

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/5001**

**Re: Property at 87 Sedgebank, Livingston, EH54 6HD (“the Property”)**

**Parties:**

**Mr John Cook, 65 Strips of Craigie Road, Dundee, DD4 7QQ (“the Applicant”)**

**Mr Scott Neil, Mrs Grace Neil, 87 Sedgebank, Livingston, EH54 6HD (“the Respondents”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision (in absence of the Respondents)**

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

**Background**

1. By application dated 30 October 2024 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 agreement
  - 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

- Letter regarding marketing the property for sale
3. A case management discussion (“cmd”) was scheduled to take place by teleconference on 15 May 2025.

#### **Case management discussion – 15 May 2025 – teleconference**

4. The applicant was represented by Ms Hepworth, letting agent, Almond Valley Property Centre. The respondents were not present or represented. The respondents had been served with papers by Sheriff Officers on 4 March 2025. The Tribunal was satisfied that the respondents had been properly notified of the cmd in terms of rule 24.1 and proceeded with the cmd in their absence in terms of rule 29.
5. Ms Hepworth sought an order for eviction. She stated that the respondents continue to reside in the property. She had spoken to them about 2 weeks ago. They reside with their 2 children. The property has 3 bedrooms. Ms Hepworth stated that the respondents are going through the process of applying for a local authority property. The local authority would provide accommodation after an eviction order is granted. She stated that the respondents were aware of today’s cmd. Ms Hepworth stated that the applicant sought an order as he intended to sell the property. He was the landlord of a number of properties and Ms Hepworth thought that he was selling a number of properties.

#### **Findings in fact**

6. Parties entered into a short assured tenancy agreement with a commencement date of 25 May 2017.
7. A notice to quit specifying the ish date of the tenancy of 26 October 2024 was served on the respondents by sheriff officers on 23 August 2024.
8. A notice in terms of section 33 notice was served on the respondents by sheriff officers on 23 August 2024.
9. The applicant intends to sell the property.
10. The respondents reside with their 2 children.
11. The respondents have not lodged any opposition to the application and did not attend the cmd to oppose an order being granted.

12. The applicant has complied with the requirements of section 33 of the Housing (Scotland) Act 1988
13. It is reasonable to grant an order for eviction

### Reasons for the decision

14. Rule 18 states:

*Power to determine the proceedings without a hearing*

**18.—(1)** *Subject to paragraph (2), the First-tier Tribunal—*

*(a) may make a decision without a hearing if the First-tier Tribunal considers that—*

*(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and*

*(ii) to do so will not be contrary to the interests of the parties; and*

*(b) must make a decision without a hearing where the decision relates to—*

*(i) correcting; or*

*(ii) reviewing on a point of law,*

*a decision made by the First-tier Tribunal.*

*(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.*

15. The Tribunal was satisfied that having regard to the undisputed facts of the case it was able to make a determination and that it was not contrary to parties' interest to do so at the cmd without the need for a further hearing.

16. 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.*

In the present application the applicant has satisfied the requirements of section 33 (a), (b) and (d).

17. 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.
18. The Tribunal took into account the oral and written submissions of Ms Hepworth. The Tribunal accepted the unopposed submissions as truthful. The Tribunal accepted that the applicant intended to sell the property on the basis of Ms Hepworth's submissions and the letter from Property Connections confirming instructions to market the property dated 28/10/24.
19. The Tribunal gave significant weight to the fact that the respondents did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. The Tribunal gave weight to the respondents' personal circumstances and in particular the fact that they resided with their two children who would lose their home in the event that an order was granted. The Tribunal considered that had the respondents sought to oppose the application this would have been a weighty consideration. However in light of the lack of opposition and also taking in account the information provided by Ms Hepworth that the respondents had applied for local authority accommodation the Tribunal determined on balance that it was reasonable to grant an order.

## **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.

# M-C.Kelly

Legal Member/Chair

Date: 15 May 2025