



**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/24/3669**

**Re: Property at 31 Lanrigg View, Stonehouse, ML9 3HS (“the Property”)**

**Parties:**

**Ms Irene J Muirhead, care of Wolfcrooks Cottage, Douglas, Lanark, ML11 9PA  
 (“the Applicant”)**

**Ms Jennifer Reid, 31 Lanrigg View, Stonehouse, ML9 3HS (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.**

**Background**

1. By application, dated 12 August 2024, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 5 August 2012 and terminating not later than 4 August 2014, and copies of a Notice under Section 33 of the 1988 Act, and a Notice to Quit, both dated 15 May 2024, and both requiring the Respondent to vacate the Property by 4 August 2024. The Applicant’s agents stated that the Applicant is now permanently resident in New Zealand, where she has bought a house and that she wishes to sell the Property.

3. On 15 February 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 8 March 2025.
4. On 25 March 2025, the Tribunal received written representations from Mr Jordan Bird, Lay Representative at Hamilton CAB on behalf of the Respondent. They stated that the application is opposed. The Respondent has been in the Property for a significant period. She is employed in a local shop and, although she is presently off work with health problems, she is due to return soon. An Order for Possession would have a disproportionate effect on her mental health as well as causing issues that could affect her earning capacity, as she works locally. She has been a tenant of the Property for more than 10 years. Her teenage son lives with her. He is currently on a waiting list for a referral for a potential diagnosis of ADHD and/or other possible neurodivergence. If the Order were granted this would cause severe anxiety and distress for him also and might exacerbate his health issues. The proceedings had been raised on the basis of Section 33, but there has been previous correspondence to the Respondent, in which the Applicant has relied on the ground that she intends to sell the Property. It was submitted that the Respondent believes that the Applicant has more than one property and, in the circumstances, she has not explained why she requires to sell this specific property. For these reasons, it was submitted that the Tribunal should refuse the Order as craved, as it would be unreasonable to grant it in the circumstances of the case.

### **Case Management Discussion**

5. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 27 March 2025. The Applicant was represented by her mother, Mrs Jane Muirhead. The Respondent was represented by Mr Jordan Bird, Lay Representative of Hamilton CAB.
6. The Applicant's representative told the Tribunal that the Applicant moved to New Zealand in 2010 and was granted citizenship in 2018. She regards it as her permanent home and is looking to sell the Property to offset her financial commitments in New Zealand, where she has bought a house with her partner. Mortgage rates are high and have risen recently. She is 42 and has a one-year-old son and, whilst she is in permanent employment, she has had to reduce to working 4 days a week, to lower the costs of childcare. She struggles with her mental health and feels a sense of guilt in not being able to devote more time to her son, particularly as a baby was long-awaited and his arrival followed a number of miscarriages. Her mental health has deteriorated as a result of the uncertainty about recovering possession of the Property. She had explained to the Respondent during a visit to Scotland in August 2023 that her circumstances had changed and she needed to sell the Property but had not put a definite timescale to the Respondent, who was then advised by South Lanarkshire Council and Citizens Advice that she did not have to move out, because she had not been served with a Notice to Quit. The Applicant then looked to serve the Notice but found out that she was bound to wait until the next possible ish date in the tenancy, due to the

wording of the lease. It had been 18 months since she had explained her situation to the Respondent and she is struggling mentally and financially. Mrs Muirhead said that she understood that the Respondent does not cope well with stress, and felt that it was time to end the uncertainty for both sides.

7. Mr Bird advised the Tribunal that the Respondent has been on the Council house waiting list for some time but does not currently have any additional priority based on her health issues. She is presently in receipt of Universal Credit which includes a housing element and he and his CAB colleagues are working with her on an income maximisation plan. She is reliant on public transport and if the local authority does not rehouse her in Stonehouse, she may not be able to travel to and from her job in a local shop when her health improves. Her son is at the local secondary school, although that is Larkhall Academy and is not in Stonehouse itself. He has recently been added to a list for referral to the Child and Adolescent Mental Health Service ("CAMHS"). Mr Bird said that the Respondent has a high degree of sympathy with the Applicant and, if the Tribunal was minded to make an Order for Possession, he would ask that it should not be capable of being enforced until two to four weeks after the expiry of the 30-day appeal period against the Tribunal's decision. Mrs Muirhead confirmed that the Applicant would be content with that request, if an Order was to be made.

### **Reasons for Decision**

8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
9. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
10. The tenancy in this case was stated to be for a period of not more than two years from 5 August 2012. Accordingly, when that date came without either Party terminating the tenancy, it continued by tacit relocation for successive periods of two years, with the consequence that, although the Applicant told the Respondent in August 2023 that she needed to have the Property back, a Notice to Quit could not be given to be effective before 4 August 2024. Service of the Notice to Quit created an end date of 4 August 2024 and prevented the further operation of tacit relocation.
11. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was no longer operating, that there was no further contractual tenancy in existence between the Parties

and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.

12. In arriving at its decision as to whether it would be reasonable to make an Order for Possession, the Tribunal considered carefully all the evidence before it. The view of the Tribunal was that, whilst no actual medical evidence had been provided by either Party, it seemed clear from the information provided by their representatives that the ongoing Tribunal process was impacting detrimentally on the health and wellbeing of both the Applicant and Respondent. There did not appear to be any dispute as to the stated facts of the case, and the Tribunal did not, therefore, think that continuing the application to a full evidential Hearing would be in the interests of the Parties. It would merely delay bringing the matter to a conclusion, with potential further impacts on their mental health.
13. Making a decision on reasonableness is often a very difficult task for the Tribunal. It turns on the facts and circumstances of each case and involves considering the situation from the viewpoint of both parties and, in particular, assessing the impact on both of a decision either to make an Order or to refuse it. It can be a fine balancing process, and the Tribunal found it to be so in the present case. The Tribunal noted that the Applicant had made her permanent home in New Zealand, had already sold the other property she had owned in Scotland, was juggling work with the needs of a very young child and was looking to sell the Property in order to reduce her financial commitments and had health issues. The Tribunal also recognised that the Respondent had mental health issues and was concerned for the health of her teenage son, who, it was understood, had been referred to CAMHS for assessment. She also had found employment locally and had family support in the area.
14. Having carefully considered the representations of both Parties, the Tribunal decided, on balance, that it would be reasonable to make an Order for Possession. The Respondent and her son have access to support services and will in due course be rehoused, whereas, if the application was refused, the Applicant would have ongoing uncertainty as to whether she would ever be able to recover the Property, realise it and reduce her financial commitments.
15. Taking into account the request by Mr Bird on behalf of the Respondent that she should be permitted some time beyond the 30-day appeal period to prepare to move out, and Mrs Muirhead's agreement, on behalf of the Respondent, to that request, the Tribunal decided that the Order for Possession should not be enforceable before 30 May 2025
16. The Tribunal's decision 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.**

**Legal Member: George Clark**

**Date: 27 March 2025**