



**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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/EV/24/1501**

**Re: Property at 67C Polton Street, Bonnyrigg, EH19 3DQ (“the Property”)**

**Parties:**

**Mr Brian Reid, 3 Esk Glades, Dalkeith, Midlothian, EH22 1UZ (“the Applicant”)**

**Mr Christopher McLuckie, 67C Polton Street, Bonnyrigg, EH19 3DQ (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for the order for possession should be granted.**

**Background**

1. The application received on 3 April 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 1 September 2011.
2. Following initial procedure, the application was accepted by the Tribunal on 27 August 2024 and notified to the Respondent by Sheriff Officer on 29 November 2024, together with details regarding the Case Management Discussion, which was originally scheduled to take place on 29 January 2025.

3. Immediately on being notified of the details of the CMD, the Applicant's representative requested a fresh date be fixed, explaining that he was unavailable on 29 January 2025. A fresh date was identified of 7 February 2025 and parties were notified of this on 10 January 2025.
4. Representations from the Respondent were to be lodged by 19 December 2024. No representations were received prior to the CMD.

### **Case Management Discussion**

5. The Case Management Discussion ("CMD") took place by telephone conference call on 7 February 2025 at 2pm. In attendance was Mr Neil Reid of Neil Reid Property, the Applicant's representative. The commencement of the CMD was delayed by 5 minutes to give the Respondent an opportunity to join late but he did not do so.
6. Following introductions and introductory comments by the Legal Member, Mr Reid was asked if he had had any recent contact with the Respondent or any update on the Respondent's circumstances or his position in relation to this application. Mr Reid confirmed that he was in contact with the Respondent a few weeks ago and that the Respondent had indicated that he was still in the same position. The Respondent has been in contact with Midlothian Council and they are aware of his housing situation, his disability (Mr Reid understands him to have poor vision and to be registered blind) and his wish to move into social housing, more suitable to his needs. However, although the Respondent has been added to their waiting list, the local authority have indicated that he will not actually be re-housed by them until an eviction order is granted by the Tribunal.
7. The Property is a first-floor flat, with two flights of stairs, and, although the Respondent can physically manage the stairs and entrance doors, due to his eyesight problems, he is looking for a more easily accessible property. Mr Reid understands that the Respondent's eyesight problems have got progressively worse over the time he has resided at the Property. He lives alone in the Property, with the assistance of family and is understood to be in his mid-forties. It is in the Respondent's interests to be re-housed and it has accordingly been frustrating for everyone involved to have to wait for the Tribunal process to be concluded which has taken a while.
8. It was explained to Mr Reid that, as with all evictions, even in the case of a Short Assured Tenancy such as this one having been properly terminated by way of notices, the Tribunal still needs to be satisfied that it is reasonable, in the circumstances, for an eviction order to be granted. As to the Applicant's circumstances, Mr Reid confirmed that he requires to sell the Property to free up funds to assist his daughter in purchasing a property of her own. She is the joint-owner of this Property with the Applicant and there is still a mortgage payable in respect of this Property. Mr Reid is not aware of the Applicant having any other properties that he lets out and his company does not manage any other properties for the Applicant.

9. In summing-up, Mr Reid stated that there was nothing he could see that would prevent the Tribunal granting the eviction order sought. He pointed out that the eviction was not contested by the Respondent who wants to move out and to obtain a property more suitable to his needs. The Applicant needs to sell the Property to realise funds, there is a mortgage over the Property and the rent in respect of the Property is very low.
10. The Legal Member raised the issue of the possibility of the Tribunal extending the timescale for the eviction and Mr Reid was asked for his comments on this. He stated that speed is really of the essence here, for both parties. He understood that the local authority have not indicated to the Respondent that there is any issue with timescales and, in fact, Mr Reid thinks they have already identified possible properties for the Respondent, given that they are aware of his need for accessible housing.
11. The Tribunal Members conferred briefly and thereafter confirmed that they were both satisfied, that the ground of eviction was met and that it was reasonable, in the circumstances, for the eviction order sought to be granted, with usual timescales. Mr Reid was informed that the decision paperwork would be issued shortly and was thanked for his attendance at the CMD.

## **Findings in Fact**

1. The Applicant is the joint-owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 1 September 2011.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice dated and delivered in-person to the Respondent on 1 February 2024 which was confirmed by written receipt from the Respondent of the same date.
4. The end of the tenancy and notice period in terms of the notices was specified as 28 April 2024, an ish date in terms of the tenancy.
5. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
6. The Respondent has remained in possession of the Property following expiry of the notice period.
7. This application was originally lodged with the Tribunal on 3 April 2024, before the end of the notice period, but it transpired that this was due to an error in the date stated as the end date of the tenancy in an earlier version of the notices served on the Respondent. This was subsequently clarified and further

documentation lodged with the Tribunal, allowing acceptance of the application on 27 August 2024.

8. The Respondent did not lodge any written representations or attend the CMD.

### **Reasons for Decision**

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant in connection with this Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.
3. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged and the oral submissions of Mr Reid at the CMD on behalf of the Applicant. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was to enable him to sell the Property, essentially for financial reasons and to free up the capital to assist his daughter in purchasing a property. The Tribunal also took into account the circumstances of the Respondent, as far as known to the Tribunal from the information provided by Mr Reid. It was noted that the Respondent was understood to live at the Property alone and that he had a progressive condition with deteriorating eyesight, which meant that the Respondent wished to move out of the Property and move into local authority housing more suitable to his needs. He was understood to have made application to the local authority, who were aware of his housing needs and had indicated that he would be re-housed by them once an eviction order had been granted by the Tribunal.
4. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position in respect of the eviction application nor to advance any reasonableness arguments on behalf of the Respondent. Accordingly, the Tribunal determined, on balance, that it was reasonable for an order for recovery of possession of the Property to be granted at this stage and that there was no need for an Evidential Hearing.
5. The Tribunal's decision 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.**

**Nicola Weir**

**Legal Member/Chair**

**7 February 2025**  
**Date**