

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 Housing (Scotland) Act
1988 (“the 1988 Act”)**

Chamber Ref: FTS/HPC/EV/24/4062

Property at 59 Poplar Street, Grangemouth, FK3 8NE (“the Property”)

Parties:

Mr Gordon Downie, Strawberryfield, Kinloch, Blairgowrie, PH10 6SD (“the Applicant”)

Mr Scott Allison, 59 Poplar Street, Grangemouth, FK3 8NE (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondent in favour of the Applicant.

Background

1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, Section 11 Notice and letter from the Applicant were lodged with the application.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 1 April 2025 at 2pm and that they were required to participate.
3. The CMD took place on 1 April 2025. The Applicant participated. The Respondent did not participate and was not represented. He did not contact the Tribunal in advance of the CMD.

The Case Management Discussion

4. Mr Downie told the Tribunal that the Respondent is still in occupation of the property. Mr Downie has another property in the same street and was there three weeks ago. It was evident that the Respondent is still there. However, he has had no contact with him since August 2024. In response to questions from the Tribunal, Mr Downie said that the last payment of rent was in January 2024, for the month of December 2023. The arrears are now £6750. The Respondent has offered no explanation for non-payment of rent – he just said that he wasn't paying it. He lives at the property alone and is understood to be working as a crane driver. He has a partner, but she has her own house. He also has children, but they live with their mother. They used to stay overnight once a week, but Mr Downie does not know if that arrangement is still in place.
5. The Tribunal noted that the letter submitted with the application sets out the Applicant's reasons for seeking possession of the property. He is selling his properties due to the increased costs associated with them. One has already been sold. Mr Downie confirmed that this is still the plan. He said that he had a mortgage over the property but paid it off when he sold the other property. He can't sell the second property until repair work is completed and the lack of rental income from the Respondent has prevented him doing this. He is struggling financially, and it is causing stress.

Findings in Fact

6. The Applicant is the owner and landlord of the property.
7. The Respondent is the tenant of the property in terms of a short assured tenancy agreement.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondent on 14 June 2024.
9. The Respondent resides at the property alone.
10. The Applicant wishes to recover possession of the property in order to sell it.
11. The Respondent stopped paying rent in January 2024 and has accrued arrears of £6750. This has caused financial difficulties for the Applicant

Reasons for Decision

12. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 26 July 2017 to 26 January 2018 with a provision that it would continue on a month to month basis after the initial term.
13. Section 32 of the 1988 Act states “(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 months; and (b) in respect of which a notice is served as mentioned in subsection (2) below. (2) The notice referred to in subsection (1)(b) above is on which – (a) is in such form as may be prescribed; (b) is served before the creation of the short assured tenancy; (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy.”
14. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondent prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
15. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondent on 14 June 2024. The Notice to Quit called upon the Respondent to vacate the property on 26 August 2024, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 14 June 2024 and gave the Respondent 2 months notice that the Landlord wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.
16. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(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; (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” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) 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". The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months' notice that the Applicant required possession of the property.

17. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.

18. The Tribunal had regard to the following: -

- (a) The Respondent did not attend the CMD or notify the Tribunal that the application is opposed.
- (b) The Respondent resides at the property alone. The Applicant understands that he is in employment. He has a partner and children, but they do not reside at the property.
- (c) The Applicant wishes to sell the property due to the increased costs associated with it.
- (d) The Respondent stopped paying rent in January 2024. He has provided no reason for non payment and now owes the sum of £6750. The arrears are causing the Applicant financial hardship.

19. In the circumstances, the Tribunal is satisfied that it would be reasonable to grant the application.

20. The Tribunal is satisfied that the Applicant has complied with the provisions of the 1988 Act and that it would be reasonable to grant the order.

Decision

21. The Tribunal determines that an order for possession of the property should be granted against the Respondent.

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.

J Bonnar

Ms Bonnar, Legal Member

1 April 2025