



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/24/3200

Re: Property at 27 Gigha Terrace, Irvine, KA11 1DJ (“the Property”)

Parties:

Mr Darren Baker, 15, Dornden Gardens, Lordeswood, Kent, ME5 8QB (“the Applicant”)

Miss Louise Rae, 27 Gigha Terrace, Irvine, KA11 1DJ (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Mary Lyden (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 representative on behalf of the Applicant on 12 July 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 Respondent.
2. Attached to the application form were:
 - (i) Copy short-assured tenancy agreement between the parties which commenced on 5 February 2014.
 - (ii) Copy form AT5 relating to the tenancy dated 3 February 2014.
 - (iii) Copy notice required under section 33 of the 1988 Act (‘the section 33 notice’) dated 26 April 2024.

- (iv) Copy Notice to Quit dated 26 April 2024 requiring the Respondent to remove from the property on or before 5 July 2024.
 - (v) Copy certificate of service certifying that the Notice to Quit and section 33 notice had been served on the Respondents by sheriff officer on 29 April 2024.
 - (vi) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 addressed to North Ayrshire Council, together with covering email dated 12 July 2024.
3. Following a request from the Tribunal administration, further information was received from the Applicant on 16 and 30 August and 29 October 2024.
4. The application was accepted on 28 November 2024.
5. No written representations were received from the Respondent prior to the case management discussion (CMD).

The first case management discussion

6. A CMD was held by teleconference call on 24 April 2025. Neither party was present or represented on the call at the appointed time. The Tribunal clerk contacted the Applicant's representative, Homesure Portfolio Management ("Homesure"), to enquire as to why there was no-one in attendance at the CMD.
7. Mrs Elaine Dunlop of Homesure then joined the teleconference call to advise the Tribunal that her former colleague who had been dealing with the application was no longer employed there. The CMD had not been noted in the office diary, and no-one at Homesure had therefore been aware that it was due to take place.
8. At Mrs Dunlop's request, the Tribunal agreed to adjourn the matter to another CMD to allow herself or a colleague to represent the Applicant.

The adjourned case management discussion

9. The adjourned CMD was held by teleconference call on 24 June 2025. The Applicant was represented on the call by Mrs Dunlop. The Respondent was present on the call and represented herself.

Submissions on behalf of the Applicant

10. Mrs Dunlop 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 5 July 2024.

11. She said that the Applicant intends to sell the property. It is his only rental property, and he wishes to exit the rental market. She confirmed that he had considered selling the property with the Respondent in situ as a sitting tenant, but that investors are not buying such properties at the moment. It was not viable to sell the property on this basis, given the low rent. The rent has remained at £450 per month since the Respondent moved in more than 12 years ago.
12. Mrs Dunlop confirmed that the Respondent currently owes rent arrears of around £2150. There is a payment plan in place under which she pays £50 over and above her rent towards the arrears.
13. Mrs Dunlop had no further information about the Applicant's circumstances.

The Respondent's submissions

14. The Respondent confirmed that she had received the notices served on her by the Applicant in July 2024. She told the Tribunal that she did not wish to oppose the application. She had always felt secure in the property, which had become her family's home since she moved in 12 years ago, but now felt very insecure living there. The property also requires various repairs to be done, and she feels that it would be best for her and her family to have a fresh start.
15. The Respondent is a single parent who lives in the property with her two children who are aged 12 and 15, and both attend a local secondary school. She has two older children who both also live in the local area. She works full time and suffers from epilepsy
16. She has applied to the North Ayrshire Council to be rehoused. The Council has indicated that they will rehouse her and her family as she has lived in the area for a long time. The Council had told her to contact them after the CMD to update them. The Council is aware of her health issues. She does not know how quickly she is likely to be rehoused but hopes it will be soon.

Findings in fact

17. The Tribunal made the following findings in fact:
 - i. The Applicant owns the property jointly with Jeanette Baker, who gave permission on 9 August 2024 for the application to proceed in his sole name.
 - ii. The Applicant is the registered landlord for the property.
 - iii. The property is the only rental property owned by the Applicant.
 - iv. The property is a four bedroomed terraced house.

- v. There is a short assured tenancy in place between the parties.
- vi. The original tenancy commenced on 5 February 2014 and ended on 5 August 2014. It has continued by tacit relocation on a month to month basis since that date.
- vii. The form AT5 dated 3 February 2014 was in the prescribed format and the short-assured tenancy agreement between the parties was validly constituted.
- viii. The Notice to Quit and section 33 notice dated 26 April 2024 stated that the Applicant required vacant possession of the property on or before 5 July 2024. These provided more than two months' notice of vacant possession.
- ix. The notices were validly served on the Respondent by sheriff officer on 29 April 2024.
- x. The Respondent lives in the property with her two children aged 12 and 15.
- xi. The rent which has been payable since the start of the tenancy is £450 per month.
- xii. The tenancy reached its end on 5 July 2024.

Reasons for decision

18. 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.

19. 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 end;

(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.

20. 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 Notice to Quit and section 33 notice had been validly served on the Respondent, for the reasons set out above.

21. 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.
22. 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 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.
23. The Tribunal also noted that it had been more than a year since the Notice to Quit and section 33 notice had been served. The Tribunal also took into account the fact that the Respondent was in rent arrears, although a payment plan had been agreed between the parties.
24. The Tribunal 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. She did not wish to stay in the property, as she no longer felt secure living there.
25. 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 did not oppose the application because she wished to secure a new council tenancy.
26. Before deciding to grant the order, the Tribunal asked the parties for their views on the possibility of delaying execution of any 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, as she hoped that she and her family would find a new home over the summer and could be settled before her children return to school in August.
27. Mrs Dunlop said that she believed that the Applicant would be agreeable to a short extension if required, without the need for the Tribunal to formally delay execution of any order.
28. The Tribunal therefore decided not to delay execution of the order beyond the standard period, which would end the tenancy on 25 July 2025.

Decision

- 29.** 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

24 June 2025

Legal Member/Chair

Date