



**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 Act”)**

Chamber Ref: FTS/HPC/EV/24/1535

**Re: Property at 127 Cullen Park, Cullen Drive, Glenrothes, KY6 2JL (“the
Property”)**

Parties:

**Ashton and Murray Holdings Limited, 205 High Street, Kirkcaldy, Scotland, KY1
1JD (“the Applicants”)**

**Mr James Lomas whose present whereabouts are unknown and Mrs Beverly
Lomas residing at 127 Cullen Park, Cullen Drive, Glenrothes, KY6 2JL, (“the
Respondents”)**

Tribunal Members:

Jim Bauld (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

**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. By application dated 3 April 2024, the applicants sought an order under section 33 of the Housing (Scotland) Act 1988 (“the Act”) and in terms of rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 24 May 2024 the application was accepted by the tribunal and referred for determination by the tribunal.

3. A Case Management Discussion was set to take place on 10 February 2025 and appropriate intimation of that hearing was given to both the landlord and the tenants. Service on James Lomas was effected by way of advertisement on the tribunal's website.

The Case Management Discussion

4. The Case Management Discussion (CMD) took place on 10 February 2025. The applicants were represented by Mr Jeffrey Livingstone from Landlord Specialist Services Scotland. Mrs Beverley Lomas was present but Mr James Lomas was not.
5. The tribunal explained the purpose of the CMD and the powers available to the tribunal to determine matters

Discussions at CMD

6. The tribunal asked various questions of the parties with regard to the application
7. In answer to the questions posed by the tribunal, parties confirmed that there was no dispute that the respondents were the tenants of the property and that the relevant notices had been served and received
8. Mrs. Lomas also accepted that she had been advised of the change of landlord in December 2021. She indicated that she had now been separated from her husband Mr James Lomas since October 2023 and he no longer reside in the property.
9. The tribunal explained that the only matter which appeared to require to be determined was whether it was reasonable to grant the order
10. Mrs. Lomas stated that she did not wish to remain in the property. It had three bedrooms and it was too large for her. She indicated that she had recently undergone knee replacement surgery and was not able to deal with the stairs leading up to the property. She has been in touch with the local council and understands that if the eviction order is granted that she will be provided with accommodation via the council's housing team
11. Mr. Livingstone for the landlords indicated that he has also been approached by the local council who are interested in using this property as one of their temporary furnished properties to house homeless families. He is aware that the council have certain duties to assist persons who are homeless and those duties would also apply to Mrs. Lomas if the order for eviction was granted.

12. The tribunal noted that both parties were effectively agreed that the eviction order should be granted and that they both agreed that it was reasonable to do so.

Findings in Fact

13. The applicants and the respondents are respectively the landlord and the tenants of the property by means of a tenancy agreement originally commencing in or around 2002.
14. A written tenancy agreement showing the respondents as tenants and Edenwood Property as landlord commencing on 25 September 2008 was produced..
15. The tenancy was a short assured tenancy in terms of the Act
16. The rent payable was initially £375 per month and was now £500 per month.
17. The applicants became the landlord on acquiring title in December 2021. Appropriate intimation of the change of landlord was given to the respondents
18. On 18 January 2024 the applicants served upon the respondents a notice to quit and a notice in terms of section 33 (1) (d) of the Act. These notices were served on the respondents by sheriff officers. Said notices became effective on 25 March 2024.
19. The notices informed the respondents that the applicants wished to seek recovery of possession using the provisions of section 33 of the Act.
20. The notices were correctly drafted and gave appropriate periods of notice as required by law.
21. The basis for the order for possession was accordingly established

Decision and reasons

22. When the 1988 Act was originally passed, the eviction process under section 33 was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the required notices in terms of that section had been served upon the tenant.

23. Since 7 April 2020, in terms of changes initially made by the Coronavirus (Scotland) Act 2020 and then by the Coronavirus (Recovery and Reform) (Scotland) Act 2022, an eviction order on this basis can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order

24. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties

25. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, **Cumming v Danson**, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

26. In this case the tribunal finds that it is reasonable to grant the order.

27. The tribunal accepts that both parties are agreed that the eviction order should be granted. The tribunal notes that the remaining tenant does not wish to remain in the property and requires the eviction order to be granted in order to obtain proper assistance from the local authority in finding alternative accommodation. It is noted that Mrs Lomas has sought assistance from the council and has been told that she will be assisted in obtaining alternative accommodation when the order is granted and she faces actual homelessness

28. The respondent requires assistance from the relevant authorities in obtaining alternative accommodation. The council's homelessness prevention team have effectively advised the respondent that she will not obtain that assistance unless an eviction order is granted thus triggering specific statutory duties under the Housing (Scotland) Act 1987. The granting of the order will therefore

ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain more suitable accommodation for herself .

29. The balance of reasonableness is weighted towards the applicants in this application

30. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that a final order should be made at the CMD

Decision

The order for recovery of possession is granted

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.

Jim Bauld

10th February 2025

Legal Member/Chair

Date