



**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”)**

Chamber Ref: FTS/HPC/EV/24/5218

Re: Property at 27 Maryhall Street, Kirkcaldy, Fife, KY1 1BH (“the Property”)

Parties:

Mrs Joan Houston, 35 The Fairway, Kirkcaldy, Fife, KY1 3AY (“the Applicant”)

**Mr Ross Sergeant, Miss Kirsty Duncan, 27 Maryhall Street, Kirkcaldy, Fife, KY1
1BH (“the Respondents”)**

Tribunal Members:

Sarah O'Neill (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicant. The Tribunal delayed execution of the order until 4 July 2025.

Background

1. An application was received from the Applicant’s solicitor on 13 November 2024 under rule 66 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of possession of the property under a short assured tenancy by the Applicant against the Respondents.
2. Attached to the application form were:
 - (i) Unsigned copy short-assured tenancy agreement between the parties which commenced on 12 November 2016.

- (ii) Statement dated 6 June 2024 and signed by both Respondents, acknowledging that they had signed the short-assured tenancy agreement on 12 November 2016 and had been provided with a copy of the agreement for their records.
 - (iii) Copy notices required under section 33 of the 1988 Act ('the section 33 notices') dated 30 May 2024 and addressed to each Respondent.
 - (iv) Copy Notices to Quit dated 30 May 2024, one addressed to each Respondent, requiring them to remove from the property on or before 12 November 2024.
 - (v) Copy certificates of service, one for each Respondent, certifying that the Notices to Quit and section 33 notices had been served on them by sheriff officer on 4 June 2024.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to Fife Council, together with covering email dated 13 November 2024.
 - (vii) Copy email correspondence between the Applicant and her husband and Fife Council dated 23 April and 5 June 2023 and 8 July 2024, regarding the possibility of selling the property back to the Council.
 - (viii) Valuation report for the property by Slater Hogg and Howison dated 5 July 2024.
 - (ix) Written representations on behalf of the Applicant
3. The application was accepted on 8 December 2024.
4. Notice of the case management discussion (CMD) scheduled for 20 May 2025, together with the application papers and guidance notes, was served on the Respondents by sheriff officer on behalf of the Tribunal on 5 March 2025.
5. No written representations were received from the Respondents prior to the CMD.

The case management discussion

6. A CMD was held by teleconference call on 20 May 2025. The Applicant was present on the teleconference call and was represented by her solicitor, Ms Jemma Forbes of Innes Johnston LLP. The Respondents were both present on the call and represented themselves.

The Applicant's submissions

7. Ms Forbes told the Tribunal that the Applicant was seeking an eviction order because she wished to sell the property. There was a good relationship between the parties and there had been ongoing discussions between them. The Respondents were fully aware of the reasons for the application.

8. The property is the only rental property which the Applicant owns. She had bought it as an investment with a view to her future retirement. The Applicant is now 63 years old, and both she and her husband have recently received cancer diagnoses. They have had to reduce their working hours as a result. They would like to reduce their hours further but feel unable to do so due to the potential for repairs costs relating to the property. The Applicant therefore wishes to sell the property, as she does not feel able to continue as a landlord.
9. As evidenced by the emails produced between the Applicant and her husband and Fife Council, she had made efforts to sell the property back to the Council to allow the Respondents to remain living there. Fife Council had told her, however, that it does not purchase properties with sitting tenants.
10. The Applicant has therefore had the property valued with a view to putting it on the open market, and intends to do so once the Respondents have moved out. She is unable to sell it with the Respondents in place as sitting tenants because the rent is very low, having remained at £400 per month since the tenancy began. She would therefore be able to achieve only a very low asking price, in the event that a suitable buyer could be found.
11. The Respondents had indicated that they wished to find social housing, but had been advised by the Council that in order to do so, they would require an eviction order.
12. Ms Forbes therefore submitted that it would be reasonable to grant an eviction order in all the circumstances.

The Respondent's submissions

13. Miss Duncan, the second Respondent, told the Tribunal that the Respondents did not wish to oppose the application. She said that the Applicant had been a great landlord and that they understood why she wanted to sell the property.
14. Fife Council had told the Respondents that they would be unable to secure social housing until an eviction order had been granted. The Respondents had recently received an offer of a new build property from Kingdom Housing Association. They had accepted this and all of the paperwork had been signed. They were just waiting for a date when they could move into the property, which they had been told would be around the end of June or start of July.

Findings in fact

15. The Tribunal made the following findings in fact:

- i. The Applicant is the sole owner and registered landlord for the property.
- ii. The property is the only rental property owned by the Applicant.
- iii. There is a short assured tenancy in place between the parties.
- iv. The tenancy commenced on 12 November 2016 for a period of 6 months. It has continued by tacit relocation every 6 months since that date.
- v. The form AT5 dated 12 November 2016 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- vi. The Notices to Quit and the section 33 notices all dated 30 May 2024 stated that the Applicant required vacant possession of the property on or before 12 November 2024. These provided more than two months' notice of vacant possession.
- vii. The notices dated 30 May 2024 were validly served on the Respondents by sheriff officer on 4 June 2024.
- viii. The tenancy reached its end on 12 November 2024.

Reasons for decision

16. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

17. The Tribunal noted that section 33 (1) of the 1988 Act as amended 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;

(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.

18. The Tribunal was satisfied that the short-assured tenancy agreement between the parties had been validly constituted. It was also satisfied that the short-assured tenancy had reached its end; that tacit relocation was not operating; and that the Notices to Quit and section 33 notices had been validly served on the Respondents, for the reasons set out above.

19. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.
20. The Tribunal noted the Applicant's personal and financial circumstances and the reasons why she wished to sell. It also noted that she had tried to keep the Respondents in their home by selling the property back to Fife Council. The Tribunal was also aware that at the start of the short assured tenancy, given the rules that were in place at that time, the Applicant might have expected to be granted an eviction order automatically, were the Tribunal satisfied that she had followed the correct rules in terms of creating the tenancy and serving the notices correctly.
21. The Tribunal also noted that the Respondents did not wish to oppose the application. They welcomed the granting of an eviction order to assist them with securing social housing. They have now secured a new home, which they should be able to move into fairly soon.
22. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that it was reasonable to grant an eviction order. It gave particular weight to the fact that the Respondents had not opposed the application and had now secured a new social rented home.
23. Before deciding to grant the order, the Tribunal asked the parties for their views on the possibility of delaying execution of the eviction order in terms of rule 16A of the 2017 rules, to give the Respondents more time to move into the new property, in the event that it was not ready as at the anticipated date. After some discussion, the parties agreed that they would be content with an extension of two weeks to the standard period.
24. The Tribunal determined that it would be reasonable to delay execution for two weeks beyond the standard period. It therefore delayed execution of the order until 4 July 2025.

Decision

25. The Tribunal granted an order in favour of the Applicant against the Respondents for recovery of possession of the property. It delayed execution of the order until 4 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.

S. O'Neill

20 May 2025

Legal Member/Chair

Date