



**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/24/4774**

**Re: Property at 13 Mayview Road, Anstruther, Fife, KY10 3HT (“the Property”)**

**Parties:**

**Mr John Middleton, 10 Pinkie Road, Newmachar, Aberdeen, AB21 0RG (“the Applicant”)**

**Natasha Margaret Katrina Danielle Cuthbert, 13 Mayview Road, Anstruther, Fife, KY10 3HT (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for eviction relying on section 33 of the Housing (Scotland) Act 1988. The Tribunal determined that it was reasonable to suspend enforcement of the order until 14 July 2025.**

**Background**

1. By application dated 11 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
  - Copy 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
3. A case management discussion (“cmd”) was scheduled to take place by teleconference on 24 April 2025.

**Case management discussion (“cmd”) – teleconference- 24 April 2025**

4. Both parties were in attendance. Mr Middleton sought an order for eviction. He stated that notices had been served as he required to sell the property. He stated that the mortgage lenders, Birmingham Midshires had obtained an order to repossess the property as a result of mortgage arrears. Mr Middleton explained that there had been an interest only mortgage over the property which had come to an end. The property now required to be sold to repay the lump sum due under the mortgage. Mr Middleton stated that he had a number of other properties that he rented out. He stated that the property had been managed by letting agents. He stated that the respondent had substantial rent arrears over a number of recent months however until then there had been no issues with the tenant’s conduct.
5. The respondent stated that she had been offered an alternative property by Kingdom Housing Association in Pittenweem. She stated that she resided with her two children aged 19 and 15. She had taken advice from Shelter after receiving the notices and had applied for housing from Fife Council. The respondent stated that she is working at present. The rent for the property is £550 per month. She stated that she had been withholding rent recently due to issues with repairs in the property. The respondent stated that she was not opposed to an order being granted however she sought an extended period before the order became enforceable in order that her new accommodation would be ready to move into. She stated that the property would be ready by 14 July 2025.
6. The applicant stated that he had no opposition to the order not being enforced until 14 July 2025. He stated that the lenders were aware of the eviction application. If an order was not granted he anticipated that they would seek to repossess the property and raise a separate application to evict.

7. The respondent indicated that she would be prepared to pay a proportion of the rent for the time when rent had been fully withheld and for the remaining duration of the tenancy.

### **Findings in fact and law**

8. The parties entered into a short assured tenancy agreement with a commencement date of 4 October 2010.
9. An AT5 was served on the respondent prior to the commencement of the tenancy.
10. Monthly rent is £550.
11. A valid notice to quit and section 33 notice dated 22 April 2024 were served on the respondent.
12. The applicant's lenders, Birmingham Midshires have obtained an order entitling them to repossess the property due to outstanding mortgage arrears.
13. The applicant is the sole owner of the property.
14. The applicant has complied with the requirements of section 33 of the Housing (Scotland) Act 1988.
15. The respondent resides with her 2 children aged 19 and 15.
16. The respondent has been offered alternative accommodation by Kingdom Housing Association.
17. The respondent's new accommodation will be ready to move into by 14 July 2025.
18. The respondent does not oppose an order for eviction being granted.
19. It is reasonable to grant an order for eviction.
20. It is reasonable to vary the date of enforcement of the eviction order until 14 July 2025.

### **Reasons for the decision**

21. 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.*

22. In the present application the applicant has satisfied the requirements of section 33 (a), (b) and (d). The Tribunal is satisfied that a short assured tenancy was created when the respondent moved into the property. A notice to quit and notice in terms of section 33 were served on the respondent. The notice to quit had the effect of preventing tacit relocation from operating. The section 33 notice provided the tenant with notice that the applicant required possession of the house.

23. 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.

24. The Tribunal took into account the oral and written submissions of the parties.

25. The Tribunal found the applicant to be credible and accepted his submissions as truthful. The Tribunal gave weight to the applicant's submissions that the mortgage lenders had obtained an order to repossess the property due to mortgage arrears and that if an eviction order was not obtained, they would seek to repossess the property and take action against the respondent. The Tribunal accepted that this would increase the level of debt due by the applicant.

26. The Tribunal gave significant weight to the fact that the respondent did not oppose the order for eviction being granted and made no objection to the reasonableness of the order being granted. The Tribunal also took into account that the respondent had secured suitable alternative accommodation from a registered social landlord.

27. In relation to the respondent's request to vary the date of execution until 14 July 2025 for her alternative accommodation to be ready to move into, the Tribunal accepted the respondent's evidence that she had been offered suitable alternative accommodation by Kingdom Housing Association. The Tribunal noted that the applicant had no objection to extending the period before the order was enforceable. The Tribunal determined that in light of the foregoing factors it was reasonable to suspend enforcement of the order until 14 July 2025.

### **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.**

# Mary-Claire Kelly

**Mary-Claire Kelly**

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**Legal Member/Chair**

**24 April 2025**

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**Date**