



**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/25/0029

**Re: Property at 31 Loch Earn Way, Whitburn, West Lothian, EH47 0RU (“the
Property”)**

Parties:

Mr Robert Gillies, 7/42 Murieston Road, Edinburgh, EH11 2JJ (“the Applicant”)

**Mr Brian McMillan, 31 Loch Earn Way, Whitburn, West Lothian, EH47 0RU (“the
Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for possession relying on section 33 of
the Housing (Scotland) Act 1988**

Background

1. By application accepted on 10 January 2025 the applicant seeks an order for eviction relying on section 33 of the Housing (Scotland) Act 1988.
2. The applicant lodged the following documents with the application:
 - Copy tenancy agreements
 - Copy form AT5
 - Copy Notice to quit
 - Copy section 33 notice
 - Proof of service of notice to quit and section 33 notice

- Notice under section 11 of the Homelessness Etc. (Scotland) Act 2001 with proof of delivery
3. A case management discussion (“cmd”) was scheduled to take place by teleconference on 4 March 2025.

Case management discussion (“cmd”) – teleconference- 4 March 2025

4. The applicant was in attendance, The respondent was not present or represented. The respondent had been personally served with papers by Sheriff Officers on 27 January 2025. The Tribunal was satisfied that the respondent had been properly notified of the cmd in terms of rule 24.1 and proceeded with the cmd in his absence in terms of rule 29.
5. The applicant sought an order for eviction. He explained that he is 64 years old and has been diagnosed with cancer. He has decided to sell the property as he is no longer fit to be a landlord and should his health deteriorate, he does not wish to leave the property for his son, who lives outside the UK, to have to deal with. The applicant confirmed that the respondent has been living in the property since 2014. He stated that the respondent is 61 years old and as far as the applicant is aware currently lives alone in the property. The property is a 3 bedroom maisonette flat. The respondent is not working and the monthly rent of £1,100 is paid directly to the applicant by universal credit. The applicant stated that the property had been very poorly maintained. He stated that he had been in the property approximately 6 months previously. Some of the windows had been broken and he had repaired these. He stated that the front door had also been damaged as had almost all the internal doors, some of which were missing. In addition there had been damage to the walls within the property and all the carpets were soiled. The applicant stated that the damage may have been done by the respondent’s son who had previously lived in the property but had now left. The applicant estimated the cost of repairing the property once vacant possession was achieved to be £10,000. He stated that the respondent offered to pay the windows repairs costs at the rate of £30 per week but this had not happened. The applicant stated that he had made efforts to engage with the respondent to discuss an arrangement by email, text message and by speaking to the respondent’s daughter but the respondent had not replied. The

applicant stated that due to the condition of the property and his own poor health his intention was to sell the property. He had also started the process of disposing of other properties he owned, and had already achieved an eviction order in respect of one of these.

Findings in fact and law

6. The parties entered into a short assured tenancy agreement with a commencement date of 25 March 2014. An AT5 was served on the respondent prior to the commencement of the tenancy.
7. Parties entered into a further short assured tenancy agreement with a commencement date of 1 January 2016.
8. Monthly rent in terms of the short assured tenancy agreement was initially £780.
9. Current monthly rent is £1,100.
10. A valid notice to quit and section 33 notice dated 14 October 2024 were served on the respondent.
11. The applicant is 64 years old.
12. The applicant has been diagnosed with cancer.
13. The applicant intends to sell the property.
14. The respondent is 61 years old.
15. The respondent is not working and receives benefits to cover the cost of the monthly rent.
16. The property has been damaged as a result of the respondent's conduct or that of his guests.
17. The applicant has complied with the requirements of section 33 of the Housing (Scotland) Act 1988.
18. It is reasonable to grant an order for eviction.

Reasons for the decision

19. Section 33 of the Housing (Scotland) Act 1988 states:

33 (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.

20. In the present application the applicant has satisfied the requirements of section 33 (a), (b) and (d). The Tribunal is satisfied that a short assured tenancy was created when the respondent moved into the property. A second tenancy commenced on 1 January 2016. This tenancy was also a short assured tenancy. A notice to quit and notice in terms of section 33 were served on 14 October 2024. The notice to quit had the effect of preventing tacit relocation from operating. The section 33 notice provided the tenant with notice that the applicant required possession of the house.

21. The Tribunal proceeded to make a determination of whether it was reasonable to grant an order for eviction. In assessing whether it is reasonable to grant an order all available facts relevant to the decision were considered and weighed in the balance, for and against.

22. The Tribunal took into account the oral and written submissions of the applicant. The Tribunal found the applicant to be credible and truthful and accepted his submissions as truthful.

23. The Tribunal gave significant weight to the fact that the respondent did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. The Tribunal also gave weight to the applicants' submissions that the property was in a poor state of repair due to the conduct of the respondent or his family members. The Tribunal took into account that the respondent had sought to engage with the respondent including speaking to his daughter however the respondent had not responded to a proposal relating to the repairs.

24. The Tribunal gave weight to the applicant's personal circumstances and in particular his poor health which was a primary consideration in his decision to seek an eviction order. The Tribunal accepted that it was reasonable that the respondent would want to sell the property due to his medical condition.

25. Taking all the foregoing factors into account the Tribunal found that on balance it was reasonable to grant an order for eviction

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.

Mary-Claire Kelly

Legal Member/Chair

4 March 2025 _____
Date