



**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/24/2419

Re: Property at 1 Balloch Place, Dundee, DD4 8TB (“the Property”)

Parties:

Mr David Sturrock, 22 Dunmore Gardens, Dundee, DD2 1PP (“the Applicant”)

**Mrs Chloe McKinnon, Mr Steven McKinnon, 1 Balloch Place, Dundee, DD4 8TB
 (“the Respondent”)**

Tribunal Members:

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

Decision (in absence of the Respondent)

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

Background

- 1 On 27 May 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 19 August 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 Respondents by sheriff officers on 19 December 2024.
- 3 No representations were received from either party in advance of the CMD.

The CMD

- 4 The CMD took place on 10 February 2025 by teleconference. The Applicant joined the call. The Respondents did not attend. The Tribunal noted that they had been given notification of the CMD in accordance with Rule 17(2) of the Rules and had been given the opportunity to make written representations. After allowing a short delay for them to join the call, the Tribunal determined to proceed in their absence.
- 5 The Tribunal had the following documents before it:-
 - (i) Application form dated 27 May 2024;
 - (ii) Title Sheet ANG10945 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 between the parties and Form AT5, both dated 26 October 2013;
 - (v) Notice to quit and notice under section 33(1)(d) of the 1988 Act both dated 22 February 2024 with proof of delivery on the Respondents by recorded delivery mail; and
 - (vi) Section 11 notice to Dundee City Council together with proof of delivery by email.
- 6 The Tribunal explained the purpose of the CMD and asked the Applicant for his submissions on the application.
- 7 The Applicant explained that he needed to move back into the property following a separation from his wife. He and his wife had purchased a property to renovate which he was currently living in. It had no heating or hot water and due to the separation he could not afford the renovations required. He owned three properties: the property he was currently living in, the Respondents' property, and a property that he let to his sister in law.
- 8 The Applicant provided some information regarding the Respondents circumstances. He advised that they were looking for another property. The first named Respondent could no longer manage stairs easily. The Respondents had two children, a daughter aged 14 and a son aged 8, who were having to share a room. The son had special needs and required his own space. The Applicant confirmed that both Respondents were in employment. They had applied to the council for housing and had received offers, which were unsuitable. The council had advised the Respondents that they would not do anything further until the Respondents were assessed as homeless. The making of an eviction order would assist the Respondents with their application for housing in this regard. The Applicant confirmed that he and the Respondents had maintained a positive relationship throughout the tenancy.

Relevant Legislation

- 9 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 time 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

- 10 The Applicant is the owner and landlord of the property.
- 11 The Applicant and Respondents entered into a tenancy agreement in respect of the property dated 26 October 2013.
- 12 The Applicant gave the Respondents 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.
- 13 The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.

- 14 On 22 February 2024 the Applicant sent the Respondents a notice to quit and a notice under section 33(1)(d) of the 1988 Act. The notices were sent by recorded delivery mail.
- 15 The notice to quit terminated the tenancy as at 25 April 2024 which is a valid ish date of the tenancy.
- 16 The Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Dundee City Council at the date of raising this application.
- 17 The Applicant requires to move back into the property following a separation from his wife.
- 18 The Applicant owns two other properties. The Applicant lets one property out to his sister in law. The Applicant is currently residing in the other property, which requires renovation. The property has no heating or hot water.
- 19 The Applicant and the Respondents have an amicable relationship.
- 20 The Respondents are both in employment.
- 21 The Respondents reside in the property with a son aged 8 and a daughter aged 14. The Respondents' son has special needs. The Respondents' children have to share a room.
- 22 The property is no longer suitable for the Respondents. The Respondents require a larger property to accommodate their family. The first named Respondent has difficulty managing the stairs.
- 23 The Respondents have applied for housing with the local authority. The Respondents have received offers of housing, which are not suitable.
- 24 The local authority will provide further assistance to the Respondents once they are assessed as homeless. The making of an eviction order will therefore assist the Respondents by progressing their application for housing with the local authority.

Reasons for Decision

- 25 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.
- 26 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. The Tribunal had

given the Respondents the opportunity to attend the CMD and to make written representations in response to the application but they had chosen not to participate in the proceedings. The Tribunal was therefore content that it could make relevant findings in fact based on the information provided by the Applicant.

- 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 under 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 Respondents had not sought to challenge the substantive facts in this case. The Tribunal therefore accepted that the reasons for the application were twofold. The Applicant required possession of the property so that he could resume occupation following a separation from his wife, and the property was no longer suitable for the needs of the Respondents' family. The Tribunal gave both of these factors significant weight.
- 30 The Tribunal also took into account the Applicant's property portfolio, and accepted that this was the only suitable property available to him. The Tribunal noted that he was currently residing in a property with no heating or hot water. Again, this was a factor to which the Tribunal gave significant weight, along with the Applicant's property rights, which entitled him to possession.
- 31 The Tribunal had regard to the Respondents' circumstances as outlined by the Applicant at the CMD. Whilst the Tribunal had concerns about the risk of homelessness to the Respondents and their family, the Tribunal accepted that the making of the eviction order would assist them in obtaining housing with the local authority. That was their desired outcome. The Respondents had not sought to lodge any objection to the application and the Tribunal accepted that the relationship between the parties was an amicable one. Accordingly, the Tribunal considered it could give less weight to the risk posed to the Respondents if an eviction order was granted.
- 32 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.

33 The Tribunal therefore concluded that the provisions of section 33 of the 1988 Act had been met and determined to make an eviction order. 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