



**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/24/3298

Re: Property at Quarrytack, Montrose, DD10 9JU (“the Property”)

Parties:

Mrs May Grant, Bank of Gallery Farmhouse, Montrose, DD10 9JU (“the Applicant”)

Miss Jan McPhail, Quarrytack, Montrose, DD10 9JU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an eviction order

Background

- 1** By application to the Tribunal dated 19 July 2024 the Applicant sought an eviction order against the Respondent 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 Housing (Scotland) Act 1988 (“the 1988 Act”).
- 2** By Notice of Acceptance of Application dated 10 August 2024 a Legal Member of the Tribunal with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application at the sifting stage. The application was therefore referred to a Case Management Discussion (“CMD”) to take place by teleconference on 9 January 2025.
- 3** Notice of the CMD was given to both parties. Said notice was served upon the Respondent along with a copy of the application paperwork on 20 November 2024. Both parties were invited to make written representations in advance of the CMD.

- 4 On 27 November 2024 the Tribunal received written representations from the Respondent. In summary the Respondent submitted that she suffered from various medical conditions that made it challenging to obtain alternative accommodation. The representations included a number of letters in support of her position. The representations also included sensitive personal information therefore the Tribunal wrote to the Respondent by first class post on 27 November 2024 requesting her consent to cross the representations over to the Applicant.
- 5 The Tribunal received no response from the Respondent. On 6 January 2025 the Tribunal attempted to telephone the Respondent. The Respondent did not answer and the Tribunal left a voicemail. The Tribunal heard nothing further from the Respondent.

The first CMD

- 6 The CMD took place on 9 January 2025. Mr Calvin Gordon of Thorntons Solicitors represented the Applicant who was not herself in attendance. The Respondent did not join the call. The Tribunal delayed the commencement time of the CMD to give the Respondent the opportunity to attend before determined to proceed in her absence.
- 7 Mr Gordon explained that the Respondent's cousin had told him that the Respondent had been detained in hospital. Mr Gordon had spoken with both the Respondent's cousin, Kitty Keith, and her home help, Fiona Winder. It would appear that returning to the property was not an option for the Respondent due to her health conditions. She required supported accommodation and there appeared to be social work involvement to assist her with that.
- 8 Mr Gordon confirmed that the Applicant was seeking an eviction order. The Applicant had made the application based on her age and the age of her husband. The Applicant would soon turn 81 and her husband was 85. They were living in a house with stairs, which was no longer suitable for their needs. They were struggling. They needed to move into the property because it was on one level. That was the main reason the Applicant wished to recover possession of the property. Mr Gordon further explained that the Applicant and her husband currently resided in a farmhouse pertaining to the family farm. The intention was for their son and his family to move into that property. The Applicant's husband owned a 25% share in the farm partnership, with his son having a majority 75% interest. It therefore made sense for the Applicant's son to move into the farmhouse. The Applicant had been concerned about the Respondent for some time, particularly her failure to adequately heat the property. The Respondent's cousin had since been attending the house and had assured the Applicant that the property was being properly heated. Mr Gordon advised that the property had three bedrooms and three public rooms. In all the circumstances it would be reasonable to make an eviction order in this case.

- 9 Having heard submissions the Tribunal concluded that it did not have sufficient information to reach a decision on the application in the absence of the Respondent, and in view of the circumstances outlined by Mr Gordon. The Tribunal therefore determined to adjourn the CMD to a further CMD. The purpose of the adjournment was for the Tribunal to seek additional information regarding the Respondent's current circumstances and housing need. Mr Gordon confirmed that he would ask both Ms Keith and Ms Winder to contact the Tribunal directly.
- 10 A second CMD was assigned for the 18 February 2025. The Tribunal gave notification of the CMD to both parties.
- 11 Following the CMD the Tribunal received an email from Estelle Sharp, Homeless Case Manager at Angus Council. She inquired as to the outcome of the CMD and provided a written mandate from the Respondent. Ms Sharp confirmed that the Respondent had been detained in hospital and assessment was ongoing. It was not known when the Respondent would be released from hospital. The Tribunal responded to Ms Sharp with a copy of the CMD note, including confirmation of the rescheduled CMD date, and requested further information regarding the suitability of the property insofar as the Respondent's housing needs.
- 12 On 19 January 2025 the Tribunal received an email from the Respondent's cousin, Kitty Keith. Ms Keith advised that in her opinion it would not be in the Respondent's best interests to return to the property. The Respondent was of the view that she required to vacate the property, and she was coping well in hospital. Ms Keith was hopeful that the Respondent would find suitable alternative accommodation elsewhere.
- 13 On 2 February 2025 the Tribunal received an email from Fiona Winder, the Respondent's home help. Ms Winder confirmed that she had worked for the Respondent for 8 years, and had known her for 40 years. She outlined the circumstances that had led to the Respondent's detention. She explained that the Respondent's condition had improved during her stay in hospital. Ms Winder felt that it would not be in the Respondent's best interests to return to the property and she would instead benefit from a smaller property with support, such as sheltered accommodation.
- 14 On 17 February 2025 the Tribunal received an email from Estelle Sharpe. Ms Sharpe advised that the Respondent remained in hospital and would be unable to attend the CMD. The Respondent did not wish to dispute the application and was unlikely to return to the property due to her health issues. The Respondent agreed that the Applicant should return to live in the property.

The second CMD

- 15 The second CMD took place on 19 January 2025. Mr Gordon represented the Applicant who was not herself in attendance. The Respondent did not attend.

16 The Tribunal had the following documents before it:-

- (i) Form E application form dated 19 July 2024;
- (ii) Copy search sheet dated 18 July 2024;
- (iii) Copy tenancy agreement and Form AT5, both dated 16th September 2025;
- (iv) Copy notice to quit and notice under section 33(1)(d) of the 1988 Act dated 26th February 2024 together with proof of postage; and
- (v) Section 11 notice to Angus Council and proof of delivery by email.
- (vi) Written representations from the Respondent, Estelle Sharp, Fiona Winder and Kitty Keith.

17 Mr Gordon confirmed that the Applicant maintained their motion for an eviction order. He adopted his submissions from the first CMD in support of the reasonableness of making an order in this case.

Relevant Legislation

18 The Tribunal considered 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

- 19** The Applicant and Respondent entered into a tenancy agreement dated 16 September 2015.
- 20** The term of the tenancy was from and including 16 September 2015 to 15 March 2016, and monthly thereafter.
- 21** The Respondent was given a Form AT5 under section 32(1)(b) of the 1988 Act prior to signing the said tenancy agreement.
- 22** The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.
- 23** On 26 February 2025 the Applicant sent the Respondent a notice to quit and a notice under section 33(1)(d) of the 1988 Act by recorded delivery mail.
- 24** The notice to quit terminated the contractual tenancy between the parties as at 15 June 2024.
- 25** On 18 July 2024 the Applicant's solicitor sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Angus Council by email.
- 26** The Applicant is aged 81. The Applicant resides with her husband who is aged 85.
- 27** The Applicant and her husband currently live in a farmhouse. The Applicant's son owns a 75% share in the farm business. The Applicant's husband owns 25%. The Applicant's son requires to move into the farmhouse with his family as the majority owner of the farm business.
- 28** The Applicant's house is no longer suitable for the needs of herself and her husband due to mobility issues. The property has stairs, which are difficult to manage.
- 29** The Applicant requires to move into the property with her husband. The property is on one level and is therefore more suitable to the needs of the Applicant and her husband.
- 30** The Respondent is currently detained in hospital.
- 31** The Respondent is receiving support from the local authority's housing and social work departments.
- 32** The property is no longer suitable for the Respondent's needs.
- 33** The Respondent does not dispute the terms of the application.

- 34** The Respondent has no dependents who reside with her who would be at risk of homelessness were an eviction order granted.

Reasons for Decision

- 35** The Tribunal took into account the application paperwork, written representations and the submissions from Mr Gordon at the CMDs, and concluded that it could make relevant findings in fact based on the information before it. The Tribunal was satisfied that it could reach a decision on the application without a hearing under Rule 18 of the Rules, and that it would be in the best interests of both parties to do so, having regard to the particular circumstances of this case.
- 36** The Tribunal accepted based on the documentation before it that the tenancy between the parties was a short assured tenancy, that the contractual tenancy had been terminated by service of a notice to quit, and that the Applicant had given the Respondent the required notice under section 33(1)(d) of the said Act. The issue for the Tribunal to determine was whether it was reasonable to make an eviction order in the particular circumstances of this case, which required the Tribunal to identify those factors relevant to reasonableness and determine what weight to apply to them.
- 37** The Tribunal gave significant weight to the Applicant's reasons for raising the application. The Tribunal noted that she and her husband were both of an age where they were struggling with the stairs in their current property. The property would be a better fit for their needs, being on one level. The Tribunal accepted the reasons why the Applicant's son as the majority owner in the family farm business would wish to move into the farmhouse currently occupied by the Applicant and her husband. The Tribunal found the Applicant's position to be credible on these matters.
- 38** The Tribunal also took into account the Applicant's right to possession of the property as the registered owner. The Tribunal considered that they had a right to occupy the property as their own home if that was their wish.
- 39** The Tribunal carefully considered the Respondent's position. The Tribunal had regard to the fact that the Respondent had been unable to take part in the proceedings due to her detention in hospital. However, the Respondent did have a support network in place, consisting of not just her family and friends but also officers from the local authority, who had helpfully assisted the Tribunal in providing further information regarding her circumstances.
- 40** The Tribunal gave significant weight to the Respondent's wishes, as expressed by Ms Sharpe. The Respondent did not seek to oppose the application, and it was unlikely that she would be in a position to return to the property. This reflected the views expressed by both Ms Keith and Ms Winder in their written representations to the Tribunal. Whilst the Respondent's health issues would ordinarily have been a cause for concern, it was clear from the evidence before the Tribunal that the property was no longer suitable for her

needs. It was in her best interests to obtain alternative accommodation and the Tribunal was satisfied that she had the appropriate support in place to assist her in identifying a suitable property. The Tribunal also took into account that fact that there were no other persons residing with the Respondent at the property who would be at risk of homelessness.

41 Considering the above factors in its assessment of reasonableness the Tribunal determined that the balance weighed in favour of making an eviction order and the provisions of section 33 of the 1988 Act were met. The Tribunal therefore made an eviction order.

42 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.

R O'Hare

18 February 2025

Legal Member/Chair

Date