

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/24/4528

Re: Property at 100 Wood Avenue, Annan, DG12 6DH (“the Property”)

Parties:

Mrs Caroline Vivers, 3 Hecklegirth, Annan, DG12 6HU (“the Applicant”)

Mr Craig Rogerson, 100 Wood Avenue, Annan, DG12 6DH (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for eviction should be granted.

1. On 1st October 2024 the Applicant lodged an Application with the Tribunal under Rule 66 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondents from the property.
2. Lodged with the application were: -
 - a. Short Assured Tenancy Agreement dated 28th March 2014 and 22nd April 2014, and initially running from 1st May 2014 to 30th April 2015 and monthly thereafter, and with monthly rent of £475;
 - b. AT5 Notice dated 28th March 2014 and 22nd April 2014;
 - c. Notice to Quit dated 19th July 2024 for 30th September 2024;
 - d. Section 33 Notice dated 19th July 2024 for 30th September 2024;
 - e. Proof of service of c and d;
 - f. Section 11 Notice;
 - g. Written Statement regarding background and reasons for wanting to evict;
 - h. Supplementary documents supporting the Written Statement.

3. The Application was served on the Respondent personally by Sheriff Officers on 6th March 2025.

Case Management Discussion

4. The Case Management Discussion ("CMD") took place by teleconference. The Applicant represented herself. The Respondent joined the call along with his father, Derek Rogerson, who represented him.
5. The Tribunal explained the purposes of a CMD in terms of Rule 17 of the Rules. The Tribunal explained that the Applicant needed to provide sufficient evidence to establish the ground of eviction, and also that it was reasonable for the Tribunal to grant the order.
6. The Applicant sought an order for eviction in terms of sections 19 and 33 of the Housing (Scotland) Act 1988. She said that her reasons for wanting to evict were laid out in her written Submission. The tribunal went through the Written submission with her and she confirmed that everything was correct.
7. Mr Rogerson said that they accepted that the Applicant wanted to evict so that she could sell the property, but the Respondent did not have anywhere else to go. He had approached the local authority to pursue the homeless route and had been told that they had no accommodation to offer him. He said that the Respondent has MS and can only work two days per week at present. The local authority are waiting to hear from him following the outcome of the CMD.

Findings in Fact

- i. The parties entered into a Short Assured Tenancy Agreement in respect of the property;
- ii. The tenancy commenced on 1st May 2014, with the initial term being from 1st May 2014 to 30th April 2015, and monthly thereafter;
- iii. Notice To Quit and Section 33 Notice were served timeously and correctly;
- iv. The Short Assured Tenancy has reached its ish;
- v. Tacit relocation is not operating;
- vi. The Application was served on the Respondent by Sheriff Officer on 6th March 2025;
- vii. The Applicant is nearing retirement age and wishes to sell the property to partially fund that retirement;
- viii. The Respondent has a history of arrears and refused to attend mediation in relation to those arrears;
- ix. The arrears are now cleared;
- x. The Respondent is difficult to contact and in September 2024 the Applicant made four attempts to have the gas engineer attend to prepare the gas safety certificate.

Reasons For Decision

8. Section 33 of the Housing (Scotland) Act 1988 is as follows:

(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.

(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 two months, that period;

(ii) in any other case, two 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.

9. The Tribunal is satisfied that the Short Assured Tenancy has reached its finish, that tacit relocation is not operating, and that the Applicant has given the Respondent notice stating that she requires possession of the property.
10. The Applicant, in her Written Statement, lays out her reasons for wanting to bring the tenancy to an end. She wishes to sell it to fund her retirement. The tenancy has not been without its problems in relation to the Respondent's behaviour including not being available for arranged tradespeople and having

rent arrears. Taking all of these factors in to account the Tribunal is satisfied that it is reasonable to grant the order.

11. The Tribunal is also satisfied that it would be just, taking in to account the Respondent's difficulty in securing alternative accommodation, to suspend extract of the eviction order until 15th July 2025. This gives certainty to the Applicant, and additional time for the Respondent to look for somewhere else to live. The Respondent was told that he should show this Decision to the local authority as soon as he receives it.

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.

Alison Kelly

9th May 2025

Legal Member/Chair

Date