



**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/24/5645

**Re: Property at 80 Jubilee Avenue, Deans, Livingston, EH54 8ER (“the
Property”)**

Parties:

**Mr Colin McGeachie, 25 Combfoot Cottages, Mid Calder, Livingston, EH53 0AG
 (“the Applicant”)**

**Ms Gillian Dornan, 80 Jubilee Avenue, Deans, Livingston, EH54 8ER (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member) and David Fotheringham (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.**

Background

1. An application was received from the Applicant’s solicitor on 16 December 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 Respondent.
2. Attached to the application form were:
 - (i) Copy short-assured tenancy agreement between the parties which commenced on 24 May 2011.

- (ii) Copy form AT5 relating to the tenancy dated 13 May 2011.
 - (iii) Copy notice required under section 33 of the 1988 Act ('the section 33 notice') dated 24 September 2024 and addressed to the Respondent.
 - (iv) Copy Notice to Quit dated 24 September 2024 addressed to the Respondent, requiring her to remove from the property on or before 26 November 2024.
 - (v) Copy certificate of service certifying that the Notice to Quit and section 33 notice had been served on the Respondent by sheriff officer on 24 September 2024.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to West Lothian Council, together with covering email dated 3 December 2024.
3. Following a request from the Tribunal administration, further information was received from the Applicant's solicitor on 22 January 2025.
 4. The application was accepted on 24 February 2025.
 5. Notice of the case management discussion (CMD) scheduled for 2 June 2025, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 14 February 2025. The Respondent was invited to submit written representations by 30 April 2025.
 6. No written representations were received from the Respondent prior to the CMD.

The case management discussion

7. A CMD was held by teleconference call on 2 June 2025. The Applicant was not present but was represented by his solicitor, Ms Jennifer Anderson of Clarity Simplicity Ltd. The Respondent was present on the call and represented herself.

Submissions on behalf of the Applicant

8. Ms Anderson told the Tribunal that the Applicant was seeking an eviction order because the short assured tenancy between the parties had come to an end at the ish date of 26 November 2024.
9. She said that the Applicant requires to sell the property, in order to pay off the outstanding mortgage over the property and other personal debts. When he bought the property in 2005, he had taken out a 25 year buy to let mortgage. There is currently a balance of £101,000 to be repaid on the mortgage.

10. The Applicant owns no other rental properties. He owns one other property, which he had been living in himself, but he was now living with his partner. That other property is not currently rented out.
11. Ms Anderson said that the Applicant had considered selling the property with the Respondent in situ as a sitting tenant. This was not a viable option, however. Because the rent on the property is so low, the Applicant is currently making a financial loss on the tenancy. In order to raise the funds required to pay off his debts, the Applicant requires to sell the property with vacant possession.

The Respondent's submissions

12. The Respondent told the Tribunal that the Applicant had spoken to her personally about his reasons for seeking an eviction order, and that she understood his situation. She said that she would have been happy to leave the property sooner, but West Lothian Council had advised her that she should remain in the property until an eviction order was granted, as she would be unable to secure a council property until this had happened. She did not therefore oppose the application.
13. The Respondent lives in the property with her 15 year old daughter and 10 year old son. She has mental health issues and is also a carer for her father. She is currently unemployed and her rent is paid via universal credit. She is keen to secure social housing, as she feels that this would offer herself and her children more security than a new private rented property.

Findings in fact

14. The Tribunal made the following findings in fact:
 - i. The Applicant owns the property.
 - ii. The property is the only rental property owned by the Applicant.
 - iii. The property is a four bedroomed house.
 - iv. There is a short assured tenancy in place between the parties.
 - v. The original tenancy commenced on 24 May 2011 and ended on 26 November 2011. It has continued by tacit relocation every 6 months since that date.
 - vi. The form AT5 dated 13 May 2011 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 24 September 2024 stated that the Applicant required vacant possession of the property on or before

- 26 November 2024. These provided more than two months' notice of vacant possession.
- viii. The notices were validly served on the Respondent by sheriff officer on 24 September 2024.
 - ix. The Respondent lives in the property with her two children aged 15 and 10.
 - x. The rent payable at the start of the tenancy was £500 per month. As at the date of the CMD, the rent was £530 per month.
 - xi. The tenancy reached its ish on 26 November 2024.

Reasons for decision

15. 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.

16. 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.

17. 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 Respondent, for the reasons set out above.

18. 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.

19. The Tribunal noted the Applicant's circumstances and the reasons why he wished to sell. It also noted that the current rent is very low, and that the Applicant is currently losing money on the tenancy. It would therefore be difficult for him to sell the property with the Respondent as a sitting tenant. 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 he had followed the correct rules in terms of creating the tenancy and serving the notices correctly.
20. The Tribunal also noted that the Respondent did not wish to oppose the application, as she required an eviction order to assist her to secure social housing for herself and her family.
21. 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 Respondent had not opposed the application as she had been advised by the council that an order was required before they would consider assisting her in securing a new social rented tenancy.
22. 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 Respondent more time to find alternative housing. The Respondent said that she would prefer the eviction date to be sooner rather than later, in the hope that she and her family would find a new home before her children return to school in August.
23. The Tribunal therefore decided not to delay execution of the order beyond the standard period, which would end the tenancy on 3 July 2025.

Decision

24. The Tribunal granted 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.

Sarah O'Neill

2 June 2025

Legal Member/Chair

Date