



**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/24/3511

**Re: Property at 85 Burns Avenue, Armadale, Bathgate, EH48 3PG (“the
Property”)**

Parties:

Mrs Karen Murray, 16 Woodlands Drive, Holytown, ML1 4XU (“the Applicant”)

**Ms Nicola Bennet and Jason Harvey, 85 Burns Avenue, Armadale, Bathgate,
EH48 3PG (“the Respondents”)**

Tribunal Members:

Martin McAllister (Legal Member) and Frances Wood (Ordinary Member)

Decision

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

Background

- 1. This is an application under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) for recovery of possession of the Property. It is dated 30 July 2024.**
- 2. The application was accepted for determination on 24 August 2024.**

Case Management Discussion

- 3. A case management discussion was held by teleconference on 12 March 2025.**
- 4. Mr Thomas Gallagher, solicitor was in attendance and represented the applicant.**

5. The Respondents were present.

Preliminary Matters

6. The legal member explained the purpose of a case management discussion.

7. Mr Gallagher said that the application had been necessary because the Respondents had not removed themselves from the Property by 27 July 2024 and that they were still residing in it.

8. Mr Harvey said that the application for recovery of the Property was not opposed. He said that they had made an application for housing to the local council but that this could not be given priority until the Tribunal granted an order of eviction.

9. Findings in Fact

9.1 The Applicant and the Respondent are parties to a short assured tenancy agreement in respect of the Property.

9.2 The term of the tenancy was 27 November 2015 to 27 November 2016 (both dates inclusive).

9.3 The tenancy agreement provided for the tenancy to continue on a month to month basis if it were not brought to an end on 27 November 2016.

9.4 The Applicant served a Section 33 Notice on the Respondent on 1 May requiring vacation of the Property by 27 July 2024.

9.5 The Respondents remain in occupation of the Property.

9.6 The required notice in terms of the Homelessness etc. (Scotland) Act 2003 has been given to the local authority.

10. Findings in Fact and Law

10.1 The tenancy continued by tacit relocation from 27 November 2016 until it was brought to an end by service of the Notice to Quit on 1 May 2024.

10.2 The tenancy ended on 27 July 2024.

10.3 The Applicant is entitled to recover the Property because the tenancy has been brought to an end.

10.4 It is reasonable for the order of eviction to be granted.

Documents

11. The Tribunal considered the documents which had been lodged with the application:

- 11.1 Copy of two pages of the short assured tenancy agreement.**
- 11.2 AT5 Form relating to the short assured tenancy.**
- 11.3 Notice to Quit served on 1 May 2024 requiring the Respondent to leave the Property by 27 July 2024.**
- 11.4 Section 33 Notice served on 1 May 2024 .**
- 11.5 Evidence of delivery of the Section 33 Notice and Notice to Quit.**
- 11.6 Copy of Notice to local authority under Section 11 of the Homelessness etc (Scotland) Act 2003.**

Applicant's Position

12. Mr Gallagher said that the Applicant was seeking recovery of the Property in terms of Section 33 of the Housing (Scotland) Act 1988. He said that the lease had continued on a month to month basis from 27 November 2016 and that the Applicant had sought to regain possession of the Property as at 27 July 2024 by serving a notice to quit on 1 May 2024. He said that 27 July 2022 was an ish date and that the tenancy finished on that date.

13. Mr Gallagher said that only two pages of the short assured tenancy agreement had been submitted because the Applicant could not locate a full copy of the lease. He said that the pages submitted provided confirmation of the existence of the lease and its term. It also provided details of the parties.

14. Mr Gallagher said that the Applicant had decided to seek an order of eviction because she wanted to withdraw from the business of being a landlord. Two properties are owned and operated as tenanted properties.

15. Mr Gallagher said that the continuation of the tenancy was not viable. He said that the rent passing was considerably below market value and the Respondents had indicated that they would not be able to pay an increased rent.

Respondent's Position

16. Mr Harvey confirmed that an increased rent would not be affordable for the Respondents. He said that he works full time and his partner cannot work because of the cost of child care.

17. Mr Harvey said that the Respondents reside in the property with their seven year old daughter who attends a local school.

18. Mr Harvey said that the Council have told him that the application for housing cannot be prioritised until an eviction order has been granted.

The Law

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 finish;

(b) that tacit relocation is not operating; ...

(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 two months, that period;

(ii) in any other case, two 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.

Discussion and Determination

19. The tribunal determined that the Applicant had properly served the notice to quit, that the Respondent had been given the appropriate period of notice and that the appropriate notice had been given to the local authority in terms of the Homelessness etc (Scotland) Act 2003.

20. The tribunal determined that the tenancy had been brought to an end at the ish date by service of the notice to quit.

21. The tribunal determined that, although only two pages of the short assured tenancy had been submitted, there was sufficient information before it to deal with the application.

22. The tribunal noted that, prior to the amendments to the 1988 Act, it would have no discretion and would have been required to grant the order of eviction. By virtue of the amendments, the tribunal does have discretion and requires to consider reasonableness.

23. The tribunal did not consider that either party had additional evidence to put before it and that there was therefore no reason to arrange for an evidential Hearing to be arranged.

24. The tribunal accepted that the Applicant's reasons for seeking the order of eviction were reasonable. It accepted that continuation of the tenancy

was not financially viable for her and that she wanted to withdraw from the business of being a landlord.

25. The tribunal noted that the Respondents were not opposing the application.

26. On balance, the tribunal determined that it was reasonable to grant the application and to make the order. In coming to its determination, the tribunal noted the particular circumstances of the parties. It considered it significant that the Respondents offered no opposition to the application.

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.

Martin McAllister

**Martin J. McAllister
Legal Member
12 March 2025**