Following a decline in his health, he wished to leave the rental market and retire. He was taking steps to sell of his entire rental portfolio. It was a credible explanation for the action he had taken. The Tribunal gave significant weight to this as a relevant factor. The Tribunal also gave significant weight to the Applicant's property rights as the registered owner of the property, which would entitle him to possession, were an assured tenancy not in place.
- 30 The Tribunal also had regard to the Respondents' circumstances. The Tribunal noted that the Respondent was looking to get back on her feet with employment, and that neither she nor her children suffered from ill health.

Whilst the Tribunal had some concerns about the general risk of homelessness to the Respondent and her children, the Tribunal gave significant weight to the fact that the Respondent was actively pursuing rehousing with the local authority and was simply seeking more time to find a council property. The Tribunal was aware that at the very least she would be entitled to emergency accommodation were an eviction order granted as she would be classed as homeless, with a view to securing permanent accommodation with the council in the long term. However, the Tribunal accepted her concerns about the prospect of having to go into emergency accommodation in terms of the impact on her children and her own mental health. The Tribunal considered that this could be partly mitigated by a delay in the execution of any eviction order granted to give the council more time to find a suitable property.

- 31 Accordingly having considered the above factors as relevant to the issue of reasonableness the Tribunal determined that the balance weighed in favour of granting an eviction order in this case if it suspended execution of the order for a period of two weeks. The Tribunal noted that, taking into account the period for service of a charge, this would give the Respondent eight weeks to source accommodation with the local authority.
- 32 The Tribunal therefore concluded that the provisions of section 33 of the 1988 Act had been met and made an eviction order, with execution of the order suspended for a period of two weeks. 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

10 February 2025

Legal Member/Chair

Date