

**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/24/4756

Re: Property at 157 Feorlin Way, Garelochhead, G84 0EB (“the Property”)

Parties:

Mr Adam Nyberg, 1 Felton Place, Yoker, Glasgow, G13 4DN (“the Applicant”)

Ms Kathryn Hunter Gonzaga, 157 Feorlin Way, Garelochhead, G84 0EB (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Gerard Darroch (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 15 October 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 15 May 2017 and, if not terminated on 16 November 2017, continuing on a monthly basis thereafter until terminated by two months’ notice given by the landlord or one month’s notice given by the tenant, and copies of a Notice under Section 33 of the 1988 Act and a Notice to Quit, both dated 17 June 2024, and both requiring the Respondent to vacate the Property by 16 September 2024. The Applicant also stated that he wishes to sell the Property.
3. On 1 March 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 22 March 2025. The Respondent did not make any written representations to the Tribunal.

4. On 12 April 2025, the Applicant provided a copy of a fee quote from Purple Bricks, estate agents. He also provided a copy of a letter from his letting agents, confirming that the Respondent had refused them access on several occasions for property inspections, and a rent statement showing arrears at 13 March 2025 of £4,927, with no rent having been paid since 18 June 2024. He advised the Tribunal that the arrears would be £6,035 by the date of the Case Management Discussion.

Case Management Discussion

5. A Case Management Discussion was held by means of a telephone conference call on the morning of 1 May 2025. The Applicant and the Respondent were both present.
6. The Respondent told the Tribunal that she is a single parent with three children, aged 14, 16 and 18. Her 14-year-old daughter is still at school in Helensburgh and the two older children attend college in Glasgow. She said that she had raised repairs issues with the letting agents, but work had not been carried out. She referred in particular to a period during which there was no heating or hot water and also to an infestation of rats. The location of the Property is such that steps have to be taken to make sure rats cannot gain entry to houses. Her view was that the kitchen is unusable, and the Property is unsanitary. There are three bedrooms, one of which is very small. She described it as “a horrible place to be.” When she sent the letting agents a list of matters requiring repair, the response was to serve a Notice to Quit. She had then contacted the local authority, who had told her she would be placed at the top of the housing list, but they had no properties available in Helensburgh. If she had anywhere else to live, she would willingly move out. She said that she had withheld rent in order to build up a deposit for a new tenancy, but in later questioning added that she was having to pay hundreds of pounds a month for rat poison and other costs for issues that should have been remedied by the Applicant, and that she had told the letting agents by telephone that she did not feel she should have to pay rent until the issues were resolved. She does not want to live in the Property but has no other option. Private rents in Helensburgh are double the amount that she is currently paying. She had tried options, such as the children living with their father, but that had not worked out. She confirmed that she occasionally stays at her boyfriend’s house.
7. The Applicant told the Tribunal that there was a mortgage over the Property and that his monthly repayments were slightly more than the rent. His position was that he could no longer afford to be a landlord and meet the costs of upkeep of the Property, particularly as he was not receiving any rent. He did not own any other rented properties. He confirmed that the Property had been without heating for a few days, but the Respondent had not been in when the boiler engineer arrived. There had only been a child in the house, and the engineer had not wished to go in without an adult being

present. He had supplied temporary heaters for the three days before he could gain access when an adult was there. The Applicant said that he is in the Armed Forces and away a lot, so the letting was managed by agents, who had instructions to carry out any work that was required to meet a landlord's legal requirements. Access had, however, been a problem, and failure to report repairs issues when they became apparent had resulted in greater costs being incurred. He said that he is at financial breaking point. He accepted that the kitchen is not modern, but the low rent reflects the condition of the Property. The rat infestation to which the Respondent referred had been resolved by sealing up a small hole in a step.

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 Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not 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.
11. 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.
12. In arriving at its decision, the Tribunal considered carefully all the evidence before it. The Tribunal noted that the rent is many months in arrears and that nothing at all has been paid since June 2024, that the Applicant is experiencing difficulty in gaining access for inspections, some of which are required by law, and that he has decided he wishes to sell the Property and has taken initial steps to obtain a quote for the marketing. He had stated that he is at financial breaking point. The Tribunal also noted that the Respondent clearly does not wish to continue to live in the Property and

remains there only because she has no other option. The view of the Tribunal was that on balance, it would be reasonable to make an Order for Possession. It did not appear to be in the best interests of either Party for the tenancy to continue. The Applicant is not receiving any rent but has mortgage commitments to meet. The Respondent will have access to support services, and the local authority has a statutory duty to rehouse her and her family. The Tribunal is aware that this process will not be straightforward and that it may take some time and decided, therefore, that its Order should not be enforceable before 30 June 2025.

13. 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.

George Clark

Legal Member/Chair

1 May 2025
Date