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 of the Housing (Scotland) Act 1988 ("the 1988 Act")

Chamber Ref: FTS/HPC/EV/24/3682

Re: Property at Craigview, Over Abington, Biggar, ML12 6SF ("the Property")

Parties:

Mr Craig Jenkins, 2-4 Bowling Green, Lane, Biggar, ML12 6ES ("the Applicant")

Mrs Pauline McLemon, Mr Peter McLemon, Craigview, Over Abington, Biggar, ML12 6SF ("the Respondents")

Tribunal Members:

Sarah O'Neill (Legal Member) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the 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 December 2025.

Background

1. An application was received from the Applicant on 13 August 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 upon termination of a short assured tenancy by the Applicant against the Respondents.

2. Attached to the application form were:

   (i) Copy short-assured tenancy agreement between the parties which commenced on 11 November 2009.
   (ii) Copy form AT5 relating to the tenancy dated 11 November 2009.

(iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to South Lanarkshire Council, together with covering email dated 11 August 2024.
(iv) Copy letter dated 24 May 2024 to the Applicant from Limehouse Ltd Estate and Letting Agents confirming that they had ben instructed to sell the property.

3. Following a request from the Tribunal administration, further information was received from the Applicant on 14 August 2024. This comprised:

(i) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 27 May 2024 and addressed to both Respondents.
(ii) Copy Notice to Quit dated 27 May 2024 addressed to both Respondents, requiring them to remove from the property on or before 11 August 2024.
(iii) Copy certificate of service certifying that the Notice to Quit and section 33 notice had been served on the Respondents by sheriff officer on 6 June 2024.

4. The application was accepted on 4 September 2024.

5. Written representations were received from the Respondents on 26 February and 24 and 26 March 2025. Written representations were received from the Applicant on 7 and 24 March 2025.

The case management discussion

6. A case management discussion (CMD) was held by teleconference call on 1 April 2025. The Applicant represented himself on the call. Both Respondents were present on the call, and were represented by the second Respondent, Mrs Pauline McLemon.

7. The Tribunal considered a preliminary issue relating to the validity of the section 11 notice, as discussed further below. It then part heard evidence in the case. The Respondents said that they wished to oppose the application. The parties agreed the facts of the case relating to the existence of a short assured tenancy between the parties and when it commenced. The Respondents also accepted that the notice to quit and section 33 notice were in the correct form and had been validly served on them by sheriff officer.

8. The primary issue in dispute between the parties was whether it was reasonable in all of the circumstances to grant an eviction order. The Tribunal therefore decided that the most appropriate course of action was to fix a hearing on reasonableness. The Tribunal adjourned the matter to a hearing to take place by teleconference on 4 June 2025. The Tribunal also issued a further direction seeking further information from both parties in advance of the hearing.

9. Responses to the direction were received from the Applicant on 9 May 2025 and from the Respondents on 19 and 20 May 2025.

Subsequent applications involving the parties

10. The Respondents submitted an application (reference no: FTS/HPC/PR/25/1773) to the Tribunal on 24 April 2025 under rule 103 of the 2017 rules against the Applicant alleging that he had failed to pay their tenancy deposit into an approved scheme.

11. The Applicant then submitted a civil proceedings application (reference no: FTS/HPC/CV/25/2004) to the Tribunal on 12 May 2025 seeking a payment order against the Respondents for £8865.69 in respect of alleged rent arrears.

12. These two applications were conjoined and considered by the same Tribunal at a CMD on the afternoon of 4 June 2025, after the hearing with respect to the present eviction application.

13. The Respondents also made an application to the Tribunal alleging that the Applicant has failed to comply with the repairing standard. An inspection and hearing by another Tribunal regarding that application has been arranged for 23 June 2025.

Preliminary issue

14. At the CMD on 1 April 2025, the Tribunal noted that the Respondents had raised a concern in their submissions regarding service of the section 11 notice dated 11 August 2024 on South Lanarkshire Council ("the Council"). Mrs McLemon said that the notice had not been sent to a valid email address, noting that the email address showing on the email which the Applicant had submitted with his application stated: "homelessness.st…narkshire.gov.uk". She said that when she had contacted the Council on 18 February and 31 March 2025, they had advised her that the notice had not been received. While the Applicant had now produced an email from the Council confirming receipt of a section 11 notice, this was dated 5 March 2024. Mrs McLemon submitted that the application was not valid because there was no evidence that the section 11 notice had been sent to, or received by, the Council.

15. The Applicant told the Tribunal that he had served two section 11 notices on the Council. The first was sent on or around 5 March 2024 and had been acknowledged by the Council. The Applicant had made a previous application to the Tribunal at around that time. The second notice was sent to the Council by email on 11 August 2024, which was also the date stated on the notice to quit and section 33 notice. The email address showing on the copy submitted to the Tribunal was simply an abbreviation of the full address which it had been sent to i.e. "homelessness.strategy@southlanarkshire.gov.uk".

16. When asked by the Tribunal if he could forward the original email showing the full address, the Applicant did so during the CMD. This showed that the email had been sent to the correct email address. The Applicant said that he had not received an email acknowledgement from the Council, but had received a call on 11 August 2024 to say that it had been received. Mrs McLemon submitted that the application was not valid, as there was no written confirmation that the section 11 notice had been received.

17. The Tribunal adjourned briefly to consider the matter. The Tribunal noted that the relevant rule (rule 66 (b) (v) of the 2017 rules) requires that an application under section 33 of the 1988 Act must be accompanied by "a copy of the notice by the landlord given to the local authority under section 11 of the Homelessness (Scotland) Act 2003". It is not explicitly stated that an acknowledgement of receipt of the notice must also be provided to the Tribunal, and the Tribunal administration does not usually require that such an acknowledgement is produced before an application is accepted.

18. The Tribunal also noted that the Council was in any case aware that the Applicant had raised previous eviction proceedings in March 2024. The Respondents had also been in contact with the Council regarding the possibility of rehousing. Finally, the Tribunal noted the view expressed in Stalker: Evictions in Scotland (Second Edition) at page 246, with reference to sections 11 and 19A of the Homelessness etc. (Scotland) Act 2003, that in relation to short assured tenancies:

"*It seems from the drafting of the sections, and the statutory form, that the notice is to be given at the same time as, or shortly after the* proceedings *are raised. It is therefore doubtful that failure to serve the notice could be a basis on which to hold that the action is incompetent: the wording of the provisions is not such as to indicate that service of the notice is a prerequisite to an action".*

19. Having considered all of the above, the Tribunal took the view that the Applicant had validly served the section 11 notice on the Council, which had been made aware that he was raising eviction proceedings. In any case, even if he had not done so, this would not be fatal to the application. The Tribunal therefore decided that the application was valid and should proceed.

The hearing

20. A hearing was held by remote teleconference call on 4 June 2025. The Applicant was present on the teleconference call and represented himself. Both Respondents was present on the call and were represented by Mrs McLemon.

The Applicant's submissions

21. The Applicant asked the Tribunal to grant an eviction order. He told the Tribunal that he needed to sell the property. The Respondents had known this for two years.

He still intended to use the estate agent he had instructed in 2024 to sell the property once it was vacant.

22. He had previously had four rental properties in total. He had already sold the other three properties (and had produced evidence of this), as he was planning to emigrate to New Zealand. His wife is from that country, and he had lived there before. He and his family planned to move there permanently once his children had finished secondary school, in around two years' time.

23. He said that he did not wish to keep the property on after he moved, as it was too far away and this would be too difficult. He had not considered selling the house with the tenants in situ. He said that the Respondents owed him rent arrears of over £8000.

24. With regard to the repairs issues raised by the Respondents, the Applicant said that the Respondents were unable to afford the heating oil to run the boiler and heat the property. He had secured a grant to upgrade the heating in the property in around 2023, but the Respondents had refused to allow the work to go ahead. This was disputed by the Respondents at the CMD.

The Respondents' submissions

25. Mrs McLemon told the Tribunal that an eviction order would have a serious impact on her family. Her husband has serious mental health issues, which require him to remain in a rural and quiet area. He also suffered a stroke in October 2024 and is now paralysed down one side. She said at the CMD that the Respondents would be happy to leave the property if they could find somewhere suitable for their needs, but that they needed more time to find somewhere suitable.

26. There were a number of serious repairs issues with the property which needed to be addressed. There had been no heating or hot water in the property for some time. There was mould and damp, and cracked pipes which had been leaking. There was a hole in the ceiling. The insulation was poor and the staircase was collapsing. There was no Electrical Installation Condition Report. They had raised these issues previously with the Applicant, who had not addressed them. As noted above, the Respondents have now made a repairing standard application to the Tribunal regarding these issues, and an inspection and hearing by another Tribunal has been arranged for 23 June 2025.

27. Mrs McLemon also said that she was finding it difficult to keep the property heated, due to cost. She has been using electric heaters which keep burning out and have to be replaced.

28. The Respondents and their two adult daughters (aged 18 and 20) are currently living in the property. Mr McLemon is in receipt of universal credit and Adult Disability Payment and Mrs McLemon is his main carer. Neither of them are in employment. Their rent has been paid until recently via local housing allowance. Both of their daughters both work in a nursing home, and Mrs McLemon relies heavily on them to help with their father's care. She will not leave home unless one of their daughters is there, as he cannot be left alone for long. Their son has moved out and is currently staying with a friend due to the lack of heating and hot water.

29. Mr McLemon has regular physiotherapy and occupational therapy, and the stroke nurse calls fortnightly to check on his progress. Mrs McLemon can call a district nurse at any time if they are required to come and see him in person. He is also under the care of a psychiatrist. The various medical professionals who come to the house are appalled that he is living in such conditions. The stroke nurse has contacted the Council regarding his housing situation. Mr McLemon has no advocacy worker, but his psychiatrist recently made a referral to social work and they are awaiting the outcome of that. This could take some months.

30. The Respondents were shocked and upset by the Applicant's claim that they owed substantial rent arrears, which they vehemently denied. Mrs McLemon denied that they owed any rent arrears from 2022. The Applicant had never previously raised this with them ,and they were unaware of this until they received the Applicant's civil proceedings application. She said that the Applicant had asked for payment in cash for a period of 18 months during 2021-22, and that this had been paid. She admitted that the rent had not been paid since November 2024, but this had been due to a mix-up over local housing allowance, following a change to Mr McLemon's benefits. She had thought it was still being paid direct to the Applicant by the Council and had only become aware that this was not the case when he had raised it in his written submissions prior to the CMD on 1 April. She was currently trying to resolve the matter.

31. Mrs McLemon had been in contact with the Council and Clydesdale Housing Association regarding social housing. They were aware of her husband's health needs. She had been told that they would have to make a homelessness application once they had received an eviction order. They now have increased priority from Clydesdale Housing Association following Mr McLemon's stroke. She had submitted a letter from the Council confirming that a housing options meeting had been held with them in February 2025. The letter stated that it was not possible to provide a timescale regarding how quickly the Respondents would be made an offer given the high demand for properties in the area and the low turnover.

32. Mrs McLemon had been in contact with Shelter regarding the eviction application and other housing issues. She had hoped that they might provide a solicitor to represent the Respondents at the hearing, but they had been unable to do so. She

had also contacted Strathclyde University Law Clinic, who had been unable to help her.

33. When asked what outcome the Respondents were seeking from the Tribunal process, Mrs McLemon said that ideally they needed time to find somewhere suitable for her husband's needs. She said that while she did not want an eviction order to be granted, they would take another property if they were offered this, given the state of the property.

Findings in fact

34. The Tribunal made the following findings in fact:

i. The Applicant owns the property and is the registered landlord for the property.
ii. The property is the only remaining rental property owned by the Applicant. He has sold his other three rental properties.
iii. The property is a three bedroomed house.
iv. There is a short assured tenancy in place between the parties.
v. The original tenancy commenced on 11 November 2009 and ended on 11 May 2010. It has continued by tacit relocation on a month to month basis since that date.
vi. The form AT5 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
vii. The Notice to Quit and section 33 notice dated 27 May 2024 stated that the Applicant required vacant possession of the property on or before 11 August 2024. These provided more than two months' notice of vacant possession.
viii. The notices were validly served on the Respondents by sheriff officer on 6 June 2024.
ix. The Respondents live in the property with their two adult daughters. Their son is currently living elsewhere.
x. The first Respondent suffers from serious mental and physical health issues.
xi. The rent payable at the start of the tenancy was £500 per month. As at the date of the CMD, the rent was £550 per month.
xii. The tenancy reached its ish on 11 August 2024.

Reasons for decision

35. 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.

36. 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 ish; that tacit relocation was not operating; and that the Notice to Quit and section 33 notice had been validly served on the Respondents, for the reasons set out above.

37. The Tribunal then considered at some length 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.

38. The Tribunal found the decision to be a difficult one given the circumstances. It took into account the Applicant's circumstances and the reasons why he wished to sell. The Tribunal also noted that as the owner of the property, the Applicant has a legal right to use and dispose of it as he sees fit, within the confines of the law. The Tribunal was also aware that at the beginning 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 (assuming that the Tribunal was satisfied that he had followed the correct rules in terms of creating the tenancy and serving the relevant notices). The Tribunal also took into consideration the fact that the Applicant had sent the notice to quit more than a year ago, having previously made an unsuccessful application to the tribunal following the incorrect service of a notice to leave in September 2023.

39. The Tribunal was aware that the Respondents were living in very difficult circumstances. Mr McLemon has significant mental and physical health issues and requires almost constant care. Any upheaval would be very difficult for him. The Respondents have been unable to find alternative accommodation for themselves and their family to date. They have been living in the property for more than 15 years and have made it their home.

40. It was clear that Mrs McLemon was torn between her desire to keep her family together and avoid the upheaval of any move and her wish to live in a property which is more suitable for her family's needs. They are living in accommodation which appears to be in a poor state of repair, and cannot afford to heat it properly. It seems unlikely that the Respondents would be able to secure

suitable social housing quickly without obtaining an eviction order and making a homelessness application to the local authority.

41. It was equally clear that the relationship between the parties had once been good, but had significantly deteriorated. In addition to the eviction application, there were also now three other applications before the Tribunal – the civil proceedings application brought by the Applicant, and the tenancy deposit and repairing standard applications brought by the Respondents. Both parties acknowledged that the current situation was very difficult, and as Mrs McLemon said during the hearing, there was now "no going back" for the parties.

42. With regard to the alleged rent arrears, a CMD was held on the same day as the present hearing on the Applicant's subsequent application for a payment order (Ref: FTS/HPC/CV/25/2004). The Tribunal fixed a hearing on that application because the Respondents disputed that they owed the money claimed. It appeared that any arrears owed may be due at least in part to an issue with a benefits change which had affected the Respondents' local housing allowance.

43. 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 relationship between the parties had deteriorated to a point where it was difficult to see how the tenancy could continue. It also considered that the Respondents needed to find a more suitable property for their needs and that an eviction order would assist them with this. The Council would be required to provide them with accommodation that was suitable for Mr McLemon's needs.

44. 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 find alternative housing. Mrs McLemon asked for a delay of one year. The Applicant indicated that he would not object to a delay but expressed the view that a year was too long. He felt that any delay should be for months rather than weeks.

45. The Tribunal considered that it would be appropriate to delay execution of the order for some months to give the Respondents further time to find social housing. The Tribunal considered that a period of one year would be excessive, but that in all of the circumstances, six months would be appropriate.

Decision

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

Sarah O'Neill

11 June 2025

Legal Member/Chair **Date**