



**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/24/5784

Re: Property at 65 Oak Drive, Lenzie, Glasgow, G66 4BU (“the Property”)

Parties:

Mrs Alison Fulton, 1 Douglas Avenue, Lenzie, Glasgow, G66 4NT (“the Applicant”)

Miss Victoria Cumming, 65 Oak Drive, Lenzie, Glasgow, G66 4BU (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the provisions of section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) have been met and it would be reasonable to make an eviction order.

The Tribunal therefore made an eviction order under section 33 of the 1988 Act.

Background

- 1** This is an application for an eviction order under Rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 33 of the 1988 Act. The Applicant sought an eviction order on the grounds that the short assured tenancy between the parties had been terminated and notice had been given to the Respondent under section 33(1)(d) of the 1988 Act.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 6 June 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules. Said notice was served upon the Respondent by sheriff officers on 28 April 2025.

- 3** The Tribunal issued a Direction to the Applicant on 10 March 2025 requesting they provide the following information:-
- (i) A written representation setting out the identity of the individual who drafted and issued to the Respondent the notice to quit and notice under section 33 of the Housing (Scotland) Act 1988 both dated 20 April 2024.
 - (ii) A written statement from the individual who drafted and issued the notices referred to above explaining (a) the method by which they served the notices and (b) an explanation as to why proof of service is not available.
- 4** On 17 March 2025 the Tribunal received an email from Coda Estates on behalf of the Applicant in response to the Direction.
- 5** Both parties were invited to make written representations in advance of the CMD. No written representations were received, other than the Applicant's aforementioned response to the Direction.

The CMD

- 6** The CMD took place on 6 June 2025 by teleconference. Ms Sharon Cook of Coda Estates represented the Applicant. The Respondent did not join the call. The Tribunal delayed the start time of the CMD for a short period, before determining to proceed in her absence, having been satisfied that the Tribunal had given her proper notice of the CMD. Ms Cook also advised that she was not expecting the Respondent to attend.
- 7** The Tribunal had the following documents before it:-
- (a) Form E application form dated 16 December 2024;
 - (b) Title sheet DMB84483 confirming the Applicant's ownership of the property;
 - (c) Excerpt from the online landlord register confirming the Applicant's landlord registration;
 - (d) Short assured tenancy agreement between the parties and Form AT5, both dated 25 September 2017;
 - (e) Notice to quit and notice under section 33(1)(d) of the 1988 Act to the Respondent, both dated 20 April 2024;
 - (f) Signed letter from the Respondent acknowledging receipt of the notices on 21 April 2024;
 - (g) Written mandate from the Applicant authorising Coda Estates to represent her;
 - (h) Notice under section 11 of the Homelessness etc (Scotland) Act 2003 and proof of delivery by email to East Dunbartonshire Council on 18 December 2024; and
 - (i) The Applicant's response to the Tribunal's Direction dated 17 March 2025.

- 8 The Tribunal heard submissions from Ms Cook on the application. For the avoidance of doubt the following is a summary of the discussion and does not constitute a verbatim account of the proceedings.
- 9 Ms Cook explained that the Applicant and her husband were both in their 70s. They were looking to retire. They had purchased the property as a pension investment. The Applicant had a mortgage over the property. The end of the mortgage term was imminent and the Applicant and her husband would struggle to re-mortgage due to their age. This was causing them stress. The Applicant and her husband had another property in Edinburgh, which had recently become vacant. They also intended to sell that property and withdraw from the rental market in order to retire.
- 10 Ms Cook explained that the Respondent resided in the property with her three children. Two were in primary school and one was an infant. The property was a two bedroom property. It was no longer big enough for the Respondent and her children. The Respondent did not want to continue with her tenancy on that basis. Ms Cook confirmed that her firm had been assisting the Respondent in trying to find accommodation in the private sector. She had been a good tenant and Ms Cook would have no reservations about letting to her again. However, three bedroom properties in the local area were unaffordable. The Respondent was instead seeking rehousing with the local authority. The local authority would not process her application until she presented with an eviction order from the Tribunal. Ms Cook confirmed that she was not aware of anyone else residing in the property other than the Respondent and her children.
- 11 The Tribunal adjourned the CMD, at which point Ms Cook left the call, before resuming the discussion and confirming the outcome.

Findings in fact

- 12 The Applicant is the registered owner of the property. The Applicant is a registered landlord.
- 13 The Applicant and Respondent entered into a tenancy agreement in respect of the property dated 25 September 2017. The term of the tenancy was six months from 23 October 2017, and on a rolling monthly basis thereafter. The Respondent was provided with a Form AT5 prior to signing the said tenancy agreement.
- 14 The tenancy between the parties was a short assured tenancy as defined by section 32 of the 1988 Act.
- 15 On 20 April 2024 the Applicant delivered a notice to quit and a notice under section 33(1)(d) of the 1988 Act to the Respondents by recorded delivery mail. The notice to quit terminated the tenancy as at 23 June 2024. The notice under section 33(1)(d) of the 1988 Act stated that the Applicant required possession of the property on that same date.

- 16 On 18 December 2024 the Applicant sent a notice under section 11 of the Homelessness etc (Scotland) Act 2003 by email to East Dunbartonshire Council.
- 17 The Applicant has terminated the contractual tenancy between the parties to enable her to sell the property. The Applicant intends to use the sale proceeds to fund retirement for both herself and her husband.
- 18 The Applicant and her husband are both in their 70s.
- 19 The Applicant has a mortgage over the property. The mortgage term is shortly due to end. The Applicant and her husband will struggle to re-mortgage due to their age.
- 20 The Applicant and her husband have a second rental property in Edinburgh, which is currently vacant. The Applicant and her husband intend to sell that property and withdraw from the rental sector entirely.
- 21 The Respondent resides in the property with her three children.
- 22 The property is a two bedroom property. The property is no longer big enough for the Respondent's family.
- 23 The Respondent wishes to be rehoused by the local authority. The making of an eviction order will assist the Respondent with her application for housing.

Reasons for decision

- 24 The Tribunal considered that it could make relevant findings in fact and reach a decision on the application following the CMD based on the information before it. The Tribunal did not identify any issues to be resolved that would require a hearing and therefore concluded it could determine the application without a hearing in terms of Rule 18 of the Rules as to do so would not be contrary to the interests of the parties in this case. The Tribunal had given the Respondent the opportunity to make written representations, and attend the CMD, but she had chosen not to do so.
- 25 The relevant legislation the Tribunal must have regard to when considering an application under Rule 66 are sections 32 and 33 of the 1988 Act:-

"32 Short assured tenancies.

*(1) A short assured tenancy is an assured tenancy—
(a) which is for a term of not less than six 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 one which—
(a) is in such form as may be prescribed;
(b) is served before the creation of the 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 that tenancy; and
(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—
(a) it continues by tacit relocation; ...
(b)
the continued tenancy... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.”

“33 Recovery of possession on termination of a short assured tenancy.

(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.

(2) The period of notice to be given under subsection (1)(d) above shall be—
(i) 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.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.”

- 26** The Tribunal was satisfied based on the documentary evidence before it that the Applicant had complied with the requirements of section 32 of the 1988 Act and the tenancy between the parties was therefore a short assured tenancy.
- 27** The Tribunal was further satisfied that the Applicant had terminated the contractual tenancy between the parties by giving the Respondent a notice to quit, and had also given her notice under section 33(1)(d) of the 1988 Act. The Tribunal accepted that the notices had been sent to the Respondent by recorded delivery mail. Whilst the Applicant had been unable to produce the recorded delivery receipt, the Tribunal accepted the Respondent’s signed acknowledgement as evidence of this on the basis that it aligned with the Applicant’s position.
- 28** The Tribunal therefore considered whether it would be reasonable to make an eviction order in this case.

- 29** The Tribunal took into account the Applicant's reasons for terminating the tenancy, namely that she and her husband wished to sell the property in order to release funds for their retirement. They were taking the same steps with the other rental property they owned in Edinburgh and wished to withdraw entirely from the private rented sector. The Tribunal accepted that they would struggle to re-mortgage due to both being in their 70s, and that this would be a source of stress for them. The Tribunal also took into account the Applicant's property rights, which would entitle her to possession of the property, were the tenancy between the parties not in place. She was entitled, on that basis, to dispose of the property as she saw fit.
- 30** The Tribunal carefully considered the Respondent's circumstances. Whilst the Respondent had not sought to participate in the proceedings, the Tribunal accepted the submissions from Ms Cook at the CMD regarding the Respondent's position on the application. Ms Cook clearly had extensive knowledge of the tenancy between the parties, having managed it on the Applicant's behalf. The Tribunal therefore accepted that the property was no longer suitable for the Respondent and her family, and that the Respondent did not wish to stay in the property for that reason. Whilst the impact of eviction upon the Respondent and her children was a cause for concern, ultimately the Respondent had not sought to oppose the eviction order. The Tribunal could reasonably assume the reason for this was she was aware that it would assist her in her application for housing with the local authority, which was her preferred choice in terms of rehousing.
- 31** Accordingly, having assessed those factors relevant to reasonableness in this case, the Tribunal determined that the balance weighed in favour of making an eviction order in this case.
- 32** The Tribunal therefore made an eviction order under section 33 of the 1988 Act. The decision of the Tribunal 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.

Ruth O'Hare

6 June 2025

Legal Member/Chair

Date