



**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/24/3839

**Re: Property at 57F Macbeth Moir Road, Musselburgh, EH21 8DQ (“the
Property”)**

Parties:

**Mr Gary O'Donnell, 41 Howden Hall Drive, Edinburgh, EH16 6UL (“the
Applicant”)**

**Mr Miroslaw Adam Gora, Ms Anna Gora nee Kulig, 57F Macbeth Moir Road,
Musselburgh, EH21 8DQ (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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 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 The application was referred to a Case Management Discussion (“CMD”) to take place by teleconference on 5 March 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 23 January 2025. Both parties were given the opportunity to make written representations. No written representations were received in advance of the CMD.

The CMD

- 3 The CMD took place on 5 March 2025 by teleconference. The Applicant joined the call and was represented by Ms Nikita Scott. The Respondents were both present. Mrs Gora confirmed she would represent them both.
- 4 The Tribunal explained the purpose of the CMD and asked the parties for their submissions on the application. For the avoidance of doubt the following is a summary of those submissions relevant to the Tribunal's determination of the application and does not constitute a verbatim account of the discussion.
- 5 Ms Scott asked the Tribunal to make an eviction order. She referred to the notice to quit and notice under section 33(1)(d) of the Housing (Scotland) Act 1988 which had been submitted with the application. She highlighted the time it had taken to get to this point, with the notices having been sent to the Respondents in May 2024. She confirmed that a family member of the Applicant was waiting to move into the accommodation. The Applicant was incurring significant costs in housing said family member in temporary accommodation pending recovery of the property. It was a source of stress to the Applicant and his family. Ms Scott confirm that the local authority were aware of the application and had been in contact with the Respondents.
- 6 Mrs Gora accepted the reasons for the Applicant requiring the property back. She had been unable to secure a suitable house for herself and her husband, and their two teenage daughters, aged 12 and 16. She had contacted the local authority upon receiving the notice to quit and had been advised that her family should remain in the property until an eviction order was issued. The local authority would then assist them with accommodation. Mrs Gora confirmed that she had an open application pending with the local authority. She and her husband were unable to secure private accommodation. She explained that the property was no longer suitable for their needs. Her husband had mobility issues and had difficulty in accessing the property. Mrs Gora confirmed she had no objection to an eviction order being granted so that her family could be rehoused by the local authority.

Relevant Legislation

- 7 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 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

- 8 The Applicant is the owner and landlord of the property.
- 9 The Applicant and Respondents entered into a tenancy agreement in respect of the property dated 18 November 2015.
- 10 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.
- 11 The tenancy between the parties is a short assured tenancy as defined by section 32 of the 1988 Act.
- 12 On 28 May 2024 the Applicant sent the Respondent a notice to quit and a notice under section 33(1)(d) of the 1988 Act. The notices were sent by recorded delivery mail.
- 13 The notice to quit terminated the tenancy as at 18 August 2024 which is a valid ish date of the tenancy.
- 14 The Applicant requires the property back to provide housing for a family member. The Applicant's family member is currently residing in temporary accommodation at a cost to the Applicant.
- 15 The Respondents reside in the property with their two teenage daughters aged 12 and 16.
- 16 The Respondents have sought advice from the local authority and have made an application for housing. The Respondents have been advised that the local

authority will provide assistance once an eviction order is granted by the Tribunal.

- 17 The Respondents do not wish to remain in the property. The property is no longer suitable for their needs.
- 18 The making of an eviction order will assist the Respondents by progressing their application for housing with the local authority.

Reasons for Decision

- 19 The Tribunal was satisfied it had sufficient information upon which to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. 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. It was clear from the submissions at the CMD that the substantive facts in this case were not in dispute.
- 20 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.
- 21 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 in accordance with the provisions of 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.
- 22 The Tribunal took into account the Applicant's reasons for making the application, namely to secure the property in order to provide housing for a family member, and the ongoing financial impact upon him as a result of having to house said family member in temporary accommodation. The Tribunal also gave significant weight to the Applicant's property rights as the registered owner of the property, which would entitle him to possession, were an assured tenancy not in place.
- 23 The Tribunal also had regard to the Respondents' circumstances. Whilst the Tribunal had some concerns about the general risk of homelessness to the Respondents and their children, the Tribunal gave greater weight to their wish to be rehoused by the local authority as the property was no longer suitable for their needs. Mrs Gora had been clear in her submissions at the CMD that she

did not oppose an eviction order, as it would assist in progressing the Respondents' application for rehousing. She had not sought to challenge the Applicant's reasons for seeking repossession of the property, and appeared in agreement with the Applicant's position as outlined by Ms Scott at the CMD.

- 24 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.
- 25 The Tribunal therefore concluded that the provisions of section 33 of the 1988 Act had been met and made 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

5 March 2025

Legal Member/Chair

Date