

**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/24/4614

Re: Property at 22 Beech Loan, Bonnyrigg, EH19 3DW (“the Property”)

Parties:

**Ms Lynne Hunter, Ms Susan Hunter, 26 Meadowfield Avenue, Edinburgh, EH8
7NW; 1 McQuade Street, Bonnyrigg, EH19 3QG (“the Applicants”)**

**Ms Shauni Finlayson, 22 Beech Loan, Bonnyrigg, EH19 3DW (“the
Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that it would grant an order for eviction, but it would not
be enforced for 30 days.**

Background

1. An application was received under rule 66 of 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 granted by the Applicants to the Respondents.
2. The application contained :-
 - a. A copy of the tenancy agreement,

- b. a copy of the AT5,
 - c. a copy of the Section 33 Notice,
 - d. a copy of the Notice to Quit,
 - e. evidence of service, and
 - f. Section 11 Notice.
3. The case had called for a case management discussion on 19 May 2025. Appearing was the Applicants' agent, Mrs Barr of AM Lettings Ltd. The Respondent also attended.
4. There was evidence of service of the application on the respondent on 5 March 2025.

Case Management Discussion

5. The Applicants' agent advised that she was seeking an order for eviction. She had provided the tenancy agreement, AT5, copies of the notice to quit and section 33 notice together with evidence of service. In addition, there was a section 11 notice.
6. In terms of reasonableness she advised that the landlords wished to sell the property to pay off the mortgage on the property. They were coming up to retirement. They had three properties. This had been bought as an investment. The mortgage is interest only. The term expires next August 2026. They will owe £85,000 and so they require to sell the property to repay the mortgage.
7. The respondent advised that she was not opposing the order to evict. She had contacted her local council and had been advised that they would not be able to assist her until she had a date for when the eviction would take place. She has two children aged 9 and 10 years of age. She hoped to stay in the local area for her children's school. She advised that an extra few weeks would be helpful for her in getting ready to move.

8. It appeared that the notice to quit was not served on the *ish* date. The lease provided that “*parties are agreed that tacit relocation is expressly excluded from operating under this agreement.*” The lease also contained provisions dealing with *termination of the lease*. The landlord's agent referred to an earlier first tier tribunal decision EV.18.3439, she submitted that similar circumstances had applied in that case. The tribunal had found that tacit relocation did not apply where it had been expressly excluded from the lease. She relied on that case in support of this application. She advised that the tribunal should ignore the notice to quit as not being necessary.

Findings in Fact

9. We found the following facts established:-
10. That there was in place a short assured tenancy.
11. That there was a tenancy agreement between the Applicant and the Respondent in respect of the Property.
12. The property was 22 Beech Loan, Bonnyrigg.
13. The landlords were Lynne Hunter and Susan Hunter.
14. The tenant was Shauni Finlayson.
15. The tenancy commenced on 4 October 2017 for an initial period of 12 months until 3 October 2018.
16. Clause 1.1 provides that “parties are agreed that tacit relocation is expressly excluded from operating under this agreement.”
17. The AT5 Form was in the prescribed format and was dated 4 October 2017.

18. The notice to quit and section 33 notices contained the prescribed information, and both were dated 26 February 2024, both sought vacant possession as of 3 May 2024. Both provided more than 2 months' notice that vacant possession was sought. There was evidence of service of the notices.
19. The notice to quit did not end the tenancy on an *ish* date.
20. There was a section 11 notice addressed to the local authority.
21. The respondent did not oppose the order being granted. She had two children 9 and 10 who lived with her. She was seeking alternative accommodation from the local authority.
22. The applicants were reaching retirement age. The applicants wanted to sell the property to repay the mortgage over the property. It was interest only mortgage and the capital sum were to be repaid by August 2024.

Reasons for Decision

23. Section 33 of the 1988 Act requires the tribunal to grant an order for possession under a short assured tenancy where: the tenancy has reached its *ish*; tacit relocation is not operating; no further contractual tenancy for the time being is in existence; the landlord has given notice to the tenant that they require possession of the house; and where it is reasonable to do so.
24. We were satisfied that a short assured tenancy had been created. We were satisfied with the terms of the section 33.
25. This is an unusual case in so far as the notice to quit did not terminate the tenancy on the *ish* date. The tenancy agreement which had been signed by both parties contained a clause which stated that "the parties are agreed that tacit relocation is expressly excluded from operating under this

agreement". The tribunal was referred to a first tier tribunal case where similar circumstances applied. In that case both parties had been legally represented and had provided detailed legal submissions to the tribunal. On that occasion the tribunal was prepared to accept that the lease agreement had not renewed at the end of the initial term. That lease appeared to contain a similar provision that the parties had contracted out of tacit relocation. The tribunal considers that this is a complicated area of the law, which is arguably, unsettled on the question of whether or not parties can contract out of tacit relocation in residential tenancies.

26. Arguments accepted in the earlier case are summarised as follows: that there are other Acts of Parliament for example on agricultural tenancies which specifically exclude the right to contract out of tacit relocation, but under the Housing (Scotland) Act 1988 no such specific exclusion exists. Further the 1998 Act allows for proceedings for eviction to be brought where no notice to quit has to be served for example where the tenancy contains the grounds for the eviction (See sections 18 and 19 of that Act). The tribunal in that case was prepared to accept that this provided a basis on which it was entitled to determine that tacit relocation did not apply and to grant the order.

27. This tribunal has not been provided with a proper legal submission on this point other than reference to this first tier tribunal case. We consider that the law is not clear and not settled on this point, however on the basis that we were referred to one supportive (but not binding) authority and as the respondent did not object to the order being granted then the tribunal is prepared to find that the requirements to grant an order for eviction have been met on this occasion.

28. The tribunal finds that a proper section 33 notice had been served. We also noted that a section 11 notice has been sent to the local authority. On balance therefore the tribunal is prepared to find that the contractual tenancy ended at the initial term and what continued thereafter was a statutory short assured tenancy.

29. Having regard to the question of reasonableness, we note that the applicants require to repay the capital sum of the mortgage for the property, and they are either retired or will be retiring within the next 12 months. We place weight on these matters when deciding if it be reasonable to grant the order. We also place weight on the fact that the respondent attended today and advised that she was not opposing the order.

30. The respondent asked for some further time before the order was enforced as she has two young children residing with her and it would be helpful for her to have a few more weeks before she has to move.

31. We consider in all the circumstances that it would be reasonable to grant the order but will extend the period before the order can be enforced by a further 30 days.

32. Accordingly, we would confirm that we are satisfied that the requirements of section 33 had been met and that it would be reasonable to grant an order for eviction under section 33 of the Housing (Scotland) Act 1988.

Decision

33. We grant an order in favour of the Applicant against the Respondent for recovery of possession of the property.

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.

Melanie Barbour

19th May 2025

Legal Member/Chair

Date