



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 (“the 1988 Act”) and Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/24/5272

Re: Property at 82 Levern Crescent, Barrhead, Glasgow, G78 2AB (“the Property”)

Parties:

Mrs Moira Winchester, Mrs Agnes Harkins, 5 Mure Place, Uplawmoor, Glasgow, G78 4AN; Hawthorns, Low Auchentiber, Lochlibo Road, Neilston, G78 3AE (“the Applicant”)

Mr Andrew Clark Wylie, 82 Levern Crescent, Barrhead, Glasgow, G78 2AB (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. The application received on 15 November 2024 sought an eviction order under Rule 66 on the basis that the Short Assured Tenancy had been brought to an end by service of the relevant notices. Supporting documentation was submitted, including a copy of the tenancy agreement, AT5, Notice to Quit, Section 33 Notice and section 11 Notice to the local authority. The Short Assured Tenancy began on 29 October 2011.
2. Following initial procedure, the application was accepted by the Tribunal on 11 December 2024 and notified to the Respondent by Sheriff Officer on 11 March

2025, together with details regarding the Case Management Discussion, which was scheduled to take place on 19 May 2025.

3. No written representations were received from, or on behalf of, the Respondent prior to the CMD.

Case Management Discussion

4. The Case Management Discussion ("CMD") took place by telephone conference call on 19 May 2025 at 2pm. In attendance was Ms Nicola Brechany of TC Young solicitors on behalf of the Applicant. The Respondent did not attend. The commencement of the CMD was delayed by 5 minutes to give the Respondent an opportunity to join late but he did not do so.
5. Following introductions and introductory comments by the Legal Member, Ms Brechany was asked if they or the Applicant had received any communication from the Respondent regarding the Tribunal proceedings but she stated that he had not responded. She addressed the detail of the application and the service and dates of the Notice to Quit and Section 33 Notice. She explained the circumstances of the Applicants who were two elderly ladies and that they wished to see the Property. Mrs Winchester is retired and is 83 years old, with various health conditions which affect her mobility. She had a bad fall recently and anticipates that she may need nursing home care at some point in the future. Her husband is 94 years old and has medical issues too. She has no other properties and requires to recover the sale proceeds of this Property in anticipation of having to pay care home fees. Mrs Harkins is also retired and is not in a position to buy out Mrs Winchester's share of the Property. There has been some interest in the Property and there may be a prospective buyer but they are, unfortunately, not in a position to purchase the Property with a sitting tenant.
6. Ms Brechany stated that the Respondent is 58 years old, unemployed and in receipt of Universal Credit. The last contact the Applicant had from him was in January when he reported an issue with the bathroom, which the Applicant attended to. There was an issue with some rent arrears previously but Mrs Harkins had visited the Respondent at the Property in March 2024 and had assisted him with advice regarding contacting the local authority to make a benefits application. This issue was resolved and a payment arrangement put in place regarding the arrears, which Ms Brechany stated meant there was no payment application before the Tribunal. Ms Brechany explained that there had been a previous notice served on the Respondent in January 2023 by the Applicant's former letting agent but there had been a technical problem with that and the matter did not proceed at that time. However, the Respondent had been aware since then that the Applicants were wishing to recover the Property. It had been noted by a surveyor in March 2024 that the Property may be in poor condition. The Respondent does appear to still be living at the Property. He may have been in contact with the local authority regarding his re-housing as the local authority had been in contact with the Applicant as recently as 16 April 2025. He had requested TC Young's details but TC Young did not subsequently

receive any contact from him, nor from the local authority so Ms Brechany is unable to confirm the Respondent's position.

7. Ms Brechany submitted that, in all the circumstances, it was reasonable for the Tribunal to grant the order sought.
8. The Tribunal Members conferred and confirmed that they had decided to grant the order sought. Ms Brechany was advised that the decision paperwork would be issued to parties shortly and was thanked for her attendance at the CMD.

Findings in Fact

1. The Applicant is the joint-owner and landlord of the Property.
2. The Respondent is the tenant of the Property by virtue of a Short Assured Tenancy which commenced on 29 October 2011.
3. The Applicant ended the contractual tenancy by serving on the Respondent a Notice to Quit and Section 33 Notice by Sheriff Officer on 16 July 2024.
4. The end of the tenancy and notice period in terms of the notices was specified as 28 September 2024, an ish date in terms of the tenancy.
5. Both notices were in the correct form, provided sufficient notice and were served validly on the Respondent.
6. The Respondent has remained in possession of the Property following expiry of the notice period.
7. The Applicant requires to sell the Property due to their financial and other circumstances.
8. The Respondent did not lodge any written representations or attend the CMD.

Reasons for Decision

1. The Tribunal was satisfied that pre-action requirements including the service of the Notice to Quit and Section 33 Notice in terms of the 1988 Act had been properly and timeously carried out by the Applicant in connection with this Tribunal application.
2. Section 33(1) of the Act states that an order for possession shall be granted by the Tribunal if satisfied that the short assured tenancy has reached its finish; that tacit relocation is not operating; that the landlord has given to the tenant notice stating that he requires possession of the house; and that it is reasonable to make an order for possession. The Tribunal was satisfied that all requirements of Section 33(1) had been met.

3. As to reasonableness, the Tribunal considered the background to the application, the supporting documentation lodged and the oral submissions made by Ms Brechany at the CMD on behalf of the Applicant. The Tribunal was satisfied that the Applicant's reason for wishing to recover possession of the Property was to enable them to sell the Property, due to their financial and other circumstances as narrated above. It appeared that they had also considered other options which may have allowed the tenancy to continue but, unfortunately, these had not been possible. The Tribunal also took into account the circumstances of the Respondent, as far as known to the Tribunal from the information provided by Ms Brechany. It was noted that the Respondent appeared to be in current or very recent communication with the local authority and it was hoped that he may have approached them for advice about his housing options and perhaps a move into social housing, although Ms Brechany was unable to confirm any further details regarding this.
4. The Respondent had not entered into the Tribunal process and the Tribunal therefore had no material before it either to contradict the Applicant's position in respect of the eviction application nor to advance any reasonableness arguments on behalf of the Respondent. Accordingly, the Tribunal determined, on balance, that it was reasonable in all the circumstances, for an order for recovery of possession of the Property to be granted at this stage and that there was no need for an Evidential Hearing.
5. 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.

Nicola Weir

Legal Member/Chair

19 May 2025
Date