



**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/24/3810**

**Re: Property at Flat 2/2 28 West Clyde Street, Helensburgh, G84 8AW (“the  
Property”)**

**Parties:**

**Ms Kathryn Megan Lowe, Safi 2a, Apartment 108, Town Square, Dubai, United  
Arab Emirates (“the Applicant”)**

**Miss Jayne E Lowe, Flat 2/2 28 West Clyde Street, Helensburgh, G84 8AW (“the  
Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
tribunal”) determined that an order for recovery of possession should be  
granted in favour of the Applicant. The tribunal delayed execution of the order  
until 26 May 2025.**

**Background**

1. An application was received from the Applicant’s representative on 16 August 2024 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”) seeking recovery of possession of the property under a short assured tenancy by the Applicant against the Respondent.
2. Attached to the application form were:
  - (i) The short-assured tenancy agreement between the parties which commenced on 15 June 2012.

- (ii) Form AT5 relating to the tenancy dated 8 June 2012 and signed by the Applicant on the same date.
  - (iii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 2 April 2024 and addressed to the Respondent.
  - (iv) Copy Notice to Quit dated 14 April 2025 addressed to the Respondent, requiring her to remove from the property on or before 14 June 2024.
  - (v) Certificate of service by sheriff officer relating to the Notice to Quit and section 33 notice, dated 4 April 2024.
  - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Argyll and Bute Council with proof of sending by email on 29 July 2024.
  - (vii) Affidavit by the Applicant dated 12 July 2024.
3. The application was accepted on 9 September 2024.
  4. Notice of the case management discussion, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 18 February 2025.
  5. The Respondent was invited to submit written representations to the tribunal by 8 March 2025. No written representations were received from her prior to the case management discussion.

### **The case management discussion**

6. A case management discussion (CMD) was held by teleconference call on 26 March 2025. The Applicant was represented on the teleconference call by Miss Emma Hamilton of Clarity Simplicity Ltd, Solicitors. The Respondent was present on the teleconference call and represented herself.

### **Preliminary issue**

7. The tribunal noted that there appeared to be a discrepancy between the date of the notice to quit and the date on which it was served on the Respondent by sheriff officer. The section 33 notice was dated 2 April 2024 and the certificate of service for both the section 33 notice and the Notice to Quit was dated 4 April 2024. The Notice to Quit, however, was dated 14 April 2024.
8. When asked to explain this discrepancy, Miss Hamilton said that she presumed the date on the certificate of service to be correct. She said that although the Notice to Quit was dated after the papers were served, this was because two months' notice was required and the end date of the tenancy was 14 June 2024.
9. The Respondent confirmed that she had received the Notice to Quit which had been left for by the sheriff officers.

10. The tribunal was satisfied that in the circumstances the notices had been validly served on the Respondent.

### **The Applicant's submissions**

11. Miss Hamilton asked the tribunal to grant an order in favour of the Applicant against the Respondent for recovery of possession of the property. While the Applicant had become aware the previous day that the Respondent had found a new tenancy, she still sought an order in case the Respondent did not move out for some reason.
12. Miss Hamilton addressed the tribunal on the matter of reasonableness. She explained that while the Applicant and the Respondent are sisters, the Applicant no longer wished to be a landlord to her sister. She now lives abroad permanently and no longer wishes to be tied to the UK. Her relationship with the Respondent had deteriorated and was now very difficult, and she wished to be free of her obligations to her sister. She had made efforts to engage with the Respondent but this had proven difficult.
13. The Respondent refused to allow the Applicant or her tradespeople access to the property. The Applicant had therefore not been in the property for some time, and had no idea of the extent of any work which may need to be carried out. She had also been unable to renew her landlord registration because she could not obtain access to have electrical and gas safety checks carried out.
14. The legal member asked whether the Applicant was aware that a landlord has a right of entry to their property and could make an application to the tribunal seeking access to the property to inspect it or carry out repairs. Miss Hamilton confirmed that the Applicant was aware of this, but did not wish to make a difficult family situation worse. She said that she believed the Applicant wished to sell the property once any work required had been completed. She confirmed that the Applicant does not own any other rental properties.
15. Miss Hamilton said that the Applicant had decided to pursue an eviction application because she considered this to be the best way to move matters forward in terms of the family situation, and to assist the Respondent with finding alternative housing.

### **The Respondent's submissions**

16. The Respondent told the tribunal that she had secured a new tenancy with the council, which had commenced on 7 March. She had signed the tenancy agreement and paid the first month's rent. She said that she was taking steps to move in to the new property. She had not yet moved in, as she was waiting for a carpet to be laid in the living room before she could begin moving her

furniture in. She was also waiting for appliances to be installed and for the gas and electricity to be transferred into her name.

17. The Respondent asked to be allowed sufficient time to move out before the eviction order took effect. She explained that she was relying on others to help her with the move, and did not know how long it was likely to take. She said that she was currently receiving support from the council's housing department and from the Adult Protection Service. She was also receiving support from a psychiatrist and from family, principally her mother.

### **Findings in fact**

18. The tribunal made the following findings in fact:

- i. The Applicant owns the property.
- ii. The Applicant is the registered landlord for the property.
- iii. There is a short-assured tenancy in place between the parties. The tenancy commenced on 15 June 2012 for an initial period of 12 months until 14 June 2013. It had then continued by tacit relocation on a twelve-monthly basis.
- iv. The form AT5 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- v. The Notice to Quit and the section 33 notice stated that the Applicant required vacant possession of the property on or before 14 June 2024. These provided more than two months' notice of vacant possession.
- vi. The notices were validly served on the Respondent by sheriff officer on 4 April 2024.
- vii. The tenancy reached its end on 14 June 2024.
- viii. The Respondent is still resident in the property.

### **Reasons for decision**

19. The tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

20. The tribunal noted that section 33 (1) of the 1988 Act as amended by the 2020 Act states:

- (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.*

21. The tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the Notice to Quit and section 33 notice had been validly served on the Respondent, for the reasons set out above.
22. The tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
23. The tribunal noted that there were clearly difficulties with the family relationship between the Applicant and the Respondent. It noted the Applicant's desire to end the landlord-tenant relationship between them.
24. It also noted that at the start of the short assured tenancy, given the rules that were in place at that time, the Applicant might have expected to be granted an eviction order automatically if the tribunal was satisfied that she applicant had followed the correct rules in terms of creating the tenancy and serving the various notices correctly. The Notice to Quit had been served on the Respondent almost a year ago. She had therefore been aware for some time that the Applicant sought to repossess the property.
25. The tribunal noted that the Respondent had been living in the property for almost 13 years. It was apparent from the Applicant's affidavit, which mentioned that the Respondent's mother has been her guardian since 2012, that the Respondent was a vulnerable adult.
26. The Respondent was not opposing the application, and had already entered into a new tenancy. She appeared to be in receipt of considerable support from various agencies, and may need slightly longer to complete the move into the new property than might be typical.
27. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the tribunal considered that on balance it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondent had secured a new tenancy and had begun the process of moving out of the property, and did not oppose the application.

28. The tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicant.

29. Before deciding to grant the order, the tribunal asked the parties for their views on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, to give the Respondent more time to move into the new property if needed. Miss Hamilton said that the Applicant would be happy to agree an extension for a reasonable amount of time, bearing in mind that the Applicant had already signed a tenancy agreement for another property.

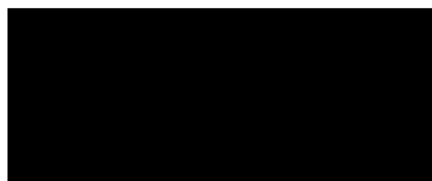
30. Taking all of the circumstances into account, the tribunal determined that it would be reasonable to delay execution for four weeks beyond the standard period.

### **Decision**

The tribunal granted an order in favour of the Applicant against the Respondent for recovery of possession of the property. The tribunal delayed execution of the order until 26 May 2025.

### **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.**



**Legal Member/Chair**

**26<sup>th</sup> March 2025**

**Date**