



**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/24/4793

**Re: Property at 48 West Loan, Prestonpans, East Lothian, EH32 9JU (“the
Property”)**

Parties:

**Mr Peter Robert Reynolds, 71 Eley Drive, Rottingdean, Brighton, BN2 7FG (“the
Applicant”)**

**Mrs Elizabeth McKean, 48 West Loan, Prestonpans, East Lothian, EH32 9JU
 (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Ann Moore (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicant was entitled to an order for possession
of the property and the removal of the Respondent from the property.**

Background

1. By application dated 16 October 2024 the Applicants’ representative, McEwan Fraser Legal, Solicitors, Edinburgh, applied to the Tribunal for an order for possession of the property in terms of Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Applicant submitted a copy of a tenancy agreement, Form AT5, Notice to Quit and Section 33 Notice with execution of service, Section 11 Notice and confirmation of receipt together with other documents in support of the application.
2. By Notice of Acceptance dated 9 November 2024 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondents by Sheriff Officers on 5 March 2025.

The Case Management Discussion

4. A CMD was held by teleconference on 29 April 2025. Miss Rosaleen Doyle attended on behalf of the Applicant. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the CMD had been given to the Respondent determined to proceed in her absence.
5. The Tribunal noted from the documents submitted with the application that the parties commenced a Short Assured tenancy of the property on 18 September 2017 at a rent of £625.00 per calendar month.
6. The Tribunal also noted that the Respondents had been served with a Notice to Quit and Section 33 Notice by recorded delivery post delivered on 7 June 2024 and requiring the Respondent to vacate the property by 18 August 2024 the lease having reached its ish.
7. The Tribunal also noted that the Applicant's representatives had sent a Section 11 Notice to East Lothian Council and this had been acknowledged by the Council on 14 October 2024.
8. Miss Doyle advised the Tribunal that the Respondent had contacted the local Council for accommodation as because of her circumstances she could not afford private housing. Miss Doyle said that the Respondent had been advised she would not receive priority for housing unless and until an order for possession was granted. Miss Doyle said that she thought the Respondent lived in the property with her adult daughter.
9. The Tribunal noted the Applicant's circumstances were as detailed in the Applicant's representatives written submissions. In addition, Miss Doyle explained that recent legislative changes had served to focus the Applicant's mind and make him decide to retire from the rental market. He was also aware of the impact of the cost of living on tenants like the Respondent and that they could not afford private rents. In addition, it was not economically viable to retain the properties at low rents. The Applicant therefore wished to obtain an order for possession.

Findings in Fact

10. The Respondent commenced a Short Assured Tenancy of the property on 18 September 2017 which endured until 18 March 2018 and continued from month to month thereafter.

11. A Notice to Quit and Section 33 Notice under Section 33 of the 1988 Act was served on the Respondent on 7 June 2024.
12. A Section 11 Notice was sent to East Lothian Council and acknowledged on 14 October 2024.
13. The Applicant is 75 years of age and wishes to retire from the let property market.
14. The property is in need of refurbishment and this would require the Applicant to raise capital to complete which would be difficult given his age.
15. The Applicant intends to sell the property once vacant possession has been obtained.
16. The Applicant has not increased the rent for the property since the commencement of the tenancy and is finding it to be no longer financially viable to continue to rent out the property to the Respondent who cannot afford increased rent.
17. The Respondent lives in the property with her adult daughter.
18. The Respondent has approached the local authority for housing.
19. The Respondent has been told that she will not receive any priority to be rehoused unless and until an order for possession is granted.

Reasons for Decision

20. The Tribunal was satisfied from the documents submitted and the oral submissions of Miss Doyle that the parties entered into a Short Assured tenancy that commenced on 18 September 2017. The Tribunal was also satisfied that a valid Notice to Quit and Section 33 Notice had been served on the Respondent and that proper intimation of the proceedings had been given to East Lothian Council by way of a Section 11 Notice.
21. The Tribunal was therefore satisfied that procedurally the criteria for granting an order for possession of the property had been met subject to it being reasonable for such an order to be made. In reaching a decision on reasonableness the Tribunal noted that despite being given an opportunity to submit written representations and to attend the CMD the Respondent had chosen to do neither. The Tribunal was satisfied that given the age and circumstances of the Applicant it was reasonable that he would wish to retire from the property rental market. The Tribunal was also satisfied that given the Respondent's circumstances increasing the rent for the property might be difficult and that at the current rent the Applicant was not finding it financially viable. The Tribunal also accepted that the property required refurbishment and that this would involve the

Applicant raising capital which would be difficult at his age. The Tribunal accepted that the Respondent was looking for lower rental property and had approached the local authority for assistance but had been advised that she would only be given priority if an order for possession was granted.

22. After carefully considering the circumstances of both parties the Tribunal was persuaded that the needs of the Applicant in this application were such that although there would undoubtedly be an adverse impact on the Respondent it was reasonable to grant the order. The Tribunal determined the order for possession would come into effect on 1 June at the earliest and the Tribunal would hope that would give the Respondent sufficient time for her to obtain alternative accommodation and that having granted an order for possession, she would receive priority for rehousing.

Decision

23. The Tribunal being satisfied it had sufficient information before it to make a decision without the need for a hearing, finds the Applicant entitled to an order for possession of the property.

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.

G Harding

**Graham Harding
Legal Member/Chair**

**29 April 2025
Date**